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CONSTITUTION

JEFFERSON'S MANUAL

AND

RULES OF THE HOUSE OF REPRESENTATIVES

OF THE UNITED STATES
ONE HUNDRED NINTH CONGRESS

JOHN V. SULLIVAN
PARLIAMENTARIAN

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HOUSE RESOLUTION 871

IN THE HOUSE OF REPRESENTATIVES, U.S.,
December 7, 2004.

Resolved, That a revised edition of the Rules and Manual of the House of Representatives for the One Hundred Ninth Congress be printed as a House document, and that three thousand additional copies shall be printed and bound for the use of the House of Representatives, of which nine hundred copies shall be bound in leather with thumb index and delivered as may be directed by the Parliamentarian of the House.

Attest:

JEFF TRANDAHL,
Clerk.

PREFACE

The House Rules and Manual contains the fundamental source material for parliamentary procedure used in the House of Representatives: the Constitution of the United States; applicable provisions of Jefferson's Manual; Rules of the House (as of the date of this preface); provisions of law and resolutions having the force of Rules of the House; and pertinent decisions of the Speakers and other presiding officers of the House and Committee of the Whole interpreting the rules and other procedural authority used in the House of Representatives.

The rules for the One Hundred Ninth Congress were adopted on January 4, 2005, when the House agreed to House Resolution 5. In addition to a series of changes to various standing rules, House Resolution 5 included separate free-standing orders constituting procedures to be followed in the One Hundred Ninth Congress. Explanations of the changes to the standing rules appear in the annotations following each rule in the text of this Manual.

In the One Hundred Sixth Congress, the House adopted a recodification of the Rules of the House. For an explanation of the recodified format, see the Preface and other introductory matter for the House Rules and Manual for the One Hundred Sixth Congress (H. Doc. 105–358).

The substantive changes in the standing rules made by House Resolution 5 of the 109th Congress included:

(1) establishment of the Committee on Homeland Security as a standing committee (granting it legislative jurisdiction and oversight responsibilities and including conforming changes to the jurisdictional statements of the Committees on the Judiciary, Transportation and Infrastructure, and Ways and Means) (clauses 1 and 3 of rule X);

(2) codification of the exercise of jurisdiction by the Committee on the Judicary over criminal law enforcement (clause 1(l) of rule X);

(3) requirement of committees, when developing their oversight plans, to insure against the duplication of Federal programs (clause 2(d) of rule X);

(4) inclusion in composition of the Committee on the Budget a Member designated by the elected leadership of

each party (rather than a Member of the elected leadership of each party) (clause 5(a)(2) of rule X);

(5) exemption for the chairman of the Committee on Rules from the limit on consecutive terms for chairmen (clause 5(c) of rule X);

(6) establishment of privileged motion in committee to recess subject to the call of the chair (within 24 hours) (clause 1(a) of rule XI);

(7) authorization for committees to adopt a rule providing that the chairman be directed to offer a motion to go to conference whenever the chairman considers it appropriate (clause 2(a) of rule XI);

(8) extension of the Speaker's authority to entertain motions to suspend the rules to include Wednesdays (clause 1 of rule XV);

(9) repeal of the Corrections Calendar (clause 6 of rule XV);

(10) authorization for remarks in debate to include references to the Senate or its Members, so long as avoiding personality (clause 1(b) of rule XVII);

(11) establishment of procedures by which a provisional number of the House may operate in the event of catastrophic circumstances (clause 5(c) of rule XX);

(12) expansion of the Speaker's authority to postpone votes to include the question of agreeing to the motion to reconsider, the question of agreeing to the motion to lay on the table a motion to reconsider, and the question of agreeing to an amendment reported from the Committee of the Whole (clause 8(a) of rule XX);

(13) authorization for Members to use campaign funds to defray certain official expenses (clause 1 of rule XXIV);

(14) extension of prohibition against use of the frank for mass mailings to 90 days (from 60) before an election (clause 8 of rule XXIV);

(15) expansion of the definition in the gift rule of "necessary transportation, lodging, and related expenses" to include travel expenses of the relative of a Member (rather than only spouse or child) (clause 5 of rule XXV); and

(16) amendments to various requirements that the Committee on Standards of Official Conduct adopt certain rules with respect to the duties of the chairman and ranking minority member regarding properly filed complaints, due process rights, and committee reporting requirements (clause 3(b), (k), (p), and (q) of rule XI); however, such amendments were redacted and the provisions as they ex-

isted at the close of the 108th Congress were reinstated (H. Res. 240, Apr. 27, 2005, p. ——).

In addition to the amendments cited above, clause 11(a)(1) of rule X was amended to change the size of the Permanent Select Committee on Intelligence (H. Res. 51, 109th Cong., Jan. 26, 2005, p. ——) and clause 3 of rule XXI was amended to conform the rule to the current law authorizing funds for highway and transit programs and to codify a rule of construction (sec. 8004, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), P.L. 109–59; 2 U.S.C. 901 note).

Citations in this edition refer to:

(1) Hinds' Precedents of the House of Representatives of the United States (volumes I through V) and Cannon's Precedents of the House of Representatives of the United States (volumes VI through VIII), by volume and section (*e.g.*, V, 5763; VIII, 2852);

(2) Deschler's Precedents of the U.S. House of Representatives (volumes 1 through 9) and the Deschler-Brown Precedents of the U.S. House of Representatives (volumes 10 through 16), by volume, chapter, and section (*e.g.*, Deschler, ch. 26, § 79.7; Deschler-Brown, ch. 28, § 4.26);

(3) the Congressional Record, by date and page (*e.g.*, Jan. 29, 1986, p. 684);

(4) House Practice (2003), by chapter and section (*e.g.*, House Practice, ch. 1, § 2);

(5) Deschler-Brown Procedure in the U.S. House of Representatives (4th edition and 1987 supplement), by chapter and section (*e.g.*, Procedure, ch. 5, § 8.1);

(6) the United States Code, by title and section (*e.g.*, 2 U.S.C. 287); and

(7) the United States Reports, by volume and page (*e.g.*, 395 U.S. 486).

Readers are invited to refer to the prefaces of Hinds', Cannon's, and Deschler's Precedents (Volumes I, VI, and 1, respectively) for comprehensive overviews by those editors of the procedural history of the House of Representatives from 1789 to 1976.

All the members of the Office of the Parliamentarian — Charles Johnson, Tom Duncan, Muftiah McCartin, Tom Wickham, Ethan Lauer, Tara Sarathy, Carrie Wolf, Gay Topper, Brian Cooper, Deborah Khalili, and Bryan Feldblum — worked diligently to annotate the decisions of the Chair and other parliamentary precedents of the

108th Congress and the 109th Congress to the date of publication and otherwise shared their considerable technical skills in the preparation of this edition. Their contributions to the revision of this Manual, including those of Muftiah McCartin in managing the process, and their unremitting dedication to parliamentary probity in the practices of the House are gratefully acknowledged.

To whatever extent the annotations in this work reflect consistency and predictability in the procedural practices of the House, a lion's share of credit is owed to Charles W. Johnson III and his predecessor, Wm. Holmes Brown. Together with their predecessor, Lewis Deschler, they have produced published precedents of the House that, along with the seminal sets of precedents published by Clarence Cannon and Asher Hinds, trace the parliamentary jurisprudence of the House to the 18th century.

Charles W. Johnson III was appointed to the Office of the Parliamentarian of the House of Representatives in May 1964 and, over the ensuing 40 years, continuously served there under seven successive Speakers, the final 10 years as Parliamentarian of the House under the appointments of three successive Speakers. His mentor and dear friend, Wm. Holmes Brown, was appointed to the Office in 1958 and, over the ensuing 36 years, continuously served under six successive Speakers, the final 20 as Parliamentarian under the appointments of four successive Speakers. Together, Messrs. Brown and Johnson unfailingly endeavored to apply pertinent precedent to every parliamentary question, in recognition of the principle that fidelity to precedent promotes procedural fairness and legitimacy. They institutionalized in the Office of the Parliamentarian their demonstrated commitment to consistency in parliamentary analysis.

Mr. Brown passed away on May 27, 2001. In publishing volume 16 of the Deschler-Brown Precedents in February, 2002, Mr. Johnson paid tribute to Mr. Brown's work in compilation of the precedents after his retirement. On the occasion of Mr. Johnson's own retirement at the end of May, 2004, the House acclaimed its profound gratitude to him for his unrivaled record of devoted service and steady, impartial guidance as its Parliamentarian. The same profound gratitude toward both of these Parliamentarians fills the hearts of those who prepared this edition of the House Rules and Manual.

JOHN V. SULLIVAN

OCTOBER 7, 2005

CONTENTS

THE CONSTITUTION

	Page
PREAMBLE	3
ARTICLE I.—The legislative power	4
II.—The executive power	65
III.—The judicial power	77
IV.—Obligations, duties, etc., of the States	79
V.—Amendments to	81
VI.—Law of the land, etc.	83
VII.—Ratification of	87
Amendments ratified	90

JEFFERSON'S MANUAL

SECTION I.—Importance of adhering to rules	125
III.—Privilege	128
VI.—Quorum	147
VII.—Call of the House	148
IX.—Speaker	149
X.—Address	151
XI.—Committees	152
XII.—Committee of the Whole	155
XIII.—Examination of witnesses	164
XIV.—Arrangement of business	170
XV.—Order	172
XVI.—Order respecting papers	173
XVII.—Order in debate	173
XVIII.—Orders of the House	194
XIX.—Petition	198
XX.—Motions	199
XXI.—Resolutions	201
XXIII.—Bills, leave to bring in	203
XXIV.—Bills, first reading	203
XXV.—Bills, second reading	204
XXVI.—Bills, commitment	204
XXVII.—Report of committee	215

CONTENTS

	Page
SECTION XXVIII.—Bill, recommitment	216
XXIX.—Bills, reports taken up	217
XXX.—Quasi-committee	219
XXXI.—Bill, second reading in the House	223
XXXII.—Reading papers	225
XXXIII.—Privileged questions	227
XXXIV.—The previous question	240
XXXV.—Amendments	242
XXXVI.—Division of the question	251
XXXVII.—Coexisting questions	254
XXXVIII.—Equivalent questions	255
XXXIX.—The question	258
XL.—Bills, third reading	258
XLI.—Division of the House	262
XLII.—Titles	268
XLIII.—Reconsideration	268
XLIV.—Bills sent to the other House	271
XLV.—Amendments between the Houses	272
XLVI.—Conferences	282
XLVII.—Messages	295
XLVIII.—Assent	299
XLIX.—Journals	302
L.—Adjournment	304
LI.—A session	306
LII.—Treaties	309
LIII.—Impeachment	313

RULES OF THE HOUSE

RULE I.—The Speaker	333
II.—Other Officers and Officials	354
III.—The Members, Delegates, and Resident Commissioner of Puerto Rico.	373
IV.—The Hall of the House	377
V.—Broadcasting the House	385
VI.—Official Reporters and News Media Galleries	387
VII.—Records of the House	399
VIII.—Response to Subpoenas	403
IX.—Questions of Privilege	407
X.—Organization of Committees	424
XI.—Procedures of Committees and Unfinished Business.	533
XII.—Receipt and Referral of Measures and Matters	593
XIII.—Calendars and Committee Reports	607
XIV.—Order and Priority of Business	641
XV.—Business in Order on Special Days	652

CONTENTS

	Page
RULE XVI.—Motions and Amendments	672
XVII.—Decorum and Debate	723
XVIII.—The Committee of the Whole House on the state of the Union.	751
XIX.—Motions Following the Amendment Stage	780
XX.—Voting and Quorum Calls	795
XXI.—Restrictions on Certain Bills	823
XXII.—House and Senate Relations	869
XXIII.—Code of Official Conduct	894
XXIV.—Limitations on Use of Official Funds	901
XXV.—Limitations on Outside Earned Income and Acceptance of Gifts.	905
XXVI.—Financial Disclosure	928
XXVII.—Statutory Limit on Public Debt	951
XXVIII.—General Provisions	955

PROVISIONS OF LEGISLATIVE REORGANIZATION ACT OF 1946, AS AMENDED BY THE LEGISLATIVE REORGANIZATION ACT OF 1970, APPLICABLE TO BOTH HOUSES

Congressional adjournment	959
Preservation of committee hearings	960

JOINT AND SELECT COMMITTEES

Economic Committee, Joint	961
Internal Revenue Taxation, Joint Committee on	961
Library, Joint Committee of Congress on the	962
Printing, Joint Committee on	962
Inaugural Ceremonies, Joint Congressional Committee on	962
Select committees	962

HOUSE AND CONGRESSIONAL OFFICES

House Commission on Congressional Mailing Standards	965
House Office Building Commission	965
Government Accountability Office	965
Office of Compliance	965
Congressional Research Service	966
Legislative Counsel	966
Congressional Budget Office	966
Law Revision Counsel	966
Technology Assessment	966
Office of the Parliamentarian	966
Office of Floor Assistants	967
Office of Interparliamentary Affairs	967
House Recording Studio	967

CONTENTS

Page

United States Capitol Preservation Commission 967
Office of General Counsel 968
Office of Emergency Planning, Preparedness, and Operations 968
Office of Attending Physician 968
Office of Architect of the Capitol 968
Early organization of House 969

MISCELLANEOUS PROVISIONS OF CONGRESSIONAL BUDGET LAWS

Congressional Budget Act of 1974 975
Budget Enforcement Act of 1990 1053

CONGRESSIONAL DISAPPROVAL PROVISIONS CONTAINED IN PUBLIC LAWS

Resolutions privileged for consideration in House 1060

INDEX

Index 1233

GENERAL ORDER OF BUSINESS

RULE XIV

First. Prayer by Chaplain.
Second. Approval of Journal.
Third. The Pledge of Allegiance to the Flag.
Fourth. Correction of reference of public bills.
Fifth. Disposal of business on Speaker's table.
Sixth. Unfinished business.
Seventh. The morning hour for the consideration of bills.
Eighth. Motions to go into Committee of the Whole.
Ninth. Orders of the day.

SPECIAL ORDER OF BUSINESS

MONDAYS

Second and fourth Mondays:
Motions to discharge committees. Rule XV, clause 2.
District of Columbia Business. Rule XV, clause 4.
Every Monday:
Motions to suspend rules. Rule XV, clause 1.

TUESDAYS

First and third Tuesdays:
Private Calendar. Rule XV, clause 5. Individual private bills considered on first Tuesday of each month, omnibus private bills may be considered on third Tuesday of each month.
Every Tuesday:
Motions to suspend rules. Rule XV, clause 1.

WEDNESDAYS

Call of Committees under Calendar Wednesday. Rule XV, clause 7.
Every Wednesday:
Motions to suspend rules. Rule XV, clause 1.

CONSTITUTION

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

§ 1. The preamble.

The First Continental Congress met in Philadelphia in September of 1774 and adopted the Declaration and Resolves of the First Continental Congress, embodying rights and principles later to be incorporated into the Constitution of the United States. The Second Continental Congress adopted in November of 1777 the Articles of Confederation, which the States approved in July, 1778. Upon recommendation of the Continental Congress, a convention of State representatives met in May, 1787 to revise the Articles of Confederation and reported to the Continental Congress in September a new Constitution, which the Congress submitted to the States for ratification. Nine States, as required by the Constitution for its establishment, had ratified by June 21, 1788, and eleven States had ratified by July 26, 1788. The Continental Congress adopted a resolution on September 13, 1788, putting the new Constitution into effect; the First Congress of the United States convened on March 4, 1789, and George Washington was inaugurated as the first President on April 30, 1789.

§ 2. Formation of the Constitution.

ARTICLE I.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

§ 3. Legislative powers vested in Congress.

The power to legislate includes the power to conduct inquiries and investigations. See Kilbourn *v.* Thompson, 103 U.S. 168 (1881); McGrain *v.* Daugherty, 273 U.S. 135 (1927); Watkins *v.* United States, 354 U.S. 178 (1957); Barenblatt *v.* United States, 360 U.S. 109 (1959). For the power of the House to punish for contempt in the course of investigations, see § 293, *infra*.

§ 4. Power to investigate.

SECTION 2. [1]The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, * * *.

§ 5. Members chosen by the people of the States every second year.

This clause requires election by the people and State authority may not determine a tie by lot (I, 775).

The phrase "by the people of the several States" means that as nearly as practicable one person's vote in a congressional election is to be worth as much as another's. Wesberry *v.* Sanders, 376 U.S. 1 (1964); Kirkpatrick *v.* Preisler, 385 U.S. 450 (1967). 2 U.S.C. 2a mandates apportionment of Representatives based upon population, and 2 U.S.C. 2c requires the establishment by the States of single-Member congressional districts. For elections generally, see Deschler, ch. 8.

§ 6. Term of a Congress.

The term of a Congress, before the ratification of the 20th amendment to the Constitution, began on the 4th of March of the odd numbered years and extended through two years. This resulted from the action of the Continental Congress on September 13, 1788, in declaring, on authority conferred by the Federal Convention, "the first Wednesday in March next" to be "the time for commencing proceedings under the said Constitution." This date was the 4th of March, 1789. Soon after the first Congress assembled a joint committee determined that the terms of Representatives and Senators of the first class commenced on that day, and must necessarily terminate with the 3d of March, 1791 (I, 3). Under the 20th amendment to the Constitution the terms of Representatives and Senators begin on the 3d of January of the odd-numbered years, regardless of when Congress actually convenes. By a practice having the force of common law, the House meets at noon when no other hour is fixed (I, 4, 210). In the later practice a

resolution fixing the daily hour of meeting at noon or some other hour is agreed to at the beginning of each session.

Before adoption of the 20th amendment, the legislative day of March 3 extended to noon on March 4 (V, 6694–6697) and, unless earlier adjourned, the Speaker could at that time declare the House adjourned sine die, without motion or vote, even to the point of suspending a roll call then in progress (V, 6715–6718).

The Legislative Reorganization Act of 1970 (84 Stat. 1140) provides that unless Congress otherwise specifies the two Houses shall adjourn sine die not later than the last day in July. This requirement is not applicable, under the terms of that Act, where a state of war exists pursuant to a congressional declaration or where, in an odd-numbered (nonelection) year, the Congress has agreed to adjourn for the month preceding Labor Day. For more on this provision, see § 1105, *infra*.

§ 7. Electors of the House of Representatives.

* * * and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

The House, in the decision of an election case, has rejected votes cast by persons not naturalized citizens of the United States, although they were entitled to vote under the statutes of a State (I, 811); but where an act of Congress had provided that a certain class of persons should be deprived of citizenship, a question arose over the proposed rejection of their votes in a State wherein citizenship in the United States was not a qualification of the elector (I, 451). In an exceptional case the House rejected votes cast by persons lately in armed resistance to the Government, although by the law of the State they were qualified voters (I, 448); but later, the House declined to find persons disqualified as voters because they had formerly borne arms against the Government (II, 879).

§ 8. Decisions of the Court.

The power of the States to set qualifications for electors is not unlimited, being subject to the 15th, 19th, 24th, and 26th amendments, and to the equal protection clause of the United States Constitution. Carrington *v.* Rash, 380 U.S. 89 (1965); Kramer *v.* Union Free School District, 395 U.S. 621 (1969).

Congress has some power in setting qualifications for electors, as in protecting the right to vote and lowering the minimum age for electors in congressional elections. Katzenbach *v.* Morgan, 384 U.S. 641 (1966); Oregon *v.* Mitchell, 400 U.S. 112 (1970).

§ 9. Age as a qualification of the Representative.

[2] No Person shall be a Representative who shall not have attained to the Age of twenty five Years, * * *.

A Member-elect not being of the required age, was not enrolled by the Clerk and he did not take the oath until he had reached the required age (I, 418).

§ 10. Citizenship as a qualification of the Member.

* * * and been seven Years a Citizen of the United States, * * *.

Henry Ellenbogen, Pa., had not been a citizen for seven years when elected to the 73d Congress, nor when the term commenced on March 4, 1933. He was sworn at the beginning of the second session on January 3, 1934, when a citizen for seven and one-half years (see H. Rept. 1431 and H. Res. 370, 73d Cong.). A native of South Carolina who had been abroad during the Revolution and on his return had not resided in the country seven years, was held to be qualified as a citizen (I, 420). A woman who forfeited her citizenship through marriage to a foreign subject and later resumed it through naturalization less than seven years before her election, was held to fulfill the constitutional requirement as to citizenship and entitled to a seat in the House (VI, 184). A Member who had long been a resident of the country, but who could not produce either the record of the court nor his final naturalization papers, was nevertheless retained in his seat by the House (I, 424).

§ 11. Inhabitancy as a qualification of the Member.

* * * and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

The meaning of the word "inhabitant" and its relation to citizenship has been discussed (I, 366, 434; VI, 174), and the House has held that a mere sojourner in a State was not qualified as an inhabitant (I, 369), but a contestant was found to be an actual inhabitant of the State although for sufficient reason his family resided in another State (II, 1091). Residence abroad in the service of the Government does not destroy inhabitancy as understood under the Constitution (I, 433). One holding an office and residing with his family for a series of years in the District of Columbia exclusively was held disqualified to sit as a Member from the State of his citizenship (I, 434); and one who had his business and a residence in the District of Columbia and had no business or residence in Virginia was held ineligible to a seat from that State (I, 436). One who had a home in the District of Columbia, and had inhabited another home in Maryland a brief period before his election, but had never been a citizen of any other State, was held to be qualified (I, 432). Also a Member who had resided a portion of a year in the District of Columbia, but who had a home in the State of his citizenship and was actually living there at the time of the election, was held to be qualified (I, 435). In the Updike *v.* Ludlow case, 71st Congress, it was decided that residence in the District of Colum-

bia for years as a newspaper correspondent and maintenance there of church membership were not considered to outweigh payment of poll and income taxes, ownership of real estate, and a record for consistent voting in the district from which elected (VI, 55), and in the same case excuse from jury duty in the District of Columbia on a plea of citizenship in the State from which elected and exercise of incidental rights of such citizenship, were accepted as evidence of inhabitancy (VI, 55).

§ 12. Qualifications other than those specified by the Constitution.

Whether Congress may by law establish qualifications other than those prescribed by the Constitution has been the subject of much discussion (I, 449, 451, 457, 458, 478); but in a case wherein a statute declared a Senator convicted of a certain offense "forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States," the Supreme Court expressed the opinion that the final judgment of conviction did not operate, ipso facto, to vacate the seat or compel the Senate to expel or regard the Senator as expelled by force alone of the judgment (II, 1282). Whether the House or Senate alone may set up qualifications other than those of the Constitution has also been a subject often discussed (I, 414, 415, 443, 457, 458, 469, 481, 484). The Senate has always declined to act on the supposition that it had such a power (I, 443, 483), and during the stress of civil war the House of Representatives declined to exercise the power, even under circumstances of great provocation (I, 449, 465). But later, in one instance, the House excluded a Member-elect on the principal argument that it might itself prescribe a qualification not specified in the Constitution (I, 477). The matter was extensively debated in the 90th Congress in connection with the consideration of resolutions relating to the seating of Representative-elect Adam C. Powell of New York (H. Res. 1, Jan. 10, 1967, p. 14; H. Res. 278, Mar. 1, 1967, p. 4997).

The exclusion of Mr. Powell was the subject of litigation reaching the Supreme Court of the United States. In Powell *v.* McCormack, 395 U.S. 486 (1969), the Court found that the power of Congress to judge the qualifications of its Members was limited to an examination of the express qualifications stated in the Constitution.

It has been decided by the House and Senate that no State may add to the qualifications prescribed by the Constitution (I, 414–416, 632); and the Supreme Court so ruled in U.S. Term Limits, Inc., *v.* Thorton, 63 U.S.L.W. 4413 (1995). There, the Court held that States may not "change, add to, or diminish" constitutional qualifications of Members, striking down a State statute prohibiting three-term incumbents from appearing on the general election ballot. For qualifications generally, see Deschler, ch. 7, §§ 9–14.

For expulsion of seated Members, which requires a two-thirds vote rather than a majority vote, see article I, section 5, clause 2 (§ 62, *infra*).

§ 13. Minority candidate not seated when returned Member is disqualified.

Both Houses of Congress have decided, when a Member-elect is found to be disqualified, that the person receiving the next highest number of votes is not entitled to the seat (I, 323, 326, 450, 463, 469; VI, 58, 59), even in a case wherein reasonable notice of the disqualification was given to the electors (I, 460). In the event of the death of a Member-elect, the candidate receiving the next highest number of votes is not entitled to the seat (VI, 152).

§ 14. The old provision for apportionment of Representatives and direct taxes.

[3] [Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] * * *

The part of this clause relating to the mode of apportionment of Representatives was changed after the Civil War by section 2 of the 14th amendment and, as to taxes on incomes without apportionment, by the 16th amendment.

§ 15. Census as a basis of apportionment.

* * * The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland

six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

The census has been taken decennially since 1790, and, with the exception of 1920, was followed each time by reapportionment. In the First Congress the House had 65 Members; increased after each census, except that of 1840, until 435 was reached in 1913 (VI, 39, 40). The Act of June 18, 1929 (46 Stat. 26), as amended by the Act of November 15, 1941 (55 Stat. 761), provides for reapportionment of the existing number (435) among the States following each new census (VI, 41–43; see 2 U.S.C. 2a). Membership was temporarily increased to 436, then to 437, upon admission of Alaska (72 Stat. 345) and Hawaii (73 Stat. 8), but returned to 435 on January 3, 1963, the effective date of the reapportionment under the 18th Decennial census.

Under the later but not the earlier practice, bills relating to the census and apportionment are not privileged for consideration (I, 305–308; VI, 48, VII, 889; Apr. 8, 1926, p. 7147).

§ 16. Decisions of the Court.

Decisions of the Supreme Court of the United States: Dred Scott *v.* Sandford, 19 Howard, 393; Veazie Bank *v.* Fenno, 8 Wall., 533; Scholey *v.* Rew, 23 Wall., 331; De Treville *v.* Smalls, 98 U.S. 517; Gibbons *v.* District of Columbia, 116 U.S. 404; Pollock *v.* Farmers Loan & Trust Co. (Income Tax case), 157 U.S. 429; Pollock *v.* Farmers' Loan & Trust Co. (Rehearing), 158 U.S. 601; Thomas *v.* United States, 192 U.S. 363; Flint *v.* Stone Tracy Co., 220 U.S. 107; Corporation Tax cases, 220 U.S. 107; Eisner *v.* Macomber, 252 U.S. 189; New York Trust Co. *v.* Eisner, 256 U.S. 345; Franklin *v.* Massachusetts, 505 U.S. 788 (1992); Utah *v.* Evans, 536 U.S. 452 (2002).

§ 17. Writs for elections to vacancies in representation.

[4] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

Vacancies are caused by death, resignation, declination, withdrawal, or by action of the House in declaring a vacancy as existing or causing one by expulsion. When a vacancy occurs, or when a new Member is sworn, the Speaker announces the resulting adjustment in the whole number of the House pursuant to clause 5(d) of rule XX (see § 1024b, *infra*). Clause 5(c) of rule XX permits the House to operate with a provisional number of the House where the House is without a quorum due to catastrophic circumstances (see § 1024a, *infra*). In extraordinary circumstances, section 8 of title 2, United States Code, prescribes special election rules to expedite the filling of vacancies in representation of the House.

§ 18. Vacancy from death.

It was long the practice to notify the executive of the State when a vacancy was caused by the death of a Member during a session (II, 1198–1202); but since improvements in transportation have made it possible for deceased Members to be buried at their homes it has been the practice for State authorities to take cognizance of the vacancies without notice. When a Member dies while not in attendance on the House or during a recess the House is sufficiently informed of the vacancy by the credentials of his successor, when they set forth the fact of the death (I, 568). The death of a Member-elect creates a vacancy, although no certificate may have been awarded (I, 323), and in such a case the candidate having the next highest number of votes may not receive the credentials (I, 323; VI 152). A Member whose seat was contested dying, the House did not admit a claimant with credentials until contestant's claim was settled (I, 326); where a contestant died after a report in his favor, the House unseated the returned Member and declared the seat vacant (II, 965), and in a later case the contestant having died, the committee did not recommend to the House a resolution it had agreed to declaring he had not been elected (VI, 112). In the 93d Congress, when two Members-elect were passengers on a missing aircraft and were presumed dead, the Speaker laid before the House documentary evidence of the presumptive death of one Member-elect and the declaration of a vacancy by the Governor, as well as evidence that the status of the other Member-elect had not been officially determined by State authority. The House then adopted a privileged resolution declaring vacant the seat of the latter Member-elect to enable the Governor of that State to call a special election (Jan. 3, 1973, p. 15). For further discussion, see § 23, *infra*.

§ 19. Vacancy from resignation.

In recent practice the Member frequently informs the House by letter that his resignation has been sent to the State executive (II, 1167–1176) and this is satisfactory evidence of the resignation (I, 567). However, Members have resigned by letter to the House alone, it being presumed that the Member would also notify his Governor (VI, 226). Where a Member resigned by letter to the House the Speaker was authorized to notify the Governor (Nov. 27, 1944, p. 8450; July 12, 1957, p. 11536; Sept. 1, 1976, p. 28887). Where a Member does not inform the House, the State executive may do so (II, 1193, 1194; VI, 232). The House has, on occasion, learned of a Member's resignation by means of the credentials of his successor (II, 1195, 1356). Where the fact of a Member's resignation has not appeared either from the credentials of his successor or otherwise, the Clerk has been ordered to make inquiry (II, 1209) or the House has ascertained the vacancy from information given by other Members (II, 1208).

It has been established that a Member or Senator may resign, appointing a future date for his resignation to take effect, and until the arrival of the date may participate in the proceedings (II, 1220–1225, 1228, 1229; VI, 227, 228; Dec. 15, 1997, p. 26709; June 5, 2001, p. ——; Nov. 27, 2001, p. ——; Jan. 27, 2003, p. ——). It has been possible even for a Member

to resign a seat in the House to be effective on a date following the anticipated date of a special election that might fill the vacancy thereby be created (Deschler, ch. 8, § 9.3). However, the State concerned must be willing to treat the prospective resignation as a Constitutional predicate for the issuance of a writ of election to fill a vacancy. For examples of resignation letters indicating that the Executive of the State took cognizance of a prospective resignation, see, January 8, 1952, (p. 14) (New York); July 9, 1991, (p. 17301) (Virginia); June 5, 2001, (p. ——) (Florida), and Jan. 27, 2003, (p. ——) (Texas). When the Governor of Oklahoma received a prospective resignation from one of its Members, the State provided by statute (enrolled Senate Bill Number 7X) for the holding of a special election before the effective date of the resignation (Feb. 27, 2002, p. ——).

For the State to take cognizance of a prospective resignation, it must have assurances that there is no possibility of withdrawal (or modification). In one case a Member who had resigned was not permitted by the House to withdraw the resignation (II, 1213). However, the House has allowed withdrawal in the case of defective resignation; that is, where the Member had not actually transmitted the letter of resignation (VI, 229), or had transmitted it to an improper state official (Oct. 9, 1997, p. 22020). A Member may include in a letter of prospective resignation a statement of intention that the resignation be "irrevocable" in order to allay any concern about the prospect of withdrawal (June 5, 2001, p. ——; Jan. 27, 2003, p. ——).

Acceptance of the resignation of a Member of the House is unnecessary (VI, 65, 226), and the refusal of a Governor to accept a resignation cannot operate to continue membership in the House (VI, 65). Only in a single exceptional case has the House taken action in the direction of accepting a resignation (II, 1214). Sometimes Members who have resigned have been reelected to the same House and taken seats (II, 1210, 1212, 1256; Jan. 28, 1965 and June 16, 1965, pp. 1452, 13774; Jan. 6, 1983 and Feb. 22, 1983, pp. 114, 2575). A Member who has not taken his seat resigned (II, 1231).

A letter of resignation is presented as privileged (II, 1167–1176); but a resolution to permit a Member to withdraw his resignation was not so treated (II, 1213). The Speaker having been elected Vice President and a Representative of the succeeding Congress at the same election, transmitted to the Governor of his State his resignation as a Member-elect (VI, 230, 453). A Member of the House having been nominated and confirmed as Vice President pursuant to the 25th amendment, submitted a letter of resignation as a Representative to the Governor of his State, and a copy of his letter of resignation was laid before the House by the Speaker following the completion of a joint meeting for his swearing-in as Vice President (Dec. 6, 1973, p. 39927). A Member of the House having been confirmed as Secretary of Defense, a copy of his letter of resignation was laid before the House before his taking the oath of that office (Mar. 20, 1989, p. 4976).

§ 20. Vacancy from declination.

A Member who has been elected to a seat may decline to accept it, and in such a case the House informed the executive of the State of the vacancy (II, 1234). The House has decided an election contest against a returned Member who had not appeared to claim the seat (I, 638). In one instance a Member-elect who had been convicted in the courts did not appear during the term (IV, 4484, footnote). On November 7, 1998, less than a week after his re-election as Representative from the 6th district of Georgia, Speaker Gingrich announced that he would not be a candidate for Speaker in the 106th Congress and that he would resign his seat as a Member of the 106th Congress. Although the letter of "withdrawal" was tendered on November 22, the Governor did not attempt to call a special election until after the term began on January 3, 1999 (Jan. 6, 1999, p. 42).

§ 21. Vacancy by withdrawal.

At the time of the secession of several States, Members of the House from those States withdrew (II, 1218). In the Senate, in cases of such withdrawals, the Secretary was directed to omit the names of the Senators from the roll (II, 1219), and the act of withdrawal was held to create a vacancy which the legislature might recognize (I, 383).

§ 22. Vacancy by action of the House.

Where the House, by its action in a question of election or otherwise, creates a vacancy, the Speaker is directed to notify the Executive of the State (I, 502, 709, 824; II, 1203–1205; Mar. 1, 1967, p. 5038; Jan. 3, 1973, p. 15; Feb. 24, 1981, pp. 2916–18). A resolution as to such notification is presented as a question of privilege (III, 2589), as is a resolution declaring a vacancy where a Member-elect was unable to take the oath of office or to resign because of an incapacitating illness (Feb. 24, 1981, pp. 2916–18).

§ 23. Questions as to the existence of a vacancy.

The House declines to give prima facie effect to credentials, even though they be regular in form, until it has ascertained whether or not the seat is vacant (I, 322, 518, 565, 569), and a person returned as elected at a second election was unseated on ascertainment that another person had actually been chosen at the first election (I, 646). Where a Member was re-elected to the House, although at the time of the election he had been unaccounted for for several weeks following the disappearance of the plane on which he was a passenger, the Governor of the State from which he was elected transmitted his certificate to the House in the regular fashion. When the Member-elect was still missing at the time the new Congress convened, and circumstances were such that other passengers on the missing plane had been presumed dead following judicial inquiries in the State where the plane was lost, the House declared the seat vacant (H. Res. 1, 93d Cong., Jan. 3, 1973, p. 15). In the 108th Congress the House codified in clause 5 of rule XX its practice of accounting for vacancies (sec. 2(l), H. Res. 5, Jan. 7, 2003, p. ——).

The term "vacancy" as occurring in this paragraph of the Constitution has been examined in relation to the functions of the State executive (I, 312, 518). A Federal law empowers the States and Territories to provide by law the times of elections to fill vacancies (I, 516; 2 U.S.C. 8); but an election called by a governor in pursuance of constitutional authority was held valid although no State law prescribed time, place, or manner of such election (I, 517). Where two candidates had an equal number of votes, the governor did not issue credentials to either, but ordered a new election after they had waived their respective claims (I, 555). A candidate elected for the 104th Congress was appointed by the Governor to fill a vacancy for the remainder of the 103d Congress pursuant to a State law requiring the Governor to appoint the candidate who won the election to the 104th Congress. In that case the House authorized the Speaker to administer the oath to the Member-elect and referred the question of his final right to the seat in the 103d Congress to the Committee on House Administration (Nov. 29, 1994, pp. 29585, 29586). For a discussion of a State election to fill a prospective vacancy of the House, see § 19.

§ 24. Functions of the State executive in filling vacancies.

A Member elected to fill a vacancy serves no longer time than the remainder of the term of the Member whose place he fills (I, 3). For the compensation and allowances of such Members, see § 87, *infra*.

§ 25. Term of a Member elected to fill a vacancy.

[5] The House of Representatives shall chuse their Speaker and other Officers; * * *

§ 26. House chooses the Speaker and other officers.

The officers of the House are the Speaker, who has always been one of its Members and whose term as Speaker must expire with his term as a Member; and the Clerk, Sergeant-at-Arms, Chief Administrative Officer, and Chaplain (I, 187), no one of whom has ever been chosen from the sitting membership of the House and who continue in office until their successors are chosen and qualified (I, 187). In one case the officers continued through the entire Congress succeeding that in which they were elected (I, 244, 263). Former officers include Doorkeeper (abolished by the 104th Congress, see § 663a, *infra*) and Postmaster (abolished during the 102d Congress, see § 668, *infra*). The House formerly provided by special rule that the Clerk should continue in office until another should be chosen (I, 187, 188, 235, 244). Currently, certain statutes impose on the officers duties which contemplate their continuance (I, 14, 15; 2 U.S.C. 75a–1, 83).

The Speaker, who was at first elected by ballot, has been chosen viva voce by surname in response to a call of the roll since 1839 (I, 187). The Speaker is elected by a majority of Members-elect voting by surname, a quorum being present (I, 216; VI, 24; Jan. 7, 1997, p. 117). The Clerk appoints tellers for this election (I, 217). Ultimately, the House, and not the Clerk, decides

§ 27. Election of a Speaker.

by what method it shall elect the Speaker (I, 210). On two occasions, by special rules, Speakers were chosen by a plurality of votes; but in each case the House by majority vote adopted a resolution declaring the result (I, 221, 222). The House has declined to choose a Speaker by lot (I, 221).

The motion to proceed to the election of a Speaker is privileged (I, 212, 214; VIII, 3883), and debatable unless the previous question is ordered (I, 213). Relying on the Act of June 1, 1789 (2 U.S.C. 25), the Clerk recognized for nominations for Speaker as being of higher constitutional privilege than a resolution to postpone the election of a Speaker and instead provide for the election of a Speaker pro tempore pending the disposition of certain ethics charges against the nominee of the majority party (Jan. 7, 1997, p. 115). On several occasions the choice of a Speaker has been delayed for several weeks by contests (I, 222; V, 5356, 6647, 6649; VI, 24). The contest over the election of a Speaker in 1923 was resolved after a procedure for the adoption of rules for the 68th Congress had been presented (VI, 24). In 1860 the voting for Speaker proceeded slowly, being interspersed with debate (I, 223), and in one instance the House asked candidates for Speaker to state their views before proceeding to election (I, 218).

§ 28. Vacancies in the Office of Speaker.

A proposition to elect a Speaker is in order at any time a vacancy exists and presents a question of the highest privilege (VIII, 3383). Upon a vacancy in the Office of Speaker, the House elects a new Speaker either viva voce following nominations (in the case where a Speaker has died between sessions of Congress or resigned) or by resolution (in the case where a Speaker has died during a session of Congress). For example, in the case where the Speaker had died between sessions of Congress, the Clerk at the next session called the House to order, ascertained the presence of a quorum, and then the House proceeded to elect a successor viva voce following nominations (I, 234; Jan. 10, 1962, p. 5). In a case where the Speaker died during a session of Congress, but not while the House was sitting, the Clerk on the following day called the House to order and the Speaker's successor was elected by resolution (June 4, 1936, p. 9016; Sept. 16, 1940, p. 12231). In a case where the Speaker resigned "on the election of my successor" (May 31, 1989, p. 10440), he entertained nominations for Speaker and, following the roll call, declared the winner of the election "duly elected Speaker" (June 6, 1989, p. 10801). In one instance a Speaker resigned on the last day of the Congress, and the House unanimously adopted a motion to elect a successor for the day (I, 225).

Form of resolution offered on death of a Speaker (Sept. 16, 1940, p. 12232; Jan. 10, 1962, p. 9) and of a former Speaker (VIII, 3564; Mar. 7, 1968, p. 5742; H. Res. 328, Jan. 25, 1994, p. 89; H. Res. 418, Feb. 8, 2000, p. 834). A resolution declaring vacant the Office of Speaker is presented as a matter of high constitutional privilege (VI, 35). Speakers have resigned by rising in their place and addressing the House (I, 231, 233), by calling a Member to the Chair and tendering the resignation verbally from the

floor (I, 225), by tendering the resignation during recognition under a question of personal privilege (May 31, 1989, p. 10440), or by sending a letter which the Clerk reads to the House at the beginning of a new session (I, 232). When the Speaker resigns no action of the House excusing him from service is taken (I, 232). Instance wherein the Speaker, following a vote upon an essential question indicating a change in the party control of the House, announced that under the circumstances it was incumbent upon the Speaker to resign or to recognize for a motion declaring vacant the Office of Speaker (VI, 35). In the 108th Congress the House adopted clause 8(b)(3) of rule I, under which the Speaker is required to deliver to the Clerk a list of Members in the order in which each shall act as Speaker pro tempore in the case of a vacancy in the Office of Speaker (sec. 2(a), H. Res. 5, Jan. 7, 2003, p. ——). The Speaker delivered to the Clerk the first such letter on February 10, 2003 (Mar. 13, 2003, p. ——).

§ 29. Power of House to elect its officers as related to law.

The effect of a law to regulate the action of the House in choosing its own officers has been discussed (IV, 3819), and such a law has been considered of doubtful validity (V, 6765, 6766) in theory and practice (I, 241, 242). The Legislative Reorganization Act of 1946 (2 U.S.C. 75a–1) authorizes the Speaker to fill temporary vacancies in the offices of Clerk, Sergeant-at-Arms, Chief Administrative Officer, and Chaplain. For a history of the Speaker's exercise of such authority, see § 640, *infra;* and, for further information on the elections of officers, see Deschler, ch. 6.

§ 30. Election of Clerk in relation to business.

The Office of Clerk becoming vacant, it was held that the House would not be organized for business until a Clerk should be elected (I, 237); but in another instance some business intervened before a Clerk was elected (I, 239). At the time of organization, while the Clerk of the preceding House was yet officiating, and after the Speaker had been elected, the House proceeded to legislation and other business before electing a Clerk (I, 242, 244). But in one case it was held that the Act of June 1, 1789 (2 U.S.C. 25) bound the House to elect the Clerk before proceeding to business (I, 241).

§ 31. House of Representatives alone impeaches.

* * * and [the House of Representatives] shall have the sole Power of Impeachment.

In 1868 the Senate ceased in its rules to describe the House, acting in an impeachment, as the "grand inquest of the nation" (III, 2126). See also art. II, sec. 4 (§ 173, *infra*); Deschler, ch. 14.

A Federal court having subpoenaed certain evidence gathered by a committee of the House in an impeachment inquiry, the House adopted a resolution granting such limited access to the evidence as would not infringe upon its sole power of impeachment (Aug. 22, 1974, p. 30047).

Until the law expired on June 30, 1999, an independent counsel was required to advise the House of any substantial and credible information that may constitute grounds for impeachment of an officer under his investigation (28 U.S.C. 595(c)). For a description of impeachment proceedings prompted by a communication from an independent counsel, see § 176, *infra*.

SECTION 3. [1][The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.]

§ 32. Numbers, terms, and votes of Senators.

This provision has now been changed by the 17th amendment to the Constitution.

[2]Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]

§ 33. Division of the Senate into classes.

§ 34. Filling of vacancies in the Senate.

That part of the above paragraph in brackets was changed by the 17th amendment.

[3]No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Cit-

§ 35. Qualifications of Senators.

izen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

In 1794 the Senate decided that Albert Gallatin was disqualified, not having been a citizen nine years although he had served in the war of Independence and was a resident of the country when the Constitution was formed (I, 428); and in 1849 that James Shields was disqualified, not having been a citizen for the required time (I, 429). But in 1870 the Senate declined to examine as to H. R. Revels, a citizen under the recently adopted 14th amendment (I, 430). As to inhabitancy the Senate seated one who, being a citizen of the United States, had been an inhabitant of the State from which he was appointed for less than a year (I, 437). Also one who, while stationed in a State as an army officer had declared his intention of making his home in the State, was admitted by the Senate (I, 438). A Senator who at the time of his election was actually residing in the District of Columbia as an officeholder, but who voted in his old home and had no intent of making the District his domicile, was held to be qualified (I, 439).

§ 36. The Vice President and his vote.

[4] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The right of the Vice President to vote has been construed to extend to questions relating to the organization of the Senate (V, 5975), as the election of officers of the Senate (V, 5972–5974), or a decision on the title of a claimant to a seat (V, 5976, 5977). The Senate has declined to make a rule relating to the vote of the Vice President (V, 5974).

§ 37. Choice of President pro tempore and other officers of the Senate.

[5] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

In the 107th Congress the Senate elected two Presidents of the Senate pro tempore for different periods when the majority of the Senate shifted after inauguration of the Vice President (S. Res. 3, Jan. 3, 2001, p. 7).

[6] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

§ 38. Senate tries impeachment and convicts by two-thirds vote.

For the exclusive power of the Senate to try impeachments under the United States Constitution, see Ritter *v.* United States, 84 Ct. Cls. 293 (1936), cert. denied, 300 U.S. 668 (1937). See also Mississippi *v.* Johnson, 71 U.S. (4 Wall.) 475 (1867) (dictum). For the nonjusticiability of a claim that Senate Rule XI violates the impeachment trial clause by delegating to a committee of 12 Senators the responsibility to receive evidence, hear testimony, and report to the Senate thereon, see Nixon *v.* United States, 506 U.S. 224 (1993). For a discussion of Senate impeachment procedures, see §§ 608–20, *infra.*

[7] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

§ 41. Judgment in cases of impeachment.

There has been discussion as to whether or not the Constitution requires both removal and disqualification on conviction (III, 2397); but in the case of Pickering, the Senate decreed only removal (III, 2341). In the case of Humphreys, judgment of both removal and disqualification was pronounced (III, 2397). In the Ritter case, it was first held that upon conviction of the respondent, judgment of removal required no vote, following automatically from conviction under article II, section 4 (Apr. 17, 1936, p. 5607). In the 99th Congress, having tried to conviction the first impeachment case against a Federal district judge since 1936, the Senate ordered his removal from office (Oct. 9, 1986, p. 29870). In the 101st Congress, two other Federal district judges were removed from office following their convictions in the Senate (Oct. 20, 1989, p. 25335; Nov. 3, 1989, p. 27101). For a further discussion of judgments in cases of impeachment, see § 619, *infra*.

SECTION 4. [1] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.

§ 42. Times, places, and manner of elections of Representatives and Senators.

The relative powers of the Congress and the States under this graph have been the subject of much discussion (I, 311, 313, 507, footnote); but Congress has in fact fixed by law the time of elections (I, 508; VI, 66; 2 U.S.C. 7), and has controlled the manner to the extent of prescribing a ballot or voting machine (II, 961; VI, 150; 2 U.S.C. 9). When a State delegated to a municipality the power to regulate the manner of holding an election, a question arose (II, 975). A question has arisen as to whether or not a State, in the absence of action by Congress, might make the time of election of Congressmen contingent on the time of the State election (I, 522). This paragraph gives Congress the power to protect the right to vote in primaries where they are an integral part of the election process. United States *v.* Wurzbach, 280 U.S. 396 (1930); United States *v.* Classic, 313 U.S. 299 (1941). Congress may legislate under this paragraph to protect the exercise of the franchise in congressional elections. Ex parte Siebolt, 100 U.S. 371 (1880); Ex parte Yarbrough, 110 U.S. 651 (1884).

§ 43. Functions of a State legislature in fixing time, etc., of elections.

The meaning of the word "legislature" in this clause of the Constitution has been the subject of discussion (II, 856), as to whether or not it means a constitutional convention as well as a legislature in the commonly accepted meaning of the word (I, 524). The House has sworn in Members chosen at an election the time, etc., of which was fixed by the schedule of a constitution adopted on that election day (I, 519, 520, 522). But the House held that where a legislature has been in existence a constitutional convention might not exercise the power (I, 363, 367). It has been argued generally that the legislature derives the power herein discussed from the Federal and not the State Constitution (II, 856, 947), and therefore that the State constitution might not in this respect control the State legislature (II, 1133). The House has sustained this view by its action (I, 525). But where the State constitution fixed a date for an election and the legislature had not acted, although it had the opportunity, the House held the election valid (II, 846). Title III of the Legislative Branch Appropriations Act, 2006, amended Federal election law to require States to hold special elections for the House within 49 days after a vacancy is announced by the Speaker in the extraordinary circumstance that vacan-

cies in representation from the States exceed 100 (P.L. 109–55; 2 U.S.C. 8).

§ 44. Decisions of the Court.

Decisions of the Supreme Court of the United States: Ex parte Siebold, 100 U.S. 371 (1880); Ex parte Clark, 100 U.S. 399 (1880); Ex parte Yarbrough, 110 U.S. 651 (1884); In re Coy, 127 U.S. 731 (1888); Ohio *v.* Hildebrant, 241 U.S. 565 (1916); United States *v. Mosley, 238 U.S. 383 (1915); United States v.* Gradwell, 243 U.S. 476 (1917); Newberry *v.* United States, 256 U.S. 232 (1921); Smiley *v.* Holme, 285 U.S. 355 (1932); United States *v.* Classic, 313 U.S. 299 (1941); Smith *v.* Allwright, 321 U.S. 649 (1944); Roudebush *v.* Hartke, 405 U.S. 15 (1972); Storer *v.* Brown, 415 U.S. 724 (1974); Buckley *v.* Valeo, 424 U.S. 1 (1976); U.S. Term Limits, Inc., *v.* Thorton, 514 U.S. 779 (1995); and Foster *v.* Love, 522 U.S. 67 (1997). In Public Law 91–285, Congress lowered the minimum age of voters in all Federal, State, and local elections from 21 to 18 years. In Oregon *v.* Mitchell, 400 U.S. 112 (1970), the Supreme Court upheld the power of Congress under article I, section 4 and under section 5 of the 14th amendment to the Constitution to fix the age of voters in Federal elections, but held that the tenth amendment to the Constitution reserved to the States the power to establish voter age qualifications in State and local elections. The 26th amendment to the Constitution extended the right of persons 18 years of age or older to vet in elections held under State authority.

§ 45. Annual meeting of Congress.

[2] [The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.]

This provision of the Constitution has been superseded by the 20th amendment.

In the later but not the earlier practice (I, 5), before the 20th amendment, the fact that Congress had met once within the year did not make uncertain the constitutional mandate to meet on the first Monday of December (I, 6, 9–11). Early Congresses, convened either by proclamation or law on a day earlier than the constitutional day, remained in continuous session to a time beyond that day (I, 6, 9–11). But in the later view an existing session ends with the day appointed by the Constitution for the regular annual session (II, 1160); see § 84, *infra*. Congress has frequently appointed by law a day for the meeting (I, 4, 5, 10–12, footnote; see also § 243, *infra*).

§ 46. House the judge of elections, returns, and qualifications.

SECTION 5. [1] Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, * * *.

In judging the qualifications of its Members, the House may not add qualifications to those expressly stated in the United States Constitution. Powell *v.* McCormack, 395 U.S. 486 (1969). This phrase allows the House or Senate to deny the right to a seat without unlawfully depriving a State of its right to equal representation. Barry *v.* United States ex rel Cunningham, 279 U.S. 597 (1929). But a State may conduct a recount of votes without interfering with the authority of the House under this phrase. Roudebush *v.* Hartke, 405 U.S. 15 (1972). For discussion of the power of the House to judge elections, see Deschler, ch. 8 (elections) and ch. 9 (election contests); for discussion of the power of the House to judge qualifications, see Deschler, ch. 7.

The House has the same authority to determine the right of a Delegate to his seat that it has in the case of a Member (I, 423). The House may not delegate the duty of judging its elections to another tribunal (I, 608), and the courts of a State have nothing to do with it (II, 959). The House has once examined the relations of this power to the power to expel (I, 469).

§ 47. Power of judging as related to State laws as to returns.

As nearly all the laws governing the elections of Representatives in Congress are State laws, questions have often arisen as to the relation of this power of judging to those laws (I, 637). The House decided very early that the certificate of a State executive issued in strict accordance with State law does not prevent examination of the votes by the House and a reversal of the return (I, 637). The House has also held that it is not confined to the conclusions of returns made up in strict conformity to State law, but may examine the votes and correct the returns (I, 774); and the fact that a State law gives canvassers the right to reject votes for fraud and irregularities does not preclude the House from going behind the returns (II, 887). The highest court in one State (Colorado) has ruled that it lacked jurisdiction to pass upon a candidate's allegations of irregularities in a primary election and that the House had exclusive jurisdiction to decide such questions and to declare the rightful nominee (Sept. 23, 1970, p. 33320).

§ 48. Power of judging as related to State laws as to acts of the voter.

When the question concerns not the acts of returning officers, but the act of the voter in giving his vote, the House has found more difficulty in determining on the proper exercise of its constitutional power. While the House has always acted on the principle of giving expression to the intent of the voter (I, 575, 639, 641; II, 1090), yet it has held that a mandatory State law, even though arbitrary, may cause the rejection of a ballot on which the intent of the voter is plain (II, 1009, 1056, 1077, 1078, 1091). See Deschler, ch. 8, § 8.11, for discussion of distinction between directory State laws governing the conduct of election officials as to ballots, and mandatory laws regulating the conduct of voters.

§ 49. Power of House as related to constitutionality of State laws.

Where the State courts have upheld a State election law as constitutional the House does not ordinarily question the law (II, 856, 1071). But where there has been no such decision the House, in determining its election cases, has passed on the validity of State laws under State constitutions (II, 1011, 1134), and has acted on its decision that they were unconstitutional (II, 1075, 1126), but it is not the policy of the House to pass upon the validity of State election laws alleged to be in conflict with the State constitution (VI, 151).

§ 50. Effect of interpretation of State election laws by State courts.

The courts of a State have nothing to do directly with judging the elections, qualifications, and returns of Representatives in Congress (II, 959), but where the highest State court has interpreted the State law the House has concluded that it should generally be governed by this interpretation (I, 645, 731; II, 1041, 1048), but does not consider itself bound by such interpretations (VI, 58). The House is not bound, however, by a decision on an analogous but not the identical question in issue (II, 909); and where the alleged fraud of election judges was in issue, the acquittal of those judges in the courts was held not to be an adjudication binding on the House (II, 1019). For a recent illustration of a protracted election dispute lasting four months see House Report 99–58, culminating in House Resolution 146 of the 99th Congress (May 1, 1985, p. 9998).

§ 51. Laws of Congress not binding on the House in its function of judging its elections.

The statutes of the United States provide specific methods for institution of a contest as to the title to a seat in the House (I, 678, 697–706) (2 U.S.C. 381–396); but the House regards this law as not of absolute binding force, but rather a wholesome rule not to be departed from except for cause (I, 597, 719, 825, 833), and it sometimes by resolution modifies the procedure prescribed by the law (I, 449, 600).

§ 51a. Decisions of the Court.

Decisions of the Supreme Court of the United States: In re Loney, 134 U.S. 317 (1890); Reed *v.* County Commissioners, 277 U.S. 376 (1928); Barry *v.* United States ex rel. Cunningham, 279 U.S. 597 (1929); Roudebush *v.* Hartke, 405 U.S. 15 (1972).

§ 52. The quorum.

* * * and a Majority of each [House] shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

§ 53. Interpretation of the Constitution as to number constituting a quorum.

Out of conditions arising between 1861 and 1891 the rule was established that a majority of the Members chosen and living constituted the quorum required by the Constitution (IV, 2885–2888); but later examination has resulted in a decision confirming in the House of Representatives the construction established in the Senate that a quorum consists of a majority of Senators duly chosen and sworn (I, 630; IV, 2891–2894). So the decision of the House now is that after the House is once organized the quorum consists of a majority of those Members chosen, sworn, and living whose membership has not been terminated by resignation or by the action of the House (IV, 2889, 2890; VI, 638). Under clause 5(d) of rule XX, when a vacancy occurs or when a new Member is sworn, the Speaker announces the resulting adjustment in the whole number of the House (see § 1024b, *infra*). Under clause 5(c) of rule XX, the House may establish a provisional number of the House where, due to catastrophic circumstances, a quorum fails to appear (sec. 2(h), H. Res. 5, Jan. 4, 2005, p. ——; see § 1024a, *infra*).

§ 54. The theory of the quorum present; and the count by the Speaker.

For many years a quorum was determined only by noting the number of Members voting (IV, 2896, 2897), with the result that Members by refusing to vote could often break a quorum and obstruct the public business (II, 1034; IV, 2895, footnote; V, 5744). However, in 1890 Speaker Reed directed the Clerk to enter on the Journal as part of the record of a yea-and-nay vote names of Members present but not voting, thereby establishing a quorum of record (IV, 2895). This decision, which was upheld by the Supreme Court (IV, 2904; United States *v.* Ballin, 144 U.S. 1 (1892)), established the principle that a quorum present made valid any action by the House, although an actual quorum might not vote (I, 216, footnote; IV, 2932). Thenceforth the point of order as to a quorum was required to be that no quorum was present and not that no quorum had voted (IV, 2917). At the time of the establishment of this principle the Speaker revived the count by the Chair as a method of determining the presence of a quorum at a time when no record vote was ordered (IV, 2909). The Speaker has permitted his count of a quorum to be verified by tellers (IV, 2888), but has not conceded it as a right of the House to have tellers under the circumstances (IV, 2916; VI, 647–651; VIII, 2369, 2436), claiming that the Chair might determine the presence of a quorum in such manner as he should deem accurate and suitable (IV, 2932). The Chair counts all Members in sight, whether in the cloak rooms, or within the bar (IV, 2970; VIII, 3120). Later, as the complement to the new view of the quorum, the early theory that the presence of a quorum was as necessary during debate or other business as on a vote was revived (IV, 2935–2949). Also, a line of rulings made under the old theory was overruled; and it was established that the point of no quorum might be made after the House had declined to verify a division by tellers or the yeas

and nays (IV, 2918–2926). For a discussion of the *Ballin* decision and the Chair's count to determine a quorum, see House Practice, ch. 43, § 5.

§ 55. Relations of the quorum to acts of the House.

The absence of a quorum having been disclosed, there must be a quorum of record before the House may proceed to business (IV, 2952, 2953; VI, 624, 660, 662), and the point of no quorum may not be withdrawn even by unanimous consent after the absence of a quorum has been ascertained and announced by the Chair (IV, 2928–2931; VI, 657; Apr. 13, 1978, p. 10119; Sept. 25, 1984, p. 26778). But when an action has been completed, it is too late to make the point of order that a quorum was not present when it was done (IV, 2927; VI, 655). But where action requiring a quorum was taken in the ascertained absence of a quorum by ruling of a Speaker pro tempore, the Speaker on the next day ruled that the action was null and void (IV, 2964; see also VIII, 3161). But such absence of a quorum should appear from the Journal if a legislative act is to be vacated for such reason (IV, 2962), and where the assumption that a quorum was present when the House acted was uncontradicted by the Journal, it was held that this assumption might not be overthrown by expressions of opinion by Members individually (IV, 2961).

Major revisions in the House rules concerning the necessity and establishment of a quorum occurred in the 94th, 95th, and 96th Congresses. Under the practice in the 93d Congress, for example, a point of no quorum would prevent the report of the Chairman of a Committee of the Whole (VI, 666); but in the 93d Congress clause 7 of rule XX (formerly clause 6 of rule XV) was adopted to provide that after the presence of a quorum is once ascertained on any day, a point of no quorum could not be entertained after the Committee had risen and pending the report of the Chairman to the House (see § 1027, *infra*). Clause 7 of rule XX now specifically precludes a point of no quorum unless a question has been put to a vote. However, the Speaker retains the right to recognize a Member to move a call of the House at any time (but may, under clause 7(c) of rule XX recognize for a call of the House after the previous question has been ordered only when the Speaker determines by actual count that a quorum is not present). A point of order of no quorum during debate only in the House does not lie independently under this clause of the Constitution because clause 7 of rule XX (formerly clause 6 of rule XV) is a proper exercise of the House's constitutional rulemaking authority which can be interpreted consistently with the requirement that a quorum be present to conduct business (as opposed to mere debate) (Sept. 8, 1977, p. 28114; Sept. 12, 1977, p. 28800).

Before these changes to rule XX (formerly rule XV), a quorum was required at all times during the reading of the Journal (IV, 2732, 2733; VI, 625, 629) or messages from the President or the Senate (IV, 3522; VI 6600, 6650; VIII 3339); but the modern practice would require the presence of a quorum only when the question is put on a pending motion or proposition in the House such as on a motion incident to the reading, amendment,

or approval of the Journal or on the referral or other disposition of other papers read to the House. A point of no quorum no longer lies during debate in the House. The practice in the Committee of the Whole is now governed by clause 6 of rule XVIII. No motion is in order on the failure of a quorum but the motions to adjourn and for a call of the House (IV, 2950; VI, 680) and the motion to adjourn has precedence over the motion for a call of the House (VIII, 2642). A call of the House is in order under the Constitution before the adoption of the rules (IV, 2981). Those present on a call of the House may prescribe a fine as a condition on which an arrested Member may be discharged (IV, 3013, 3014), but this is rarely done. A quorum is not required on motions incidental to a call of the House (IV, 2994; VI, 681; Oct. 8, 1940, p. 13403; and Oct. 8, 1968, p. 30090). The House may adjourn sine die in the absence of a quorum where both Houses have already adopted a concurrent resolution providing for a sine die adjournment on that day (Oct. 18, 1972, p. 37200).

§ 56. Relations of the quorum to organization of the House.

At the time of organization the two Houses inform one another of the appearance of the quorum in each, and the two Houses jointly inform the President (I, 198–203). A message from one House that its quorum has appeared is not delivered in the other until a quorum has appeared there also (I, 126). But at the beginning of a second session of a Congress the House proceeded to business, although a quorum had not appeared in the Senate (I, 126). At the beginning of a second session of a Congress unsworn Members-elect were taken into account in ascertaining the presence of a quorum (I, 175); however, at the beginning of the second session of the 87th Congress, the Clerk called the House to order, announced the death of Speaker Rayburn during the sine die adjournment, and did not call unsworn Members-elect or Members who had resigned during the hiatus to establish a quorum or elect a new Speaker (Jan. 10, 1962, p. 5). In both Houses the oath has been administered to Members-elect in the absence of a quorum (I, 174, 181, 182; VI, 22), although in one case the Speaker objected to such proceedings (II, 875). Prayer by the Chaplain is not business requiring the presence of a quorum and the Speaker declines to entertain a point of no quorum before prayer is offered (VI, 663; clause 7 of rule XX).

§ 57. Decisions of the Court.

Decisions of the Supreme Court of the United States: Kilbourn *v.* Thompson, 103 U.S. 190 (1881); United States *v.* Ballin, 144 U.S. 1 (1892); Burton *v.* United States, 202 U.S. 344 (1906).

§ 58. The House determines its rules.

[2] Each House may determine the Rules of its Proceedings, * * *

§ 59. Power to make rules not impaired by rules or law.

The power of each House of Representatives to make its own rules may not be impaired or controlled by the rules of a preceding House (I, 187, 210; V, 6002, 6743–6747), or by a law passed by a prior Congress (I, 82, 245; IV, 3298, 3579; V, 6765, 6766). The House in adopting its rules may, however, incorporate by reference as a part thereof all applicable provisions of law which constituted the Rules of the House at the end of the preceding Congress (H. Res. 5, 95th Cong., Jan. 4, 1977, pp. 53–70) and has also incorporated provisions of concurrent resolutions which were intended to remain applicable under the Budget Act (H. Res. 5, 107th Cong., Jan. 3, 2001, p. 25). The House twice reaffirmed free-standing directives to the Committee on Standards of Official Conduct contained in a simple House resolution (H. Res. 168, 105th Cong., p. 19317, reaffirmed for the 106th Congress by sec. 2(c), H. Res. 5, Jan. 6, 1999, p. 47, and reaffirmed for the 107th Congress with an exception by sec. 3(a), H. Res. 5, Jan. 3, 2001, p. 24; see § 806, *infra*). In the 108th Congress those free-standing directives were codified in clause 3 of rule XI (sec. 2(h), H. Res. 5, Jan. 7, 2003, p. ——). Ordinary rights and functions of the House under the Constitution are exercised in accordance with the rules (III, 2567), and under later decisions questions of so-called constitutional privilege should also be considered in accordance with the rules (VI, 48; VII, 889; Apr. 8, 1926, p. 7147). But a law passed by an existing Congress with the concurrence of the House has been recognized by that House as of binding force in matters of procedure (V, 6767, 6768). In exercising its constitutional power to change its rules the House may confine itself within certain limitations (V, 6756; VIII, 3376); but the attempt of the House to deprive the Speaker of his vote as a Member by a rule was successfully resisted (V, 5966, 5967). While the Act of June 1, 1789 (see 2 U.S.C. 25) requires the election of a Clerk before the House proceeds to business yet the House has held that it may adopt rules before electing a Clerk (I, 245). Although the Speaker ceases to be an officer of the House with the expiration of a Congress, the Clerk, by old usage, continues in a new Congress (I, 187, 188, 235, 244; see 2 U.S.C. 26). In case of a vacancy in the Office of Clerk, Sergeant-at-Arms, Doorkeeper (abolished by the 104th Congress; see § 663a, *infra*), Postmaster (abolished during the 102d Congress; see § 668, *infra*), Chaplain, or Chief Administrative Officer, the Speaker is authorized to make temporary appointments (2 U.S.C. 75a–1). The House has adopted a rule before election of a Speaker (I, 94, 95); but in 1839 was deterred by the Act of June 1, 1789 and the Constitution from adopting rules before the administration of the oath to Members-elect (I, 140). The earlier theory that an officer might be empowered to administer oaths by a rule of either House has been abandoned in later practice and the authority has been conferred by law (III, 1823, 1824, 2079, 2303, 2479; 2 U.S.C. 191).

§ 60. Procedure in the House before the adoption of rules.

Before the adoption of rules the House is governed by general parliamentary law, but Speakers have been inclined to give weight to the rules and precedents of the House in modifying the usual constructions of that law (V, 5604, 6758–6760; VIII, 3384; Jan. 3, 1953, p. 24; Jan. 10, 1967, p. 14). The general parliamentary law as understood in the House is founded on Jefferson's Manual as modified by the practice of American legislative assemblies, especially of the House of Representatives (V, 6761–6763; Jan. 3, 1953, p. 24), but the provisions of the House's accustomed rules are not necessarily followed (V, 5509). Before the adoption of rules, the statutory enactments incorporated into the rules of the prior Congress as an exercise of the rulemaking power do not control the proceedings of the new House until it adopts rules incorporating those provisions (Jan. 22, 1971, p. 132).

Before the adoption of rules, it is in order for any Member who is recognized by the Chair to offer a proposition relating to the order of business without asking consent of the House (IV, 3060). Relying on the Act of June 1, 1789 (2 U.S.C. 25), the Clerk recognized for nominations for Speaker as being of higher constitutional privilege than a resolution to postpone the election of a Speaker and instead provide for the election of a Speaker pro tempore pending the disposition of certain ethics charges against the nominee of the majority party (Jan. 7, 1997, p. 115). The Speaker may recognize the Majority Leader to offer an initial resolution providing for the adoption of the rules as a question of privilege in its own right (IV, 3060; Deschler, ch. 1, § 8), even before recognizing another Member to offer as a question of privilege another resolution calling into question the constitutionality of that resolution (Speaker Foley, Jan. 5, 1993, p. 49). The Speaker also may recognize a Member to offer for immediate consideration a special order providing for the consideration of a resolution adopting the rules (H. Res. 5, Jan. 4, 1995, p. 447). The resolution adopting rules for a Congress has included a special order of business for consideration of specified legislation (sec. 108, H. Res. 6, Jan. 4, 1995, p. 463; sec. 3, H. Res. 5, Jan. 6, 1999, p. 76). The Speaker held as not cognizable a point of order that a resolution adopting the Rules of the House contained a provision that the House had no constitutional authority to adopt, stating that the House decides such issues by way of the question of consideration or disposition of the resolution (Speaker Hastert, Jan. 4, 2005, p. ——).

During debate on the resolution adopting rules, any Member may make a point of order that a quorum is not present based upon general parliamentary precedents, since the provisions of clause 7 of rule XX (formerly clause 6(e) of rule XV) prohibiting the Chair from entertaining such a point of order unless the question has been put on the pending proposition are not yet applicable (Jan. 15, 1979, p. 10). Before adoption of rules, under general parliamentary law as modified by usage and practice of the House, an amendment may be subject to the point of order that it is not germane to the proposition to which offered (Jan. 3, 1969, p. 23). Before adoption

of rules, the Speaker may maintain decorum by directing a Member who has not been recognized in debate beyond an allotted time to be removed from the well and by directing the Sergeant-at-Arms to present the mace as the traditional symbol of order (Jan. 3, 1991, p. 58).

The motion to commit is permitted after the previous question has been ordered on the resolution adopting the rules (V, 5604; Jan. 3, 1989, p. 81; Jan. 3, 1991, p. 61) but is not debatable (Jan. 7, 1997, p. 139). It is the prerogative of the minority to offer a motion to commit even before the adoption of the rules, but at that point the proponent need not qualify as opposed to the resolution (Jan. 3, 1991, p. 61; Jan. 4, 1995, p. 457). Such a motion to commit is not divisible, but if it is agreed to and more than one amendment is reported back pursuant thereto, then separate votes may be had on the reported amendments (Jan. 5, 1993, p. 98). The motion to refer has also been permitted upon the offering of a resolution adopting the rules, and before debate thereon, subject to the motion to lay on the table (Jan. 5, 1993, p. 52).

§ 61. Joint rules.

The two Houses of Congress adopted in the early years of the Government joint rules to govern their procedure in matters requiring concurrent action; but in 1876 these joint rules were abrogated (IV, 3430; V, 6782–6787). The most useful of their provision continued to be observed in practice, however (IV, 3430; V, 6592).

§ 61a. Decisions of the Court.

Decisions of the Supreme Court of the United States: United States *v.* Smith, 286 U.S. 6 (1932); Christoffel *v.* United States, 338 U.S. 84 (1949); United States *v.* Bryan, 339 U.S. 323 (1950); Yellin *v.* United States, 374 U.S. 109 (1963); Powell *v.* McCormack, 395 U.S. 486 (1969).

§ 62. Punishment and expulsion of Members.

* * * [Each House may] punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

§ 63. Punishment and expulsion, generally.

Among the punishments that the House may impose under this provision, the rules of the Committee on Standards of Official Conduct outline the following: (1) expulsion from the House; (2) censure; (3) reprimand; (4) fine; (5) denial or limitation of any right, power, privilege, or immunity of the Member if not in violation of the Constitution; or (6) any other sanction determined by the Committee to be appropriate (rule 24, Committee on Standards of Official Conduct, 109th Cong.). Under rule 10 of the Committee on Standards of Official Conduct, a statement of alleged violation must be proven by clear and convincing evidence.

In action for censure or expulsion, the House has discussed whether or not the principles of the procedure of the courts should be followed (II, 1255, 1264). The House, in a proceeding for expulsion, declined to give the Member a trial at the bar (II, 1275); but the Senate has permitted

a counsel to appear at its bar (II, 1263), although it declined to grant a request for a specific statement of charges or compulsory process for witnesses (II, 1264). In one instance, pending consideration of a resolution to censure a Member, the Speaker informed him that he should retire (II, 1366), but this is not usual. Members or Senators, against whom resolutions have been pending, have participated in debate either by consent to make a personal explanation (II, 1656) or without question as to consent (II, 1246, 1253, 1269, 1286). A Member against whom a resolution of censure was pending was asked by the Speaker if he desired to be heard (VI, 236). However, after the House had voted censure and the Member has been brought to the bar by the Sergeant-at-Arms to be censured, it was held that he might not then be heard (II, 1259). In the modern practice, the manager of the resolution proposing the punishment (who controls the entire hour) yields a portion of his time to the accused (Oct. 2, 1980, p. 28966; July 24, 2002, p. ——). In the latter case, the House extended debate on the resolution for a specified period and yielded that entire time to the Member who was the subject of the resolution (July 24, 2002, p. ——). The manager of the resolution has the right to close debate, not the Member who is the subject of the resolution (July 24, 2002, p. ——). Where the manager of a resolution has divided his hour three ways, the Chair announced that the order of closing speeches would be as follows: The minority manager of the resolution, the subject of the resolution, and the manager of the resolution (July 24, 2002, p. ——). Debate on a resolution recommending a disciplinary sanction against a Member may not exceed the scope of the conduct of the accused Member (Dec. 18, 1987, p. 36271).

A resolution recommending reprimand, censure, or expulsion of a Member presents a question of privilege (II, 1254; III, 2648–2651; VI, 236; Dec. 9, 1913, pp. 584–86; July 26, 1990, p. 19717). If reported by the Committee on Standards of Official Conduct (or a derivation thereof), the resolution may be called up at any time after the committee has filed its report (Jan. 21, 1997, p. 393). Before debate, an expulsion resolution is subject to the motion to lay on the table (Oct. 1, 1976, p. 35111), to postpone to a date certain (Oct. 2, 1980, p. 28953; July 24, 2002, p. ——), or to refer to committee (Mar. 1, 1979, p. 3753). A proposition to censure is not germane to a proposition to expel (VI, 236).

The Senate once expelled several Senators by a single resolution (II, 1266); however, the House has refused to censure more than one Member by a single resolution (II, 1240, 1621).

§ 64. Punishment by reprimand.

In the 94th Congress the House by adopting a report from the Committee on Standards of Official Conduct reprimanded a Member for failing to report certain financial holdings in violation of rule XXVI (formerly rule XLIV) and for investing in stock in a Navy bank the establishment of which he was promoting, in violation of the Code of Ethics for Government Service (H. Res. 1421, July 29, 1976, pp. 24379–82). (For the Code of Ethics for Government

Service, see H. Con. Res. 175, 85th Cong., 72 Stat. B12.) In the 95th Congress following an investigation by the Committee on Standards of Official Conduct into whether Members or employees had improperly accepted things of value from the Republic of Korea or representatives thereof, the House reprimanded three Members, one for falsely answering an unsworn questionnaire relative to such gifts and violating the Code of Official Conduct, one for failing to report as required by law the receipt of a campaign contribution and violating the Code of Official Conduct, and one for failing to report a campaign contribution, converting a campaign contribution to personal use, testifying falsely to the committee under oath, and violating the Code of Official Conduct (Oct. 13, 1978, pp. 36984, 37009, 37017). In the 100th Congress the House adopted a resolution reprimanding a Member for "ghost voting," improperly diverting government resources, and maintaining a "ghost employee" on his staff (Dec. 18, 1987, p. 36266). In the 101st Congress another was reprimanded for seeking dismissal of parking tickets received by a person with whom he had a personal relationship and not related to official business and for misstatements of fact in a memorandum relating to the criminal probation record of that person (July 26, 1990, p. 19717). In the 105th Congress the House reprimanded the Speaker and ordered him to reimburse a portion of the costs of the investigation by the Committee on Standards of Official Conduct (Jan. 21, 1997, p. 393).

§ 65. Punishment by censure.

Censure is inflicted by the Speaker (II, 1259) and the words are entered in the Journal (II, 1251, 1656; VI 236), but the Speaker may not pronounce censure except by order of the House (VI, 237). When Members have resigned pending proceedings for censure, the House has nevertheless adopted the resolutions of censure (II, 1239, 1273, 1275, 1656). Members have been censured for personalities and other disorder in debate (II, 1251, 1253, 1254, 1259), assaults on the floor (II, 1665), for presenting a resolution alleged to be insulting to the House (II, 1246), and for corrupt acts (II, 1274, 1286). For abuse of the leave to print, the House censured a Member after a motion to expel him had failed (VI, 236). In one instance Members were censured for acts before the election of the then existing House (II, 1286). In the 96th Congress two Members were censured by the House as follows: (1) A Member who during a prior Congress both knowingly increased an office employee's salary for repayment of that Member's personal expenses and who was unjustly enriched by clerk-hire employees' payments of personal expenses later compensated by salary increases, was censured and ordered to repay the amount of the unjust enrichment with interest (July 31, 1979, p. 21592); (2) a Member was censured for receiving over a period of time sums of money from a person with a direct interest in legislation in violation of clause 3 of rule XXIII (formerly clause 4 of rule XLIII), and for transferring campaign funds into office and personal accounts (June 10, 1980, pp. 13801–20)). In the 98th Congress the House adopted two resolutions (as amended in the House), each censuring a Member for an

improper relationship with a House page in a prior Congress (July 20, 1983, p. 20020 and p. 20030).

§ 66. Punishment by expulsion.

Five Members have been expelled in the history of the House. Among those, three were expelled for various offenses related to their service for the Confederacy in the Civil War: John B. Clark of Missouri (a Member-elect) (II, 1262, July 13, 1861); Henry C. Burnett of Kentucky (II, 1261, Dec. 3, 1861); and John W. Reid of Missouri (II, 1261, Dec. 6, 1861). Michael J. Myers of Pennsylvania was expelled after being convicted in a Federal court of bribery and conspiracy in accepting funds to perform official duties (Oct. 2, 1980, p. 28978). James A. Traficant of Ohio was expelled after being convicted in a Federal court for crimes including (1) trading official acts and influence for things of value; (2) demanding and accepting salary kickbacks from his congressional employees; (3) influencing a congressional employee to destroy evidence and to provide false testimony to a Federal grand jury; (4) receiving personal labor and the services of his congressional employees while they were being paid by the taxpayers to perform public service; and (5) filing false income tax returns (July 24, 2002, p. ——). Three Senators were expelled for their association with the Confederates during the Civil War (II, 1268–1270).

The power of expulsion has been the subject of much discussion (I, 469, 476, 481; II, 1264, 1265, 1269; VI, 56, 398; see Powell *v.* McCormack, 395 U.S. 486 (1969)). In one case a Member-elect who had not taken the oath was expelled (II, 1262), and in another case the power to do this was discussed (I, 476). In one instance the Senate assumed to annul its action of expulsion (II, 1243). The Supreme Court has decided that a judgment of conviction under a disqualifying statute does not compel the Senate to expel (II, 1282; Burton *v.* United States, 202 U.S. 344 (1906)). The power of expulsion in its relation to offenses committed before the Members' election has been discussed (II, 1264, 1284, 1285, 1286, 1288, 1289; VI, 56, 238). In one case the Judiciary Committee of the House concluded that a Member might not be punished for an offense alleged to have been committed against a preceding Congress (II, 1283); but the House itself declined to express doubt as to its power to expel and proceeded to inflict censure (II, 1286). In addition, the 96th Congress punished Members on two occasions for offenses committed during a prior Congress (H. Res. 378, July 31, 1979, p. 21592; H. Res. 660, June 10, 1980, pp. 13801–20). It has been held that the power of the House to expel one of its Members is unlimited; a matter purely of discretion to be exercised by a two-thirds vote, from which there is no appeal (VI, 78). The resignation of the accused Member has always caused a suspension of proceedings for expulsion (II, 1275, 1276, 1279; VI, 238). Following the expulsion of a Member, the Clerk notifies the Governor of the relevant state of the action of the House (July 24, 2002, p. ——).

§ 67. Decisions of the Court.

Decisions of the Supreme Court of the United States: Anderson *v.* Dunn, 6 Wh. 204 (1821); Kilbourn *v.* Thompson, 103 U.S. 168 (1881); United States *v.* Ballin, 144 U.S. 1 (1892); In re Chapman, 166 U.S. 661 (1897); Burton *v.* United States, 202 U.S. 344 (1906); Powell *v.* McCormack, 395 U.S. 486 (1969).

[3] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; * * *

§ 68. Each House to keep a journal.

§ 69. The Journal the official record.

The Journal and not the Congressional Record is the official record of the proceedings of the House (IV, 2727). Its nature and functions have been the subject of extended discussions (IV, 2730, footnote). The House has fixed its title (IV, 2728). While it ought to be a correct transcript of the proceedings of the House, the House has not insisted on a strict chronological order of entries (IV, 2815). The Journal is dated as of the legislative and not the calendar day (IV, 2746).

§ 70. Journal a record of proceedings and not of reasons.

The Journal records proceedings but not the reasons therefor (IV, 2811) or the circumstances attending (IV, 2812), or the statements or opinions of Members (IV, 2817–2820). Exceptions to this rule are rare (IV, 2808, 2825). Protests have on rare occasions been admitted by the action of the House (IV, 2806, 2807), but the entry of a protest on the Journal may not be demanded by a Member as a matter of right (IV, 2798) and such demand does not present a question of privilege (IV, 2799). A motion not entertained is not entered on the Journal (IV, 2813, 2844–46).

§ 71. House's absolute control of entries in the Journal.

While the House controls the Journal and may decide what are proceedings, even to the extent of omitting things actually done or recording things not done (IV, 2784; VI, 634), and while the Speaker has entertained a motion to amend the Journal so as to cause it to state what was not the fact, leaving it for the House to decide on the propriety of the act (IV, 2785), holding that he could not prevent a majority of the House from so amending the Journal as to undo an actual transaction (IV, 3091–93), in none of those rulings was an amendment permitted to correct the Journal which had the effect of collaterally changing the tabling of a motion to reconsider. In fact, under the precedents cited in § 902, *infra,* under clause 1 of rule XVI it has been held not in order to amend or strike out a Journal entry setting forth a motion exactly as made (IV, 2783, 2789), and thus it was held not in order to amend the Journal by striking out a resolution actually offered (IV, 2789), but on one occasion the House vacated the Speaker's referral of an executive communication by amending the Journal of the preceding day (Mar. 19, 1990, p. 4488). Only on rare

instances has the House nullified proceedings by rescinding the records of them in the Journal (IV, 2787), the House and Senate usually insisting on the accuracy of its Journal (IV, 2783, 2786). In rare instances the House and Senate have rescinded or expunged entries in Journals of preceding Congresses (IV, 2730, footnote, 2792, 2793).

§ 72. Record of votes in the Journal.

The Journal should record the result of every vote and state in general terms the subject of it (IV, 2804); but the result of a vote is recorded in figures only when the yeas and nays are taken (IV, 2827), when the vote is recorded by electronic device or by clerks, or when a vote is taken by ballot, it having been determined in latest practice that the Journal should show not only the result but the state of the ballot or ballots (IV, 2832).

§ 73. Approval of the Journal.

It is the uniform practice of the House to approve its Journal for each legislative day (IV, 2731). Where Journals of more than one session remain unapproved, they are taken up for approval in chronological order (IV, 2771–2773). In ordinary practice the Journal is approved by the House without the formal putting of the motion to vote (IV, 2774).

The former rule required the reading of the Journal on each legislative day. The reading could be dispensed with only by unanimous consent (VI, 625) or suspension of the rules (IV, 2747–2750) and had to be in full when demanded by any Member (IV, 2739–2741; VI, 627–628; Feb. 22, 1950, p. 2152).

The present form of the rule (clause 1 of rule I; see § 621, *infra*) was drafted from section 127 of the Legislative Reorganization Act of 1970 (84 Stat. 1140), incorporated into the standing rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144), and was further amended in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16). Under the current practice, the Speaker is authorized to announce his approval of the Journal which is deemed agreed to by the House, subject to the right of any Member to demand a vote on agreeing to the Speaker's approval (which if decided in the affirmative is not subject to the motion to reconsider). In the 98th Congress, the Speaker was given the authority to postpone a record vote on agreeing to his approval of the Journal to a later time on that legislative day (H. Res. 5, Jan. 3, 1983, p. 34). While the transaction of any business is not in order before approval of the Journal (IV, 2751; VI, 629, 637; Oct. 8, 1968, p. 30096), approval of the Journal yields to the simple motion to adjourn (IV, 2757), administration of the oath (I, 171, 172), an arraignment of impeachment (VI, 469), and questions of the privileges of the House (II, 1630), and the Speaker may in his discretion recognize for a parliamentary inquiry before approval of the Journal (VI, 624). Under clause 1 of rule I, as amended in the 96th Congress, a point of order of no quorum is not in order before the Speaker announces his approval of the Journal. Clause 7 of rule XX generally prohibits the making of points of order of no quorum unless the Speaker has put the question on the pending motion or proposition.

§ 74. Motions to amend the Journal.

Under the practice before clause 1 of rule I was adopted in its present form, the motion to amend the Journal took precedence over the motion to approve it (IV, 2760; VI, 633); but the motion to amend may not be admitted after the previous question is demanded on a motion to approve (IV, 2770; VI, 633; VIII, 2684). An expression of opinion as to a decision of the Chair was held not in order as an amendment to the Journal (IV, 2848). A proposed amendment to the Journal being tabled does not carry the Journal with it (V, 5435, 5436). While a proposed correction of the Journal may be recorded in the Journal, yet it is not in order to insert in full in this indirect way what has been denied insertion in the first instance (IV, 2782, 2804, 2805). The earlier practice was otherwise, however (IV, 2801–2803). The Journal of the last day of a session is not approved on the assembling of the next session, and is not ordinarily amended (IV, 2743, 2744). For further discussion of the composition and approval of the Journal, see Deschler, ch. 5.

§ 74a. Decisions of the Court.

Decisions of the Supreme Court of the United States: Field *v.* Clark, 143 U.S. 649 (1892); United States *v.* Ballin, 144 U.S. 1 (1892).

§ 75. Yeas and Nays entered on the Journal.

* * * and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

§ 76. Conditions of ordering yeas and nays.

The yeas and nays may be ordered before the organization of the House (I, 91; V, 6012, 6013), but are not taken in Committee of the Whole (IV, 4722, 4723). They are not necessarily taken on the passage of a resolution proposing an amendment to the Constitution (V, 7038, 7039; VIII, 3506), but are required to pass a bill over a veto (§ 104; VII, 1110). In the earlier practice of the House it was held that less than a quorum might not order the yeas and nays, but for many years the decisions have been uniformly the other way (V, 6016–6028). Neither is a quorum necessary on a motion to reconsider the vote whereby the yeas and nays are ordered (V, 5693). When a quorum fails on a yea and nay vote it is the duty of the Speaker and the House to take notice of that fact (IV, 2953, 2963, 2988). If the House adjourns, the order for the yeas and nays remains effective whenever the bill again comes before the House (V, 6014, 6015; VI, 740; VIII, 3108), and it has been held that the question of consideration might not intervene on a succeeding day before the second calling of the yeas and nays (V, 4949). However, when the call of the House is automatic, the Speaker directs the roll to be called or the vote to be taken by electronic device without motion from the floor (VI, 678, 679, 694, 695); and should

a quorum fail to vote and the House adjourn, proceedings under the automatic call are vacated and the question recurs de novo when the bill again comes before the House (Oct. 10, 1940, pp. 13534–35; Oct. 13, 1962, p. 23474; Oct. 19, 1966, p. 27641). While the Constitution and the Rules of the House guarantee that votes taken by the yeas and nays be spread upon the Journal, neither requires that a Member's vote be announced to the public immediately during the vote (Sept. 19, 1985, p. 24245).

§ 77. Demanding the yeas and nays.

The yeas and nays may not be demanded until the Speaker has put the question in the form prescribed by clause 6 of rule I (formerly clause 5) (Oct. 2, 1974, p. 33623).

The yeas and nays may be demanded while the Speaker is announcing the result of a division (V, 6039), while a vote by tellers is being taken (V, 6038), and even after the announcement of the vote if the House has not passed to other business (V, 6040, 6041; VIII, 3110). But after the Speaker has announced the result of a division on a motion and is in the act of putting the question on another motion it is too late to demand the yeas and nays on the first motion (V, 6042). And it is not in order during the various processes of a division to repeat a demand for the yeas and nays which has once been refused by the House (V, 6029, 6030, 6031). The constitutional right of a Member to demand the yeas and nays may not be overruled as dilatory (V, 5737; VIII, 3107); but this constitutional right does not exist as to a vote to second a motion when such second is required by the rules (V, 6032–6036; VIII, 3109). The right to demand yeas and nays is not waived by the fact that the Member demanding them has just made the point of no quorum and caused the Chair to count the House (V, 6044).

§ 78. Yeas and nays ordered by one-fifth.

In passing on a demand for the yeas and nays the Speaker need determine only whether one-fifth of those present sustain the demand (V, 6043; VIII, 3112, 3115). In ascertaining whether one-fifth of those present support a demand for the yeas and nays the Speaker counts the entire number present and not merely those who rise to be counted (VIII, 3111, 3120). Such count is not subject to verification by appeal (Sept. 12, 1978, p. 28984), and a request for a rising vote of those opposed to the demand is not in order (VIII, 3112–3114). Where the Chair prolongs his count of the House in determining whether one-fifth have supported the demand for yeas and nays, he counts latecomers in support of the demand as well as for the number present (Sept. 24, 1990, p. 25521). After the House, on a vote by tellers, has refused to order the yeas and nays it is too late to demand the count of the negative on an original vote (V, 6045).

§ 79. Reconsideration of the vote ordering the yeas and nays.

A motion to reconsider the vote ordering the yeas and nays is in order (V, 6029; VIII, 2790), and the vote may be reconsidered by a majority. If the House votes to reconsider the yeas and nays may again be ordered by one-fifth (V, 5689–5691). But when the House, having reconsidered, again orders the yeas and nays, a second motion to reconsider may not be made

(V, 6037). In one instance it was held that the yeas and nays might be demanded on a motion to reconsider the vote whereby the yeas and nays were ordered (V, 5689), but evidently there must be a limit to this process. The vote whereby the yeas and nays are refused may be reconsidered (V, 5692).

§ 80. Effect of an order of the yeas and nays.

A motion to adjourn may be admitted after the yeas and nays are ordered and before the roll call has begun (V, 5366); and a motion to suspend the rules has been entertained after the yeas and nays have been demanded on another matter (V, 6835). Consideration of a conference report (V, 6457), and a motion to reconsider the vote by which the yeas and nays were ordered (V, 6029; VIII, 2790) may be admitted. A demand for tellers or for a division is not precluded or set aside by the fact that the yeas and nays are demanded and refused (V, 5998; VIII, 3103).

§ 81. Decisions of the Court.

Decisions of the Supreme Court of the United States: Field *v.* Clark, 143 U.S. 649 (1892); United States *v.* Ballin, 144 U.S. 1 (1892); Twin City Bank *v.* Nebeker, 167 U.S. 196 (1897); Wilkes County *v.* Coler, 180 U.S. 506 (1901); Marshall *v.* Gordon, 243 U.S. 521 (1917).

§ 82. Adjournment for more than three days or to another place.

[4] Neither House, during the Session of Congress shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

§ 82a. Adjournment to another place.

The word "Place" in the above paragraph was construed to mean the seat of Government, and consent of the Senate is not required where the House orders its meetings to be held in another structure at the seat of Government (Speaker Rayburn, Aug. 17, 1949, pp. 11651, 11683). Under clause 12(d) of rule I, the Speaker may convene the House in a place *within* the District of Columbia, other than the Hall of the House, whenever, in his opinion, the public interest shall warrant it (§ 639, *infra*). In recent practice the two Houses have granted joint leadership (or their designees) authority for an entire Congress to assemble the Congress at a place *outside* the District of Columbia whenever the public interest shall warrant it (H. Con. Res. 1, Feb. 13, 2003, p. ——; H. Con. Res. 1, Jan. 4, 2005, p. ——). The Speaker executes by letter his designation under such resolution (Mar. 13, 2003, p. ——; Jan. 20, 2005, p. ——). After September 11, 2001, recall authority carried in adjournment resolutions has allowed reassembly at such place as may be designated (see, *e.g.*, S. Con. Res. 160, Nov. 22, 2002, p. ——; H. Con. Res. 2, Jan. 6, 2005, p. ——; see also § 84, *infra*). The

President may convene Congress at places outside the seat of Government during hazardous circumstances (2 U.S.C. 27; Deschler, ch. 1, § 4).

On November 22, 1940, p. 13715, the House adopted a resolution providing that thereafter until otherwise ordered its meetings be held in the Caucus room of the new House Office Building. Likewise the Senate on the same day, p. 13709, provided that its meetings be held in the Chamber formerly occupied by the Supreme Court in the Capitol. The two Houses continued to hold their sessions in these rooms until the opening of the 77th Congress. These actions were necessitated by the precarious condition of the roofs in the two Chambers. On June 28, 1949, p. 8571, and on September 1, 1950, p. 14140, the House provided that until otherwise ordered its meetings be held in the Caucus room of the new House Office Building, pending the remodeling of its Chamber. On June 29, 1949, p. 8584, and on Aug. 9, 1950, p. 12106, the Senate provided that its meetings be held in the Chamber formerly occupied by the Supreme Court in the Capitol, pending remodeling of its Chamber. The House returned to its Chamber on January 3, 1950, and again on January 1, 1951. The Senate returned to its Chamber on January 3, 1950, and again on January 3, 1951.

There has been no occasion for the convening of a session of Congress outside the seat of Government. However, the Congress has engaged in ceremonial functions outside the seat of Government, which were authorized by concurrent resolution (H. Con. Res. 131, May 28, 1987, p. 14031; H. Con. Res. 96, Apr. 18, 1989, p. 6834; H. Con. Res. 448, July 25, 2002, p. ——).

§ 83. Adjournment of the House within the three-day limit.

The House of Representatives in adjourning for not more than three days must take into the count either the day of adjourning or the day of the meeting, and Sunday is not taken into account in making this computation (V, 6673, 6674). By special order, the House may provide for a session of the House on a Sunday, traditionally a "dies non" under the precedents of the House (Dec. 17, 1982, p. 31946; Dec. 18, 1987, p. 36352; Nov. 17, 1989, p. 30029; Aug. 20, 1994, p. 23367). The House has by standing order provided that it should meet on two days only of each week instead of daily (V, 6675). Before the election of Speaker, the House has adjourned for more than one day (I, 89, 221). The House has by unanimous consent agreed to an adjournment for less than three days but specified that it would continue in adjournment for 10 days pursuant to a concurrent resolution already passed by the House if the Senate adopted the concurrent resolution before the third day of the House's adjournment (Nov. 20, 1987, p. 33054). The Committee on Rules has reported a rule authorizing the Speaker to declare the House in recesses subject to calls of the Chair during five discrete periods, each consistent with the constitutional constraint that neither House adjourn (or recess) for more than three days without consent of the other House (Dec. 21, 1995, p. 38141; Jan. 5, 1996, p. 357). Under clause 12(c) of rule I, during any recess or adjournment of not more than three days, if the Speaker is notified by the Sergeant-

at-Arms of an imminent impairment of the place of reconvening, then he may, in consultation with the Minority Leader, postpone the time for reconvening within the three-day limit prescribed by the Constitution. In the alternative, the Speaker, under the same conditions, may reconvene the House before the time previously appointed solely to declare the House in recess within that three-day limit (see § 639, *infra*).

§ 84. Resolutions for adjournment of the two Houses.

Congress is adjourned for more than three days by a concurrent resolution (IV, 4031, footnote). When it adjourns in this way, but not to or beyond the day fixed by Constitution or law for the next regular session to begin, the session is not thereby necessarily terminated (V, 6676, 6677). At the close of the first session of the 66th Congress, the two Houses adjourned sine die under authority granted each House by simple resolutions consenting to such adjournment sine die at any time before a specified date (Nov. 19, 1919, p. 8810).

Until the 67th Congress neither House had ever adjourned for more than three days by itself with the consent of the other, but resolutions had been offered for the accomplishment of that end (V, 6702, 6703). In the modern practice it is common for a concurrent resolution to provide for a one-House adjournment or to provide for each House to adjourn for different time periods. For example: (1) the House adjourned until August 15, 1922, with the consent of the Senate (June 29, 1922, p. 10439); (2) the two Houses provided for an adjournment sine die of the House on August 20, 1954, and of the Senate at any time before December 25, 1954 (H. Con. Res. 266); (3) the two Houses provided for an adjournment sine die of the House on December 20 or December 21 pursuant to a motion made by the Majority Leader or his designee, and of the Senate at any time before January 3, 1983, as determined by the Senate, and for adjournments or recesses of the Senate for periods of more than three days as determined by the Senate during such period (H. Con. Res. 438, Dec. 20, 1982, p. 32951); (4) the two Houses provided for an adjournment of the Senate to a day certain and of the House for more than three days to a day certain, or to any day before that day as determined by the House (S. Con. Res. 102, May 27, 1982, pp. 12504, 12505); (5) the two Houses provided for an adjournment to a day certain, with a provision that if there should be no quorum present on that day the session should terminate (V, 6686).

A concurrent resolution adjourning both Houses for more than three days, or sine die, normally includes joint leadership authority to reassemble the Members whenever the public interest shall warrant it (see, *e.g.*, July 8, 1943, p. 7516; June 23, 1944, p. 6667; Sept. 21, 1944, p. 8109; July 18, 1945, p. 7733; July 26, 1947, p. 10521; June 20, 1948, p. 9348; Aug. 7, 1948, p. 10247; Dec. 22, 1973, p. 43327; Dec. 20, 1974, p. 41815; Nov. 21, 1989, 101st Cong., p. 31156; Oct. 3, 1996, 104th Cong., p. 12275; Nov. 13, 1997, 105th Cong., p. 26538; Dec. 15, 2000, 106th Cong., p. 27019). Pursuant to such recall authority: (1) the Speaker and the Majority Leader

of the Senate notified Members of the House to reassemble, the Senate already being in session (Mar. 20, 2005, p. ——, pursuant to H. Con. Res. 103, 109th Cong., Mar. 17, 2005, p. ——); (2) the Speaker and the Majority Leader of the Senate notified Members of both Houses to reassemble (Sept. 2, 2005, p. ——, pursuant to H. Con. Res. 225, 109th Cong., July 28, 2005, p. ——).

After September 11, 2001, such recall authority has allowed reassembly at such place as may be designated (see, *e.g.*, S. Con. Res. 160, Nov. 22, 2002, p. ——; H. Con. Res. 531, Dec. 9, 2004, p. ——). More recently, such recall authority permitted recall by designees of the Speaker and the Majority Leader of the Senate (see, *e.g.,* S. Con. Res. 132, July 26, 2002, p. ——). The Speaker executes by letter his designation under a concurrent resolution of adjournment, as well as his designation under House Concurrent Resolution 1 (Mar. 13, 2003, p. ——; Jan. 20, 2005, p. ——). The Speaker also executes by letter his designation of another Member to utilize reassembly authority under a joint resolution changing the convening date of the next session (H. J. Res. 80, 108th Cong., Dec. 15, 2003, p. ——).

On occasion an adjournment resolution has provided for one-House recall (see, *e.g.*, July 20, 1970, 91st Cong., p. 24978). Joint leadership and House only recall provisions were included in the sine die adjournment resolution for the second session of the 105th Congress (H. Con. Res. 353, Oct. 20, 1998, p. 27348), and the Speaker exercised his recall authority under that resolution to reassemble the House (Dec. 17, 1998, p. 27802).

When the Senate is out of session for not more than three days, the Senate Majority and Minority Leaders may modify an order for the time or place of convening when, in their opinion, such action is warranted by intervening circumstances (S. Res. 296, 108th Cong., Feb. 3, 2003, p. ——). Pursuant to such authority, during an adjournment of the Senate for not more than three days, the Senate convened earlier than previously ordered to adopt a House concurrent resolution providing for an adjournment of the two Houses (H. Con. Res. 103, Mar. 17, 2005, p. ——), section 2 of which enabled a recall of the House (Mar. 20, 2005, p. ——).

A resolution adopted in the first session of the 106th Congress provided for an adjournment to a date certain, unless the House sooner received a specified message from the Senate, in which case it would stand adjourned sine die (H. Con. Res. 235, Nov. 18, 1999, p. 30734). It has become the common practice for the House, by unanimous consent adopted after originating an adjournment resolution, to fix a time to which it would adjourn within three days unless the House were sooner to receive a message from the Senate transmitting its adoption of the adjournment resolution, in which case the House would stand adjourned pursuant to that resolution (see, *e.g.*, Nov. 3, 2000, p. ——; Mar. 20, 2002, p. ——).

A resolution providing for the sine die adjournment of the first session may contain a proviso that when the second session convenes the Senate or House may not conduct organizational or legislative business but shall adjourn on that day until a date certain, unless sooner recalled (H. Con.

Res. 232, 96th Cong., Dec. 20, 1979, p. 37317; H. Con. Res. 260, 102d Cong., Nov. 26, 1991, p. 35840; H. Con. Res. 235, 106th Cong., Nov. 18, 1999, p. 30734). That prohibition against the conduct of business was considered not to preclude recognition for one-minute speeches and special-order speeches by unanimous consent (Jan. 3, 1992, pp. 2, 9) or the introduction and numbering of bills and resolutions (which would not be noted in the Congressional Record or referred by the Speaker until the next legislative day, when executive communications, petitions, and memorials also would be numbered and referred) (Jan. 24, 2000, p. ——). The House has passed a joint resolution appointing a day for the convening of a second session of a Congress and provided for possible earlier assembly by joint-leadership recall (see, *e.g.*, H. J. Res. 80, 107th Cong., Dec. 20, 2001, p. ——; H. J. Res. 80, 108th Cong., Nov. 21, 2003, p. ——).

A concurrent resolution to provide for adjournment for more than three days or an adjournment sine die is offered in the House as a matter of privilege (V, 6701–6706), and is not debatable (VIII, 3372–3374), though a Member may be recognized under a reservation of objection to a unanimous-consent request that the resolution be agreed to (Oct. 27, 1990, p. 36850). The Legislative Reorganization Act of 1970 provides for a sine die adjournment, or (in an odd numbered year) an adjournment of slightly over a month (from that Friday in August which is at least 30 days before Labor Day to the Wednesday following Labor Day) unless the nation is in a state of war, declared by Congress (sec. 461(b); 84 Stat. 1140). Congress may, of course, waive this requirement and make other determinations regarding its adjournment (see § 1106, *infra*).

The requirement that resolutions providing for an adjournment sine die of either House may not be considered until Congress has completed action on the second concurrent resolution on the budget for the fiscal year in question, and on any reconciliation legislation required by such a resolution, contained in section 310(f) of the Congressional Budget Act of 1974 (P.L. 93–344), was repealed by the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177). That law amended sections 309 and 310 of the Congressional Budget Act to prohibit the consideration of concurrent resolutions providing adjournments for more than three calendar days during the month of July in excess of three days until the House has approved annual appropriation bills within the jurisdictions of all the subcommittees on Appropriations for the ensuing fiscal year, and until the House has completed action on all reconciliation legislation for the ensuing fiscal year required to be reported by the concurrent resolution on the budget for that year (see § 1127, *infra*).

§ 85. Compensation of Members.

SECTION 6. [1]The Senators and Representatives shall receive a Compensation for their Services, to be ascertained

by Law, and paid out of the Treasury of the United States.

The 27th amendment to the Constitution addresses laws varying the compensation for the services of the Senators and Representatives (see § 258, *infra*). The present rate of compensation of Representatives, the Resident Commissioner from Puerto Rico, and Delegates is $162,100 per annum. The rate of compensation of the Speaker and the Vice President is $209,100 per annum (2 U.S.C. 31; 3 U.S.C. 104) with an additional $10,000 per annum to assist in defraying expenses (2 U.S.C. 31b; 3 U.S.C. 111). The Majority and Minority Leaders of the House receive $180,100 per annum (2 U.S.C. 31). These rates of compensation are all (except for the expense allowances) subject to annual cost of living adjustments (2 U.S.C. 31(2)). The present rate of compensation of Senators is that fixed by section 1101 of Public Law 101–194, as adjusted pursuant to 2 U.S.C. 31(2).

§ 86. Salary and deductions.

Under the Federal Salary Act of 1967 (2 U.S.C. 351–362), the Citizens' Commission on Public Service and Compensation (formerly the Commission on Executive, Legislative and Judicial Salaries) is authorized and directed to conduct quadrennial reviews of the rates of pay of specified government officials, including Members of Congress, and to report to the President the results of each review and its recommendations for adjustments in such rates. The enactment of those recommendations is governed by the Federal Salary Act (see § 1130(12), *infra*).

The statute also provides for deductions from the pay of Members and Delegates who are absent from the sessions of the House for reasons other than illness of themselves and families, or who retire before the end of the Congress (2 U.S.C. 39; IV, 3011, footnote). The law as to deductions has been held to apply only to Members who have taken the oath (II, 1154). Members and Delegates are paid monthly on certificate of the Speaker (2 U.S.C. 34, 35, 37, 57a). The law also provides that the residence of a Member of Congress for purpose of imposing State income tax laws shall be the State from which elected and not the State, or subdivision thereof, in which the Member maintains an abode for the purpose of attending sessions of Congress (4 U.S.C. 113).

§ 87. Questions as to compensation.

Questions have arisen frequently as to compensation of Members especially in cases of Members elected to fill vacancies (I, 500; II, 1155) and where there have been questions as to incompatible offices (I, 500) or claims to a seat (II, 1206). The Supreme Court has held that a Member chosen to fill a vacancy is entitled to salary only from the time that the compensation of his predecessor has ceased (Page *v.* United States, 127 U.S. 67 (1888); see also 2 U.S.C. 37).

§ 88. Travel and Members' representational allowances.

In the 92d Congress, the provisions of H. Res. 457 of that Congress, authorizing the Committee on House Administration to adjust allowances of Members and committees without further action by the House, were enacted into permanent law (2 U.S.C. 57), but the 94th Congress enacted into permanent law H. Res. 1372 of that Congress, stripping the Committee of that authority and requiring House approval of the committee's recommendations, except in cases made necessary by price changes in materials and supplies, technological advances in office equipment, and cost of living increases (2 U.S.C. 57a). The Committee on House Administration retains authority under 2 U.S.C. 57 to independently adjust amounts under certain conditions outlined in 2 U.S.C. 57a (Mar. 21, 1977, p. 8227; Apr. 21, 1983, p. 9339). The text of those statutes follow:

"SEC. 57. ADJUSTMENT OF HOUSE OF REPRESENTATIVES ALLOWANCES BY COMMITTEE ON HOUSE ADMINISTRATION

"(a) IN GENERAL.—Subject to the provision of law specified in subsection (b) of this section, the Committee on House Administration of the House of Representatives may, by order of the Committee, fix and adjust the amounts, terms, and conditions of, and other matters relating to, allowances of the House of Representatives within the following categories:

"(1) For Members of the House of Representatives, the Members' Representational Allowance, including all aspects of the Official Mail Allowance within the jurisdiction of the Committee under section 59(e) of this title.

"(2) For committees, the Speaker, the Majority and Minority Leaders, the Clerk, the Sergeant at Arms, and the Chief Administrative Officer, allowances for official mail (including all aspects of the Official Mail Allowance within the jurisdiction of the Committee under section 59e of this title), stationery, and telephone and telegraph and other communications.

"(b) PROVISION SPECIFIED.—The provision of law referred to in subsection (a) of this section is section 57a of this title.

"(c) MEMBER OF THE HOUSE OF REPRESENTATIVES DEFINED.—As used in this section, the term 'Member of the House of Representatives' means a Representative in, or a Delegate or Resident Commissioner to, the Congress."

"SEC. 57a. LIMITATION ON ALLOWANCE AUTHORITY OF COMMITTEE ON HOUSE ADMINISTRATION.

"(a) IN GENERAL.—An order under the provision of law specified in subsection (c) of this section may fix or adjust the allowances of the House of Representatives only by reason of—

"(1) a change in the price of materials, services, or office space;

"(2) a technological change or other improvement in office equipment; or

"(3) an increase under section 5303 of title 5 in rates of pay under the General Schedule.

"(b) RESOLUTION REQUIREMENT.—In the case of reasons other than the reasons specified in paragraph (1), (2), or (3) of subsection (a) of this section, the fixing and adjustment of the allowances of the House of Representatives in the categories described in the provision of law specified in subsection (c) of this section may be carried out only by resolution of the House of Representatives.

"(c) PROVISION SPECIFIED.—The provision of law referred to in subsections (a) and (b) of this section is section 57 of this title."

In the 104th Congress the Committee on House Administration promulgated an order abolishing separate allowances for Clerk Hire, Official Expenses, and Official Mail, in favor of a single "Members' Representational Allowance" (MRA), which was ultimately enacted into law (2 U.S.C. 57b). The MRA is provided for the employment of staff in the Member's Washington and district offices, official expenses incurred by the Member, and the postage expenses of first, third, and fourth class frankable mail.

Until January 1, 1988, the maximum salary for staff members was the rate of basic pay authorized for Level V of the Executive Schedule (by order of the Committee on House Administration, Mar. 21, 1977, p. 8227). Under section 311 of the Legislative Branch Appropriations Act, 1988, as contained in section 101(i) of Public Law 100–202 (2 U.S.C. 60a–2a), the maximum salary for staff members is set by pay order of the Speaker. A Member may not employ a relative on his MRA (5 U.S.C. 3110). The Code of Official Conduct also precludes certain hiring practices of Members (see § 1095, *inra*.).

Until the 103d Congress, a Member could employ a "Lyndon Baines Johnson Congressional Intern" for a maximum of two months at not to exceed $1,160 per month. Such internships were available for college students and secondary or postsecondary school teachers (H. Res. 420, 93d Cong., Sept. 18, 1973, p. 30186). Any paid internship is now funded through the MRA.

The statutes provide for continuation of the pay of clerical assistants to a Member upon his or her death or resignation, until a successor is elected to fill the vacancy, and such clerical assistants perform their duties under the direction of the Clerk of the House (2 U.S.C. 92a–92d). Upon the explusion of a Member in the 96th Congress, the House by resolution extended those provisions to any termination of service by a Member during the term of office (H. Res. 804, Oct. 2, 1980, p. 28978).

For current information on the MRA and the method of its accounting and disbursement, see current U.S. House of Representatives Congressional Handbook, Committee on House Administration.

§ 88a. Ban on Legislative Service Organizations.

At its organization the 104th Congress prohibited the establishment or continuation of any legislative service organization (as that term had been understood in the 103d Congress) and directed the Committee on House Administration to take such steps as were necessary to ensure an orderly termination and accounting for funds of any legislative service organization in existence on January 3, 1995 (sec. 222, H. Res. 6, Jan. 4, 1995, p. 477).

§ 89. Leadership staff allowances.

Separate from the MRA specified above, the leaders of the House (the Speaker, Majority Leader, Minority Leader, Majority Whip, and Minority Whip) are entitled to office staffing allowances consisting of certain statutory positions as well as lump-sum appropriations authorized by section 473 of the Legislative Reorganization Act of 1970 (84 Stat. 1140). The portion of these allowances for leadership office personnel may be adjusted by the Clerk of the House in certain situations when the President effects a pay adjustment for certain classes of Federal employees under the Federal Pay Comparability Act of 1970 (P.L. 91–656; 84 Stat. 1946).

§ 89a. Speaker's "pay orders."

Under section 311(d) of the Legislative Branch Appropriations Act, 1988 [2 U.S.C. 60a–2a], the Speaker may issue "pay orders" that adjust pay levels for officers and employees of the House to maintain certain relationships with comparable levels in the Senate and in the other branches of government. For the text of section 311(d), see § 1130, *infra*.

§ 90. Privilege of Members from arrest.

* * * They [the Senators and Representatives] shall in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their attendance at the Session of their respective Houses, and in going to and returning from the same; * * *

§ 91. Assertions of privilege of Members by the House.

The word "felony" in this provision has been interpreted not to refer to a delinquency in a matter of debt (III, 2676), and "treason, felony, and breach of the peace" have been construed to mean all indictable crimes (III, 2673). The Supreme Court has held that the privilege does not apply to arrest in any criminal case. Williamson *v.* United States, 207 U.S. 425 (1908). The courts have discussed and sustained the privilege of the Member in going to and returning from the session (III, 2674); and where a person assaulted a Member on his way to the House, although at a place distant therefrom, the House arrested him on warrant of the Speaker, arraigned him at the bar and committed him (II, 1626, 1628). Other assaults under these circumstances have been treated as breaches

of privilege (II, 1645). Where a Member had been arrested and detained under mesne process in a civil suit during a recess of Congress, the House decided that he was entitled to discharge on the assembling of Congress, and liberated him and restored him to his seat by the hands of its own officer (III, 2676). Service of process is distinguished from arrest in civil cases and related historical data are collected in Long *v.* Ansell, 293 U.S. 76 (1934), where the Supreme Court held that the clause was applicable only to arrests in civil suits, now largely obsolete but common at the time of the adoption of the United States Constitution. Rule VIII (formerly rule L, *infra*, was added in the 97th Congress to provide a standing procedure governing subpoenas to Members, officers, and employees directing their appearance as witnesses relating to the official functions of the House, or for the production of House documents.

§ 92. Members privileged from being questioned for speech or debate.

* * * and for any Speech or Debate in either House, they [the Senators and Representatives] shall not be questioned in any other place.

§ 93. Scope of the privilege.

This privilege as to "any speech or debate" applies generally to "things done in a session of the House by one of its Members in relation to the business before it." Kilbourn *v.* Thompson, 103 U.S. 168 (1881), cited at III, 2675. See also II, 1655 and §§ 301–302, *infra*, for provisions in Jefferson's Manual on the privilege; and Deschler, ch. 7. The clause precludes judicial inquiry into the motivation, preparation, or content of a Member's speech on the floor and prevents such a speech from being made the basis for a criminal conspiracy charge against the Member. United States *v.* Johnson, 383 U.S. 169 (1966). The Supreme Court held in United States *v.* Helstoski, 442 U.S. 447 (1979), that under the Speech or Debate Clause, neither evidence of nor references to legislative acts of a Member of Congress may be introduced by the Government in a prosecution under the official bribery statute. But the Supreme Court has limited the scope of legislative activity which is protected under the clause by upholding grand jury inquiry into the possession and nonlegislative use of classified documents by a Member. Gravel *v.* United States, 408 U.S. 606 (1972). The Court has also sustained the validity of an indictment of a Member for accepting an illegal bribe to perform legislative acts where the prosecution established a prima facie case without relying on the Member's constitutionally-protected legislative speech. United States *v.* Brewster, 408 U.S. 501 (1972). Nor does the clause protect transmittal of allegedly defamatory material issued in press releases and newsletters by a Senator, as neither was essential to the deliberative process of the Senate. Hutchinson *v.* Proxmire, 443 U.S. 111 (1979). A complaint against an officer of the House relating to the dismissal of an official reporter of debates has been held nonjusticiable on the basis that her duties were directly related to the due functioning of the legislative

process. Browning *v.* Clerk, 789 F.2d 923 (D.C. Cir. 1986), cert. den. 479 U.S. 996 (1986). For a discussion of waivers of the Speech and Debate clause, see § 301, *infra*.

Legislative employees acting under orders of the House are not necessarily protected under the clause from judicial inquiry into the constitutionality of their actions. Kilbourn *v.* Thompson, 103 U.S. 165 (1880); Dombrowski *v.* Eastland, 387 U.S. 82 (1967); Powell *v.* McCormack, 395 U.S. 486 (1969). But see Gravel *v.* United States, 408 U.S. 606 (1972), where the Supreme Court held that the aide of a Senator was protected under the clause when performing legislative acts which would have been protected under the clause if performed by the Senator himself. There is no distinction between the Members of a Senate subcommittee and its chief counsel insofar as complete immunity under the Speech and Debate Clause is provided for the issuance of a subpoena pursuant to legitimate legislative inquiry. Eastland *v.* U.S. Servicemen's Fund, 421 U.S. 491 (1975). See also Doe *v.* McMillan, 412 U.S. 306 (1973) (relating to the dissemination of a congressional report) for the immunity under this clause of Members of the House and their staffs, and for the common-law immunity of the Public Printer and Superintendent of Documents.

For Federal court decisions on the applicability of the clause to unofficial circulation of reprints from the Congressional Record, see McGovern *v.* Martz, 182 F. Supp. 343 (1960); Long *v.* Ansell, 69 F.2d 386 (1934), aff'd, 293 U.S. 76 (1934); Methodist Federation for Social Action *v.* Eastland, 141 F. Supp. 729 (1956). For inquiry into a Member's use of the franking privilege, see Hoellen *v.* Annunzio, 468 F.2d 522 (1972), cert. denied, 412 U.S. 953 (1973); Schiaffo *v.* Helstoski, 350 F. Supp. 1076 (1972), rev'd 492 F.2d 413 (1974). For inquiry into the printing of committee reports, see Doe *v.* McMillan, 412 U.S. 306 (1973); Hentoff *v.* Ichord, 318 F. Supp. 1175 (1970).

§ 94. Action by the House.

For assaulting a Member for words spoken in debate, Samuel Houston, not a Member, was arrested, tried, and censured by the House (II, 1616–1619). Where Members have assaulted other Members for words spoken in debate (II, 1656), or proceeded by duel (II, 1644), or demanded explanation in a hostile manner (II, 1644), the House has considered the cases as of privilege. A communication addressed to the House by an official in an Executive Department calling in question words uttered by a Member in debate was criticized as a breach of privilege and withdrawn (III, 2684). An explanation having been demanded of a Member by a person not a Member for a question asked of the latter when a witness before the House, the matter was considered but not pressed as a breach of privilege (III, 2681). A letter from a person supposed to have been assailed by a Member in debate, asking properly and without menace if the speech was correctly reported, was held to involve no question of privilege (III, 2682). Unless it be clear that a Member has been questioned for words spoken in debate, the House declines to act (II, 1620; III, 2680).

For assaulting a Member, Charles C. Glover was arrested, arraigned at the bar of the House, and censured by the Speaker by direction of the House, although the provocation of the assault was words spoken in debate in the previous Congress (VI, 333).

§ 95. Decisions of the Court.

Decisions of the Supreme Court of the United States: Kilbourn *v.* Thompson, 103 U.S. 168 (1881); Tenney *v.* Brandhove, 341 U.S. 367 (1951); United States *v.* Johnson, 383 U.S. 169 (1966); Dombrowski *v.* Eastland, 387 U.S. 82 (1967); Powell *v.* McCormack, 395 U.S. 486 (1969); Gravel *v.* United States, 408 U.S. 606 (1972); United States *v.* Brewster, 408 U.S. 501 (1972); United States *v.* Helstoski, 442 U.S. 477 (1979); Hutchinson *v.* Proxmire, 443 U.S. 111 (1979).

§ 96. Restriction on appointment of Members to office.

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any Civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; * * *.

In a few cases questions have arisen under this paragraph (I, 506, footnote; and see 42 Op. Att'y Gen. 36 (1969); see also Deschler, ch. 7).

§ 97. Members not to hold office under the United States.

* * * and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

The meaning of the word "office" as used in this paragraph has been discussed (I, 185, 417, 478, 493; II, 993; VI, 60, 64), as has also the general subject of incompatible offices (I, 563).

§ 98. As to what are incompatible offices.

The Judiciary Committee has concluded that members of commissions created by law to investigate and report, but having no legislative, executive, or judicial powers, and visitors to academies, regents, directors, and trustees of public institutions, appointed under the law by the Speaker, are not officers within the meaning of the Constitution (I, 493). Membership on joint committees created by statute is not an office in the contemplation of the constitutional provision prohibiting Members of Congress from holding simultaneously other offices under the United States (VII, 2164). A Member of either House is eligible to appointment to any office not forbidden him by law, the duties of which are not incompatible with those of a Member (VI, 63) and the question as to whether a Member may be appointed to

the Board of Managers of the Soldiers' Home and become local manager of one of the Homes, is a matter for the decision of Congress itself (VI, 63). The House has also distinguished between the performance of paid services for the Executive (I, 495), like temporary service as assistant United States attorney (II, 993), and the acceptance of an incompatible office. The House has declined to hold that a contractor under the Government is constitutionally disqualified to serve as a Member (I, 496). But the House, or its committees, have found disqualified a Member who was appointed a militia officer in the District of Columbia (I, 486) and in various States (VI, 60), and Members who have accepted commissions in the Army (I, 491, 492, 494). But the Judiciary Committee has expressed the opinion that persons on the retired list of the Army do not hold office under the United States in the constitutional sense (I, 494). A Member-elect has continued to act as governor of a State after the assembling of the Congress to which he was elected (I, 503), but the duties of a Member of the House and the Governor of a State are absolutely inconsistent and may not be simultaneously discharged by the same Member (VI, 65).

§ 99. Appointment of Members-elect to offices under the United States.

The House decided that the status of a Member-elect was not affected by the constitutional requirement (I, 499), the theory being advanced that the status of the Member-elect is distinguished from the status of the Member who has qualified (I, 184). A Member-elect, who continued in an office after his election but resigned before taking his seat, was held entitled to the seat (I, 497, 498). However, when a Member-elect held an incompatible office after the meeting of Congress and his taking of the oath, he was held to have disqualified himself (I, 492). In other words, the Member-elect may defer until the meeting of Congress and his taking of the oath, his choice between the seat and an incompatible office (I, 492). As early as 1874 the Attorney General opined that a Member-elect is not officially a Member of the House, and thus may hold any office until sworn (14 Op. Att'y Gen. 408 (1874)).

§ 100. Relation of contestants to incompatible offices.

The House has manifestly leaned to the idea that a contestant holding an incompatible office need not make his election until the House has declared him entitled to the seat (I, 505). Although a contestant had accepted and held a State office in violation of the State constitution, if he were really elected a Congressman, the House did not treat his contest as abated (II, 1003). Where a Member had been appointed to an incompatible office a contestant not found to be elected was not admitted to fill the vacancy (I, 807).

§ 101. Procedure of the House when incompatible offices are accepted.

Where a Member has accepted an incompatible office, the House has assumed or declared the seat vacant (I, 501, 502; VI, 65). In the cases of Baker and Yell, the Elections Committee concluded that the acceptance of a commission as an officer of volunteers in the national army vacated the seat of a Member (I, 488), and in another similar

case the Member was held to have forfeited his right to a seat (I, 490). The House has seated a person bearing regular credentials on ascertaining that his predecessor in the same Congress had accepted a military office (I, 572). But usually the House by resolution formally declares the seat vacant (I, 488, 492). A Member-elect may defer until the meeting of Congress and his taking of the oath of office his choice between the seat and an incompatible office (I, 492). But when he retains the incompatible office and does not qualify, a vacancy has been held to exist (I, 500). A resolution excluding a Member who has accepted an incompatible office may be agreed to by a majority vote (I, 490). A Member charged with acceptance of an incompatible office was heard in his own behalf during the debate (I, 486).

Where it was held in Federal court that a Member of Congress may not hold a commission in the Armed Forces Reserve under this clause, the U.S. Supreme Court reversed on other grounds, the plaintiff's lack of standing to maintain the suit. Reservists Committee to Stop the War *v.* Laird, 323 F. Supp. 833 (1971), aff'd, 595 F.2d 1075 (1972), rev'd on other grounds, 418 U.S. 208 (1974).

SECTION 7. [1] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

§ 102. Bills raising revenue to originate in the House.

This provision has been the subject of much discussion (II, 1488, 1494). In the earlier days the practice was not always correct (II, 1484); but in later years the House has insisted on its prerogative and the Senate has often shown reluctance to infringe thereon (II, 1482, 1483, 1493). In several instances, however, the subject has been matter of contention, conference (II, 1487, 1488), and final disagreement (II, 1485, 1487, 1488). Sometimes, however, when the House has questioned an invasion of prerogative, the Senate has receded (II, 1486, 1493). The disagreements have been especially vigorous over the right of the Senate to concur with amendments (II, 1489), and while the Senate has acquiesced in the sole right of the House to originate revenue bills, it has at the same time held to a broad power of amendment (II, 1497–1499). The House has frequently challenged the Senate on this point (II, 1481, 1491, 1496; Sept. 14, 1965, p. 23632). When the House has perceived an invasion of its prerogative, it has ordered the bill or Senate amendment to be returned to the Senate (II, 1480–1499; VI, 315, 317; Mar. 30, 1937, p. 2930; July 2, 1960, p. 15818; Oct. 10, 1962, p. 23014; May 20, 1965, p. 11149; June 20, 1968, p. 22127; Nov. 8, 1979, p. 31518; May 17, 1983, p. 12486; Oct. 1, 1985, p. 25418; Sept. 25, 1986, p. 26202; July 30, 1987, p. 21582; June 16, 1988, p. 14780; June 21, 1988, p. 15425; Sept. 23, 1988, p. 25094; Sept. 28, 1988, p. 26415; Oct. 21, 1988, pp. 33110–11; June 15, 1989, p. 12167; Nov. 9, 1989, p. 28271; Oct. 22, 1991, p. 27087; Oct. 31, 1991, p. 29284; Feb. 25, 1992, p. 3377; July 14,

1994, p. 16593; July 21, 1994, p. 17280; July 21, 1994, p. 17281; Aug. 12, 1994, pp. 7642, 7643; Oct. 7, 1994, p. 29136, 29137; Mar. 21, 1996, p. 5950; Apr. 16, 1996, pp. 7642, 7643; Sept. 27, 1996, p. 25542; Sept. 28, 1996, p. 25931; Mar. 5, 1998, p. 2618; Oct. 15, 1998, p. 26483; July 15, 1999, p. 16317; Nov. 18, 1999, p. 30732; Oct. 24, 2000, p. 24149; Sept. 20, 2001, p. ——), or declined to proceed further with it (II, 1485). Among the measures the House has returned to the Senate: a Senate-passed bill providing for the sale of Conrail and containing provisions relating to the tax treatment of the sale, notwithstanding inclusion in that bill of a disclaimer section requiring all revenue provisions therein to be contained in separate legislation originating in the House (Sept. 25, 1986, p. 26202); a Senate-passed bill prohibiting the importation of commodities subject to tariff (July 30, 1987, p. 21582); a Senate-passed bill banning all imports from Iran, a tariff measure as affecting revenue from dutiable imports (June 16, 1988, p. 14780); a Senate-passed bill dealing with the tax treatment of income derived from the exercise of Indian treaty fishing rights (June 21, 1988, p. 15425); a Senate-passed bill creating a tax-exempt government corporation (June 15, 1989, p. 12167); a Senate-passed bill addressing the tax treatment of police-corps scholarships and the regulation of firearms under the Internal Revenue Code (Oct. 22, 1991, p. 27087); a Senate-passed bill including certain import sanctions in an export administration statute (Oct. 31, 1991, p. 29284); a Senate-passed bill requiring the President to impose sanctions including import restrictions against countries that fail to eliminate largescale driftnet fishing (Feb. 25, 1992, p. 3377); a Senate amendment to a general appropriation bill prohibiting funds for the Internal Revenue Service to enforce a requirement to use undyed diesel fuel for use in recreational boats (July 14, 1994, p. 16593); a Senate-passed bill proposing to regulate toxic substances by prohibiting the import of products containing more than specified level of lead (July 21, 1994, p. 17280); a Senate amendment to a general appropriation bill proposing a user fee raising revenue to finance broader activities of the agency imposing the levy, thereby raising general revenue (Aug. 12, 1994, p. 21656); a Senate-passed bill proposing to repeal a fee on electricity generated by nuclear energy that otherwise would raise revenue (Mar. 5, 1998, p. 2618); a Senate-passed bill proposing new import restrictions on products containing any substance derived from rhinoceroses or tigers (Oct. 15, 1998, p. 26483); Senate-passed bills proposing an amendment to the criminal code that would make it unlawful to import certain assault weapons (Oct. 22, 1991, p. 27087) or to import large capacity ammunition feeding devices (July 15, 1999, p. 16317); Senate-passed bills prescribing the tax treatment of certain benefits to members of the Armed Forces (Nov. 18, 1999, p. 30732) or of public-sector retirement plans (Nov. 18, 1999, p. 30734); a Senate-passed bill proposing to create a new basis for applying import restrictions on bear viscera or products derived therefrom (Oct. 24, 2000, p. 24149); a Senate amendment proposing to enact by reference a Senate bill providing for a ban on (dutiable) imports of diamonds from certain

countries (Sept. 20, 2001, p. ——). The House laid on the table a resolution asserting that a conference report (on which the House was acting first) accompanying a House bill originated provisions in derogation of the constitutional prerogative of the House and resolving that such bill be recommitted to conference (July 27, 2000, p. 16565).

A bill raising revenue incidentally was held not to infringe upon the constitutional prerogative of the House to originate revenue legislation (VI, 315). Discussion of differentiation between bills for the purpose of raising revenue and bills which incidentally raise revenue (VI, 315). A question relating to the invasion of the constitutional prerogatives of the House by a Senate amendment may be raised at any time when the House is in possession of the papers, but not otherwise; thus, the question has been presented pending the motion to call up a conference report on the bill (June 20, 1968, Deschler, ch. 13, § 14.2; Aug. 19, 1982, p. 22127), but has been held nonprivileged with respect to a bill already presented to the President (Apr. 6, 1995, p. 10700). On January 16, 1924, p. 1027, the Senate decided that a bill proposing a gasoline tax in the District of Columbia should not originate in the Senate (VI, 316).

Clause 5(a) of rule XXI prohibits consideration of any amendment, including any Senate amendment, proposing a tax or tariff measure during consideration of a bill or joint resolution reported by a committee not having that jurisdiction (§ 1066, *infra*).

For a discussion of the prerogatives of the House under this clause, and discussion of the prerogatives of the House to originate appropriation bills, see Deschler, ch. 13. For a discussion of the prerogatives of the House with respect to treaties affecting revenue, see § 597, *infra*. For examples of Senate messages requesting the return of Senate measures that intruded on the Constitutional prerogative of the House to originate revenue measures, see § 565, *infra.*

§ 103. Decisions of the Court.

Decisions of the Supreme Court of the United States: Field *v.* Clark, 143 U.S. 649 (1892); Twin City Bank *v.* Nebeker, 167 U.S. 196 (1897); Flint *v.* Stone Tracy Co., 220 U.S. 107 (1911); Millard *v.* Roberts, 202 U.S. 429 (1906); Rainey *v.* United States, 232 U.S. 310 (1914); United States *v.* Munoz-Flores, 495 U.S. 385 (1990).

§ 104. Approval and disapproval of bills by the President.

[2]Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on

their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. * * *.

§ 105. The act of approval.

Under the usual practice, bills are considered to have been presented to the President at the time they are delivered to the White House. In 1959, bills delivered to the White House while the President was abroad were held for presentation to the President upon his return to the United States by the White House. The United States Court of Claims held, in Eber Bros. Wine and Liquor Corp. *v.* United States, 337 F.2d 624 (1964), cert. denied, 380 U.S. 950 (1965), that where the President had determined, with the informal acquiescence of leaders of Congress, that bills from the Congress were to be received at the White House only for presentation to him upon his return to the United States and the bill delivered to the White House was so stamped, the Presidential veto of the bill more than 10 days after delivery to the White House but less than 10 days after his return to the country was timely. The second session of the 89th Congress adjourned sine die while President Johnson was on an Asian tour and receipts for bills delivered to the White House during that time were marked in like manner. The approval of a bill by the President of the United States is valid only with his signature (IV, 3490). Before the adoption of the 20th amendment to the Constitution, at the close of a Congress, when the two Houses prolonged their sessions into the forenoon of March 4, the approvals were dated on the prior legislative day, as the legislative portion of March 4 belonged to the term of the new Congress. In one instance, however, bills signed on the forenoon of March 4 were dated as of that day with the hour and minute of approval given with the date (IV, 3489). The 20th amendment to the Constitution changed the date of meeting of the Congress to January 3d. The act of President Tyler in filing with a bill an exposition of his reasons for signing it was examined and severely criticized by a committee of the House (IV, 3492); and in 1842 a committee of the House discussed the act of President Jackson in writing above his signature

of approval a memorandum of his construction of the bill (IV, 3492). But where the President has accompanied his message announcing the approval with a statement of his reasons there has been no question in the House (IV, 3491). The statutes require that bills signed by the President shall be received by the Archivist of the United States and deposited in his office (1 U.S.C. 106a). Formerly these bills were received by the Secretary of State (IV, 3485) and deposited in his office (IV, 3429).

§ 106. Notice of approval sent by message.

Notice of the signature of a bill by the President is sent by message to the House in which it originated (VII, 1089) and that House informs the other (IV, 3429). But this notice is not necessary to the validity of the act (IV, 3495). Sometimes, at the close of a Congress the President informs the House of such bills as he has approved and of such as he has allowed to fail (IV, 3499–3502). In one instance he communicated his omission to sign a bill through the committee appointed to notify him that Congress was about to adjourn (IV, 3504). A bill that had not actually passed having been signed by the President, he disregarded it and a new bill was passed (IV, 3498). Messages of the President giving notice of bills approved are entered in the Journal and published in the Congressional Record (V, 6593).

§ 107. Disapproval (or veto) of bills.

A message withholding approval of a bill, called a veto message, is sent to the House in which the bill originated; but it has been held that such a message may not be returned to the President on his request after it has been laid before the Senate (IV, 3521). Instance where a veto message which had not been laid before the House was returned to the President on his request (Aug. 1, 1946, p. 10651). A vetoed bill received in the House by way of the Senate is considered as if received directly from the President and supersedes the regular order of business (IV, 3537; VII, 1109). A veto message may not be read in the absence of a quorum, even though the House be about to adjourn sine die (IV, 3522; VII, 1094); but the message may be read and acted on at the next session of the same Congress (IV, 3522). When the President has been prevented by adjournment from returning a bill with his objections he has sometimes at the next session communicated his reasons for not approving (V, 6618–6620).

Although the ordinary form of a return veto is a message under seal returning the enrollment with a statement of the President's objections, an enrolled House bill returned to the Clerk during the August recess with a "memorandum of disapproval" setting forth the objections of the President was considered as a return veto (Sept. 11, 1991, p. 22643).

§ 108. Consideration of a vetoed bill in the House.

It is possible, although not invariable, that a bill returned with the objections of the President shall be voted on at once (IV, 3534–3536) and when laid before the House the question on the passage is considered as pending and no motion from the floor is required (VII, 1097–1099), but it has been held that the constitutional mandate that "the House shall

proceed to consider" means that the House shall immediately proceed to consider it under the Rules of the House, such that the ordinary motions under the Rules of the House (*e.g.*, to refer or to postpone to a day certain) are in order (IV, 3542–3550; VII, 1100, 1105, 1113; Speaker Wright, Aug. 3, 1988, p. 20280) and (for the stated examples) debatable under the hour rule (VIII, 2740). Although under clause 4 of rule XVI, and under the precedents the motion for the previous question takes precedence over motions to postpone or to refer when a question is under debate, where the Speaker has laid before the House a veto message from the President but has not yet stated the question to be on overriding the veto, that question is not "under debate" and the motion for the previous question does not take precedence (Speaker Wright, Aug. 3, 1988; Procedure, ch. 24, § 15.8). A resolution asserting that to recognize for a motion to refer a veto message before stating the question on overriding the veto would interfere with the constitutional prerogative of the House to proceed to that question, and directing the Speaker to state the question on overriding the veto as pending before recognizing for a motion to refer, did not give rise to a question of the privileges of the House (Speaker Wright, Aug. 3, 1988, p. 20281). A motion to refer a vetoed bill, either with or without the message, has been held allowable within the constitutional mandate that the House "shall proceed to reconsider" (IV, 3550; VII, 1104, 1105, 1108, 1114), and in the 101st Congress, a veto pending as unfinished business was referred with instructions to consider and report promptly (Jan. 24, 1990, p. 421). But while the ordinary motion to refer may be applied to a vetoed bill, it is not in order to move to recommit it pending the demand for the previous question or after it is ordered (IV, 3551; VII, 1102). When a veto message is before the House for consideration de novo or as unfinished business, a motion to refer the message to committee takes precedence over the question of passing the bill, the objections of the President to the contrary notwithstanding (Procedure, ch. 24, § 15.8; Oct. 25, 1983, p. 29188), but the motion to refer may be laid on the table (Oct. 25, 1983, p. 29188). A vetoed bill having been rejected by the House, the message was referred (IV, 3552; VII, 1103). Committees to which vetoed bills have been referred have sometimes neglected to report (IV, 3523, 3550, footnotes; VII, 1108, 1114).

A vetoed bill may be laid on the table (IV, 3549; VII, 1105), but it is still highly privileged and a motion to take it from the table is in order at any time (IV, 3550; V, 5439). Also a motion to discharge a committee from the consideration of such a bill is privileged (IV, 3532; Aug. 4, 1988, p. 20365; Sept. 19, 1996, p. 23815) and (in the modern practice) is debatable (Mar. 7, 1990, p. 3620) but is subject to the motion to lay on the table (Sept. 7, 1965, p. 22958; Aug. 4, 1988, p. 20365). When the motion to discharge is agreed to, the veto message is pending as unfinished business (Mar. 7, 1990, p. 3621). While a vetoed bill is always privileged, the same is not true of a bill reported in lieu of it (IV, 3531; VII, 1103).

§ 109. Action on a vetoed bill.

If two-thirds of the House to which a bill is returned with the President's objections agree to pass it, and then two-thirds of the other House also agree, it becomes a law (IV, 3520). The yeas and nays are required to pass a bill over the President's veto (art. I, sec. 7; IV, 2726, 3520; VII, 1110). The two-thirds vote required to pass the bill is two-thirds of the Members present and voting and not two-thirds of the total membership of the House (IV, 3537, 3538; Missouri Pac. Ry. Co. *v.* Kansas, 248 U.S. 276 (1919)). Only Members voting should be considered in determining whether two-thirds voted in the affirmative (VII, 1111). The motion to reconsider may not be applied to the vote on reconsideration of a bill returned with the objections of the President (V, 5644; VIII, 2778).

It is the practice for one House to inform the other by message of its decision that a bill returned with the objections of the President shall not pass (IV, 3539–3541). A bill passed notwithstanding the objections of the President is sent by the presiding officer of the House which last acts on it to the Archivist, who receives it and deposits it in his office (1 U.S.C. 106a). Formerly these bills were sent to the Secretary of State (IV, 3524) and deposited in his office (IV, 3485).

§ 110. Errors in bills sent to the President.

A bill incorrectly enrolled has been recalled from the President, who erased his signature (IV, 3506). Bills sent to the President but not yet signed by him are sometimes recalled by concurrent resolution of the two Houses (IV, 3507–3509; VII, 1091; Sept. 4, 1962, p. 18405; May 6, 1974, p. 13076), and amended; but this proceeding is regarded as irregular (IV, 3510–3518). When the two Houses of Congress request the President by concurrent resolution to return an enrolled bill delivered to him and the President honors the request, the ten-day period under this clause runs anew from the time the bill is re-enrolled and is again presented to the President. Thus, in the 93d Congress the President returned on May 7, 1974 a bill pursuant to the request of Congress (H. Con. Res. 485, May 6, 1974, p. 13076). The bill was again enrolled, presented to the President on May 7, and marked "received May 7" at the White House. An error in an enrolled bill that has gone to the President may also be corrected by a joint resolution (IV, 3519; VII, 1092). In the 99th Congress, two enrollments of a continuing appropriation bill for FY 1987 were presented to and signed by the President, the second correcting an omission in the first (see P.L. 99–500 and 99–591). In Clinton *v.* City of New York, 524 U.S. 417 (1998), the Supreme Court held that the cancellation procedures of the Line Item Veto Act violated the presentment clause of article I, section 7 of the Constitution. For a discussion of the operation of the Act during the period of its effectiveness, see § 1130, *infra*.

§ 110a. Decisions of the Court.

Decisions of the Supreme Court of the United States: Matthews *v.* Zane, 20 U.S. (7 Wheat.) 164 (1822); Gardner *v.* Collector, 73 U.S. (6 Wall.) 499 (1868); Lapeyre *v.* United States, 84 U.S. (17 Wall.) 191 (1873); La Abra Silver Mining

Co. *v.* United States, 175 U.S. 423 (1899); Missouri Pacific Railway Co. *v.* Kansas, 248 U.S. 276 (1919); Edwards *v.* United States, 286 U.S. 482 (1932); Wright *v.* United States, 302 U.S. 583 (1938); Clinton *v.* City of New York, 524 U.S. 417 (1998).

§ 111. Bills which become laws without the President's approval.

* * * If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

A bill signed by the President within 10 days (Sunday excepted) after it has been presented to him becomes a law even though such signing takes place when Congress is not in session, whether during the period of an adjournment to a day certain or after the final adjournment of a session. Presidents currently sign bills after sine die adjournment but within 10 days after their receipt. President Truman signed several bills passed in the 81st Congress after the convening of the 82d Congress but within 10 days (P.L. 910–921; 64 Stat. 1221–1257); and President Reagan approved bills passed in the 97th Congress which were presented after the convening of the 98th Congress. It was formerly contended that the President might not approve bills during a recess (IV, 3493, 3494), and in one instance, in 1864, when the President signed a bill after final adjournment of Congress but within 10 days grave doubts were raised and an adverse report was made by a House committee (IV, 3497). Later opinions of the Attorney General have been to the effect that the President has the power to approve bills within 10 days after they have been presented to him during the period of an adjournment to a day certain (IV, 3496) and after an adjournment sine die (VII, 1088). The Supreme Court has held valid as laws bills signed by the President within 10 days during a recess for a specified time (La Abra Silver Mining Co. *v.* United States, 175 U.S. 451 (1899); IV, 3495) and also those signed after an adjournment sine die (Edwards *v.* United States, 286 U.S. 482 (1932)).

§ 112. The pocket veto.

A bill which is passed by both Houses of Congress during the first regular session of a Congress and presented to the President less than 10 days (Sundays excepted) before the sine die adjournment of that session, but is neither signed by the President, nor returned by him to the House in which it originated, does not become a law ("The Pocket Veto Case," 279 U.S. 655 (1929); VII, 1115). President Truman during an adjournment to a day certain pocket vetoed several bills passed by the 81st Congress and also, after the convening of the 82d Congress, pocket vetoed one bill passed in the 81st Congress. The Supreme Court has held that the adjournment of the House of origin for not exceed-

ing three days while the other branch of the Congress remained in session, did not prevent a return of the vetoed bill to the House of origin (Wright *v.* United States, 302 U.S. 583 (1938)).

§ 113. Effect of adjournment to a day certain.

Doubt has existed as to whether a bill which remains with the President 10 days without his signature, Congress meanwhile before the tenth day having adjourned to a day certain, becomes a law (IV, 3483, 3496; VII, 1115); an opinion of the Attorney General in 1943 stated that under such circumstances a bill not signed by the President did not become a law (40 Op. Att'y Gen. 274 (1943)). However, more recently, where a Member of the Senate challenged in Federal court the effectiveness of such a pocket veto, a United States Court of Appeals held that a Senate bill could not be pocket-vetoed by the President during an "intrasession" adjournment of Congress to a day certain for more than three days, where the Secretary of the Senate had been authorized to receive Presidential messages during such adjournment. Kennedy *v.* Sampson, 511 F.2d 430 (D.C. Cir., 1974). See also Kennedy *v.* Jones, 412 F. Supp. 353 (D.D.C. 1976). Following a consent decree in this case, it was announced that President Ford would utilize a "return" veto, subject to override, in intersession and intrasession adjournments where authority exists for the appropriate House to receive such messages notwithstanding the adjournment.

In the 101st Congress, when President Bush returned an enrolled bill during the intersession adjournment, not by way of message under seal but with a "memorandum of disapproval" setting forth his objections, the House treated it as a return veto subject to override under article I, section 7 (Jan. 23, 1990, p. 4). Similarly, in the 102d Congress, an enrolled House bill returned to the Clerk during the August recess, not by way of message under seal but with a "memorandum of disapproval" setting forth the objections of the President, was considered as a return veto (Sept. 11, 1991, p. 22643). Also in the 102d Congress, President Bush purported on December 20, 1991, to pocket veto a bill (S. 1176) that was presented to him on December 9, 1991, notwithstanding that the Congress was in an intrasession adjournment (from Nov. 27, 1991, until 11:55 a.m., Jan. 3, 1992) rather than an adjournment sine die (see Jan. 23, 1992 [Daily Digest]); and during debate on a subsequent bill (S. 2184) purporting to repeal the provisions of S. 1176 and to enact instead provisions acceding to the objections of the President, the Speaker inserted remarks on the pocket veto in light of modern congressional practice concerning the receipt of messages and communications during recesses and adjournments (Mar. 3, 1992, p. 4081).

In the 93d Congress, the President returned a House bill without his signature to the Clerk of the House, who had been authorized to receive messages from the President during an adjournment to a day certain, and the President asserted in his veto message that he had "pocket vetoed" the bill during the adjournment of the House to a day certain. The House regarded the President's return of the bill without his signature as a veto

within the meaning of article I, section 7 of the Constitution and proceeded to reconsider and to pass the bill over the President's veto, after postponing consideration to a subsequent day (motion to postpone, Nov. 18, 1974, p. 36246; veto override, Nov. 20, 1974, p. 36621). Subsequently, on November 21, 1974, the Senate also voted to override the veto (p. 36882) and pursuant to 1 U.S.C. 106a the Enrolling Clerk of the Senate forwarded the bill to the Archives for publication as a public law. The Administrator of General Services at the Archives (now Archivist), upon instructions from the Department of Justice, declined to promulgate the bill as public law on the day received. The question as to the efficacy of the congressional action in passing the bill over the President's veto was mooted when the House and Senate passed on November 26, 1974 (pp. 37406, 37603), an identical bill which was signed into law on December 7, 1974 (P.L. 93–516). On similar occasions, when the President has asserted a "pocket veto," the House has regarded the President's actual return of the bill without his signature as a veto within the meaning of article I, section 7 of the Constitution and proceeded to reconsider the bill over the President's objections (Jan. 23, 1990, p. 3; Sept. 6, 2000, p. 17156; Nov. 13, 2000, p. 26022).

As part of the concurrent resolution providing for the sine die adjournments of the first sessions of the 101st Congress and 105th Congress, the Congress reaffirmed its position that an intersession adjournment did not prevent the return of a bill where the Clerk and the Secretary of the Senate were authorized to receive messages during the adjournment (H. Con. Res. 239, Nov. 21, 1989, p. 31156; S. Con. Res. 68, Nov. 13, 1997, p. 26538). For the views of the Speaker, the Minority Leader, and the Attorney General concerning pocket veto authority during an intrasession adjournment, see correspondence inserted in the Congressional Record (Jan. 23, 1990, p. 3; Sept. 19, 2000, p. 18594; Nov. 13, 2000, p. 26022); and for discussions of the constitutionality of intersession or intrasession pocket vetoes see Kennedy, "Congress, The President, and The Pocket Veto," 63 Va. L. Rev. 355 (1977), and Hearing, Subcommittee on Legislative Process, Committee on Rules, on H.R. 849, 101st Congress.

§ 114. Decisions of the Court.

Decisions of the Supreme Court of the United States: La Abra Silver Mining Co. *v.* United States, 175 U.S. 423 (1899); Wilkes County *v.* Coler, 180 U.S. 506 (1901); the Pocket Veto Case, 279 U.S. 655 (1929); Edwards *v.* United States, 286 U.S. 482 (1932); Wright *v.* United States, 302 U.S. 583 (1938); Burke *v.* Barnes, 479 U.S. 361 (1987) (vacating and remanding as moot the decision *sub nom.* Barnes *v.* Kline, 759 F.2d 21 (D.C. Cir. 1984)).

§ 115. As to presentation of orders and resolutions for approval.

[3]Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the Presi-

dent of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

It has been settled conclusively that a joint resolution proposing an amendment to the Constitution should not be presented to the President for his approval (V, 7040; Hollingsworth *v.* Virginia, 3 U.S. (3 Dall.) 378 (1798)). Such joint resolutions, after passage by both Houses, are presented to the Archivist (1 U.S.C. 106b). Although the requirement of the Constitution seems specific, the practice of Congress has been to present to the President for approval only such concurrent resolutions as are legislative in effect (IV, 3483, 3484) which is not within the scope of the modern form of concurrent resolutions. See § 192, *infra*, for a discussion of Presidential approval of a joint resolution extending the period for State ratification of a constitutional amendment already submitted to the States. For discussion of "Congressional Disapproval" provisions contained in public laws, see § 1130, *infra*.

§ 116. Decisions of the Court.

Decisions of the Supreme Court of the United States: Field *v.* Clark, 143 U.S. 649 (1892); United States *v.* Ballin, 144 U.S. 1 (1892); Fourteen Diamond Rings *v.* United States, 183 U.S. 176 (1901); INS *v.* Chadha, 462 U.S. 919 (1983); Process Gas Consumer's Group *v.* Consumer Energy Council of America 463 U.S. 1216 (1983).

SECTION 8. The Congress shall have Power [1]

§ 117. The revenue power.

To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

§ 118. The borrowing power.

[2] To borrow Money on the credit of the United States:

§ 119. Power over commerce.

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

§ 120. Naturalization and bankruptcy.

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

§ 121. Coinage, weight, and measures.

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

§ 122. Counterfeiting.

[7] To establish Post Offices and Post Roads;

§ 123. Post-offices and post-roads.

[8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

§ 124. Patents and copyrights.

[9] To constitute Tribunals inferior to the supreme Court;

§ 125. Inferior courts.

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

§ 126. Piracies and offenses against law of nations.

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

§ 127. Declarations of war and maritime operations.

In the 93d Congress, the Congress passed over the President's veto Public Law 93–148, relating to the power of Congress to declare war under this clause and the power of the President as Commander in Chief under article II, section 2, clause 1 (§ 178, *infra*). The law requires that the President report to Congress on the introduction of United States Armed Forces in the absence of a declaration of war. The President must terminate use of the Armed Forces unless Congress, within 60 calendar days after

§ 128. War powers of Congress and the President.

a report is submitted or is required to be submitted, (1) declares war or authorizes use of the Armed Forces; (2) extends by law the 60-day period; or (3) is physically unable to meet as result of armed attack. The Act also provided that Congress could adopt a concurrent resolution requiring the removal of Armed Forces engaged in foreign hostilities, a provision which should be read in light of INS *v.* Chadha, 462 U.S. 919 (1983). Sections 6 and 7 of the Act provide congressional procedures for joint resolutions, bills, and concurrent resolutions introduced pursuant to the provisions of the Act (see § 1130, *infra*). For further discussion of that Act, and war powers generally, see Deschler, ch. 13.

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

§ 129. Raising and support of armies.

[13] To provide and maintain a Navy;

§ 130. Provisions for a navy.

[14] To make Rules for the Government and Regulation of the land and naval Forces;

§ 131. Land and naval forces.

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

§ 132. Calling out the militia.

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

§ 133. Power over militia.

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of par-

§ 134. Power over territory of the United States.

ticular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

§ 135. Congressional authority over the District of Columbia.

Congress has provided by law that "all that part of the territory of the United States included within the present limits of the District of Columbia shall be the permanent seat of government of the United States" (4 U.S.C. 71). Pursuant to its authority under this clause, Congress provided in 1970 for the people of the District of Columbia to be represented in the House of Representatives by a Delegate and for a Commission to report to the Congress on the organization of the government of the District of Columbia (P.L. 91–405; 84 Stat. 845). For the powers and duties of the Delegate from the District of Columbia, see rule III (§ 675, *infra*) and Deschler, ch. 7, § 3. In 1973, Congress passed the District of Columbia Self-Government and Governmental Reorganization Act, which reorganized the governmental structure of the District, provided a charter for local government subject to acceptance by a majority of the registered qualified voters of the District, delegated certain legislative powers to the District, and implemented certain recommendations of the Commission on the Organization of the Government of the District of Columbia (P.L. 93–198; 87 Stat. 774). Section 604 of that Act provides for congressional action on certain district matters by providing a procedure for approval and disapproval of certain actions by the District of Columbia Council. The section, as amended by Public Law 98–473, permits a highly privileged motion to discharge a joint resolution of approval or disapproval which has not been reported by the committee to which referred within 20 calendar days after its introduction (see § 1130, *infra*).

§ 136. General legislative power.

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

§ 137. Migration or importation of persons.

[2] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

§ 138. Writ of habeas corpus.

[3] No Bill of Attainder or ex post facto Law shall be passed.

§ 139. Bills of attainder and ex post facto laws.

[4] [No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.]

§ 140. Capitation and direct taxes.

This provision was changed in 1913 by the 16th amendment to the Constitution.

[5] No Tax or Duty shall be laid on Articles exported from any State.

§ 141. Export duties.

[6] No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

§ 142. Freedom of commerce.

[7] No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Re-

§ 143. Appropriations and accounting of public money.

ceipts and Expenditures of all public Money shall be published from time to time.

[8] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

§ 144. Titles of nobility and gifts from foreign states.

Consent has been granted to officers and employees of the government, under enumerated conditions, to accept certain gifts and decorations from foreign governments (see 5 U.S.C. 7342). The adoption of this act largely has obviated the practice of passing private bills to permit the officer or employee to retain the award. However, where the Speaker (who was one of the officers empowered by an earlier law to approve retention of decorations by Members of the House) was himself tendered an award from a foreign government, a private law (Private Law 91–244) was enacted to permit him to accept and wear the award so that he would not be in the position of reviewing his own application under the provisions of the law.

§ 145. Foreign gifts and decorations.

Public Law 95–105 amended the Foreign Gifts and Decorations Act (now 5 U.S.C. 7342) to designate the Committee on Standards of Official Conduct of the House of Representatives as the employing agency for the House with respect to foreign gifts and decorations received by Members and employees; under that statute the Committee may approve the acceptance of foreign decorations and has promulgated regulations to carry out the Act with respect to Members and employees (Jan. 23, 1978, p. 452), and disposes of foreign gifts which may not be retained by the donee.

Opinions of Attorneys General:

Gifts from Foreign Prince, 24 Op. Att'y Gen. 117 (1902); Foreign Diplomatic Commission, 13 Op. Att'y Gen. 538 (1871); Marshal of Florida, 6 Op. Att'y Gen. 409 (1854).

SECTION 10. [1] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or

§ 146. States not to make treaties, coin money, pass ex post facto laws, impair contracts, etc.

Law impairing the Obligation of Contracts, or grant any Title of Nobility.

§ 147. States not to lay imposts or duties.

[2] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

§ 148. States not to lay tonnage taxes, make compacts, or go to war.

[3] No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II.

§ 149. Terms of the President and Vice President.

SECTION 1. [1] The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four years, and together with the Vice President, chosen for the same Term, be elected, as follows:

§ 150. Commencement of President's term of office.

George Washington took the oath of office, as the first President on April 30, 1789 (III, 1986). The two Houses of the First Congress found, after examination by a joint committee, that by provisions made in the Federal Constitution and by the Continental Congress, the term of the President had, notwithstanding, begun on March 4, 1789 (I, 3). The 20th amendment, declared to have been ratified on February 6, 1933, provides that

Presidential terms shall end and successor terms shall begin at noon on January 20. Thus, Franklin D. Roosevelt's first term began on March 4, 1933, but ended at noon on January 20, 1937. Formerly, when March 4 fell on Sunday, the public inauguration of the President occurred at noon on March 5 (III, 1996; VI, 449). Following ratification of the 20th amendment, the first time inauguration day fell on Sunday was January 20, 1957, and Dwight David Eisenhower took the oath for his second term in a private ceremony at the White House on that day followed by a public inauguration ceremony on the steps of the East Front of the Capitol on Monday, January 21, 1957. A similar scenario was followed at the beginning of President Reagan's second term, with the oath being given at the White House on January 20, 1985, followed by a public ceremony on Monday, January 21, in the Rotunda of the Capitol. The 22d amendment provides that no person shall be elected President more than twice.

§ 151. Electors of President and Vice President and their qualifications.

[2] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

§ 152. Questions as to qualifications of electors.

Questions of the qualifications of electors have arisen, and in one instance certain ones were found disqualified, but as their number was not sufficient to affect the result and as there was doubt as to what tribunal should pass on the question the votes were counted (III, 1941). In other cases there were objections, but the votes were counted (III, 1972–1974, 1979). In one instance an elector found to be disqualified resigned both offices, whereupon he was made eligible to fill the vacancy thus caused among electors (III, 1975).

§ 152a. Original provision for failure of electoral college to choose, superseded by 12th amendment.

[3] [The Electors shall meet in their respective States and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List

they shall sign and certify, and transmit sealed to the Seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a majority of the whole Number of Electors appointed: and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.]

This third clause of article II, section 1 was superseded by the 12th amendment (see §§ 219–223, *infra*).

§ 153. Time of choosing electors and time at which their votes are given.

[4] The Congress may determine the Time of chusing the Electors, and the Day on which they shall

give their Votes; which Day shall be the same throughout the United States.

The time for choosing electors has been fixed on "the Tuesday next after the first Monday in November, in every fourth year"; and the electors in each State "meet and give in their votes on the first Monday after the second Wednesday in December next following their appointment, at such place in each State as the legislature of such State shall direct" (III, 1914; VI, 438; 3 U.S.C. 1, 7). The statutes also provide for transmitting to the President of the Senate certificates of the appointment of the electors and of their votes (III, 1915–1917; VI, 439; 3 U.S.C. 11).

§ 154. Qualifications of President of the United States.

5 No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

§ 155. Succession in case of removal, death, resignation, or disability of President and Vice President.

6 In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

§ 156. Resignation of the President.

Amendment XXV provides for filling a vacancy in the Office of the Vice President and, when the President is unable to perform the duties of his office, for the Vice President to assume those powers and duties as Acting President. During the 93d Congress, President Richard M. Nixon resigned from office on Au-

gust 9, 1974, by delivering a signed resignation to the Office of the Secretary of State, pursuant to 3 U.S.C. 20. Pursuant to amendment XXV, Vice President Gerald R. Ford became President and the House and Senate confirmed his nominee, Nelson A. Rockefeller, to become Vice President (December 19, 1974, p. 41516).

Congress also has provided for the performance of the duties of the President in case of removal, death, resignation or inability, both of the President and Vice President (3 U.S.C. 19).

§ 157. Compensation of President.

[7] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

The compensation of the President, formerly fixed at $200,000 per annum (3 U.S.C. 102), was increased to $400,000, effective January 20, 2001 (P.L. 106–59). In addition the law provides an expense allowance of $50,000 (3 U.S.C. 102), and authorizes a travel allowance of not to exceed $100,000 (3 U.S.C. 103).

§ 158. Oath of the President.

[8] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

§ 159. Inauguration of the President.

The taking of this oath, which is termed the inauguration, is made the occasion of certain ceremonies which are arranged for by a joint committee of the two Houses (III, 1998, 1999; VI, 451). For many years the oath was normally taken at the east portico of the Capitol, although in earlier years it was taken in the Senate Chamber or Hall of the House (III, 1986–1995). On March 4, 1909, owing to inclemency of the weather, the President-elect took the oath and delivered his inaugural address in the Senate Chamber (VI, 447). And when Vice President Fillmore succeeded to the vacancy in the Office of President, Congress being in session, he took the oath in the Hall of the House in the presence of the Senate and House (III, 1997). In 1945

Franklin D. Roosevelt, who had been elected for his fourth term as President, took the oath of office on the south portico at the White House. On August 9, 1974, Gerald R. Ford, who as Vice President succeeded to the Presidency following the resignation of President Nixon on that day, was sworn in in the East Room of the White House. The West Front of the Capitol was first used for the inaugural ceremony for Ronald W. Reagan, Jan. 20, 1981. Because of extreme cold, the public administration of the oath was for the first time held in the Rotunda of the Capitol, rather than on the West Front, as scheduled, on January 21, 1985. Permission for such use is authorized by concurrent resolution (see, *e.g.*, S. Con. Res. 144, 98th Cong. Oct. 9, 1984, p. 30926).

SECTION 2. [1]The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

§ 160. The President the Commander in Chief.

§ 161. Opinions of the President's advisers.

§ 162. President grants reprieves and pardons.

In the 93d Congress, the Congress passed over the President's veto Public Law 93–148, relating to the power of Congress to declare war under article I, section 8, clause 11 (§ 127, *supra*) and the power of the President as Commander in Chief. For further discussion of the reports to Congress required and the procedure for congressional action provided under Public Law 93–148, see § 128, *supra*.

§ 163. War powers of Congress and the President.

In 1974, President Ford exercised his power under the last phrase of this clause by pardoning former President Nixon for any crimes he might have committed during a certain period in office (Proclamation 4311, September 8, 1974). The former President had resigned on August 9, 1974, following the decision of the Committee on the Judiciary to report to the House a recommendation of impeachment (H. Rept. 93–1305, Aug. 20, 1974, p. 29219).

§ 164. Pardon of former President.

[2] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

§ 165. President makes treaties.

§ 166. Appointing power of the President.

The power of the President to appoint diplomatic representatives to foreign governments and to determine their rank is derived from the Constitution and may not be circumscribed by statutory enactments (VII, 1248). In Buckley *v.* Valeo, 424 U.S. 1 (1976) the Supreme Court held that any appointee exercising significant authority (not merely internal delegable authorities within the legislative branch) pursuant to the laws of the United States is an Officer of the United States and must therefore be appointed pursuant to this clause, and that Congress cannot by law vest such appointment authority in its own officers or require that Presidential appointments be subject to confirmation by both Houses. For a discussion of the role of the House with respect to treaties affecting revenue, see § 597, *infra*.

[3] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

§ 167. President's power to fill vacancies during recess of the Senate.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend

§ 168. Messages from the President.

to their Consideration such Measures as he shall judge necessary and expedient; * * *

In the early years of the Government the President made a speech to Congress on its assembling (V, 6629), but in 1801 President Jefferson discontinued this practice and transmitted a message in writing. This precedent was followed until April 8, 1913, when the custom of addressing Congress in person was resumed by President Wilson and, with the exception of President Hoover (VIII, 3333) has been followed generally by subsequent Presidents. Only messages of major importance are delivered in person. A message in writing is usually communicated to both Houses on the same day, but an original document accompanying can of course be sent to but one House (V, 6616, 6617). The President's State of the Union message delivered in person to the 95th Congress, second Session, together with separate hand-delivered written messages, were referred on motion to the Union Calendar and ordered printed (Jan. 19, 1978, p. 152). In early years confidential messages were often sent and considered in secret session of the House (V, 7251, 7252).

§ 169. Messages required by law.

By law (31 U.S.C. 1105), the President is required to transmit the Budget to Congress on or after the first Monday in January but not later than the first Monday in February each year. In addition, he is required to submit a supplemental budget summary by July 16 each year (31 U.S.C. 1106). Submission of the Economic Report of the President is required within 10 days after the submission of the January budget (15 U.S.C. 1022). The Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 601) requires the transmittal to Congress by the President of amendments and revisions related to the budget on or before April 10 and July 15 of each year. In addition, the Act provides for the transmittal of messages proposing rescissions and deferrals of budget authority (2 U.S.C. 682).

§ 170. Reception of messages from the President.

When the President has indicated that he will address Congress in person a concurrent resolution is adopted by both Houses arranging for a joint session to receive the message. At the appointed hour the Members of the Senate arrive. The President of the Senate (the Vice President) sits to the right of the Speaker, but in the absence of the Vice President, the President pro tempore sits to the left of the Speaker (Nov. 27, 1963, p. 22838). The Speaker presides.

The ceremony of receiving a message in writing is simple (V, 6591), and may occur during consideration of a question of privilege (V, 6640–6642) or before the organization of the House (V, 6647–6649) and in the absence of a quorum (V, 6650; VIII, 3339; clause 7 of rule XX).

But, with the exception of vetoes, messages are regularly laid before the House only at the time prescribed by the rule for the order of business (V, 6635–6638) within the discretion of the Speaker (VIII, 3341). While a message of the President is always read in full the latest rulings have

not permitted the reading of the accompanying documents to be demanded as a matter of right (V, 5267–5271; VII, 1108). A concurrent resolution providing for a joint session to receive the President's message was held to be of the highest privilege (VIII, 3335).

§ 171. Power of President as to convening and adjourning Congress.

* * * he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; * * *

In certain exigencies the President may convene Congress at a place other than the seat of government (I, 2; 2 U.S.C. 27). Congress has on occasion been convened by the President (I, 10, 11; Nov. 17, 1947, p. 10578; July 26, 1948, p. 9362), and in one instance, when Congress had provided by law for meeting, the President called it together on an earlier day (I, 12). The Congress having adjourned on July 27, 1947, p. 10521, and on June 20, 1948, p. 9350, to a day certain, the President called it together on an earlier date than that to which it adjourned (Nov. 17, 1947, p. 10577; July 26, 1948, p. 9362). There has been some discussion as to whether or not there is a distinction between a session called by the President and other sessions of Congress (I, 12, footnote).

§ 172. President receives ambassadors, executes the laws, and commissions officers.

* * * he shall receive Ambassadors and other public Ministers; he shall take Care That the Laws be faithfully executed, and shall Commission all the officers of the United States.

§ 173. Impeachment of civil officers.

SECTION 4. The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

§ 174. As to the officers who may be impeached.

In the Blount trial the managers contended that all citizens of the United States were liable to impeachment, but this contention was not admitted (III, 2315), and in the Belknap trial both managers and counsel for respondent agreed that a private citizen, apart from offense in an office, might

not be impeached (III, 2007). But resignation of the office, does not prevent impeachment for crime or misdemeanor therein (III, 2007, 2317, 2444, 2445, 2459, 2509). In Blount's case it was decided that a Senator was not a civil officer within the meaning of the impeachment provisions of the Constitution (III, 2310, 2316). Questions have also arisen as to whether or not the Congressional Printer (III, 1785), or a vice consul-general (III, 2515), might be impeached. Proceedings for the impeachment of territorial judges have been taken in several instances (III, 2486, 2487, 2488), although various opinions have been given that such an officer is not impeachable (III, 2022, 2486, 2493). A committee of the House by majority vote held a Commissioner of the District of Columbia not to be a civil officer subject to impeachment under the Constitution (VI, 548). An independent counsel appointed under 28 U.S.C. 593 (a statute currently ineffective under 28 U.S.C. 599) may be impeached under 28 U.S.C. 596(a), and a resolution impeaching such an independent counsel constitutes a question of the privileges of the House under rule IX (Sept. 23, 1998, p. 21560).

§ 175. Nature of impeachable offenses.

As to what are impeachable offenses there has been much discussion (III, 2008, 2019, 2020, 2356, 2362, 2379–2381, 2405, 2406, 2410, 2498, 2510; VI, 455; Impeachment of Richard M. Nixon, President of the United States, Committee on the Judiciary, H. Rept. 93–1305, Aug. 20, 1974, p. 29219; Associate Justice William O. Douglas, Final Report by the Special Subcommittee on H. Res. 920, Committee on the Judiciary, Sept. 17, 1970; Impeachment of William Jefferson Clinton, President of the United States, H. Rept. 105–830, Dec. 16, 1998). For a time the theory that indictable offenses only were impeachable was stoutly maintained and as stoutly denied (III, 2356, 2360–2362, 2379–2381, 2405, 2406, 2410, 2416); but on the 10th and 11th articles of the impeachment of President Andrew Johnson the House concluded to impeach for other than indictable offenses (III, 2418), and in the Swayne trial the theory was definitely abandoned (III, 2019). While there has not been definite concurrence in the claim of the managers in the trial of the President that an impeachable offense is any misbehavior that shows disqualification to hold and exercise the office, whether moral, intellectual, or physical (III, 2015), yet the House has impeached judges for improper personal habits (III, 2328, 2505), and in the impeachment of the President one of the articles charged him with "intemperate, inflammatory, and scandalous harangues" in public addresses, tending to the harm of the Government (III, 2420). There was no conviction under these charges except in the single case of Judge Pickering, who was charged with intoxication on the bench (III, 2328–2341). As to the impeachment of judges for other delinquencies, there has been much contention as to whether they may be impeached for any breach of good behavior (III, 2011, 2016, 2497), or only for judicial misconduct occurring in the actual administration of justice in connection with the court (III, 2010, 2013, 2017). The intent of the judge (III, 2014, 2382) as related to mistakes of the law, and the relations of intent to conviction have been discussed

at length (III, 2014, 2381, 2382, 2518, 2519). The statutes make nonresidence of a judge an impeachable offense, and the House has taken steps to impeach for this cause (III, 2476, 2512). There has, however, been some question as to the power of Congress to make an impeachable offense (III, 2014, 2015, 2021, 2512). Usurpation of power has been examined several times as a cause for impeachment (III, 2404, 2508, 2509, 2516, 2517). There also has been discussion as to whether or not there is distinction between a misdemeanor and a high misdemeanor (III, 2270, 2367, 2492). Review of impeachments in Congress showing the nature of charges upon which impeachments have been brought and judgments of the Senate thereon (VI, 466). The report accompanying a resolution to impeach President Clinton, and the debate in the House thereon, included discussion of the nature of an impeachable offense (H. Rept. 105–830; Dec. 18, 1998, p. 27828). Of the four articles of impeachment of President Clinton reported by the Committee on the Judiciary ((1) perjury in grand jury, (2) perjury in a civil deposition, (3) obstruction of justice, and (4) improper responses to written questions from the Committee on the Judiciary), only the first and third were adopted by the House (H. Res. 611, Dec. 19, 1998, p. 28110). The President was acquitted by the Senate on each article (Feb. 12, 1999, p. ——).

§ 176. Later impeachment inquiries.

The articles of impeachment adopted by the House in 1936 against Judge Ritter charged a variety of judicial misconduct, including violations of criminal law. The seventh and general article, upon which Judge Ritter was convicted by the Senate, charged general misconduct to bring his court into scandal and disrepute and to destroy public confidence in his court and in the judicial system (Impeachment by the House, Mar. 2, 1936, p. 3091; Conviction by the Senate, Apr. 17, 1936, p. 5606). Following his conviction by the Senate, former Judge Ritter brought an action for back salary, contending that the Senate had tried and convicted him for nonimpeachable offenses. The U.S. Court of Claims held that the Senate's power to try impeachments was exclusive and not subject to judicial review. Ritter *v.* United States, 84 Ct. Cls. 293 (1936), cert. denied, 300 U.S. 668 (1937).

In 1970 a special subcommittee of the Committee on the Judiciary considered charges of impeachment against Associate Justice Douglas of the Supreme Court. The subcommittee recommended against his impeachment but concluded that a Federal judge could be impeached (1) for judicial conduct which is a serious dereliction from public duty and (2) for nonjudicial conduct which is criminal in nature (Associate Justice William O. Douglas, Final Report by the Special Subcommittee on H. Res. 920, Committee on the Judiciary, September 17, 1970).

In 1974 the Committee on the Judiciary investigated charges of impeachment against President Nixon (H. Res. 803, Feb. 6, 1974, p. 2349), and determined to recommend his impeachment to the House. The President having resigned, the committee reported to the House without submitting

a resolution of impeachment, and the House accepted the report by resolution (H. Res. 1333, Aug. 20, 1974, p. 29361). The report of the committee included the text of the three articles of impeachment adopted by the committee. The committee had concluded that impeachable offenses need not be indictable offenses and recommended impeachment of the President (1) for violating his oath of office and his duty under the Constitution by preventing, obstructing, and impeding the administration of justice; (2) for engaging in a course of conduct violating the constitutional rights of citizens, impairing the administration of justice, and contravening the laws governing executive agencies; and (3) for failing to honor subpoenas issued by the Committee on the Judiciary in the course of its impeachment inquiry (Impeachment of Richard M. Nixon, President of the United States, Committee on the Judiciary, H. Rept. 93–1305, Aug. 20, 1974, printed in full in the Cong. Record, Aug. 22, 1974, p. 29219).

In 1986, for the first time since 1936, the House agreed to a resolution impeaching a Federal district judge. Judge Harry Claiborne had been convicted of falsifying Federal income tax returns. His final appeal was denied by the Supreme Court in April, and he began serving his prison sentence in May. Because he declined to resign, however, Judge Claiborne was still receiving his judicial salary and, absent impeachment, would resume the bench on his release from prison. Consequently, a resolution of impeachment was introduced on June 3, and on July 16, the Committee on the Judiciary reported to the House four articles of impeachment against Judge Claiborne. On July 22, the resolution was called up as a question of privilege and agreed to by a recorded vote of 406 yeas, 0 nays. After trial in the Senate, Judge Claiborne was convicted on three of the four articles of impeachment and removed from office on October 9, 1986.

In 1988, the House agreed to a resolution reported from the Committee on the Judiciary and called up as a question of the privileges of the House impeaching Federal district judge Alcee L. Hastings for high crimes and misdemeanors specified in 17 articles of impeachment, some of them addressing allegations on which the judge had been acquitted in a Federal criminal trial (H. Res. 499, 100th Cong., Aug. 3, 1988, p. 20206). No trial in the Senate was had before the adjournment of the 100th Congress. In the 101st Congress, the House reappointed managers to conduct this impeachment in the Senate (Jan. 3, 1989, p. 84); the Senate began its deliberations on March 15, 1989 (p. 4219); conviction and removal from office occurred on October 20, 1989 (p. 25335). Also in the 101st Congress, the Senate convicted Federal district judge Walter L. Nixon on two of the three impeachment charges brought against him (Nov. 3, 1989, p. 27101). For further discussion of the continuance of impeachment proceedings in a succeeding Congress, see § 620, *infra*.

In 1998 the House agreed to a privileged resolution reported from the Committee on Rules, referring to the Committee on the Judiciary a communication from an independent counsel transmitting under 28 U.S.C. 595(c) evidence of possible impeachable offenses by President Clinton, and re-

stricting access to the communication and to meetings and hearings thereon (H. Res. 525, Sept. 11, 1998, p. 20020). Later, the House adopted a privileged resolution reported from the Committee on the Judiciary authorizing an impeachment inquiry by that committee and investing it with special investigative authorities to facilitate the inquiry (H. Res. 581, Oct. 8, 1998, p. 24679). The Committee on the Judiciary filed with the House a privileged report accompanying a resolution containing four articles of impeachment against President Clinton that alleged: (1) the President gave perjurious, false, and misleading testimony to a grand jury; (2) the President gave perjurious, false, and misleading testimony in a Federal civil action; (3) the President prevented, obstructed, and impeded the administration of justice relating to a Federal civil action; and (4) the President abused his office, impaired the administration of justice, and contravened the authority of the legislative branch by his response to 81 written questions submitted by the Committee on the Judiciary (H. Res. 611, Dec. 17, 1998, p. 27819). The chairman of the Committee on the Judiciary called up the resolution on December 18, 1998 (p. 27828).

A resolution offered from the floor to permit the Delegate of the District of Columbia to vote on the articles of impeachment was held not to constitute a question of the privileges of the House under rule IX (Dec. 18, 1998, p. 27825). To a privileged resolution of impeachment, an amendment proposing instead censure, which is not privileged, was held not germane (Dec. 19, 1998, p. 28100).

For further discussion of impeachment proceedings, see §§ 601–620, *infra*; § 31, *supra*, and Deschler, ch. 14.

ARTICLE III.

§ 177. The judges, their terms, and compensation.

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

§ 178. Extent of the judicial power.

SECTION 2. [1]The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the

Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

§ 178a. Decisions of the Court on legislative standing.

Decisions of the Supreme Court involving legislative standing to bring cases in Federal court include Coleman *v.* Miller, 307 U.S. 433 (1939); Goldwater *v.* Carter, 444 U.S. 996 (1979); Allen *v.* Wright, 468 U.S. 737 (1984); Whitmore *v.* Arkansas, 495 U.S. 149 (1990); and, most recently, Raines *v.* Byrd, 521 U.S. 811 (1997), holding that Member plaintiffs must have alleged a "personal stake" in having an actual injury redressed, rather than an "institutional injury" that is "abstract and widely dispersed."

§ 179. Original and appellate jurisdiction of the Supreme Court.

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

§ 180. Places of trial of crimes by jury.

[3] The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any

State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

§ 181. Treason against the United States.

SECTION 3. [1]Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

§ 182. Punishment for treason.

[2]The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person Attainted.

ARTICLE IV.

§ 183. Each State to give credit to acts, records, etc., of other States.

SECTION 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

§ 184. Privileges and immunities of citizens.

SECTION 2. [1]The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

§ 185. Extradition for treason, felony, or other crime.

[2]A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which

he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

§ 186. Persons held to service or labor.

[3] No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

§ 187. Admission and formation of new States.

SECTION 3. [1] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

§ 188. Power of Congress over territory and other national property.

[2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

The Court of Appeals for the District of Columbia Circuit has held that the property clause does not prohibit the transfer of United States property to foreign nations through self-executing treaties. Edwards *v.* Carter, 580 F.2d 1055 (1978), cert. denied, 436 U.S. 907 (1978).

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

§ 189. Republican form of government and protection from domestic violence guaranteed to the States.

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

§ 190. Amendments to the Constitution.

Amendments to the Constitution are proposed in the form of joint resolutions, which have their several readings and are enrolled and signed by the presiding officers of the two Houses (V, 7029, footnote), but are not presented to the President for his approval (V, 7040; see discussion

§ 191. Form of and action on amendments to the Constitution.

under § 115, *supra*; Hollingsworth *v.* Virginia, 3 U.S. (3 Dall.) 378 (1798)). They are filed with the Archivist who, under the law (1 U.S.C. 106b; 1 U.S.C. 112), has the responsibility for the certification and publication of such amendments, once they are ratified by the States. Under the earlier procedure, the two Houses sometimes requested the President to transmit to the States certain proposed amendments (V, 7041, 7043), but a concurrent resolution to that end was without privilege (VIII, 3508). The President notified Congress by message of the promulgation of the ratification of a constitutional amendment (V, 7044).

§ 192. The two-thirds vote on proposed amendments.

The vote required on a joint resolution proposing an amendment to the Constitution is two-thirds of those voting, a quorum being present, and not two-thirds of the entire membership (V, 7027, 7028; VIII, 3503). The majority required to pass a constitutional amendment, like the majority required to pass a bill over the President's veto (VII, 1111) and the majority required to adopt a motion to suspend the rules (Dec. 16, 1981, pp. 31850, 31851, 31855, 31856), is two-thirds of those Members voting either in the affirmative or negative, a quorum being present, and Members who only indicate that they are "present" are not counted in this computation (Nov. 15, 1983, p. 32685). The requirement of the two-thirds vote applies to the vote on the final passage and not to amendments (V, 7031, 7032; VIII, 3504), or prior stages (V, 7029, 7030), but is required where the House votes on agreeing to Senate amendments (V, 7033, 7034; VIII, 3505), or on agreeing to a conference report (V, 7036). One House having, by a two-thirds vote, passed in amended form a proposed constitutional amendment from the other House, and then having by a majority vote receded from its amendment, the constitutional amendment was held not to be passed (V, 7035).

In the 95th Congress, both the House and Senate agreed by a majority vote to House Joint Resolution 638, extending the time period for ratification by the States of the Equal Rights Amendment, where House Joint Resolution 208 of the 92d Congress, proposing the amendment, had provided for a seven-year ratification period. The House determined, by laying on the table by a record vote a privileged resolution asserting that a vote of two-thirds of the Members present and voting was required to pass a joint resolution extending the ratification period for a constitutional amendment already submitted to the States, that only a majority vote was required on such a measure (H.J. Res. 638; Speaker O'Neill, Aug. 15, 1978, p. 26203).

The joint resolution extending the ratification period for the Equal Rights Amendment was delivered to the President, who signed it although expressing doubt as to the necessity for his doing so (Presidential Documents, Oct. 19, 1978). When sent to the Archivist, the joint resolution was not assigned a public law number, but the Archivist notified the States of the action of the Congress in extending the ratification period. For a judicial decision voiding this extension, see Idaho *v.* Freeman, 529 F.Supp. 1107

(D.C.D. Idaho, 1981), judgment stayed *sub nom.* National Organization of Women *v.* Idaho, 455 U.S. 918 (1982), vacated and remanded to dismiss, 459 U.S. 809 (1982).

The yeas and nays are not required to pass a joint resolution proposing to amend the Constitution (V, 7038–7039; VIII, 3506).

Question has arisen as to the power of a State to recall, or rescind, its assent to a constitutional amendment (V, 7042; footnotes to §§ 225, 234, *infra*) but has not been the subject of a final judicial determination (see Idaho *v.* Freeman, 529 F.Supp. 1107 (D.C.D. Idaho, 1981), judgment stayed *sub nom.* National Organization of Women *v.* Idaho, 455 U.S. 918 (1982), vacated and remanded to dismiss, 459 U.S. 809 (1982)).

§ 193. Decisions of the Court.

Decisions of the Supreme Court of the United States: National Prohibition Cases, 253 U.S. 350 (1920); Hawke *v.* Smith, 253 U.S. 221 (1920); Dillon *v.* Gloss, 256 U.S. 368 (1921); Leser *v.* Garnett, 258 U.S. 130 (1922); Coleman *v.* Miller, 307 U.S. 433 (1939); Chandler *v.* Wise, 307 U.S. 474 (1939).

ARTICLE VI.

§ 194. Validity of debts and engagements.

[1] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

§ 195. Constitution, laws, and treaties the supreme law of the land.

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

§ 196. Oaths of public officers; and prohibition of religious tests.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States,

shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

§ 197. Form of oath.

The form of the oath is prescribed by statute (5 U.S.C. 3331; I, 128): "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

§ 198. Administration of oath at organization.

The Act of June 1, 1789 (2 U.S.C. 25), provides that on the organization of the House and previous to entering on any other business the oath shall be administered by any Member (generally the Member with longest continuous service) (I, 131; VI, 6) to the Speaker and by the Speaker to the other Members and Clerk (I, 130). The Act has at times been considered in the House as directory merely (I, 118, 242, 243, 245; VI, 6); but at other times has been observed carefully (I, 118, 140). The Act was cited by the Clerk in recognizing for nominations for Speaker as being of higher constitutional privilege than a resolution to postpone the election of a Speaker and instead provide for the election of a Speaker pro tempore pending the disposition of certain ethics charges against the nominee of the majority party (Jan. 7, 1997, p. 115).

Previously it was the custom to administer the oath by State delegations, but beginning with the 71st Congress Members-elect have been sworn in en masse (VI, 8). The Clerk supplies printed copies of the oath to Members and Delegates who have taken the oath in accordance with law, which shall be subscribed by the Members and Delegates and delivered to the Clerk to be recorded in the Journal and Congressional Record as conclusive proof of the fact that the signer duly took the oath in accordance with law (2 U.S.C. 25). See Deschler, ch. 2. The Speaker has requested that guests in the gallery rise with the Members during the administration of the oath of office to a Member-elect (Nov. 12, 1991, p. 31255).

§ 199. Functions of the Speaker in administering the oath.

The Speaker possesses no arbitrary power in the administration of the oath (I, 134), and when objection is made the question must be decided by the House and not by the Chair (I, 519, 520). An objection prevents the Speaker from administering the oath of his own authority, even though the credentials be regular in form (I, 135–138). The Speaker has frequently declined to administer the oath in cases wherein the House has, by its action, indicated that he should not do so (I, 139, 140). And in case of doubt he has waited the instruction of the House

(I, 396; VI, 11). There has been discussion as to the competency of a Speaker pro tempore to administer the oath (I, 170), and in the absence of the Speaker a Member-elect waited until the Speaker should be present (I, 179), but in 1920 a Speaker pro tempore whose designation by the Speaker had been approved by the House, administered the oath to a Member (VI, 20). The House may authorize the Speaker to administer the oath to a Member away from the House (I, 169), or may, in such a case, authorize another than the Speaker to administer the oath (I, 170; VI, 14). For forms used in this procedure see (VI, 14).

§ 200. Administration of the oath as related to the quorum.

Members-elect have been sworn at the beginning of a second session before the ascertainment of a quorum (I, 176–178), but when the Clerk called the second session of the 87th Congress to order, Members-elect were not sworn before ascertainment of a quorum and election of Speaker McCormack to succeed Speaker Rayburn, who had died during the sine die adjournment (Jan. 10, 1962, p. 5). Members-elect have also been sworn where a roll call or other ascertainment has shown the absence of a quorum (I, 178, 181, 182; VI, 21) but in one instance, however, the Speaker declined to administer the oath under such circumstances (II, 875).

§ 201. Privilege of administration of the oath.

A proposition to administer the oath to a Member is a matter of high privilege (VI, 14). It has been administered during a call of the roll and during an electronic vote on a motion to agree to rules at the time of organization (I, 173; VI, 22; Jan. 5, 2005, p. ——) and during an electronic vote taken during House deliberations interlocutory to an ongoing joint session to count the electoral votes (Jan. 6, 2005, p. ——). It also has been administered before the reading of the Journal (I, 172), in the absence of a quorum (VI, 22), on Calendar Wednesday (VI, 22), before a pending motion to amend the Journal (I, 171), and after the previous question has been ordered on a bill reported back to the House from the Committee of the Whole (Oct. 3, 1969, p. 28487). A division being demanded on a resolution for seating several claimants, the oath may be administered to each as soon as his case is decided (I, 623). Where a Member-elect whose right to a seat has been determined by the House presents himself to take the oath, his right to be sworn is complete and cannot be deferred even by a motion to adjourn (I, 622), but the Speaker has entertained the motion to adjourn after adoption of a seating resolution but before the Member-elect was present in the Chamber to take the oath (May 1, 1985, p. 10019).

§ 202. Challenge of the right to take the oath.

The right of a Member-elect to take the oath is sometimes challenged and the Speaker requests the Member-elect to stand aside temporarily (VI, 9–11, 174; VIII, 3386). This usually occurs at the time of organization of the House. The challenge proceeds from some Member, but the fact that he has not yet taken the oath himself does not debar him from making the challenge (I, 141). The Member challenging does so on his responsibility as a Member or on the strength of documents (I, 448) or on both (I, 443, 474). And

where an objection was sustained neither by affidavit nor on the responsibility of the Member objecting, the House declined to entertain it (I, 455).

§ 203. Consideration of an objection to the taking of the oath.

It has been held, although not uniformly, that in cases where the right of a Member-elect to take the oath is challenged, the Speaker may direct the Member to stand aside temporarily (I, 143–146, 474; VI, 9, 174; VIII, 3386). The Member so challenged is not thereby deprived of any right (I, 155). Similarly, the seating of a Member-elect does not prejudice a pending contest, brought under the Federal Contested Elections Act (2 U.S.C. 381–396), over final right to the seat (Jan. 7, 1997, p. 120). When several are challenged and stand aside the question is first taken on the Member-elect first required to stand aside (I, 147, 148). In 1861 it was held that the House might direct contested names to be passed over until the other Members-elect had been sworn in (I, 154). Motions and debate are in order on the questions involved in a challenge, and in a few cases other business has intervened by unanimous consent (I, 149, 150). By unanimous consent the consideration of a challenge is sometimes deferred until after the completion of the organization (I, 474), and by unanimous consent also the House has sometimes proceeded to legislative business pending consideration of the right of a Member to be sworn (I, 151–152).

§ 204. Relation of credentials to the right to take the oath.

Although the House has emphasized the impropriety of swearing-in a Member without credentials (I, 162–168), yet it has been done in cases wherein the credentials are delayed or lost and there is no doubt of the election (I, 85, 176–178; VI, 12, 13), or where the governor of a State has declined to give credentials to a person whose election was undoubted and uncontested (I, 553). A certificate of election in due form having been filed, the Clerk placed the name of the Member-elect on the roll, although he was subsequently advised that a State Supreme Court had issued a writ restraining the Secretary of State from issuing such certificate (Jan. 3, 1949, p. 8). Where the prima facie right is contested the Speaker declines to administer the oath (I, 550), but the House admits on his prima facie showing and without regard to final right a Member-elect from a recognized constituency whose credentials are in due form and whose qualifications are unquestioned (I, 528–534). If the status of the constituency is in doubt, the House usually defers the oath (I, 361, 386, 448, 461). In the 99th Congress, the House declined to give prima facie effect to a certificate of election, the results of the election being in doubt, and referred the issue of initial as well as final right to the Committee on House Administration (H. Res. 1, Jan. 3, 1985, pp. 380–87). After a recount of the votes was conducted by that committee, the House on its recommendation declared the candidate without the certificate entitled to the seat (H. Res. 146, May 1, 1985, p. 9998). The House also may defer the oath when a question of qualifications arises (I, 474), but it may investigate qualifications after the oath is taken (I, 156–159, 420, 462, 481), and after investigation unseat the Member by majority vote (I, 428).

§ 205. Sanity, loyalty, and incapacity as related to the oath.

Questions of sanity (I, 441) and loyalty (I, 448) seem to pertain to competency to take the oath as distinct from a question of qualifications, although there has been not a little debate on this subject (I, 479). In one case a Member-elect who had not taken the oath was excluded from the House because of disloyalty, where the resolution of exclusion and the committee report thereon concluded that he was ineligible to take a seat as a Representative under the express provisions of section 3 of the 14th amendment (VI, 56–59). This action by the House was cited in the Supreme Court decision of Powell *v.* McCormack (395 U.S. 486, 545 fn. 83) which denied the power of the House to exclude Members-elect by a majority vote for other than failure to meet the express qualifications stated in the Constitution. In Bond *v.* Floyd, 385 U.S. 116 (1966), the Supreme Court held that the exclusion by a State legislature of a member-elect of that body was unconstitutional, where the legislature had asserted the power to judge the sincerity with which the Member-elect could take the oath to support the Constitution of the United States. In the 97th Congress, the House declared vacant by majority vote the seat of a Member-elect unable to take the oath because of illness, where the medical prognosis showed no likelihood of improvement to permit the Member-elect to take the oath or assume the duties of a Representative (H. Res. 80, Feb. 24, 1981, pp. 2916–18).

§ 206. Decisions of the Court.

Decisions of the Supreme Court of the United States: McCulloch *v.* Maryland, 17 U.S. (4 Wheat.) 316 (1819); Ex parte Garland, 71 U.S. (4 Wall.) 333 (1867); Davis *v.* Beason, 133 U.S. 333 (1890); Mormon Church *v.* United States, 136 U.S. 1 (1890).

ARTICLE VII.

§ 207. Ratification of the Constitution.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of

America the Twelfth IN WITNESS whereof We have hereunto subscribed our Names,

GO WASHINGTON—*Presidt.*
and Deputy from Virginia.

[Signed also by the deputies of twelve States.]

New Hampshire.

JOHN LANGDON, NICHOLAS GILMAN.

Massachusetts.

NATHANIEL GORHAM, RUFUS KING.

Connecticut.

WM. SAML. JOHNSON, ROGER SHERMAN.

New York.

ALEXANDER HAMILTON.

New Jersey.

WIL: LIVINGSTON, WM. PATERSON,
DAVID BREARLEY, JONA: DAYTON.

Pennsylvania.

B FRANKLIN, THOMAS MIFFLIN,
ROBT. MORRIS, GEO. CLYMER,
THOS. FITZSIMONS, JARED INGERSOLL,
JAMES WILSON, GOUV MORRIS.

Delaware.

GEO. READ, GUNNING BEDFORD JUN,
JOHN DICKINSON, RICHARD BASSETT.
JACO BROOM,

Maryland.

JAMES MCHENRY, DAN OF ST THOS. JENIFER.
DANI CARROLL,

Virginia.

JOHN BLAIR, JAMES MADISON Jr.

North Carolina.

WM. BLOUNT,
HU WILLIAMSON,
RICH'D. DOBBS SPAIGHT.

South Carolina.

J. RUTLEDGE,
CHARLES PINCKNEY,
CHARLES COTESWORTH PINCKNEY,
PIERCE BUTLER.

Georgia.

WILLIAM FEW,
ABR BALDWIN.

Attest:
WILLIAM JACKSON, *Secretary.*

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION[1]

AMENDMENT I.

§ 208. Freedom of religion, of speech, and of peaceable assembly.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II.

§ 209. The right to bear arms.

A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

[1] The first 10 amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress on September 25, 1789 (this date and the date succeeding amendments were proposed is the date of final congressional action—signature by the presiding officer of the Senate—as is shown in the Senate Journals). They were ratified by the following States, on the dates shown, and the notifications by the governors thereof of ratification were communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; New York, February 27, 1790; Pennsylvania, March 10, 1790; Rhode Island, June 7, 1790; Vermont, November 3, 1791; and Virginia, December 15, 1791. Ratification was completed on December 15, 1791. The amendments were subsequently ratified by Massachusetts, March 2, 1939; Georgia, March 18, 1939; and Connecticut, April 19, 1939.

AMENDMENT III.

§ 210. Quartering of soldiers in houses.

No soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV.

§ 211. Security from unreasonable searches and seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V.

§ 212. Security as to accusations, trials, and property.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI.

§ 213. Right to trial by jury and to confront witnesses and secure testimony.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VII.

§ 214. Jury trial in suits at common law.

In suits at common law, where the value in Controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII.

§ 215. Excessive bail or fines and cruel punishments prohibited.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX.

§ 216. Rights reserved to the people.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X.

§ 217. Powers reserved to the States.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XI.[2]

§ 218. Extent of the judicial power.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

[2] The 11th amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Third Congress on March 11, 1794; and was declared in a message from the President to Congress dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the States. The dates of ratification were: New York, March 27, 1794; Rhode Island, March 31, 1794; Connecticut, May 8, 1794; New Hampshire, June 16, 1794; Massachusetts, June 26, 1794; Vermont, October 28, 1794; Virginia, November 18, 1794; Georgia, November 29, 1794; Kentucky, December 7, 1794; Maryland, December 26, 1794; Delaware, January 23, 1795; and North Carolina, February 7, 1795. Ratification was completed on February 7, 1795. The amendment was subsequently ratified by South Carolina on December 4, 1797. New Jersey and Pennsylvania did not take action on the amendment.

AMENDMENT XII.[3]

§ 219. Meeting of the electors and transmission and count of their votes.

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;— * * *

[3] See article II, section 1 of the Constitution. The 12th amendment to the Constitution was proposed to the legislatures of the several States by the Eighth Congress on December 12, 1803, in lieu of the original third paragraph of the first section of the second article, and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States. The dates of ratification were: North Carolina, December 21, 1803; Maryland, December 24, 1803; Kentucky, December 27, 1803; Ohio, December 30, 1803; Virginia, December 31, 1803; Pennsylvania, January 5, 1804; Vermont, January 30, 1804; New York, February 10, 1804; New Jersey, February 22, 1804; Rhode Island, March 12, 1804; South Carolina, May 15, 1804; Georgia, May 19, 1804; New Hampshire, June 15, 1804. Ratification was completed on June 15, 1804. The amendment was subsequently ratified by Tennessee on July 27, 1804. The amendment was rejected by Delaware, January 18, 1804; Massachusetts, February 3, 1804; and by Connecticut at its session begun May 10, 1804.

§ 220. The electoral count.

The electoral count occurs in a joint session of the two Houses in the Hall of the House (III, 1819) at 1 p.m. on the sixth day of January succeeding every meeting of electors (3 U.S.C. 15). The Vice President, as President of the Senate (or the President pro tempore in the Vice President's absence), presides over the joint session (3 U.S.C. 15). The date of the count has been changed by law as follows: (1) the 1957 count was changed to Monday, January 7 (P.L. 84–436); (2) the 1985 count was changed to Monday, January 7 (P.L. 98–456); (3) the 1989 count was changed to Wednesday, January 4 (P.L. 100–646); and (4) the 1997 count was changed to Thursday, January 9 (P.L. 104–296).

Sections 15–18 of title 3, United States Code, prescribe in detail the procedure for the count. Nevertheless, the two Houses traditionally adopt a concurrent resolution providing for the meeting in joint session to count the vote, for the appointment of tellers, and for the declaration of the state of the vote (III, 1961; Deschler, ch. 10, § 2.1). Under the law governing the proceedings, the two Houses divide to consider an objection to the counting of any electoral vote or "other question arising in the matter" (3 U.S.C. 15–18; Jan. 6, 1969, pp. 145–47; Jan. 6, 2001, p. 101; Jan. 6, 2005, p. ——), but only when in writing and signed by both a Member and a Senator (Jan. 6, 2001, p. 101; Jan. 6, 2005, p. ——). Examples of an "other question arising in the matter" include: (1) an objection for lack of a quorum (Jan. 6, 2001, p. 101); (2) a motion that either House withdraw from the joint session (Jan. 6, 2001, p. 101); and (3) an appeal from a ruling by the presiding officer (Jan. 6, 2001, p. 101). Such questions are not debatable in the joint session (3 U.S.C. 18; Jan. 6, 2001, p. 101). When the two Houses have divided, a motion in the House to lay the objection on the table is not in order (Jan. 6, 1969; pp. 169–72). A Vice President-elect, as Speaker of the House or as a sitting Vice President, has participated in the ceremonies (*e.g.*, VI, 446; Jan. 6, 2005, p. ——). See Deschler, ch. 10 for further discussion. When addressing a controversy over the election of President and Vice President in the State of Florida, the Supreme Court indicated its view of a section of the statute (3 U.S.C. 5) addressing a determination of controversy as to the appointment of electors (Bush *v.* Palm Beach County Canvassing Bd. (531 U.S. 70 (2000)). Ultimately, the Supreme Court found that the Florida Supreme Court violated the Equal Protection Clause of the 14th amendment by ordering certain counties to conduct manual recounts of the votes for President and Vice President without establishing standards for those recounts (Bush *v.* Gore (531 U.S. 98 (2000)).

* * * The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineli-

§ 221. Elections of President and Vice President by the House and Senate in certain cases.

gible to the Office of President shall be eligible to that of Vice-President of the United States.

§ 222. History of original provision for failure of electoral college to choose.

The 20th amendment to the Constitution has clarified some of the provisions of the 12th amendment. In 1801 (III, 1983), the House of Representatives chose a President under article II, section 1, clause 3 (see § 152a, *supra*), the constitutional provision superseded by the 12th amendment.

§ 223. Occasions of election by House and Senate after 1803.

In 1825 the House elected a President under the 12th amendment (III, 1985); and in 1837 the Senate elected a Vice President (III, 1941).

AMENDMENT XIII.[4]

§ 224. Prohibition of slavery and involuntary servitude.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall

[4] The 13th amendment to the Constitution of the United States was proposed to the legislatures of the several States by the 38th Congress, on February 1, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December 1865, to have been ratified by the legislatures of 27 of the 36 States. The dates of ratification were: Illinois, February 1, 1865; Rhode Island, February 2, 1865; Michigan, February 2, 1865; Maryland, February 3, 1865; New York, February 3, 1865; Pennsylvania, February 3, 1865; West Virginia, February 3, 1865; Missouri, February 6, 1865; Maine, February 7, 1865; Kansas, February 7, 1865; Massachusetts, February 7, 1865; Virginia, February 9, 1865; Ohio, February 16, 1865; Indiana, February 13, 1865; Nevada, February 16, 1865; Louisiana, February 17, 1865; Minnesota, February 23, 1865; Wisconsin, February 24, 1865; Vermont, March 9, 1865; Tennessee, April 7, 1865; Arkansas, April 14, 1865; Connecticut, May 4, 1865; New Hampshire, July 1, 1865; South Carolina, November 13, 1865; Alabama, December 2, 1865; North Carolina, December 4, 1865; and Georgia, December 6, 1865. Ratification was completed on December 6, 1865. The amendment was subsequently ratified by Oregon, December 8, 1865; California, December 19, 1865; Florida, December 28, 1865 (Florida again ratified on June 9, 1868, upon its adoption of a new constitution); Iowa, January 15, 1866; New Jersey, January 23, 1866 (after having rejected the amendment on March 16, 1865); Texas, February 18, 1870; Continued

exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV.[5]

§ 225. Citizenship: security and equal protection of citizens.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the

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Delaware, February 12, 1901 (after having rejected the amendment on February 8, 1865); Kentucky, March 30, 1976 (after hearing rejected the amendment on February 24, 1865). The amendment was rejected by Mississippi, December 4, 1865.

[5] The 14th amendment to the Constitution of the United States was proposed to the legislatures of the several States by the 39th Congress, on June 15, 1866. On July 20, 1868, the Secretary of State issued a proclamation that the 14th amendment was a part of the Constitution if withdrawals of ratification were ineffective. On July 21, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution declaring that "the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress: Therefore *Resolved*, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated July 28, 1868, declaring that the proposed 14th amendment had been ratified, in the manner hereafter mentioned, by the legislatures of 28 States. The dates of ratification were: Connecticut, June 30, 1866; New Hampshire, July 6, 1866; Tennessee, July 18, 1866; New Jersey, September 11, 1866 (subsequently, on February 20, 1868, the legislature rescinded its ratification, and on March 24, 1868, readopted its resolution of rescission over the Governor's veto, and on April 23, 2003, revoked the resolution of rescission); Oregon, September 19, 1866; New York, January 10, 1867; Ohio, January 11, 1867 (subsequently rescinded its ratification on January 13, 1868, and ratified

State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 226. Apportionment of representation.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being

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on March 12, 2003); Illinois, January 15, 1867; West Virginia, January 16, 1867; Michigan, January 16, 1867; Minnesota, January 16, 1867; Kansas, January 17, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Indiana, January 23, 1867; Missouri, January 25, 1867; Pennsylvania, February 6, 1867; Rhode Island, February 7, 1867; Wisconsin, February 13, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, March 16, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; North Carolina, July 4, 1868 (after having rejected the amendment December 14, 1866); Louisiana, July 9, 1868 (after having rejected the amendment February 6, 1867); South Carolina, July 9, 1868 (after having rejected the amendment December 20, 1866). Ratification was completed on July 9, 1868. The amendment was subsequently ratified by Alabama, July 13, 1868; Georgia, July 21, 1868 (after having rejected it on November 9, 1866); Virginia, October 8, 1869 (after having rejected it on January 9, 1867); Mississippi, January 17, 1870; Texas, February 18, 1870 (after having rejected it on October 27, 1866); Delaware, February 12, 1901 (after having rejected it on February 8, 1867); Maryland, April 4, 1959 (after having rejected it on March 23, 1867); California, May 6, 1959; Kentucky, March 30, 1976 (after having rejected it on January 10, 1867).

twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

§ 227. Law governing the establishment of districts.

There has been a readjustment of House representation each 10 years except during the period 1911 to 1929 (VI, 41, footnote). From March 4, 1913, permanent House membership has remained fixed at 435 (VI, 40, 41; 37 Stat. 13). Upon admission of Alaska and Hawaii to statehood, total membership was temporarily increased to 437 until the next reapportionment (72 Stat. 339, 345; 73 Stat. 8). Congress has by law provided for automatic apportionment of the 435 Representatives among the States according to each census including and after that of 1950 (2 U.S.C. 2a). The Apportionment Act formerly provided that the districts in a State were to be composed of contiguous and compact territory containing as nearly as practicable an equal number of inhabitants (I, 303; VI, 44); but subsequent apportionment Acts, those of 1929 (46 Stat. 26) and 1941 (55 Stat. 761), omitted such provisions (see Wood *v.* Broom, 287 U.S. 1 (1932)).

Congress has by law provided that for the 91st and subsequent Congresses each State entitled to more than one Representative shall establish a number of districts equal to the number of such Representatives, and that Representatives shall be elected only from the single-Member districts so established. (Hawaii and New Mexico were excepted from the operation of this statute for the elections to the 91st Congress by Public Law 90–196; see 2 U.S.C. 2c). After any apportionment, until a State is redistricted in a manner provided by its own law and in compliance with the congressional mandate, the question of whether its Representatives shall be elected by districts, at large, or by a combination of both, is determined by the Apportionment Act of 1941 (2 U.S.C. 2a).

Under the Apportionment Act, a statistical model known as the "method of equal proportions" is used to determine the number of Representatives to which each State is entitled. Although other methods for apportioning House seats may be permitted, the equal proportions method chosen by Congress has been upheld under the Constitution and was plainly intended to reach as close as practicable the goal of "one person, one vote" (Massachusetts *v.* Mosbacher, 785 F. Supp. 230 (D. Mass. 1992), *rev'd* on other grounds Franklin *v.* Massachusetts, 505 U.S. 788 (1992)). The courts also have recently upheld under Federal law and the Constitution a counting methodology used by the Census Bureau in a decennial census. This meth-

od, known as "imputation," was held to be different than "sampling," a method prohibited under section 195 of title 13, United States Code (Utah *v.* Evans, 536 U.S. 452 (2002)). The method of apportioning the seats in the House is vested exclusively in Congress, and neither States nor courts may direct greater or lesser representation than that allocated by statute (Deschler, ch 8 § 1). See Deschler, ch. 8 for apportionment and districting.

§ 228. Questions as to elections.

The House has always seated Members elected at large in the States, although the law required election by districts (I, 310, 519). Questions have arisen from time to time when a vacancy has occurred soon after a change in districts, with the resulting question whether the vacancy should be filled by election in the old or new district (I, 311, 312, 327). The House has declined to interfere with the act of a State in changing the boundaries of a district after the apportionment has been made (I, 313).

The Attorney General has stated that all Indians are subject to taxation. 39 Op. Att'y Gen. 518 (1940).

§ 229. Requirement that districts be equally populated.

The Supreme Court has ruled that congressional districts must be as equally populated as practicable. Wesberry *v.* Sanders, 376 U.S. 1 (1964); Kirkpatrick *v.* Preisler, 385 U.S. 450 (1967). The Court has made clear that variances in population among congressional districts within a State may be considered *de minimis* only if they cannot practicably be avoided. If such variances, no matter how mathematically miniscule, could have been reduced or eliminated by a good faith effort, then they may be justified only on the basis of a consistent, rational State policy. Karcher *v.* Daggett, 462 U.S. 725 (1983). The Court also has made evident that it will take judicial review of a claims that apportionment schemes lack consistent, rational bases. Davis *v.* Bandemer, 478 U.S. 109 (1986) (holding political gerrymandering complaint justiciable under equal protection clause).

§ 230. Loyalty as a qualification of Senators and Representatives.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid

or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

§ 231. Removal of disabilities and questions as to seating a Member-elect.

Congress has by law removed generally the disabilities arising from the Civil War (30 Stat. L., p. 432). Soon after the war various questions arose under this section (I, 386, 393, 455, 456). For disloyalty to the United States, for giving aid and comfort to a public enemy, for publication of expressions hostile to the Government a Member-elect was denied a seat in the House (VI, 56, 58). As to the meaning of the words "aid or comfort" as used in the 14th amendment (VI, 57).

§ 232. Validity of the national debt, etc.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ 233. Enforcement of the 14th amendment.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Congress may legislate under this section to protect voting rights by preempting State qualifications for electors which are discriminatory (Katzenbach *v.* Morgan, 384 U.S. 641 (1966)), and may lower the voting age in Federal (but not State) elections (Oregon *v.* Mitchell, 400 U.S. 112 (1970)).

AMENDMENT XV.[6]

§ 234. Suffrage not to be abridged for race, color, etc.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

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[6] The 15th amendment to the Constitution of the United States was proposed to the legislatures of the several States by the 40th Congress on February 26, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of 29 of the 37 States. The dates of these ratifications were: Nevada, March 1, 1869; West Virginia, March 3, 1869; North Carolina, March 5, 1869; Illinois, March 5, 1869; Louisiana, March 5, 1869; Michigan, March 8, 1869; Wisconsin, March 9, 1869; Maine, March 11, 1869; Massachusetts, March 12, 1869; Arkansas, March 15, 1869; South Carolina, March 15, 1869; Pennsylvania, March 25, 1869; New York, April 14, 1869 (subsequently withdrew its consent to the ratification on January 5, 1870 but rescinded this action on March 30, 1970); Indiana, May 14, 1869; Connecticut, May 19, 1869; Florida, June 14, 1869; New Hampshire, July 1, 1869; Virginia, October 8, 1869; Vermont, October 20, 1869; Alabama, November 16, 1869; Missouri, January 7, 1870 (Missouri had ratified the first section of the 15th amendment on March 1, 1869, but had failed to include in its ratification the second section of the amendment); Minnesota, January 13, 1870; Mississippi, January 17, 1870; Rhode Island, January 18, 1870; Kansas, January 19, 1870; Ohio, January 27, 1870 (after having rejected the amendment April 30, 1869); Georgia, February 2, 1870; Iowa, February 3, 1870. Ratification was completed on February 3, 1870, unless the withdrawal of ratification by New York was effective; in which event ratification was completed on February 17, 1870, when ratified by Nebraska. The amendment was subsequently ratified by Texas, February 18, 1870; New Jersey, February 15, 1871 (after having rejected it on February 7, 1870); Delaware, February 12, 1901 (after having rejected it on March 18, 1869); Oregon, February 24, 1959; California, April 3, 1962 (after having rejected it on January 28, 1870); Maryland, May 7, 1973 (after having rejected it on February 4 and February 26, 1870); Kentucky, March 30, 1976 (after having rejected it on March 11 and March 12, 1869); and Tennessee, April 2, 1997, (after having rejected it on November 16, 1869).

AMENDMENT XVI.[7]

§ 235. Taxes on incomes.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

[7] The 16th amendment to the Constitution of the United States was proposed to the legislatures of the several States by the 61st Congress on July 16, 1909, and was declared, in a proclamation of the Secretary of State dated February 25, 1913, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Alabama, August 10, 1909; Kentucky, February 8, 1910; South Carolina, February 19, 1910; Illinois, March 1, 1910; Mississippi, March 7, 1910; Oklahoma, March 10, 1910; Maryland, April 8, 1910; Georgia, August 3, 1910; Texas, August 16, 1910; Ohio, January 19, 1911; Idaho, January 20, 1911; Oregon, January 23, 1911; Washington, January 26, 1911; Montana, January 30, 1911; Indiana, January 30, 1911; California, January 31, 1911; Nevada, January 31, 1911; South Dakota, February 3, 1911; Nebraska, February 9, 1911; North Carolina, February 11, 1911; Colorado, February 15, 1911; North Dakota, February 17, 1911; Kansas, February 18, 1911; Michigan, February 23, 1911; Iowa, February 24, 1911; Missouri, March 16, 1911; Maine, March 31, 1911; Tennessee, April 7, 1911; Arkansas, April 22, 1911 (after having rejected it at the session begun January 9, 1911); Wisconsin, May 26, 1911; New York, July 12, 1911; Arizona, April 6, 1912; Minnesota, June 11, 1912; Louisiana, June 28, 1912; West Virginia, January 31, 1913; Delaware, February 3, 1913; Wyoming, February 3, 1913; New Mexico, February 3, 1913. Ratification was completed on February 3, 1913. The amendment was subsequently ratified by New Jersey, February 4, 1913; Vermont, February 19, 1913 (after having rejected the amendment January 17, 1911); Massachusetts, March 4, 1913; New Hampshire, March 7, 1913 (after having rejected the amendment March 2, 1911). The amendment was rejected by Rhode Island, April 29, 1910; Utah, March 9, 1911; Connecticut, June 28, 1911; and Florida, May 31, 1913. Pennsylvania and Virginia did not complete action.

AMENDMENT XVII.[8]

§ 236. Election of Senators by direct vote.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided,* That the legislature of any State may empower the executive

[8] See article I, section 3 of the Constitution. The 17th amendment to the Constitution was proposed to the legislatures of the several States by the 62d Congress on May 15, 1912, and was declared, in a proclamation by the Secretary of State dated May 31, 1913, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Massachusetts, May 22, 1912; Arizona, June 3, 1912; Minnesota, June 10, 1912; New York, January 15, 1913; Kansas, January 17, 1913; Oregon, January 23, 1913; North Carolina, January 25, 1913; California, January 28, 1913; Michigan, January 28, 1913; Iowa, January 30, 1913; Montana, January 30, 1913; Idaho, January 31, 1913; West Virginia, February 4, 1913; Colorado, February 5, 1913; Nevada, February 6, 1913; Texas, February 7, 1913; Washington, February 7, 1913; Wyoming, February 8, 1913; Arkansas, February 11, 1913; Maine, February 11, 1913; Illinois, February 13, 1913; North Dakota, February 14, 1913; Wisconsin, February 18, 1913; Indiana, February 19, 1913; New Hampshire, February 19, 1913; Vermont, February 19, 1913; South Dakota, February 19, 1913; Oklahoma, February 24, 1913; Ohio, February 25, 1913; Missouri, March 7, 1913; New Mexico, March 13, 1913; Nebraska, March 14, 1913; New Jersey, March 17, 1913; Tennessee, April 1, 1913; Pennsylvania, April 2, 1913; Connecticut, April 8, 1913. Ratification was completed on April 8, 1913. The amendment was subsequently ratified by Louisiana, June 11, 1914; North Carolina, May 3, 1989; Alabama, April 16, 2002. The amendment was rejected by Utah, February 26, 1913; Delaware, March 18, 1913. Florida, Georgia, Rhode Island, and South Carolina did not complete action.

thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

§ 237. Filling vacancies in the Senate.

Senator Rebecca L. Felton, appointed during the recess of the Senate on October 3, 1922, to fill a vacancy, was the first woman to sit in the Senate (VI, 156). Senator Walter F. George was elected to fill the vacancy on November 7, 1922. Mrs. Felton took the oath of office on November 21, 1922, and Senator George took the oath November 22, 1922 (VI, 156). Discussion as to the term of service of a Senator appointed by a State executive to fill a vacancy (VI, 156).

§ 238. Qualifications of electors.

The right of an elector to vote for a Senator is fundamentally derived from the United States Constitution (United States *v.* Aczel 219 F.2d 917 (1915)) and may not be denied in a discriminatory fashion (Chapman *v.* King, 154 F.2d 460 (1946), cert. denied, 327 U.S. 800 (1946); Forssenius *v.* Harman, 235 F. Supp. 66 (1964), affd., 380 U.S. 529 (1965)).

AMENDMENT XVIII.[9]

§ 239. Prohibition of intoxicating liquors.

SECTION 1. [After one year from the ratification of this article the manufacture, sale, or transportation of intoxi-

[9] See amendment XXI, repealing this amendment. The 18th amendment to the Constitution of the United States was proposed to the legislatures of the several States by the 65th Congress on December 18, 1917, and was declared in a proclamation by the Secretary of State dated January 29, 1919, to have been ratified by the legislatures of 36 of the 48 States. The dates of these ratifications were: Mississippi, January 8, 1918; Virginia, January 11, 1918; Kentucky, January 14, 1918; North Dakota, January 25, 1918; South Carolina, January 29, 1918; Maryland, February 13, 1918; Montana, February 19, 1918; Texas, March 4, 1918; Delaware, March 18, 1918; South Dakota, March 20, 1918; Massachusetts, April 2, 1918; Arizona, May 24, 1918; Georgia, June 26, 1918; Louisiana, August 3, 1918; Florida, December 3, 1918; Michigan, January 2, 1919; Ohio, January 7, 1919; Oklahoma, January 7, 1919; Idaho, January 8, 1919; Maine, January 8, 1919; West Virginia, January 9, 1919;

cating liquors within, the importation thereof into, or the exportation thereof from the United States and all territories subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SECTION 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.]

AMENDMENT XIX.[10]

§ 240. Women's suffrage.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

California, January 13, 1919; Tennessee, January 13, 1919; Washington, January 13, 1919; Arkansas, January 14, 1919; Kansas, January 14, 1919; Alabama, January 15, 1919; Colorado, January 15, 1919; Iowa, January 15, 1919; New Hampshire, January 15, 1919; Oregon, January 15, 1919; Nebraska, January 16, 1919; North Carolina, January 16, 1919; Utah, January 16, 1919; Missouri, January 16, 1919; Wyoming, January 16, 1919. Ratification was completed on January 16, 1919. The amendment was subsequently ratified by Minnesota, January 17, 1919; Wisconsin, January 17, 1919; New Mexico, January 20, 1919; Nevada, January 21, 1919; New York, January 29, 1919; Vermont, January 29, 1919; Pennsylvania, February 25, 1919; Connecticut, May 6, 1919; and New Jersey, March 9, 1922. Rhode Island rejected the amendment.

[10] The 19th amendment to the Constitution of the United States was proposed to the legislatures of the several States by the 66th Congress on June 5, 1919, and was declared in a proclamation by the Secretary

Continued

Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XX.[11]

§ 241. Commencement of terms of Pres., Vice Pres., Senators, and Representatives.

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representa-

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of State dated August 26, 1920, to have been ratified by the legislatures of 36 of the 48 States. The dates of these ratifications were: Illinois, June 10, 1919 (and that State readopted its resolution of ratification June 17, 1919); Michigan, June 10, 1919; Wisconsin, June 10, 1919; Kansas, June 16, 1919; New York, June 16, 1919; Ohio, June 16, 1919; Pennsylvania, June 24, 1919; Massachusetts, June 25, 1919; Texas, June 28, 1919; Iowa, July 2, 1919; Missouri, July 3, 1919; Arkansas, July 28, 1919; Montana, August 2, 1919; Nebraska, August 2, 1919; Minnesota, September 8, 1919; New Hampshire, September 10, 1919; Utah, October 2, 1919; California, November 1, 1919; Maine, November 5, 1919; North Dakota, December 1, 1919; South Dakota, December 4, 1919; Colorado, December 15, 1919; Kentucky, January 6, 1920; Rhode Island, January 6, 1920; Oregon, January 13, 1920; Indiana, January 16, 1920; Wyoming, January 27, 1920; Nevada, February 7, 1920; New Jersey, February 9, 1920; Idaho, February 11, 1920; Arizona, February 12, 1920; New Mexico, February 21, 1920; Oklahoma, February 28, 1920; West Virginia, March 10, 1920; Washington, March 22, 1920; Tennessee, August 28, 1920. Ratification was completed on August 28, 1920. The amendment was subsequently ratified by Connecticut, September 14, 1920 (and that State reaffirmed on September 21, 1920); Vermont, February 8, 1921; Delaware, March 6, 1923 (after having rejected the amendment on June 2, 1920); Maryland, March 29, 1941 (after having rejected the amendment on February 24, 1920; ratification certified February 25, 1958); Virginia, February 21, 1952 (after having rejected the amendment February 12, 1920); Alabama, September 8, 1953 (after having rejected the amendment September 22, 1919); Florida, May 13, 1969; South Carolina, July 1, 1969 (after having rejected the amendment on January 28, 1920); Georgia, February 20, 1970 (after having rejected the amendment on July 24, 1919); Louisiana, June 11, 1970 (after having rejected it on July 1, 1920); North Carolina, May 6, 1971; Mississippi, March 22, 1984 (after having rejected the amendment on March 29, 1920).

[11] See article I, section 4 of the Constitution. The 20th amendment to the Constitution was proposed to the legislatures of the several States by the 72d Congress, on March 3, 1932, and was declared in a proclama-

tives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

§ 242. Meeting of Congress.

SECTION 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Before the ratification of the 20th amendment Congress met on the first Monday in December as provided in article I, section 4, of the Constitution. For discussion of the term of Congress before and pursuant to the 20th amendment, see § 6, *supra* (accompanying art. I, sec. 2, cl. 1), and Deschler, ch. 1.

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tion by the Secretary of State dated February 6, 1933, to have been ratified by the legislatures of 36 of the 48 States. The dates of these ratifications were: Virginia, March 4, 1932; New York, March 11, 1932; Mississippi, March 16, 1932; Arkansas, March 17, 1932; Kentucky, March 17, 1932; New Jersey, March 21, 1932; South Carolina, March 25, 1932; Michigan, March 31, 1932; Maine, April 1, 1932; Rhode Island, April 14, 1932; Illinois, April 21, 1932; Louisiana, June 22, 1932; West Virginia, July 30, 1932; Pennsylvania, August 11, 1932; Indiana, August 15, 1932; Texas, September 7, 1932; Alabama, September 13, 1932; California, January 4, 1933; North Carolina, January 5, 1933; North Dakota, January 9, 1933; Minnesota, January 12, 1933; Montana, January 13, 1933; Nebraska, January 13, 1933; Oklahoma, January 13, 1933; Arizona, January 13, 1933; Kansas, January 16, 1933; Oregon, January 16, 1933; Wyoming, January 19, 1933; Delaware, January 19, 1933; Washington, January 19, 1933; South Dakota, January 20, 1933; Tennessee, January 20, 1933; Iowa, January 20, 1933; Idaho, January 21, 1933; New Mexico, January 21, 1933; Ohio, January 23, 1933; Utah, January 23, 1933; Missouri, January 23, 1933; Georgia, January 23, 1933. Ratification was completed on January 23, 1933. The amendment was subsequently ratified by Massachusetts, January 24, 1933; Wisconsin, January 24, 1933; Colorado, January 24, 1933; Nevada, January 26, 1933; Connecticut, January 27, 1933; New Hampshire, January 31, 1933; Vermont, February 2, 1933; Maryland, March 24, 1933; Florida, April 26, 1933.

The ratification of this amendment to the Constitution shortened the first term of President Franklin D. Roosevelt and Vice President John N. Garner, and the terms of all Senators and Representatives of the 73d Congress.

Pursuant to section 2 of the 20th amendment, a regular session of a Congress must begin at noon on January 3 of every year unless Congress sets a different date by law, and if the House is in session at that time the Speaker declares the House adjourned sine die without a motion from the floor, in order that the next regular session of that Congress, or the first session of the next Congress (as the case may be) may assemble at noon on that day (Jan. 3, 1981, p. 3774; Jan. 3, 1996, pp. 35, 36).

§ 243. Laws appointing different day for convening.

Since ratification, laws appointing a different day for assembling have been enacted as follows: Public Law 74–120, Jan. 5, 1937; Public Law 77–395, Jan. 5, 1942; Public Law 77–819, Jan. 6, 1943; Public Law 78–210, Jan. 10, 1944; Public Law 79–289, Jan. 14, 1946; Public Law 80–358, Jan. 6, 1948; Public Law 82–244, Jan. 8, 1952; Public Law 83–199, Jan. 6, 1954; Public Law 83–700, Jan. 5, 1955; Public Law 85–290, Jan. 7, 1958; Public Law 85–819, Jan. 7, 1959; Public Law 86–305, Jan. 6, 1960; Public Law 87–348, Jan. 10, 1962; Public Law 87–864, Jan. 9, 1963; Public Law 88–247, Jan. 7, 1964; Public Law 88–649, Jan. 4, 1965; Public Law 89–340, Jan. 10, 1966; Public Law 89–704, Jan. 10, 1967; Public Law 90–230, Jan. 15, 1968; Public Law 91–182, Jan. 19, 1970; Public Law 91–643, Jan. 21, 1971; Public Law 92–217, Jan. 18, 1972; Public Law 93–196, Jan. 21, 1974; Public Law 93–553, Jan. 14, 1975; Public Law 94–186, Jan. 19, 1976; Public Law 94–494, Jan. 4, 1977; Public Law 95–594, Jan. 15, 1979; Public Law 96–566, Jan. 5, 1981; Public Law 97–133, Jan. 25, 1982; Public Law 98–179, Jan. 23, 1984; Public Law 99–379, Jan. 21, 1986; Public Law 99–613, Jan. 6, 1987; Public Law 100–229, Jan. 25, 1988; Public Law 101–228, Jan. 23, 1990; Public Law 102–475, Jan. 5, 1993; Public Law 103–395, Jan. 4, 1995; Public Law 104–296, Jan. 7, 1997; Public Law 105–140, Jan. 27, 1998; Public Law 105–350, Jan. 6, 1999; Public Law 106–127, Jan. 24, 2000; Public Law 107–328, Jan. 7, 2003; Public Law 108–181, Jan. 20, 2004; Public Law 108–433, Jan. 4, 2005. Such laws for the convening of a second session of a Congress may provide for possible earlier assembly by joint-leadership recall (see, *e.g.*, Public Law 107–98, Jan. 23, 2002; Public Law 108–433, Jan. 4, 2005).

§ 244. Death or disqualification of President-elect.

SECTION 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President

shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

§ 245. Statutory succession and the 25th amendment.

Congress provided by law in 1947 for the performance of the duties of the President in case of removal, death, resignation or inability, both of the President and Vice President (3 U.S.C. 19). Earlier succession statutes covering the periods 1792–1886 and 1887–1948 can be found in 18 Stat. 21, and 24 Stat. 1, respectively. Also see the 25th amendment to the Constitution, relating to vacancies in the Office of Vice President and Presidential inability.

Before the 20th amendment there was no provision in the Constitution to take care of a case wherein the President-elect was disqualified or had died.

§ 246. Congress to provide for case wherein death occurs among those from whom House chooses a President.

SECTION 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

The above section changes the 12th amendment insofar as it gives Congress the power to provide by law the manner in which the House should proceed in the event no candidate had a majority and one of the three highest on the list of those voted for as President had died.

SECTION 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SECTION 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

AMENDMENT XXI.[12]

§ 247. Repeal of prohibition.

SECTION 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

§ 248. Transportation into States prohibited.

SECTION 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amend-

[12] The 21st amendment to the Constitution of the United States was proposed to conventions of the several States by the 72d Congress on February 20, 1933, and was declared in a proclamation by the Acting Secretary of State dated December 5, 1933, to have been ratified by conventions in 36 of the 48 States. The dates of these ratifications were: Michigan, April 10, 1933; Wisconsin, April 25, 1933; Rhode Island, May 8, 1933; Wyoming, May 25, 1933; New Jersey, June 1, 1933; Delaware, June 24, 1933; Massachusetts, June 26, 1933; Indiana, June 26, 1933; New York, June 27, 1933; Illinois, July 10, 1933; Iowa, July 10, 1933; Connecticut, July 11, 1933; New Hampshire, July 11, 1933; California, July 24, 1933; West Virginia, July 25, 1933; Arkansas, August 1, 1933; Oregon, August 7, 1933; Alabama, August 8, 1933; Tennessee, August 11, 1933; Missouri, August 29, 1933; Arizona, September 5, 1933; Nevada, September 5, 1933; Vermont, September 23, 1933; Colorado, September 26, 1933; Washington, October 3, 1933; Minnesota, October 10, 1933; Idaho, October 17, 1933; Maryland, October 18, 1933; Virginia, October 25, 1933; New Mexico, November 2, 1933; Florida, November 14, 1933; Texas, November 24, 1933; Kentucky, November 27, 1933; Ohio, December 5, 1933; Pennsylvania, December 5, 1933; Utah, December 5, 1933. The amendment was subsequently ratified by Maine on December 6, 1933; Montana, August 6, 1934. The convention held in the State of South Carolina on December 4, 1933, rejected the 21st amendment.

ment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

AMENDMENT XXII.[13]

§ 249. No person shall be elected President more than twice.

SECTION 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress,

[13] The 22d amendment to the Constitution of the United States was proposed to the legislatures of the several States by the 80th Congress on March 24, 1947, and was declared by the Administrator of General Services, in a proclamation dated March 1, 1951, to have been ratified by the legislatures of 36 of the 48 States. The dates of these ratifications were: Maine, March 31, 1947; Michigan, March 31, 1947; Iowa, April 1, 1947; Kansas, April 1, 1947; New Hampshire, April 1, 1947; Delaware, April 2, 1947; Illinois, April 3, 1947; Oregon, April 3, 1947; Colorado, April 12, 1947; California, April 15, 1947; New Jersey, April, 15, 1947; Vermont, April 15, 1947; Ohio, April 16, 1947; Wisconsin, April 16, 1947; Pennsylvania, April 29, 1947; Connecticut, May 21, 1947; Missouri, May 22, 1947; Nebraska, May 23, 1947; Virginia, January 28, 1948; Mississippi, February 12, 1948; New York, March 9, 1948; South Dakota, January 21, 1949; North Dakota, February 25, 1949; Louisiana, May 17, 1950; Montana, January 25, 1951; Indiana, January 29, 1951; Idaho, January 30, 1951; New Mexico, February 12, 1951; Wyoming, February 12, 1951; Arkansas, February 15, 1951; Georgia, February 17, 1951; Tennessee, February 20, 1951; Texas, February 22, 1951; Nevada, February 26, 1951; Utah, February 26, 1951; Minnesota, February 27, 1951. Ratification was completed February 27, 1951. The amendment was subsequently ratified by North Carolina, February 28, 1951; South Carolina, March 13, 1951; Maryland, March 14, 1951; Florida, April 16, 1951; Alabama, May 4, 1951.

and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

SECTION 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

AMENDMENT XXIII.[14]

§ 250. Representation in the Electoral College to the District of Columbia.

SECTION 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

[14] The 23d amendment to the Constitution of the United States was proposed to the legislatures of the several States by the 86th Congress on June 17, 1960, and was declared by the Administrator of General Services, in a proclamation dated April 3, 1961, to have been ratified by the legislatures of 39 of the 50 States. The dates of these ratifications were: Hawaii, June 23, 1960; Massachusetts, August 22, 1960; New Jersey, December 19, 1960; New York, January 17, 1961; California, January 19, 1961; Oregon, January 27, 1961; Maryland, January 30, 1961; Idaho, January 31, 1961; Maine, January 31, 1961; Minnesota, January 31, 1961; New Mexico, February 1, 1961; Nevada, February 2, 1961; Montana, February 26, 1961; Colorado, February 8, 1961; Washington, February 9, 1961; West Virginia, February 9, 1961; Alaska, February 10, 1961; Wyoming, February 13, 1961; South Dakota, February 14, 1961; Delaware, February 20, 1961; Utah, February 21, 1961; Wisconsin, February 21, 1961; Pennsylvania, February 28, 1961; Indiana, March 3, 1961; North Dakota, March 3, 1961; Tennessee, March 6, 1961; Michigan, March 8, 1961; Connecticut, March 9, 1961; Arizona, March 10, 1961; Illinois, March 14, 1961; Nebraska, March 15, 1961; Vermont, March 15, 1961; Iowa, March 16, 1961; Missouri, March 20, 1961; Oklahoma, March 21, 1961; Rhode Island, March 22, 1961; Kansas, March 29,

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XXIV.[15]

§ 251. Right to vote not denied for failure to pay poll tax.

SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President

1961; and Ohio, March 29, 1961. Ratification was completed March 29, 1961. The amendment was subsequently ratified by New Hampshire on March 30, 1961 (when that State annulled and then repeated its ratification of March 29, 1961). Arkansas rejected the amendment January 24, 1961.

[15] The 24th amendment to the Constitution of the United States was proposed to the legislatures of the several States by the 87th Congress on August 28, 1962, and was declared by the Administrator of General Services, in a proclamation dated February 4, 1964, to have been ratified by the legislatures of 38 of the 50 States. The dates of these ratifications were: Illinois, November 14, 1962; New Jersey, December 3, 1962; Oregon, January 25, 1963; Montana, January 28, 1963; West Virginia, February 1, 1963; New York, February 4, 1963; Maryland, February 6, 1963; California, February 7, 1963; Alaska, February 11, 1963; Rhode Island, February 14, 1963; Indiana, February 19, 1963; Utah, February 20, 1963; Michigan, February 20, 1963; Colorado, February 21, 1963; Ohio, Feb-

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or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Harman *v.* Forssenius, 380 U.S. 528 (1965); Harper *v.* Virginia State Board of Elections, 383 U.S. 663 (1966).

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XXV.[16]

§ 252. Presidential succession and inability.

SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

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ruary 27, 1963; Minnesota, February 27, 1963; New Mexico, March 5, 1963; Hawaii, March 6, 1963; North Dakota, March 7, 1963; Idaho, March 8, 1963; Washington, March 14, 1963; Vermont, March 15, 1963; Nevada, March 19, 1963; Connecticut, March 20, 1963; Tennessee, March 21, 1963; Pennsylvania, March 25, 1963; Wisconsin, March 26, 1963; Kansas, March 28, 1963; Massachusetts, March 28, 1963; Nebraska, April 4, 1963; Florida, April 18, 1963; Iowa, April 24, 1963; Delaware, May 1, 1963; Missouri, May 13, 1963; New Hampshire, June 12, 1963; Kentucky, June 27, 1963; Maine, January 16, 1964; and South Dakota, January 23, 1964. Ratification was completed on January 23, 1964. Mississippi rejected the amendment on December 20, 1962.

[16] The 25th amendment to the Constitution of the United States was proposed to the legislatures of the several States by the 89th Congress on July 7, 1965, and was declared by the Administrator of General Services, in a proclamation dated February 23, 1967, to have been ratified by the legislatures of 39 of the 50 States. The dates of these ratifications were: Nebraska, July 12, 1965; Wisconsin, July 13, 1965; Oklahoma, July 16, 1965; Massachusetts, August 9, 1965; Pennsylvania, August 18, 1965; Kentucky, September 15, 1965; Arizona, September 22, 1965; Michigan, October 5, 1965; Indiana, October 20, 1965; California, October 21, 1965; Arkansas, November 4, 1965; New Jersey, November 29, 1965; Delaware, December 7, 1965; Utah, January 17, 1966; West Virginia, January 20, 1966; Maine, January 24, 1966; Rhode Island, January 28, 1966; Colorado, February 3, 1966; New Mexico, February 3, 1966; Kansas, February 8, 1966; Vermont, February 10, 1966; Alaska, February 18, 1966; Idaho, March 2, 1966; Hawaii, March 3, 1966; Virginia, March 8, 1966;

SECTION 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

§ 253. Confirmation by House and Senate of nominee to fill vice presidential vacancy.

SECTION 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

§ 254. President's declaration of disability.

SECTION 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable

§ 255. Determination of Presidential inability and Vice President as Acting President.

Mississippi, March 10, 1966; New York, March 14, 1966; Maryland, March 23, 1966; Missouri, March 30, 1966; New Hampshire, June 13, 1966; Louisiana, July 5, 1966; Tennessee, January 12, 1967; Wyoming, January 25, 1967; Iowa, January 26, 1967; Washington, January 26, 1967; Oregon, February 2, 1967; Minnesota, February 10, 1967; Nevada, February 10, 1967. Ratification was completed February 10, 1967. The amendment was subsequently ratified by Connecticut, February 14, 1967; Montana, February 15, 1967; South Dakota, March 6, 1967; Ohio, March 7, 1967; Alabama, March 14, 1967; North Carolina, March 22, 1967; Illinois, March 22, 1967; Texas, April 25, 1967; Florida, May 25, 1967.

to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

§ 256. Instances where House and Senate have confirmed nominee as Vice President; temporary incapacity of President.

Congress has twice performed its responsibility under section two of the 25th amendment. On October 13, 1973, the Speaker laid before the House a message from President Nixon transmitting his nomination of Gerald R. Ford, Minority Leader in the House of Representatives, to be Vice President of the United States, Vice President Agnew having resigned on October 10, 1973. The Speaker referred the nomination to the Committee on the Judiciary, which under clause 1(k)(14) of rule X has jurisdiction over matters relating to Presidential succession (Oct. 13, 1973, p. 34032). The nomination of Mr. Ford to be Vice President was confirmed by the Senate on November 27, 1973 (p. 38225) and by the House on December 6, 1973 (p. 39900), and Vice President Ford was sworn in in the Chamber of the House of Representatives on December 6 (p. 39925). Subsequently, President Nixon resigned from office by delivering his written resignation into the Office of the Secretary of State, pursuant to 3 U.S.C. 20, on August 9, 1974. Pursuant to section one of the 25th amendment, Vice President Ford became President, and was sworn in in the East Room at the White House. He nominated Nelson A. Rockefeller to be Vice President which nomination was received in the House of Representatives and referred to the Committee on the Judiciary on August 20, 1974; the nomination was confirmed by the Senate on December 10, 1974 (p. 38936) and by the House on December 19, 1974 (p. 41516), and Vice President Rockefeller was sworn in in the Senate Chamber on December 19, 1974 (p. 41181). On both instances, the House received the message from the Senate, announcing that body's confirmation of the nominee for Vice President, following the vote on confirmation by the House.

The Chair laid before the House communications from the President pursuant to section 3 of this amendment as follows: First, before undergoing sedation for a medical procedure, declaring his impending inability to discharge the constitutional powers and duties of the Office of President and advising that the Vice President would discharge those responsibilities as Acting President until the President declared his ability to resume that role; and second (after recovering from the sedation and the medical procedure) declaring his ability to resume the discharge the constitutional powers and duties of the Office of President, and advising that he was doing so immediately (July 15, 1985, p. 18955; July 8, 2002, p. ——).

AMENDMENT XXVI.[17]

§ 257. Right to vote extended to persons 18 years of age or older.

SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XXVII.[18]

§ 258. Timing of law varying congressional compensation.

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

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[17] The 26th amendment to the Constitution was proposed by the Congress on March 23, 1971. It was declared, in a certificate of the Administrator of General Services, dated July 5, 1971, to have been ratified by the legislatures of 39 of the 50 States. The dates of ratification were: Connecticut, March 23, 1971; Delaware, March 23, 1971; Minnesota, March 23, 1971; Tennessee, March 23, 1971; Washington, March 23, 1971; Hawaii, March 24, 1971; Massachusetts, March 24, 1971; Montana, March 29, 1971; Arkansas, March 30, 1971; Idaho, March 30, 1971; Iowa, March 30, 1971; Nebraska, April 2, 1971; New Jersey, April 3, 1971; Kansas, April 7, 1971; Michigan, April 7, 1971; Alaska, April 8, 1971; Maryland, April 8, 1971; Indiana, April 8, 1971; Maine, April 9, 1971; Vermont, April 16, 1971; Louisiana, April 17, 1971; California, April 19, 1971; Colorado, April 27, 1971; Pennsylvania, April 27, 1971; Texas, April 27, 1971; South Carolina, April 28, 1971; West Virginia, April 28, 1971; New Hampshire, May 13, 1971; Arizona, May 14, 1971; Rhode Island, May 27, 1971; New York, June 2, 1971; Oregon, June 4, 1971; Missouri, June 14, 1971; Wisconsin, June 22, 1971; Illinois, June 29, 1971; Alabama, June 30, 1971; Ohio, June 30, 1971; North Carolina, July 1, 1971; Oklahoma, July 1, 1971.

Ratification was completed on July 1, 1971.

The amendment was subsequently ratified by Virginia, July 8, 1971; Wyoming, July 8, 1971; Georgia, October 4, 1971.

[18] The 27th amendment to the Constitution was proposed on September 25, 1789. It was declared to have been ratified by the legislatures of 39

To quell speculation over the efficacy of a ratification process spanning two centuries, the House adopted a concurrent resolution declaring the ratification of the amendment (H. Con. Res. 320, 102d Cong., May 19, 1992, p. 11779). The Senate adopted both a separate concurrent resolution and a simple resolution making similar declarations (S. Con. Res. 120 and S. Res. 298, 102d Cong., May 20, 1992, p. 11869). Neither House considered the concurrent resolution of the other. For a concurrent resolution declaring the ratification of the 14th amendment, see July 21, 1868. For opinions of the Supreme Court concerning the duration of the ratification process and the contemporaneity of State ratifications, see Dillon *v.* Gloss, 256 U.S. 368 (1921) and Coleman *v.* Miller, 307 U.S. 433 (1939).

For Federal court opinions upholding congressional cost-of-living adjustments for Members under in the Ethics Reform Act of 1989 (103 Stat. 1716), see Boehner *v.* Anderson, 809 F. Supp. 38 (D.D.C. 1992), *aff'd*, 30 F.3d 156 (D.C. Cir 1994); Schaffer *v.* Clinton, 54 F. Supp.2d 1014 (D.Colo. 1999).

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of the 50 States in a certificate of the Archivist dated May 18, 1992. The dates of ratification were: Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; Delaware, January 28, 1790; Vermont, November 3, 1791; Virginia, December 15, 1791; Ohio, May 6, 1873; Wyoming, March 6, 1978; Maine, April 27, 1983; Colorado, April 22, 1984; South Dakota, February 21, 1985; New Hampshire, March 7, 1985; Arizona, April 3, 1985; Tennessee, May 23, 1985; Oklahoma, July 10, 1985; New Mexico, February 14, 1986; Indiana, February 24, 1986; Utah, February 25, 1986; Arkansas, March 6, 1987; Montana, March 17, 1987; Connecticut, May 13, 1987; Wisconsin, July 15, 1987; Georgia, February 2, 1988; West Virginia, March 10, 1988; Louisiana, July 7, 1988; Iowa, February 9, 1989; Idaho, March 23, 1989; Nevada, April 26, 1989; Alaska, May 6, 1989; Oregon, May 19, 1989; Minnesota, May 22, 1989; Texas, May 25, 1989; Kansas, April 5, 1990; Florida, May 31, 1990; North Dakota, March 25, 1991; Alabama, May 5, 1992; Missouri, May 5, 1992; Michigan, May 7, 1992; and New Jersey, May 7, 1992.

Ratification was completed on May 7, 1992. The amendment was subsequently ratified by Illinois, May 12, 1992; and California, June 26, 1992.

JEFFERSON'S MANUAL

JEFFERSON'S MANUAL OF PARLIAMENTARY PRACTICE [1]

SEC. I—IMPORTANCE OF ADHERING TO RULES

§ 283. Rules as related to the privileges of minorities.

Mr. Onslow, the ablest among the Speakers of the House of Commons, used to say, "It was a maxim he had often heard when he was a young man, from old

[1] Jefferson's Manual was prepared by Thomas Jefferson for his own guidance as President of the Senate in the years of his Vice Presidency, from 1797 to 1801. In 1837 the House, by rule which still exists, provided that the provisions of the Manual should "govern the House in all cases to which they are applicable and in which they are not inconsistent with the standing rules and orders of the House and joint rules of the Senate and House of Representatives." Rule XXVIII, § 1105, *infra*. In 1880 the committee which revised the Rules of the House declared in their report that the Manual, "compiled as it was for the use of the Senate exclusively and made up almost wholly of collations of English parliamentary practice and decisions, it was never especially valuable as an authority in the House of Representatives, even in its early history, and for many years past has been rarely quoted in the House" (V, 6757). This statement, although sanctioned by high authority, is extreme, for in certain parts of the Manual are to be found the foundations of some of the most important portions of the House's practice.

§ 284. The Manual as a statement of parliamentary law.

The Manual is regarded by English parliamentarians as the best statement of what the law of Parliament was at the time Jefferson wrote it. Jefferson himself says, in the preface of the work:

"I could not doubt the necessity of quoting the sources of my information, among which Mr. Hatsel's most valuable book is preeminent; but as he has only treated some general heads, I have been obliged to recur to other authorities in support of a number of common rules of practice, to which his plan did not descend. Sometimes each authority cited supports the whole passage. Sometimes it rests on all taken together. Sometimes the authority goes only to a part of the text, the residue being in-

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and experienced Members, that nothing tended more to throw power into the hands of administration, and those who acted with the majority of the House of Commons, than a neglect of, or departure from, the rules of proceeding; that these forms, as instituted by our ancestors, operated as a check and control on the actions of the majority, and that they were, in many instances, a shelter and protection to the minority, against the attempts of power." So far the maxim is certainly true, and is founded in good sense, that as it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power are the forms and rules of proceeding

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ferred from known rules and principles. For some of the most familiar forms no written authority is or can be quoted, no writer having supposed it necessary to repeat what all were presumed to know. The statement of these must rest on their notoriety.

"I am aware that authorities can often be produced in opposition to the rules which I lay down as parliamentary. An attention to dates will generally remove their weight. The proceedings of Parliament in ancient times, and for a long while, were crude, multiform, and embarrassing. They have been, however, constantly advancing toward uniformity and accuracy, and have now attained a degree of aptitude to their object beyond which little is to be desired or expected.

"Yet I am far from the presumption of believing that I may not have mistaken the parliamentary practice in some cases, and especially in those minor forms, which, being practiced daily, are supposed known to everybody, and therefore have not been committed to writing. Our resources in this quarter of the globe for obtaining information on that part of the subject are not perfect. But I have begun a sketch, which those who come after me will successively correct and fill up, till a code of rules shall be formed for the use of the Senate, the effects of which may be accuracy in business, economy of time, order, uniformity, and impartiality."

which have been adopted as they were found necessary, from time to time, and are become the law of the House, by a strict adherence to which the weaker party can only be protected from those irregularities and abuses which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities, *2 Hats., 171, 172.*

§ 285. Necessity of rules of action.

And whether these forms be in all cases the most rational or not is really not of so great importance. It is much more material that there should be a rule to go by than what that rule is; that there may be a uniformity of proceeding in business not subject to the caprice of the Speaker or captiousness of the members. It is very material that order, de-

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Jefferson also says in his preface, as to the source most desirable at that time from which to draw principles of procedure:

§ 286. Relations of the parliamentary law to the early practice of Congress.

"But to what system of rules is he to recur, as supplementary to those of the Senate? To this there can be but one answer: To the system of regulations adopted for the government of some one of the parliamentary bodies within these States, or of that which has served as a prototype to most of them. This last is the model which we have all studied, while we are little acquainted with the modifications of it in our several States. It is deposited, too, in publications possessed by many, and open to all. Its rules are probably as wisely constructed for governing the debates of a deliberative body, and obtaining its true sense, as any which can become known to us; and the acquiescence of the Senate, hitherto, under the references to them, has given them the sanction of the approbation."

Those portions of the Manual which refer exclusively to Senate procedure or which refer to English practice wholly inapplicable to the House have been omitted. Paragraphs from the Constitution of the United States have also been omitted, as the Constitution is printed in full in this volume.

cency, and regularity be preserved in a dignified public body. *2 Hats., 149.*

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SEC. III—PRIVILEGE

§ 287. Privileges of members of Parliament.

The privileges of members of Parliament, from small and obscure beginnings, have been advancing for centuries with a firm and never yielding pace. Claims seem to have been brought forward from time to time, and repeated, till some example of their admission enabled them to build law on that example. We can only, therefore, state the points of progression at which they now are. It is now acknowledged, 1st. That they are at all times exempted from question elsewhere, for anything said in their own House; that during the time of privilege, 2d. Neither a member himself, his, *order H. of C. 1663, July 16,* wife, nor his servants (familiares sui), for any matter of their own, may be, *Elsynge, 217; 1 Hats., 21; 1 Grey's Deb., 133,* arrested on mesne process, in any civil suit: 3d. Nor be detained under execution, though levied before time of privilege: 4th. Nor impleaded, cited, or subpoenaed in any court: 5th. Nor summoned as a witness or juror: 6th. Nor may their lands or goods be distrained: 7th. Nor their persons assaulted, or characters traduced. And the period of time covered by privilege, before and after the session, with the practice of short prorogations under the connivance of the Crown, amounts in fact to a perpetual protection against the course of justice. In

one instance, indeed, it has been relaxed by the 10 G. 3, c. 50, which permits judiciary proceedings to go on against them. That these privileges must be continually progressive, seems to result from their rejecting all definition of them; the doctrine being, that "their dignity and independence are preserved by keeping their privileges indefinite; and that 'the maxims upon which they proceed, together with the method of proceeding, rest entirely in their own breast, and are not defined and ascertained by any particular stated laws.'" *1 Blackst., 163, 164.*

For a modern discussion of privileges of Members of Parliament, see Report of Joint Committee on Parliamentary Privilege of the House of Commons (H.C. 214–1, Mar. 30, 1999).

§ 288. Privilege of Members of Congress under the Constitution.

It was probably from this view of the encroaching character of privilege that the framers of our Constitution, in their care to provide that the laws shall bind equally on all, and especially that those who make them shall not exempt themselves from their operation, have only privileged "Senators and Representatives" themselves from the single act of "arrest in all cases except treason, felony, and breach of the peace, during their attendance at the session of their respective Houses, and in going to and returning from the same, and from being questioned in any other place for any speech or debate in either House." *Const. U.S. Art I, Sec. 6.* Under the general authority "to make all laws necessary and proper for carrying into execution the powers given them," *Const. U.S., Art. II, Sec. 8,* they may pro-

vide by law the details which may be necessary for giving full effect to the enjoyment of this privilege. No such law being as yet made, it seems to stand at present on the following ground: 1. The act of arrest is void, ab initio. *2 Stra., 989.* 2. The member arrested may be discharged on motion, *1 Bl., 166; 2 Stra., 990;* or by habeas corpus under the Federal or State authority, as the case may be; or by a writ of privilege out of the chancery, *2 Stra., 989,* in those States which have adopted that part of the laws of England. *Orders of the House of Commons, 1550, February 20.* 3. The arrest being unlawful, is a trespass for which the officer and others concerned are liable to action or indictment in the ordinary courts of justice, as in other cases of unauthorized arrest. 4. The court before which the process is returnable is bound to act as in other cases of unauthorized proceeding, and liable, also, as in other similar cases, to have their proceedings stayed or corrected by the superior courts.

§ 289. Privilege as to going and returning.

The time necessary for going to, and returning from, Congress, not being defined, it will, of course, be judged of in every particular case by those who will have to decide the case. While privilege was understood in England to extend, as it does here, only to exemption from arrest, eundo, morando, et redeundo, the House of Commons themselves decided that "a convenient time was to be understood." *(1580,) 1 Hats., 99, 100.* Nor is the law so strict in point of time as to require the party

to set out immediately on his return, but allows him time to settle his private affairs, and to prepare for his journey; and does not even scan his road very nicely, nor forfeit his protection for a little deviation from that which is most direct; some necessity perhaps constraining him to it. *2 Stra., 986, 987.*

§ 290. Privilege of Members as related to rights of courts to summon witnesses and jurors.

This privilege from arrest, privileges, of course, against all process the disobedience to which is punishable by an attachment of the person; as a subpoena ad respondendum, or testificandum, or a summons on a jury; and with reason, because a Member has superior duties to perform in another place. When a Representative is withdrawn from his seat by summons, the 40,000 people whom he represents lose their voice in debate and vote, as they do on his voluntary absence; when a Senator is withdrawn by summons, his State loses half its voice in debate and vote, as it does on his voluntary absence. The enormous disparity of evil admits no comparison.

§ 291a. Attitude of the House as to demands of the courts.

The House has decided that the summons of a court to Members to attend and testify constituted a breach of privilege, and directed them to disregard the mandate (III, 2661); but in other cases wherein Members informed the House that they had been summoned before the District Court of the United States for the District of Columbia or other courts, the House authorized them to respond (III, 2662; Feb. 23, 1948, p. 1557; Mar. 5, 1948, p. 2224; Apr. 8, 1948, p. 4264; Apr. 12, 1948, p. 4347; Apr. 14, 1948, p. 4461; Apr. 15, 1948, p. 4529; Apr. 28, 1948, p. 5009; May 6, 1948, pp. 5433, 5451; Feb. 2, 1950, p. 1399; Apr. 4, 1951, p. 3320; Apr. 9, 1951, p. 3525; Apr. 12, 1951, pp. 3751, 3752; Apr. 13, 1951, p. 3915; June 4, 1951, p. 6084; June 22, 1951, p. 7001; Sept. 18, 1951, p. 11571; Sept. 27, 1951, p. 12292; Mar. 5, 1953, p. 1658; Mar. 18, 1953, p. 2085; Mar. 11, 1954, p. 3102; July 19, 1954, p. 10904; Apr. 9, 1956, p. 5970; Apr. 10,

1956, p. 5991). The House, however, has declined to make a general rule permitting Members to waive their privilege, preferring that the Member in each case should apply for permission (III, 2660). Also in maintenance of its privilege the House has refused to permit the Clerk or other officers to produce in court, in obedience to a summons, an original paper from the files, but has given the court facilities for making copies (III, 2664, 2666; Apr. 15, 1948, p. 4552; Apr. 29, 1948, pp. 5161, 5162; May 6, 1948, p. 5432; Jan. 18, 1950, p. 565; Feb. 8, 1950, p. 1695; Feb. 13, 1950, p. 1765; Sept. 22, 1950, p. 15636; Apr. 6, 1951, p. 3403; Apr. 12, 1951, p. 3800; Oct. 20, 1951, p. 13777; Jan. 22, 1953, p. 498; May 25, 1953, p. 5523; Jan. 28, 1954, p. 964; Feb. 25, 1954, p. 2281; July 1, 1955, p. 9818; Apr. 12, 1956, p. 6258; Apr. 24, 1958, p. 7262; Apr. 29, 1958, p. 7636; Sept. 16, 1974, p. 31123; Jan. 19, 1977, p. 1728), but on one occasion, where the circumstances warranted such action, the Clerk was permitted to respond and take with him certified copies of certain documents described in the subpoena (H. Res. 601, Oct. 29, 1969, p. 32005); and on the rare occasions where the House has permitted the production of an original paper from its files, it has made explicit provision for its return (H. Res. 1022, 1023, Jan. 16, 1968, p. 80; H. Res. 1429, July 27, 1976, p. 24089). No officer or employee, except by authority of the House, should produce before any court a paper from the files of the House, nor furnish a copy of any paper except by authority of the House or a statute (III, 2663; VI, 587; Apr. 15, 1948, p. 4552; Apr. 30, 1948, pp. 5161, 5162; May 6, 1948, p. 5432; Jan. 18, 1950, p. 565; Feb. 8, 1950, p. 1695; Feb. 13, 1950, p. 1765; Sept. 22, 1950, p. 15636; Apr. 6, 1951, p. 3403; Apr. 12, 1951, p. 3800; Oct. 20, 1951, p. 13777; Mar. 10, 1954, p. 3046; Feb. 7, 1955, p. 1215; May 7, 1956, p. 7588; Dec. 18, 1974, p. 40925). In the 98th Congress, the House adopted a resolution denying compliance with a subpoena issued by a Federal Court for the production of records in the possession of the Clerk (documents of a select committee from the prior Congress), where the Speaker and joint leadership had instructed the Clerk in the previous Congress not to produce such records and where the Court refused to stay the subpoena or to allow the select committee to intervene to protect its interest; the resolution directed the Counsel to the Clerk to assert the rights and privileges of the House and to take all steps necessary to protect the rights of the House (Apr. 28, 1983, p. 10417). On appeal from a subsequent district court judgment finding the Clerk in contempt, the Court of Appeals reversed on the ground that a subpoena to depose a nonparty witness under the Federal Rules of Civil Procedure may only be served in the district (of Maryland) where it was issued. In re Guthrie, 733 F.2d 634 (4th Cir. 1984). Where an official of both Houses of Congress is subpoenaed in his official capacity, the concurrence of both Houses by concurrent resolution is required to permit compliance (H. Con. Res. 342, July 16, 1975, pp. 23144–46).

A resolution routinely adopted up to the 95th Congress provided that when the House had recessed or adjourned Members, officers, and employ-

ees were authorized to appear in response to subpoenas duces tecum, but prohibited the production of official papers in response thereto; the resolution also provided that when a court found that official papers, other than executive session material, were relevant, the court could obtain copies thereof through the Clerk of the House (see, *e.g.*, H. Res. 12, Jan. 3, 1973, p. 30). In the 95th Congress, the House for the first time by resolution permitted this same type of general response whether or not the House is in session or in adjournment if a court has found that specific documents in possession of the House are material and relevant to judicial proceedings. The House reserved to itself the right to revoke this general permission in any specific case where the House desires to make a different response (H. Res. 10, Jan. 4, 1977, p. 73; H. Res. 10, Jan. 15, 1979, p. 19). The permission did not apply to executive session material, such as a deposition of a witness in executive session of a committee, which could be released only by a separate resolution passed by the House (H. Res. 296, June 4, 1979, p. 13180). H. Res. 10 of the 96th Congress was clarified and revised later in that Congress by H. Res. 722 (Sept. 17, 1980, pp. 25777–90) and became the basis for rule VIII, added as rule L in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113, see § 697, *infra*).

§ 291b. Judicial appearances on behalf of House.

While the statutes provide that the Department of Justice may represent any officer of the House or Senate in the event of judicial proceedings against such officer in relation to the performance of official duties (see 2 U.S.C. 118), and that the Department of Justice shall generally represent the interests of the United States in Court (28 U.S.C. 517), the House has on occasion authorized special appearances on its own behalf by special counsel when the prerogatives or powers of the House have been questioned in the courts. The House has adopted privileged resolutions authorizing the chairman of a subcommittee to intervene in any judicial proceeding concerning subpoenas duces tecum issued by that committee, authorizing the appointment of a special counsel to carry out the purposes of such a resolution, and providing for the payment from the contingent fund (now referred to as "applicable accounts of the House described in clause 1(j)(1) of rule X") of expenses to employ such special counsel (H. Res. 1420, Aug. 26, 1976, p. 1858; H. Res. 334, May 9, 1977, pp. 13949–52), authorizing the Sergeant at Arms to employ a special counsel to represent him in a pending action in Federal court in which he was named as a defendant, and providing for the payment from the contingent fund of expenses to employ such counsel (H. Res. 1497, Sept. 2, 1976, p. 28937), and authorizing the chairman of the Committee on House Administration to intervene as a party in a pending civil action in the U.S. Court of Claims, to defend on behalf of the House the constitutional authority to make laws necessary and proper for executing its constitutional powers, authorizing the employment of special counsel for such purpose, and providing for the payment from the contingent fund of expenses to employ such counsel (H. Res. 884, Nov. 2, 1977, p. 36661). The House has author-

ized the Speaker to take any steps he considered necessary, including intervention as a party or by submission of briefs amicus curiae, in order to protect the interests of the House before the court (H. Res. 49, Jan. 29, 1981, p. 1304). The House also has on occasion adopted privileged resolutions, reported from the Committee on Rules, authorizing standing or select committees to make applications to courts in connection with their investigations (H. Res. 252, Feb. 9, 1977, pp. 3966–75; H. Res. 760, Sept. 28, 1977, pp. 31329–36; H. Res. 67, Mar. 4, 1981, pp. 3529–33). For a discussion of the Office of General Counsel, which was established to provide legal assistance and representation to the House without regard to political affiliation and in consultation with the Bipartisan Legal Advisory Group, see clause 8 of rule II, § 670*, infra*.

§ 292. Attitude of one House as to demands of the other for attendance or papers.

When either House desires the attendance of a Member of the other to give evidence it is the practice to ask the House of which he is a Member that the Member have leave to attend, and the use of a subpoena is of doubtful propriety (III, 1794). However, in one case the Senate did not consider that its privilege forbade the House to summon one of its officers as a witness (III, 1798). But when the Secretary of the Senate was subpoenaed to appear before a committee of the House with certain papers from the files of the Senate, the Senate discussed the question of privilege before empowering him to attend (III, 2665). For discussion of the means by which one House may prefer a complaint against a Member or officer of the other, see § 373, *infra*.

§ 293. Power of the House to punish for contempts.

So far there will probably be no difference of opinion as to the privileges of the two Houses of Congress; but in the following cases it is otherwise. In December, 1795, the House of Representatives committed two persons of the name of Randall and Whitney for attempting to corrupt the integrity of certain Members, which they considered as a contempt and breach of the privileges of the House; and the facts being proved, Whitney was detained in confinement a fortnight and Randall three weeks, and was reprimanded by the Speaker. In March, 1796, the House voted a challenge given to a Member of their House to be a breach of the privileges of the House; but

satisfactory apologies and acknowledgments being made, no further proceeding was had. * * *

§ 294. Decision of the court in Anderson's case.

The cases of Randall and Whitney (II, 1599–1603) were followed in 1818 by the case of John Anderson, a citizen, who for attempted bribery of a Member was arrested, tried, and censured by the House (II, 1606). Anderson appealed to the courts and this procedure finally resulted in a discussion by the Supreme Court of the United States of the right of the House to punish for contempts, and a decision that the House by implication has the power to punish, since "public functionaries must be left at liberty to exercise the powers which the people have intrusted to them," and "the interests and dignity of those who created them require the exertion of the powers indispensable to the attainment of the ends of their creation. Nor is a casual conflict with the rights of particular individuals any reason to be urged against the exercise of such powers" (II, 1607; Anderson *v.* Dunn, 6 Wheaton 204). In 1828 an assault on the President's secretary in the Capitol gave rise to a question of privilege which involved a discussion of the inherent power of the House to punish for contempt (II, 1615). Again in 1832, when the House censured Samuel Houston, a citizen, for assault on a Member for words spoken in debate (II, 1616), there was a discussion by the House of the doctrine of inherent and implied power as opposed to the other doctrine that the House might exercise no authority not expressly conferred on it by the Constitution or the laws of the land (II, 1619). In 1865 the House arrested and censured a citizen for attempted intimidation and assault on a member (II, 1625); in 1866, a citizen who had assaulted the clerk of a committee of the House in the Capitol was arrested by order of the House, but as there was not time to punish in the few remaining days of the session, the Sergeant-at-Arms was directed to turn the prisoner over to the civil authorities of the District of Columbia (II, 1629); and in 1870 Woods, who had assaulted a Member on his way to the House, was arrested on warrant of the Speaker, arraigned at the bar, and imprisoned for a term extending beyond the adjournment of the session, although not beyond the term of the existing House (II, 1626–1628).

§ 295. Views of the court in Kilbourn's case.

In 1876 the arrest and imprisonment by the House of Hallet Kilbourn, a contumacious witness, resulted in a decision by the Supreme Court of the United States that the House had no general power to punish for contempt, as in a case wherein it was proposing to coerce a witness in an inquiry not within the constitutional authority of the House. The Court also discussed the doctrine of inherent power to punish, saying in conclusion, "We are of opinion that the right of the Houses of Representatives to punish the citizen for a contempt of its authority or a breach of its privileges can derive no support from the precedents and practices of the

two Houses of the English Parliament, nor from the adjudged cases in which the English courts have upheld these practices. Nor, taking what has fallen from the English judges, and especially the later cases on which we have just commented, is much aid given to the doctrine, that this power exists as one necessary to enable either House of Congress to exercise successfully their function of legislation. This latter proposition is one that we do not propose to decide in the present case, because we are able to decide it without passing upon the existence or nonexistence of such a power in aid of the legislative function" (103 U.S. 189; II, 1611). In 1894, in the case of Chapman, another contumacious witness, the Supreme Court affirmed the undoubted right of either House of Congress to punish for contempt in cases to which its power properly extends under the expressed terms of the Constitution (II, 1614; In Re Chapman, 166 U.S. 661). The nature of the punishment which the House may inflict was discussed by the Court in Anderson's case (II, 1607; Anderson *v.* Dunn, 6 Wheaton 204).

In the case of Marshall *v.* Gordon, 243 U.S. 521 (1917), the Court addressed the following situation:

§ 296. Decision of the court in Marshall *v.* Gordon.

Appellant, while United States Attorney for the Southern District of New York, conducted a grand jury investigation which led to the indictment of a Member of the House. Acting on charges of misfeasance and nonfeasance made by the Member against appellant in part before the indictment and renewed with additions afterward, the House by resolution directed its Judiciary Committee to make inquiry and report concerning appellant's liability to impeachment. Such inquiry being in progress through a subcommittee, appellant addressed to the subcommittee's chairman, and gave to the press, a letter, charging the subcommittee with an endeavor to probe into and frustrate the action of the grand jury, and couched in terms calculated to arouse the indignation of the members of that committee and those of the House generally. Thereafter, appellant was arrested in New York by the Sergeant-at-Arms pursuant to a resolution of the House whereby the letter was characterized as defamatory and insulting and as tending to bring that body into public contempt and ridicule, and whereby appellant in writing and publishing such letter was adjudged to be in contempt of the House in violating its privileges, honor, and dignity. He applied for habeas corpus.

The court held that the proceedings concerning which the alleged contempt was committed were not impeachment proceedings; that, whether they were impeachment proceedings or not, the House was without power by its own action, as distinct from such action as might be taken under criminal laws, to arrest or punish for such acts as were committed by appellant.

No express power to punish for contempt was granted to the House save the power to deal with contempts committed by its own Members (art. I, sec. 5). The possession by Congress of the commingled legislative and judicial authority to punish for contempts which was exerted by the House

of Commons is at variance with the view and tendency existing in this country when the Constitution was adopted, as evidenced by the manner in which the subject was treated in many State constitutions, beginning at or about that time and continuing thereafter. Such commingling of powers would be destructive of the basic constitutional distinction between legislative, executive, and judicial power, and repugnant to limitations which the Constitution fixes expressly; hence there is no warrant whatever for implying such a dual power in aid of other powers expressly granted to Congress. The House has implied power to deal directly with contempt so far as is necessary to preserve and exercise the legislative authority expressly granted. Being, however, a power of self-preservation, a means and not an end, the power does not extend to infliction of punishment, as such; it is a power to prevent acts which in and of themselves inherently prevent or obstruct the discharge of legislative duty and to compel the doing of those things which are essential to the performance of the legislative functions. As pointed out in Anderson *v.* Dunn, 6 Wheat. 204 this implied power in its exercise is limited to imprisonment during the session of the body affected by the contempt.

The authority does not cease when the act complained of has been committed, but includes the right to determine in the use of legitimate and fair discretion how far from the nature and character of the act there is necessity for repression to prevent immediate recurrence, *i.e.*, the continued existence of the interference or obstruction to the exercise of legislative power. In such case, unless there be manifest an absolute disregard of discretion, and a mere exertion of arbitrary power coming within the reach of constitutional limitations, the exercise of the authority is not subject to judicial interference. The power is the same in quantity and quality whether exerted on behalf of the impeachment powers or of the others to which it is ancillary. The legislative power to provide by criminal laws for the prosecution and punishment of wrongful acts is not here involved.

The Senate may invoke its civil contempt statute (2 U.S.C. 288d) to direct the Senate legal counsel to bring an action in Federal court to compel a witness to comply with the subpoena of a committee of the Senate. The House, in contrast, may either certify such a witness to the appropriate United States Attorney for possible indictment under the criminal contempt statute (2 U.S.C. 192) or exercise its inherent power to commit for contempt by detaining the recalcitrant witness in the custody of the Sergeant-at-Arms.

(See also McGrain *v.* Daugherty, 273 U.S. 135 (1927); Sinclair *v.* United States, 279 U.S. 263 (1929); Jurney *v.* MacCracken, 294 U.S. 125 (1935); Quinn *v.* United States, 349 U.S. 155 (1955); Groppi *v.* Leslie, 404 U.S. 496 (1972).)

§ 297. Jefferson's statement of arguments for inherent power to punish for contempt.

* * * The editor of the Aurora having, in his paper of February 19, 1800, inserted some paragraphs defamatory of the Senate, and failed in his appearance, he was ordered to be committed. In debating the legality of this order, it was insisted, in support of it, that every man, by the law of nature, and every body of men, possesses the right of self-defense; that all public functionaries are essentially invested with the powers of self-preservation; that they have an inherent right to do all acts necessary to keep themselves in a condition to discharge the trusts confided to them; that whenever authorities are given, the means of carrying them into execution are given by necessary implication; that thus we see the British Parliament exercise the right of punishing contempts; all the State Legislatures exercise the same power, and every court does the same; that, if we have it not, we sit at the mercy of every intruder who may enter our doors or gallery, and, by noise and tumult, render proceeding in business impracticable; that if our tranquillity is to be perpetually disturbed by newspaper defamation, it will not be possible to exercise our functions with the requisite coolness and deliberation; and that we must therefore have a power to punish these disturbers of our peace and proceedings. * * *

§ 298. Statement of arguments against the inherent power to punish for contempts.

* * * To this it was answered, that the Parliament and courts of England have cognizance of contempts by the express provisions of their law; that

the State Legislatures have equal authority because their powers are plenary; they represent their constituents completely, and possess all their powers, except such as their constitutions have expressly denied them; that the courts of the several States have the same powers by the laws of their States, and those of the Federal Government by the same State laws adopted in each State, by a law of Congress; that none of these bodies, therefore, derive those powers from natural or necessary right, but from express law; that Congress have no such natural or necessary power, nor any powers but such as are given them by the Constitution; that that has given them, directly, exemption from personal arrest, exemption from question elsewhere for what is said in their House, and power over their own members and proceedings; for these no further law is necessary, the Constitution being the law; that, moreover, by that article of the Constitution which authorizes them "to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in them," they may provide by law for an undisturbed exercise of their functions, *e.g.*, for the punishment of contempts, of affrays or tumult in their presence, &c.; but, till the law be made, it does not exist; and does not exist, from their own neglect; that, in the meantime, however, they are not unprotected, the ordinary magistrates and courts of law being open and competent to punish all unjustifiable disturbances or defamations, and even their own sergeant, who may appoint depu-

ties ad libitum to aid him *3 Grey, 59, 147, 255,* is equal to small disturbances; that in requiring a previous law, the Constitution had regard to the inviolability of the citizen, as well as of the Member; as, should one House, in the regular form of a bill, aim at too broad privileges, it may be checked by the other, and both by the President; and also as, the law being promulgated, the citizen will know how to avoid offense. But if one branch may assume its own privileges without control, if it may do it on the spur of the occasion, conceal the law in its own breast, and, after the fact committed, make its sentence both the law and the judgment on that fact; if the offense is to be kept undefined and to be declared only ex re nata, and according to the passions of the moment, and there be no limitation either in the manner or measure of the punishment, the condition of the citizen will be perilous indeed. * * *

§ 299. Jefferson's suggestion that a law might define procedure in cases of contempt.

* * * Which of these doctrines is to prevail, time will decide. Where there is no fixed law, the judgment on any particular case is the law of that single case only, and dies with it. When a new and even a similar case arises, the judgment which is to make and at the same time apply to the law, is open to question and consideration, as are all new laws. Perhaps Congress in the mean time, in their care for the safety of the citizen, as well as that for their own protection, may declare by law what is necessary and proper to enable them to carry into execution

the powers vested in them, and thereby hang up a rule for the inspection of all, which may direct the conduct of the citizen, and at the same time test the judgments they shall themselves pronounce in their own case.

In 1837 the House declined to proceed with a bill "defining the offense of a contempt of this House, and to provide for the punishment thereof" (II, 1598). Congress has, however, prescribed that a witness summoned to appear before a committee of either House who does not respond or who refuses to answer a question pertinent to the subject of the inquiry shall be deemed guilty of a misdemeanor (2 U.S.C. 192).

A resolution directing the Speaker to certify to the U.S. Attorney the refusal of a witness to respond to a subpoena issued by a House committee involves the privileges of the House and may be offered from the floor as privileged if offered by direction of the committee reporting the resolution (*e.g.*, Oct. 27, 2000, p. 25200). A committee report to accompany such resolution may therefore be presented to the House without regard to the three-day availability requirement for other reports (see clause 4 of rule XIII; July 13, 1971, p. 24720). A resolution with two resolve clauses separately directing the certification of the contemptuous conduct of two individuals is subject to a demand for a division of the question as to each individual (contempt proceedings against Ralph and Joseph Bernstein, Feb. 27, 1986, p. 3061); as is a resolution with one resolve clause certifying contemptuous conduct of several individuals (Oct. 27, 2000, p. 25200, *contrast*, Deschler-Brown, ch. 30, § 49.1). A contempt resolution may be withdrawn as a matter of right before action thereon (Oct. 27, 2000, p. 25200).

In the 97th Congress, the House adopted a resolution directing the Speaker to certify to the United States Attorney the failure of an official of the executive branch (Anne M. Gorsuch, Administrator, Environmental Protection Agency) to submit executive branch documents to a House subcommittee pursuant to a subcommittee subpoena; this was the first occasion on which the House cited an executive official for contempt of Congress (H. Res. 632, H. Rept. 97–968, Dec. 16, 1982, p. 31754). In the following Congress, the 98th, the House adopted (as a question of privilege) a resolution reported from the same committee certifying to the United States Attorney the fact that an agreement had been entered into between the committee and the executive branch for access by the committee to the documents which Anne Gorsuch had failed to submit and which were the subject of the contempt citation (where the contempt had not yet been prosecuted) (Aug. 3, 1983, p. 22692). In other cases where compliance had subsequently been attained in the same Congress, the House has adopted privileged resolutions certifying the facts to the United States Attorney to the end that contempt proceedings be discontinued (see Deschler, ch. 15, § 21). In the 98th Congress, the House adopted a privileged resolution

directing the Speaker to certify to the United States Attorney the refusal of a former official of the executive branch to obey a subpoena to testify before a subcommittee (H. Res. 200, May 18, 1983, p. 12720). In the 106th Congress the House considered a resolution directing the Speaker to certify to the United States Attorney the refusal of three individuals to obey a subpoena duces tecum and to answer certain questions while appearing under subpoena before a subcommittee, which resolution was withdrawn before action thereon (H. Res. 657, Oct. 27, 2000, p. 25217).

A resolution laying on the table a message from the President containing certain averments inveighing disrespect toward Members of Congress was considered as a question of the privileges of the House as a breach of privilege in a formal communication to the House (VI, 330).

§ 300. Status of Member-elect as to privilege, oath, committee service, etc.

Privilege from arrest takes place by force of the election; and before a return be made a Member elected may be named of a committee, and is to every extent a Member except that he cannot vote until he is sworn, *Memor., 107, 108. D'Ewes, 642, col. 2; 643, col. 1. Pet. Miscel. Parl., 119. Lex. Parl., c. 23.2 Hats., 22, 62.*

The Constitution of the United States limits the broad Parliamentary privilege to the time of attendance on sessions of Congress, and of going to and returning therefrom. In a case wherein a Member was imprisoned during a recess of Congress, he remained in confinement until the House, on assembling, liberated him (III, 2676).

It is recognized in the practice of the House that a Member may be named to a committee before he is sworn, and in some cases Members have not taken the oath until long afterwards (IV, 4483), although in the modern practice Members-elect have been elected to standing committees effective only when sworn (H. Res. 26, 27; Jan. 6, 1983, p. 132). In one case, wherein a Member did not appear to take the oath, the Speaker with the consent of the House appointed another Member to the committee place (IV, 4484). The status of a Member-elect under the Constitution undoubtedly differs greatly from the status of a Member-elect under the law of Parliament. In various inquiries by committees of the House this question has been examined, with the conclusions that a Member-elect becomes a Member from the very beginning of the term to which he was elected (I, 500), that he is as much an officer of the Government before taking the oath as afterwards (I, 185), and that his status is distinguished from that of a Member who has qualified (I, 183, 184). Members-elect may resign or decline before taking the oath (II, 1230–1233, 1235; Jan. 6, 1999, p. 42); they have been excluded (I, 449, 464, 474, 550, 551; VI, 56; Mar. 1, 1967, pp. 4997–5038), and in one case a Member-elect was expelled (I,

476; II, 1262). The names of Members who have not been sworn are not entered on the roll from which the yeas and nays are called for entry on the Journal (V, 6048; VIII, 3122), nor are such Members-elect permitted to vote or introduce bills.

§ 301. Relations of Members and others to privilege.

Every man must, at his peril, take notice who are members of either House returned of record. *Lex. Parl., 23; 4 Inst., 24.*

On Complaint of a breach of privilege, the party may either be summoned, or sent for in custody of the sergeant. *1 Grey, 88, 95.*

The privilege of a Member is the privilege of the House. If the Member waive it without leave, it is a ground for punishing him, but cannot in effect waive the privilege of the House. *3 Grey, 140, 222.*

Although the privilege of Members of the House is limited by the Constitution, these provisions of the Parliamentary law are applicable, and persons who have attempted to bribe Members (II, 1599, 1606), assault them for words spoken in debate (II, 1617, 1625) or interfere with them while on the way to attend the sessions of the House (II, 1626), have been arrested by order of the House by the Sergeant-at-Arms, "Wherever to be found." The House has declined to make a general rule to permit Members to waive their privilege in certain cases, preferring to give or refuse permission in each individual case (III, 2660–2662).

In United States *v.* Helstoski, 42 U.S. 477 (1979), the Supreme Court discussed the ability of either an individual Member or the entire Congress to waive the protection of the Speech or Debate Clause. The Court found first, that the Member's conduct in testifying before a grand jury and voluntarily producing documentary evidence of legislative acts protected by the Clause did not waive its protection. Assuming, without deciding, that a Member could waive the Clause's protection against being prosecuted for a legislative act, the Court said that such a waiver could only be found after an explicit and unequivocal renunciation of its immunity, which was absent in this case. Second, passage of the official bribery statute, 18 U.S.C. 201, did not amount to an institutional waiver of the Speech or Debate Clause for individual Members. Again assuming without deciding whether Congress could constitutionally waive the Clause for individual Members, such a waiver could be shown only by an explicit and unequivocal expression of legislative intent, and there was no evidence of that in the legislative history of the statute. The Speech and Debate clause is not an impediment

to the enforcement within the House of the rule prohibiting personalities in debate (clause 1 of rule XVII, May 25, 1995, p. 14436).

§ 302. Parliamentary law as to questioning a Member in another place for speech or debate.

For any speech or debate in either House, they shall not be questioned in any other place. *Const. U.S., I, 6; S. P. protest of the Commons to James I, 1621; 2 Rapin, No. 54, pp. 211, 212. But this is restrained to things done in the House in a parliamentary course. 1 Rush, 663.* For he is not to have privilege contra morem parliamentarium, to exceed the bounds and limits of his place and duty. *Com. p.*

§ 303. Relation of the courts to parliamentary privilege.

If an offense be committed by a member in the House, of which the House has cognizance, it is an infringement of their right for any person or court to take notice of it till the House has punished the offender or referred him to a due course. *Lex. Parl., 63.*

Privilege is in the power of the House, and is a restraint to the proceeding of inferior courts, but not of the House itself. *2 Nalson, 450; 2 Grey, 399.* For whatever is spoken in the House is subject to the censure of the House; and offenses of this kind have been severely punished by calling the person to the bar to make submission, committing him to the tower, expelling the House, &c. *Scob., 72; L. Parl., c. 22.*

§ 304. Breach of privilege to refuse to put a question which is in order.

It is a breach of order for the Speaker to refuse to put a question which is in order. *1 Hats., 175–6; 5 Grey, 133.*

Where the Clerk, presiding during organization of the House, declined to put a question, a Member put the question from the floor (I, 67).

§ 305. Parliamentary law of privilege as related to treason, felony, etc.

And even in cases of treason, felony, and breach of the peace, to which privilege does not extend as to substance, yet in Parliament a member is privileged as to the mode of proceeding. The case is first to be laid before the House, that it may judge of the fact and of the ground of the accusation, and how far forth the manner of the trial may concern their privilege; otherwise it would be in the power of other branches of the government, and even of every private man, under pretenses of treason, &c., to take any man from his service in the House, and so, as many, one after another, as would make the House what he pleaseth. *Dec'l of the Com. on the King's declaring Sir John Hotham a traitor. 4 Rushw., 586.* So, when a member stood indicted for felony, it was adjudged that he ought to remain of the House till conviction; for it may be any man's case, who is guiltless, to be accused and indicted of felony, or the like crime. *23 El., 1580; D'Ewes, 283, col. 1; Lex. Parl., 133.*

Where Members of the House have been arrested by the State authorities the cases have not been laid first before the House; but when the House has learned of the proceedings, it has investigated to ascertain if the crime charged was actually within the exceptions of the Constitution (III, 2673), and in one case where it found a Member imprisoned for an offense not within the exceptions it released him by the hands of its own officer (III, 2676).

§ 306. Practice as to Members indicted or convicted.

The House has not usually taken action in the infrequent instances where Members have been indicted for felony, and in one or two instances Members under indictment or pending appeal on conviction have been appointed to committees (IV, 4479). The House has, however, adopted a resolution expressing the sense of the House that Members con-

victed of certain felonies should refrain from participation in committee business and from voting in the House until the presumption of innocence is reinstated or until re-elected to the House (see H. Res. 128, Nov. 14, 1973, p. 36944), and that principle has been incorporated in the Code of Official Conduct (clause 10 of rule XXIII). A Senator after indictment was omitted from committees at his own request (IV, 4479), and a Member who had been convicted in one case did not appear in the House during the Congress (IV, 4484, footnote). A Senator in one case withdrew from the Senate pending his trial (II, 1278), and on conviction resigned (II, 1282). In this case the Senate, after the conviction, took steps looking to action although an application for rehearing on appeal was pending (II, 1282).

§ 307. Parliamentary law as to arrest of a Member.

When it is found necessary for the public service to put a Member under arrest, or when, on any public inquiry, matter comes out which may lead to affect the person of a member, it is the practice immediately to acquaint the House, that they may know the reasons for such a proceeding, and take such steps as they think proper. *2 Hats., 259.* Of which see many examples. *Ib., 256, 257, 258.* But the communication is subsequent to the arrest. *1 Blackst., 167.*

§ 308. A breach of privilege for one House to encroach or interfere as to the other.

It is highly expedient, says Hatsel, for the due preservation of the privileges of the separate branches of the legislature, that neither should encroach on the other, or interfere in any matter depending before them, so as to preclude, or even influence, that freedom of debate which is essential to a free council. They are, therefore, not to take notice of any bills or other matters depending, or of votes that have been given, or of speeches which have been held, by the members of either of the other branches of the legislature, until the same have been communicated

to them in the usual parliamentary manner. *2 Hats., 252; 4 Inst., 15; Seld. Jud., 53.*

§ 309. Relations of the Sovereign to the Parliament and its Members.

Thus the King's taking notice of the bill for suppressing soldiers, depending before the House; his proposing a provisional clause for a bill before it was presented to him by the two Houses; his expressing displeasure against some persons for matters moved in Parliament during the debate and preparation of a bill, were breaches of privilege, *2 Nalson, 743;* and in 1783, December 17, it was declared a breach of fundamental privileges, &c., to report any opinion or pretended opinion of the King on any bill or proceeding depending in either House of Parliament, with a view to influence the votes of the members, *2 Hats., 251, 6.*

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SEC. VI—QUORUM

* * * * *

§ 310. Necessity of a quorum during business, including debate.

In general the chair is not to be taken till a quorum for business is present; unless, after due waiting, such a quorum be despaired of, when the chair may be taken and the House adjourned. And whenever, during business, it is observed that a quorum is not present, any member may call for the House to be counted, and being found deficient, business is suspended. *2 Hats., 125, 126.*

In the House the Speaker takes the Chair at the hour to which the House stood adjourned and there is no requirement that the House proceed

immediately to establish a quorum, although the Speaker has the authority under clause 7 of rule XX to recognize for a call of the House at any time. The question of a quorum is not considered unless properly raised (IV, 2733; VI, 624), and it is not in order for the Speaker to recognize for a point of no quorum unless he has put the pending question or proposition to a vote. While it was formerly the rule that a quorum was necessary for debate as well as business (IV, 2935–2949), under the procedure put in effect in the 95th Congress such is not the case. In the 94th Congress the House by rule restricted the Chair's ability to recognize the absence of a quorum (clause 7 of rule XX). Clause 5(c) of rule XX permits the House to operate with a "provisional quorum" where the House is without a quorum due to catastrophic circumstances (see § 1024a, *infra*). Title III of the Legislative Branch Appropriations Act, 2006, amended Federal election law to require States to hold special elections for the House within 49 days after a vacancy is announced by the Speaker in the extraordinary circumstance that vacancies in representation from the States exceed 100 (P.L. 109–55; 2 U.S.C. 8).

SEC. VII—CALL OF THE HOUSE

§ 311. Parliamentary rules for call of the House.

On the call of the House, each person rises up as he is called, and answereth; the absentees are then only noted, but no excuse to be made till the House be fully called over. Then the absentees are called a second time, and if still absent, excuses are to be heard. *Ord. House of Commons, 92.*

They rise that their persons may be recognized; the voice, in such a crowd, being an insufficient verification of their presence. But in so small a body as the Senate of the United States, the trouble of rising cannot be necessary.

Orders for calls on different days may subsist at the same time. *2 Hats., 72.*

Rule XX of the House provides for a procedure on call of the House. Members of the House do not rise on answering, and quorum calls are normally conducted by electronic device (clause 2(a) of rule XX). Clause 5(c) of rule XX permits the House to operate with a "provisional quorum"

where the House is without a quorum due to catastrophic circumstances (see § 1024a, *infra*).

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SEC. IX—SPEAKER

* * * * *

§ 312. Election of Speaker.

When but one person is proposed, and no objection made, it has not been usual in Parliament to put any question to the House; but without a question the members proposing him conduct him to the chair. But if there be objection, or another proposed, a question is put by the Clerk. *2 Hats., 158.* As are also questions of adjournment. *6 Gray, 406.* Where the House debated and exchanged messages and answers with the King for a week without a Speaker, till they were prorogued. They have done it de die in diem for fourteen days. *1 Chand., 331, 335.*

On October 23, 2000, the House of Commons, pursuant to a Standing Order, elected a new Speaker after rejection of twelve other nominees offered one at a time as amendments to the question. The amendments were offered after refusal of the "Father of the House of Commons" to entertain a motion to change the Standing Order to require a preliminary secret ballot. On March 22, 2001, and on October 29, 2002, the House of Commons adopted Standing Order 1B, requiring that the election of a new Speaker be by secret ballot (*Standing Orders of the House of Commons—Public Business 2003*).

For a discussion of the election of the Speaker of the House of Representatives, see § 27, *supra.*

§ 313. Election of President pro tempore of the Senate.

In the Senate, a President pro tempore, in the absence of the Vice-President, is proposed and chosen by ballot. His office is understood to be determined on the Vice-President's appearing and

taking the chair, or at the meeting of the Senate after the first recess.

In the later practice the President pro tempore has usually been chosen by resolution. In 1876 the Senate determined that the tenure of the Office of a President pro tempore elected at one session does not expire at the meeting of Congress after the first recess, the Vice President not having appeared to take the chair; that the death of the Vice President does not have the effect of vacating the Office of President pro tempore; and that the President pro tempore holds office at the pleasure of the Senate (II, 1417). In the 107th Congress the Senate elected two Presidents of the Senate pro tempore for different periods when the majority of the Senate shifted after inauguration of the Vice President (S. Res. 3, Jan. 3, 2001, p. 7).

§ 314. Parliamentary law as to choice of Speaker pro tempore.

Where the Speaker has been ill, other Speakers pro tempore have been appointed. Instances of this are *1 H., 4.* Sir John Cheyney, and Sir William Sturton, and in *15 H., 6.* Sir John Tyrrel, in 1656, January 27; 1658, March 9; 1659, January 13.

Sir Job Charlton ill, Seymour chosen, 1673, February 18.

Seymour being ill, Sir Robert Sawyer chosen, 1678, April 15.

} Not merely pro tem. 1 *Chand., 169, 276, 277.*

Sawyer being ill, Seymour chosen.

Thorpe in execution, a new Speaker chosen, *31 H. VI, 3 Grey, 11;* and March 14, 1694, Sir John Trevor chosen. There have been no later instances. *2 Hats., 161; 4 Inst., 8; L. Parl., 263.*

The House, by clause 8 of rule I, has provided for appointment and election of Speakers pro tempore. Relying on the Act of June 1, 1789 (2 U.S.C. 25), the Clerk recognized for nominations for Speaker, at the convening of a new Congress, as being of higher constitutional privilege than a resolution to postpone the election of a Speaker and instead provide for the elec-

tion of a Speaker pro tempore pending the disposition of certain ethics charges against the nominee of the majority party (Jan. 7, 1997, p. 115).

§ 315. Removal of the Speaker.

A Speaker may be removed at the will of the House, and a Speaker pro tempore appointed, *2 Grey, 186; 5 Grey, 134.*

The House has never removed a Speaker; but it had on several occasions removed or suspended other officers, such as Clerk and Doorkeeper (I, 287–290, 292; II, 1417), who are officers classed by the Constitution in the phrase "the House of Representatives shall chuse their Speaker and other Officers." A resolution for the removal of an officer is presented as a matter of privilege (I, 284–286; VI, 35), and a resolution declaring the Office of Speaker vacant presents a question of constitutional privilege (VI, 35).

SEC. X—ADDRESS

* * * * *

§ 316. Addresses to the President.

A joint address of both Houses of Parliament is read by the Speaker of the House of Lords. It may be attended by both Houses in a body, or by a Committee from each House, or by the two Speakers only. An address of the House of Commons only may be presented by the Whole House, or by the Speaker, *9 Grey, 473; 1 Chandler, 298, 301;* or by such particular members as are of the privy council. *2 Hats., 278.*

In the first years of Congress the President annually delivered an address to the two Houses in joint session, and the House then prepared an address, which the Speaker, attended by the House, carried to the President. A joint rule of 1789 also provided for the presentation of joint addresses of the two Houses to the President (V, 6630). In 1876 the joint rules of the House were abrogated, including the joint rule providing for presentation of the joint addresses of the two Houses to the President (V, 6782–6787). In 1801 President Jefferson transmitted a message in writing and discontinued the practice of making addresses in person. From 1801 to 1913 all messages were sent in writing (V, 6629), but President Wilson resumed the custom of making addresses in person on April 8, 1913, and, with the exception of President Hoover (VIII, 3333), the custom has been followed generally by subsequent Presidents.

SEC. XI—COMMITTEES

§317. Appointment of standing committees; and designation and duties of chairmen thereof.

Standing committees, as of Privileges and Elections, &c., are usually appointed at the first meeting, to continue through the session. The person first named is generally permitted to act as chairman. But this is a matter of courtesy; every committee having a right to elect their own chairman, who presides over them, puts questions, and reports their proceedings to the House. *4 inst., 11, 12; Scob., 9; 1 Grey, 122.*

Before the 62d Congress, standing as well as select committees and their chairmen were appointed by the Speaker, but under the present form of rule X, adopted in 1911, continued as a part of the Legislative Reorganization Act of 1946, and revised under the Committee Reform Amendments of 1974 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), standing committees and their respective chairmen are elected by the House (IV, 4448; VIII, 2178). Owing to their number and size, committees are not usually elected immediately, but resolutions providing for such elections are presented by the majority and minority parties pursuant to clause 5 of rule X as soon as they are able to perfect the lists. A committee may order its report to be made by the chairman, or by some other member (IV, 4669), even by a member of the minority party (IV, 4672, 4673), or by a Delegate, July 1, 1958 (Burns of Hawaii) p. 12871; and the chairman sometimes submits a report in which he has not concurred (IV, 4670). Clause 2 of rule XIII requires that a report which has been approved by the committee must be filed with the House within seven calendar days after a written request from a majority of the committee is submitted to the committee clerk.

§318. Parliamentary law as to debate in standing and select committees.

At these committees the members are to speak standing, and not sitting; though there is reason to conjecture it was formerly otherwise. *D'Ewes, 630, col. 1; 4 Parl. Hist., 440; 2 Hats., 77.*

§ 319. Secrecy of committee procedure.

Their proceedings are not to be published, as they are of no force till confirmed by the House. *Rushw., part 3, vol. 2, 74; 3 Grey, 401; Scob., 39.* * * *

In the House it is entirely within rule and usage for a committee to conduct its proceedings in secret (IV, 4558–4564; see also clause 2(g) of rule XI), and the House itself may not abrogate the secrecy of a committee's proceedings except by suspending the rule (IV, 4565). The House has no information concerning the proceedings of a committee not officially reported by the committee (VII, 1015) and it is not in order in debate to refer to executive session proceedings of a committee which have not formally been reported to the House (V, 5080–5083; VIII, 2269, 2485, 2493; June 24, 1958, pp. 12120, 12122; Apr. 5, 1967, p. 8411). However, a complaint that certain remarks that might be uttered in debate would improperly disclose executive-session material of a committee is not cognizable as a point of order in the House where the Chair is not aware of the executive-session status of the information (Nov. 5, 1997, p. 24648). On one occasion a Member was permitted to refer to the unreported executive session proceedings of a subcommittee to justify his point of order that a resolution providing for a select committee to inquire into action of the subcommittee was not privileged (June 30, 1958, p. 12690). In one case the House authorized the clerk of a committee to disclose by deposition its proceedings (III, 2604). Where a committee takes testimony it is sometimes very desirable that the proceedings be secret (III, 1694), as in the investigation in the Bank of the United States in 1834, when the committee determined that its proceedings should be confidential, not to be attended by any person not invited or required (III, 1732). It is for the committee, in its discretion, to determine whether the proceedings of the committee shall be open or not (clause 2(g) of rule XI). Clause 2(k) of rule XI establishes the procedure for closing a hearing because of defamatory, degrading, or incriminating testimony. Clause 11(d) of rule X establishes special rules governing the closing of hearings of the Permanent Select Committee on Intelligence.

Under clause 2 of rule XI, all hearings and business meetings conducted by standing committees shall be open to the public, except when a committee, in open session, by record vote, with a majority present, determines to close the meeting or hearing for that day for the reasons stated in that clause.

§ 320. Reception of petitions by committees.

* * * Nor can they receive a petition but through the House. *9 Grey, 412.*

§ 321. Parliamentary law of procedure when a committee inquiry involves a Member.

When a committee is charged with an inquiry, if a Member prove to be involved, they can not proceed against him but must make a special report to the House; whereupon the Member is heard in his place, or at the bar, or a special authority is given to the committee to inquire concerning him. *9 Grey, 523.*

§ 322. Practice of House when a committee inquiry involves a Member.

While the authority of this principle has not been questioned by the House, there have in special instances been deviations from it. Thus, in 1832, when a Member had been slain in a duel, and the fact was notorious that all the principals and seconds were Members of the House, the committee, charged only with investigating the causes and whether or not there had been a breach of privilege, reported with their findings recommendations for expulsion and censure of the Members found to be implicated. There was criticism of this method of procedure as deviating from the rule of Jefferson's Manual, but the House did not recommit the report (II, 1644). In 1857, when a committee charged with inquiring into accusations against Members not named found certain Members implicated, they gave them copies of the testimony and opportunities to explain to the committee, under oath or otherwise, as they individually might prefer (III, 1845), but reported recommendations for expulsion without first seeking the order of the House (II, 1275; III, 1844). In 1859 and 1892 a similar procedure occurred (III, 1831, 2637). But the House, in a case wherein an inquiry had incidentally involved a Member, evidently considered the parliamentary law as applicable, since it admitted as of privilege and agreed to a resolution directing the committee to report the charges (III, 1843). And in cases wherein testimony taken before a joint committee incidentally impeached the official characters of a Member and a Senator, the facts in each case were reported to the House interested (III, 1854). A select committee, appointed to report upon the right of a Member-elect to be sworn (H. Res. 1, 90th Cong., pp. 14–27, Jan. 10, 1967), invited him to appear, to testify, and permitted him to be accompanied by counsel (see H. Rept. 90–27).

§ 323. Inquiries involving Members of other House.

And where one House, by its committee, has found a Member of the other implicated, the testimony has been transmitted (II, 1276; III, 1850, 1852, 1853). Where such testimony was taken in open session of the committee, it was not thought necessary that it be under seal when sent to the other House (III, 1851).

§ 324. Duty of chairman of a committee when the House sits.

So soon as the House sits, and a committee is notified of it, the chairman is in duty bound to rise instantly, and the members to attend the service of the House. *2 Nals., 319.*

For the current practice of the House, see the annotation following clause 2(i) of rule XI (§ 801, *infra*).

§ 325. Action of joint committees.

It appears that on joint committees of the Lords and Commons each committee acted integrally in the following instances: *7 Grey, 261, 278, 285, 338; 1 Chandler, 357, 462.* In the following instances it does not appear whether they did or not: *6 Grey, 129; 7 Grey, 213, 229, 321.*

It is the practice in Congress that joint committees shall vote per capita, and not as representatives of the two Houses (IV, 4425), although the membership from the House is usually, but not always (IV 4410), larger than that from the Senate (III, 1946; IV, 4426–4431). But ordinary committees of conference appointed to settle differences between the two Houses are not considered joint committees, and the managers of the two Houses vote separately (V, 6336), each House having one vote. A quorum of a joint committee seems to have been considered to be a majority of the whole number rather than a majority of the membership of each House (IV, 4424). The first named of the Senate members acted as chairman in one notable instance (IV, 4424), and in another the joint committee elected its chairman (IV, 4447).

SEC. XII—COMMITTEE OF THE WHOLE

§ 326. Parliamentary usage as to Committee of the Whole.

The speech, messages, and other matters of great concernment are usually referred to a Committee of the Whole House (*6 Grey, 311*), where general principles are digested in the form of resolutions, which are debated and amended till they get into a shape which meets the approbation of a majority. These being reported and confirmed

by the House are then referred to one or more select committees, according as the subject divides itself into one or more bills. *Scob., 36, 44.* Propositions for any charge on the people are especially to be first made in a Committee of the Whole. *3 Hats., 127.* The sense of the whole is better taken in committee, because in all committees everyone speaks as often as he pleases. *Scob., 49.* * * *

This provision is largely obsolete, the House having by its rules and practice provided specifically for procedure in Committee of the Whole, and having also by its rules for the order of business left no privileged status for motions to go into Committee of the Whole on matters not already referred to that committee. The Committee of the Whole no longer originates resolutions or bills, but receives such as have been formulated by standing or select committees and referred to it; and when it reports, the House usually acts at once on the report without reference to select or other committees (IV, 4705). The practice of referring annual messages of the President to Committee of the Whole, to be there considered and reported with recommendations for the reference of various portions to the proper standing or select committees (V, 6621, 6622), was discontinued in the 64th Congress (VIII, 3350). The current practice is to refer the annual message to the Committee of the Whole House on the state of the Union and order it printed (Jan. 14, 1969, p. 651). Executive communications submitted to implement the proposals contained in the State of the Union Message are referred by the Speaker to the various committees having jurisdiction over the subject matter therein.

§ 327. Selection of Chairman of Committee of the Whole.

* * * They generally acquiesce in the chairman named by the Speaker; but, as well as all other committees, have a right to elect one, some member, by consent, putting the question, *Scob., 36; 3 Grey, 301.* * * *

The House (by clause 1 of rule XVIII) gives the authority to appoint the Chairman of the Committee of the Whole to the Speaker (IV, 4704).

§ 328. Form of going into Committee of the Whole.

* * * The form of going from the House into committee, is for the Speaker, on motion, to put the question that the House do now resolve itself into a Committee of the Whole to take into consideration such a matter, naming it. If determined in the affirmative, he leaves the chair and takes a seat elsewhere, as any other Member; and the person appointed chairman seats himself at the Clerk's table. *Scob., 36.* * * *

This is the form in the House, except that the Chairman of the Committee of the Whole seats himself in the Speaker's chair. Clause 1(b) of former rule XXIII (currently rule XVIII) was adopted to authorize the Speaker, and it is the modern practice, when no other business is pending, to declare the House resolved into Committee of the Whole to consider a measure at any time after the House has adopted a special order of business providing for consideration of such measure (and not require a motion), unless the resolution specifies otherwise (H. Res. 5, Jan. 3, 1983, p. 34).

§ 329. Quorum in Committee of the Whole.

* * * Their quorum is the same as that of the House; and if a defect happens, the chairman, on a motion and question, rises, the Speaker resumes the chair and the chairman can make no other report than to inform the House of the cause of their dissolution. * * *

Until 1890 a quorum of the Committee of the Whole was the same as the quorum of the House; but in 1890 the rule (formerly clause 2 of rule XXIII, current clause 6 of rule XVIII) fixed it at one hundred (IV, 2966). Clause 6 of rule XVIII provides the procedure that is followed in Committee of the Whole in case of failure of a quorum.

§ 330. Rising of committee for reception of messages.

* * * If a message is announced during a committee, the Speaker takes the chair and receives it, because the committee can not. *2 Hats., 125, 126.*

In the House, the committee rises informally to receive a message, or to enable the Speaker to sign and lay before the House an enrolled bill, at the direction of the Chairman without a formal motion from the floor (IV, 4786, footnote; Jan. 28, 1980, p. 888; Feb. 8, 1995, p. 4112); but at this rising the House may not have the message read or transact other business except by unanimous consent (IV, 4787–4791). However, it is the general custom for the Speaker to decline to entertain a unanimous-consent request during an informal rising of the Committee of the Whole (IV, 4789, Apr. 6, 2000, p. 4778).

§ 331. Quarrels in Committee of the Whole, and duty of the Speaker in relation thereto.

In a Committee of the Whole, the tellers on a division differing as to numbers, great heats and confusion arose, and danger of a decision by the sword. The Speaker took the chair, the mace was forcibly laid on the table; whereupon the Members retiring to their places, the Speaker told the House "he has taken the chair without an order to bring the House into order." Some excepted against it; but it was generally approved as the only expedient to suppress the disorder. And every Member was required, standing up in his place, to engage that he would proceed no further in consequence of what had happened in the grand committee, which was done. *3 Grey, 128.*

In the House the Speaker has on several occasions taken the chair "without an order to bring the House into order" (II, 1648–1653), but that being accomplished he may yield to the chairman that the committee may rise in due form (II, 1349). In one instance, the chairman, having been defied and insulted by a Member, left the chair; and, on the chair being taken by the Speaker, he reported the facts to the House (II, 1653). In several cases Members who have quarrelled have made explanation and reconciled their difficulties (II, 1651), or have been compelled by the House to apologize "for violating its privilege and offending its dignity" (II, 1648, 1650).

§ 332. Effect of breaking up of Committee of the Whole by disorder.

A Committee of the Whole being broken up in disorder, and the chair resumed by the Speaker without an order, the House was adjourned. The next day the committee was considered as thereby dissolved, and the subject again before the House; and it was decided in the House, without returning into committee. *3 Grey, 130.*

This provision is obsolete, since in the practice of the House there is but one Committee of the Whole, which is in its nature a standing committee with calendars of business. It is never dissolved, and bills remain on its calendar until reported in the regular manner after consideration (IV, 4705). When the Speaker restores order he usually yields the chair to the chairman, thus permitting the committee later to rise in due form (II, 1349).

§ 333. Motions for previous question and to adjourn not used in Committee of the Whole.

No previous question can be put in a committee; nor can this committee adjourn as others may; but if their business is unfinished, they rise, on a question, the House is resumed, and the chairman reports that the Committee of the Whole have, according to order, had under their consideration such a matter, and have made progress therein; but not having had time to go through the same, have directed him to ask leave to sit again. Whereupon a question is put on their having leave, and on the time the House will again resolve itself into a committee. *Scob., 38.* But if they have gone through the matter referred to them, a member moves that the committee may rise, and the chairman report their proceedings to the House; which being resolved, the chairman rises, the Speaker resumes the

§ 334. Parliamentary law as to reports from Committee of the Whole.

chair, the chairman informs him that the committee have gone through the business referred to them, and that he is ready to make report when the House shall think proper to receive it. If the House have time to receive it, there is usually a cry of "now, now," whereupon he makes the report; but if it be late, the cry is "to-morrow, to-morrow," or "Monday," etc., or a motion is made to that effect, and a question put that it be received to-morrow, &c. *Scob., 38.*

In the practice of the House the previous question and motion to adjourn are not admitted in Committee of the Whole; but the rules (clause 8 of rule XVIII) provide for closing both the general and five-minute debate. When the committee rises without concluding a matter the chairman reports that they "have come to no resolution thereon"; but leave to sit again is not asked in the modern practice. The permission of the House is not asked when the chairman reports a matter concluded in committee. The report is made and received as a matter of course, and is thereupon before the House for action. When the House has vested control of general debate in certain Members, their control may not be abrogated during general debate by another Member moving to rise, unless they yield for that purpose (May 25, 1967, p. 14121; June 10, 1999, p. 12471). A Member yielded time in general debate may not yield to another for such motion (Feb. 22, 1950, p. 2178; May 17, 2000, p. 8200). The motion that the Committee of the Whole rise is privileged during debate under the five-minute rule, and may be offered during debate on a pending amendment, except where a Member has the floor (Aug. 13, 1986, p. 21215; Mar. 22, 1995, p. 8770). The motion to rise may not include restrictions on the amendment process or limitations on future debate on amendments (June 6, 1990, p. 13234). The motion that the Committee of the Whole rise is not debatable (May 17, 2000, p. 8203). For a further discussion of the motion to rise, see § 983, *infra*. For a point of order against the motion to rise and report an appropriation bill to the House where the bill, as proposed to be amended, exceeds an applicable allocation of new budget authority under section 302(b) of the Congressional Budget Act of 1974, and procedures for the Committee of the Whole in the event that the point of order is sustained, see § 1044b, *infra*.

§ 335. Duties of Speaker and House as to reception of reports of Committee of the Whole.

The Speaker recognizes only reports from the Committee of the Whole made by the chairman thereof (V, 6987), and a matter alleged to have arisen therein but not reported may not be brought to the attention of the House (VIII, 2429, 2430) even on the claim that a question of privilege is involved (IV, 4912; V, 6987; VIII, 2430). In one instance, however, the committee reported with a bill a resolution relating to an alleged breach of privilege (V, 6986). When a bill is reported the Speaker must assume that it has passed through all the stages necessary for the report (IV, 4916). When the committee reported not only what it had done but by whom it had been prevented from doing other things, the Speaker held that the House might not amend the report, which stood (IV, 4909). But a committee may not report a recommendation which, if carried into effect, would change a rule of the House (IV, 4907, 4908) unless a measure proposing amendments to House rules has initially been referred to the Committee of the Whole by the House. When an amendment is reported by the committee it may not be withdrawn, and a question as to its validity is not considered by the Speaker (IV, 4900). When a committee, directed by order of the House to consider certain bills, reported also certain other bills, the Speaker held that so much of the report as related to the latter bills could be received only by unanimous consent (IV, 4911). When a report is ruled out as in excess of the committee's power, the accompanying bill stands recommitted (IV, 4784, 4907). A report from a Committee of the Whole could not formerly be received in the absence of a quorum (VI, 666; clause 7 of rule XX).

§ 336. Amendments in Committee of the Whole.

The Committee of the Whole, like any other committee, may amend a proposition either by an ordinary amendment or by a substitute amendment (IV, 4899), but these amendments must be reported to the House for action. Amendments rejected by the committee are not reported (IV, 4877). Ordinarily all amendments must be disposed of before the committee may report (IV, 4752–4758); but sometimes a special order of business requires a report at a specified time, in which case pending amendments are reported (IV, 3225–3228) or not (IV, 4910) as the terms of the order may direct. In the 98th Congress, clause 2 of rule XXI was amended to give precedence to the motion that the Committee rise and report a general appropriation bill at the conclusion of its reading for amendment and before or between consideration of amendments proposing certain limitations or retrenchments (H. Res. 5, Jan. 3, 1983, p. 34). The 104th Congress further amended clause 2 to permit only the Majority Leader or a designee to offer that motion (sec. 215(a), H. Res. 6, Jan. 4, 1995, p. 468). The 105th Congress elevated the Majority Leader's preferential motion in clause 2 to take precedence of *any* motion to amend at that stage (H. Res. 5, Jan. 7, 1997, p. 121). The practice of the House, based originally on a rule (IV, 4904), requires amendments to be reported from the Committee of the Whole in their perfected forms, and this holds good even in the case of

an amendment in the nature of a substitute, which may have been amended freely (IV, 4900–4903). If a Committee of the Whole amends a paragraph and subsequently strikes out the paragraph as amended, the first amendment fails, and is not reported to the House or voted on (IV, 4898; V, 6169; VIII, 2421, 2426), and when the Committee of the Whole adopts two amendments that are subsequently deleted by an amendment striking out and inserting new text, only the latter amendment is reported to the House (June 20, 1967, p. 16497). Where two amendments proposing inconsistent motions to strike and insert a pending section are considered as separate first degree amendments (not one as a substitute for the other) before either is finally disposed of under a special procedure permitting the Chair to postpone requests for a recorded vote, the Chair's order of voting on the matter as unfinished business determines which amendment (if both were adopted) would be reported to the House (Aug. 6, 1998, pp. 19098–107). Normally, if the Committee of the Whole perfects a bill by adopting certain amendments and then adopts an amendment striking out all after section one of the bill and inserting a new text, only the bill, as amended by the motion to strike out and insert, is reported to the House; but when the bill is being considered under a special rule permitting a separate vote in the House on any of the amendments adopted in the Committee of the Whole to the bill or the committee substitute, all amendments adopted in the Committee are reported to the House regardless of their consistency (May 26, 1960, pp. 11302–04). Where a separate vote is demanded in this type of situation in the House only on an amendment striking out a section of a committee substitute, but not on perfecting amendments which have been previously adopted in Committee of the Whole to that section, rejection in the House of the motion to strike the section results in a vote on the committee substitute in its original form and not as perfected, since the perfecting amendments have been displaced in the Committee of the Whole and have not been revived on a separate vote in the House (Speaker O'Neill, Oct. 13, 1977, pp. 33622–24). But where the Committee of the Whole reports a bill to the House with an adopted amendment in the nature of a substitute and the special order of business in question does not provide for separate House votes on amendments thereto, a separate vote may not be demanded on an amendment to such amendment, since only one amendment in its perfected form has been reported back to the House (Nov. 17, 1983, p. 33463).

§ 337. Committee of the Whole amendments in the House.

All amendments to a bill reported from the Committee of the Whole stand on an equal footing and must be voted on by the House (IV, 4871) in the order in which they are reported, although they may be inconsistent, one with another (IV, 4881, 4882), and are subject to amendment in the House unless the previous question is ordered (VIII, 2419). Two amendments being reported as distinct were considered independently, although apparently one was a proviso attaching to the other (IV, 4905); and an entire and distinct amendment may not be divided,

but must be voted on by the House as a whole (IV, 4883–4892; VIII, 2426). It is a frequent practice for the House by unanimous consent, to act at once on all the amendments to a bill reported from the Committee of the Whole, but it is the right of any Member to demand a separate vote on any amendment (IV, 4893, 4894; VIII, 2419). Where a special rule permits en bloc consideration of certain amendments in Committee of the Whole, those amendments if reported back to the House may also be considered en bloc for a separate vote in the House on demand of any Member (Speaker O'Neill, Sept. 7, 1978, p. 28425). A Member may demand a separate vote in the House on an amendment to a committee amendment in the nature of a substitute adopted in the Committee of the Whole where the bill is being considered under a special rule permitting separate votes in the House on any of the amendments adopted in the Committee of the Whole to the bill or committee amendment (Sept. 30, 1971, p. 34337), but where a special rule "self-executes" an amendment as a modification of an amendment in the nature of a substitute to be considered as an original bill, that modification is not separately voted on upon demand in the House (Speaker Foley, Feb. 3, 1993, p. 2043). A Member may withdraw a demand for a separate vote in the House on an amendment reported from Committee of the Whole before the Speaker's putting the question thereon, and unanimous consent is not required (May 28, 1987, p. 14030). When demand is made for separate votes in the House on several amendments adopted in the Committee of the Whole, the amendments are voted on in the House in the order in which they appear in the bill (July 24, 1968, pp. 23093–95; May 28, 1987, p. 14030; June 11, 1997, p. 10654), except when amendments have been considered under a special rule prescribing the order for their consideration where the bill is considered as read, in which case they are voted on upon demand in the order in which considered in Committee of the Whole (Mar. 11, 1993, p. 4733; Mar. 25, 1993, pp. 6358, 6359).

Depending on the will of the House as expressed on the question of ordering the previous question (IV, 4895; V, 5794; VIII, 2419), when a bill is reported with amendments, it is in order to submit additional amendments after disposition of the committee amendments (IV, 4872–4876). However, in modern practice the opportunity to submit amendments is normally foreclosed by the ordering of the previous question under a special rule. The fact that a proposition has been rejected by the Committee of the Whole does not prevent it from being offered as an amendment when the subject comes up in the House (IV, 4878–4880; VIII, 2700). A substitute amendment may be offered to a bill reported from committee, and then the previous question may be ordered on the substitute, on all other amendments, and on the bill to final passage (V, 5472). An amendment in the nature of a substitute reported from committee is treated like any other amendment (V, 5341), and if the House rejects the substitute the original bill without amendment is before the House (VIII, 2426).

§ 338. Bills from Committee of the Whole in the House.

Where a series of bills are reported from Committee of the Whole, the House considers them in the order in which they are reported (IV, 4869, 4870; VIII, 2417). A proposition reported for action has precedence over an independent resolution on the same subject offered by a Member from the floor (V, 6986), and where a bill and a resolution relating to an alleged breach of privilege were reported together the question was put first on the bill (V, 6986). A bill read in full and considered in Committee of the Whole (IV, 3409, 3410), or presumed to have been so read (IV, 4916), is not read in full again in the House when reported and acted on. The Chairman of the Committee of the Whole which reports a bill does not become entitled to prior recognition for debate in the House (II, 1453); but on an adverse report an opponent is recognized to offer a motion for disposition of the bill (IV, 4897; VIII, 2430), or for debate (VII, 2629). The recommendation of the committee being before the House, the motion to carry out the recommendation is usually considered as pending without being offered from the floor (IV, 4896), but when a bill was reported with a recommendation that it lie on the table, a question was raised as to whether or not this motion, which prevents debate, should be considered as pending (IV, 4897). The House considers an amendment reported from the Committee of the Whole to the preamble of a Senate joint resolution following disposition of amendments to the text and pending third reading (May 25, 1993, pp. 11036, 11037).

§ 339. Discharge of the Committee of the Whole.

A motion to discharge the Committee of the Whole from the consideration of a matter committed to it is not privileged as against a demand for the regular order (IV, 4917). When the committee is discharged from consideration of a bill the House, in lieu of the report of the chairman, accepts the minutes of the Clerk as evidence of amendments agreed to (IV, 4922).

§ 340. Application of House rules in Committee of the Whole.

In other things the rules or proceedings are to be the same as in the House. *Scob., 39.*

The House provides by rule (clause 12 of rule XVIII) that the rules of proceeding in the House shall apply in Committee of the Whole so far as they may be applicable.

SEC. XIII—EXAMINATION OF WITNESSES

§ 341. Common fame as ground for investigation.

Common fame is a good ground for the House to proceed by inquiry, and even to accusation. *Resolution House of Commons, 1 Car., 1, 1625; Rush, L.*

Parl., 115; Grey, 16–22, 92; 8 Grey, 21, 23, 27, 45.

In the House common fame has been held sufficient to justify procedure for inquiry (III, 2701), as in a case wherein it was stated on the authority of common rumor that a Member had been menaced (III, 2678). The House also has voted to investigate with a view to impeachment on the basis of common fame, as in the cases of Judges Chase (III, 2342), Humphreys (III, 2385), and Durell (III, 2506).

§ 342. The production of witnesses at an inquiry.

Witnesses are not to be produced but where the House has previously instituted an inquiry, *2 Hats., 102, nor then are orders for their attendance given blank. 3 Grey, 51.*

In the House witnesses are summoned in pursuance and by virtue of the authority conferred on a committee by the House to send for persons and papers (III, 1750). Even in cases wherein the rules give to certain committees the authority to investigate without securing special permission, authority must be obtained before the production of testimony may be compelled (IV, 4316). The rules require that subpoenas issued by order of the House be signed by the Speaker (clause 4 of rule I) and attested and sealed by the Clerk (clause 2 of rule II). However, in clause 2(m) of rule XI the House has authorized any committee or subcommittee to issue a subpoena when authorized by a majority of the members of the committee or subcommittee voting, a majority being present. A committee may also delegate the authority to issue subpoenas to the chairman of a full committee. Authorized subpoenas are signed by the chairman of the committee or by any other member designated by the committee. Sometimes the House authorizes issue of subpoenas during a recess of Congress and empowers the Speaker to sign them (III, 1806), and in one case the two Houses, by concurrent resolution, empowered the Vice President and Speaker to sign during a recess (III, 1763). (See McGrain *v.* Daugherty, 273 U.S. 135 (1927); Barry *v.* U.S. ex. rel. Cunningham, 279 U.S. 597 (1929); Sinclair *v.* United States, 279 U.S. 263 (1929)). Under section 2954 of title 5, United States Code, an executive agency, if so requested by the Committee on Government Operations (now Government Reform), or any seven members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee.

§ 343. Examination of witnesses in the House and in committee.

When any person is examined before a committee or at the bar of the House, any Member wishing to ask the person a question must address it to the Speaker or chairman, who repeats the question to the person, or says to him, "You hear the question—answer it." But if the propriety of the question be objected to, the Speaker directs the witness, counsel, and parties to withdraw; for no question can be moved or put or debated while they are there. *2 Hats., 108.* Sometimes the questions are previously settled in writing before the witness enters. *Ib., 106, 107; 8 Grey, 64.* The questions asked must be entered in the Journal. *3 Grey, 81.* But the testimony given in answer before the House is never written down; but before a committee, it must be, for the information of the House, who are not present to hear it. *7 Grey, 52, 334.*

The Committee of the Whole of the House was charged with an investigation in 1792, but the procedure was wholly exceptional (III, 1804), although a statute still empowers the Chairman of the Committee of the Whole, as well as the Speaker, chairmen of select or standing committees, and Members to administer oaths to witnesses (2 U.S.C. 191; III, 1769). Most inquiries, in the modern practice, are conducted by select or standing committees, and these in each case determine how they will conduct examinations (III, 1773, 1775). Clause 2(k) of rule XI, contains provisions governing certain procedures at hearings by committees (§ 803, *infra*). In one case a committee permitted a Member of the House not of the committee to examine a witness (III, 2403). Usually these investigations are reported stenographically, thus making the questions and answers of record for report to the House. To sustain a conviction of perjury, a quorum of a committee must be in attendance when the testimony is given (Christoffel *v.* United States, 338 U.S. 84). Certain criminal statutes make it a felony to give perjurious testimony before a congressional committee (18 U.S.C. 1621), to intimidate witnesses before committees (18 U.S.C. 1505), or to make false statements in any matter within the jurisdiction of the execu-

tive, legislative, or judicial branch of the Government of the United States (18 U.S.C. 1001).

Another provision of the Federal criminal code (18 U.S.C. 6005) provides for "use" immunity for certain witnesses before either House or committees thereof as follows:

"SEC. 6005. CONGRESSIONAL PROCEEDINGS.

"(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to either House of Congress, or any committee, or any subcommittee of either House, or any joint committee of the two Houses, a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

"(b) Before issuing an order under subsection (a) of this section, a United States district court shall find that—

"(1) in the case of a proceeding before or ancillary to either House of Congress, the request for such an order has been approved by an affirmative vote of a majority of the Members present of that House;

"(2) in the case of a proceeding before or ancillary to a committee or a subcommittee of either House of Congress or a joint committee of both Houses, the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and

"(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.

"(c) Upon application of the Attorney General, the United States district court shall defer the issuance of any order under subsection (a) of this section for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify.".

§ 344. Earlier and later practice as to inquiries at the bar of the House.

The House, in its earlier years, arraigned and tried at its bar persons, not Members, charged with violation of its privileges, as in the cases of Randall, Whitney (II, 1599–1603), Anderson (II, 1606), and Houston (II, 1616); but in the case of Woods, charged with breach of privilege in 1870 (II, 1626–1628), the respondent was arraigned before the House, but was heard in his defense by counsel and witnesses before a standing committee. At the conclusion of that investigation the respondent was brought to the bar of the House while the House voted his punishment (II, 1628). The House also has arraigned at its bar contumacious witnesses before taking steps to punish by its own action or through the

courts (III, 1685). In examinations at its bar the House has adopted forms of procedure as to questions (II, 1633, 1768), providing that they be asked through the Speaker (II, 1602, 1606) or by a committee (II, 1617; III, 1668). And the questions to be asked have been drawn up by a committee, even when put by the Speaker (II, 1633). In the earlier practice the answer of a witness at the bar was not written down (IV, 2874); but in the later practice the answers appear in the journal (III, 1668). The person at the bar withdraws while the House passes on an incidental question (II, 1633; III, 1768). (See McGrain *v.* Dougherty, 273 U.S. 135 (1927); Barry *v.* U.S. ex. rel. Cunningham, 279 U.S. 597 (1929); Jurney *v.* MacCracken, 294 U.S. 125 (1935)).

§ 345. Procuring attendance of a witness in custody of the other House.

If either House have occasion for the presence of a person in custody of the other, they ask the other their leave that he may be brought up to them in custody. *3 Hats., 52.*

§ 346. Members as witnesses.

A Member, in his place, gives information to the House of what he knows of any matter under hearing at the bar. *Jour. H. of C., Jan. 22, 1744–5.*

At an examination at the bar of the House in 1795 both the written information given by Members and their verbal testimony were required to be under oath (II, 1602). In a case not of actual examination at the bar, but wherein the House was deliberating on a proposition to order investigation, it demanded by resolution that certain Members produce papers and information (III, 1726, 1811). Members often give testimony before committees of investigation, and in at least one case the Speaker has thus appeared (III, 1776). But in a case wherein a committee summoned a Member to testify as to a statement made by him in debate he protested that it was an invasion of his constitutional privilege (III, 1777, 1778; see also H. Rept. 1372, 67th Cong. and Cong. Rec. 5, 1923, pp. 2415–23). In one instance the chairman of an investigating committee administered the oath to himself and testified (III, 1821). The House, in an inquiry preliminary to an impeachment trial, gave leave to its managers to examine Members, and leave to its Members to attend for the purpose (III, 2033).

§ 347. Method of obtaining testimony of a Member of the other House.

Either House may request, but not command, the attendance of a Member of the other. They are to make the request by message of the other House, and

to express clearly the purpose of attendance, that no improper subject of examination may be tendered to him. The House then gives leave to the Member to attend, if he choose it; waiting first to know from the Member himself whether he chooses to attend, till which they do not take the message into consideration. But when the peers are sitting as a court of criminal judicature, they may order attendance, unless where it be a case of impeachment by the Commons. There it is to be a request. *3 Hats., 17; 9 Grey, 306, 406; 10 Grey, 133.*

The House and the Senate have observed this rule; but it does not appear that they have always made public ascertainment of the willingness of the Member to attend (III, 1790, 1791). In one case the Senate laid aside pending business in order to comply with the request of the House (III, 1791). In several instances House committees, after their invitations to Senators to appear and testify had been disregarded, have issued subpoenas. In such cases the Senators have either disregarded the subpoenas, refused to obey them, or have appeared under protest (III, 1792, 1793). In one case, after a Senator had neglected to respond either to an invitation or a subpoena the House requested of the Senate his attendance and the Senate disregarded the request (III, 1794). Where Senators have responded to invitations of House committees, their testimony has been taken without obtaining consent of the Senate (III, 1793, 1795, footnote).

§ 348. Admission of counsel.

Counsel are to be heard only on private, not on public, bills and on such points of law only as the House shall direct. *10 Grey, 61.*

In 1804 the House admitted the counsel of certain corporations to address the House on pending matters of legislation (V, 7298), and in 1806 voted that a claimant might be heard at the bar (V, 7299); but in 1808, after consideration, the House by a large majority declined to follow again the precedent of 1804 (V, 7300). In early years counsel in election cases were heard at the bar at the discretion of the House (I, 657, 709, 757, 765); but in 1836, after full discussion, the practice was abandoned (I, 660), and, with one exception in 1841 (I, 659), has not been revived, even for the case of a contestant who could not speak the English language (I, 661). Counsel appear before committees in election cases, however. Where wit-

nesses and others have been arraigned at the bar of the House for contempt, the House has usually permitted counsel (II, 1601, 1616; III, 1667), sometimes under conditions (II, 1604, 1616); but in a few cases has declined the request (II, 1608; III, 1666, footnote). In investigations before committees counsel usually have been admitted (III, 1741, 1846, 1847), sometimes even to assist a witness (III, 1772), and clause 2(k)(3) of rule XI now provides that witnesses at hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights (§ 803, *infra*). In examinations preliminary to impeachment counsel usually have been admitted (III, 1736, 2470, 2516) unless in cases wherein such proceedings were ex parte. During impeachment investigations against President Nixon and President Clinton, the Committee on the Judiciary admitted counsel to the President to be present, to make presentations and to examine witnesses during investigatory hearings (H. Rept. 93–1305, Aug. 20, 1974, p. 29219; H. Rept. 105–830, Dec. 16, 1998, p. 27819).

At one time the House required all counsel or agents representing persons or corporations before committees to be registered with the Clerk (III, 1771). The Federal Regulation of Lobbying Act (Title III of the Legislative Reorganization Act of 1946) requires all lobbyists to register with the Clerk of the House and the Secretary of the Senate (2 U.S.C. 1601).

SEC. XIV—ARRANGEMENT OF BUSINESS

§ 349. Advantages of an order of business.

The Speaker is not precisely bound to any rules as to what bills or other matter shall be first taken up; but it is left to his own discretion, unless the House on a question decide to take up a particular subject. *Hakew., 136.*

A settled order of business is, however, necessary for the government of the presiding person, and to restrain individual Members from calling up favorite measures, or matters under their special patronage, out of their just turn. It is useful also for directing the discretion of the House, when they are moved to take up a particular matter, to the prejudice of others, having

priority of right to their attention in the general order of business.

* * * * *

In this way we do not waste our time in debating what shall be taken up. We do one thing at a time; follow up a subject while it is fresh, and till it is done with; clear the House of business gradatim as it is brought on, and prevent, to a certain degree, its immense accumulation toward the close of the session.

Jefferson gave as a part of his comment on the law of Parliament the order of business in the Senate in his time. Both in the House and Senate the order of business has been changed to meet the needs of the times. The order of business now followed in the House is established by rule XIV; and this rule, with the rules supplemental thereto, take away to a very large extent the discretion exercised by the Speaker under the parliamentary law.

In the House before committees are appointed it is in order to offer a bill or resolution for consideration not previously considered by a committee (VII, 2103). In the 73d Congress, the House-passed before the adoption of rules and election of committees a bill of major importance (H.R. 1491, providing relief in the existing national emergency in banking), following a message from President Roosevelt recommending its immediate passage (Mar. 9, 1933, pp. 75–84). After committees are appointed, bills and resolutions not otherwise in order must be referred (VII, 2104).

§ 350. Conditions of the old and the modern orders of business.

Arrangement, however, can only take hold of matters in possession of the House. New matter may be moved at any time when no question is before the House. Such are original motions and reports on bills. Such are bills from the other House, which are received at all times, and receive their first reading as soon as the question then before the House is disposed of; and bills brought in on leave, which are read first whenever presented. So messages from the other House respecting

amendments to bills are taken up as soon as the House is clear of a question, unless they require to be printed, for better consideration. Orders of the day may be called for, even when another question is before the House.

In Jefferson's time the principles of this comment would have applied to both House and Senate; but in the House the pressure of business has become so great that the order of business may be interrupted at the will of the majority only by certain specified matters (see annotations following rule XIV). For matters not thus specified, interruption of the order takes place only by unanimous consent. For a discussion of the Speaker's policy of conferring recognition for such unanimous-consent requests, see § 956, *infra*.

SEC. XV—ORDER

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§ 351. Precedent in Parliament and the House.

In Parliament, "instances make order," per Speaker Onslow. *2 Hats., 141.* But what is done only by one Parliament, cannot be called custom of Parliament, by Prynne. *1 Grey, 52.*

In the House the Clerk is required to note all questions of order and the decisions thereon and print the record thereof as an appendix to the Journal (clause 2 of rule II). The Parliamentarian has the responsibility for compiling and updating the precedents (2 U.S.C. 28). The Committee Reform Amendments of 1974 gave the Speaker the responsibility to prepare an updated compilation of such precedents every two years (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). The Speaker feels constrained in his rulings to give precedent its proper influence (II, 1317), since the advantage of such a course are undeniable (IV, 4045). But decisions of the Speakers on questions of order are not like judgments of courts which conclude the rights of parties, but may be reexamined and reversed (IV, 4637), except on discretionary matters of recognition (II, 1425). It is rare, however, that such a reversal occurs.

SEC. XVI—ORDER RESPECTING PAPERS

§ 352. Safekeeping of papers and integrity of bills.

The Clerk is to let no journals, records, accounts, or papers be taken from the table or out of his custody. *2 Hats., 193, 194.*

Mr. Prynne, having at a Committee of the Whole amended a mistake in a bill without order or knowledge of the committee, was reprimanded. *1 Chand., 77.*

A bill being missing, the House resolved that a protestation should be made and subscribed by the members "before Almighty God, and this honorable House, that neither myself, nor any other to my knowledge, have taken away, or do at this present conceal a bill entitled," &c. *5 Grey, 202.*

After a bill is engrossed, it is put into the Speaker's hands, and he is not to let any one have it to look into. *Town, col. 209.*

In the House an alleged improper alteration of a bill was presented as a question of privilege and examined by a select committee. It being ascertained that the alteration was made to correct a clerical error, the committee reported that it was "highly censurable in any Member or officer of the House to make any change, even the most unimportant, in any bill or resolution which has received the sanction of this body" (III, 2598). Engrossed bills do not go into the Speaker's hands. Enrolled bills go to him for signature.

SEC. XVII—ORDER IN DEBATE

§ 353. Decorum of Members as to sitting in their places.

When the Speaker is seated in his chair, every member is to sit in his place. *Scob., 6; Grey, 403.*

In the House the decorum of Members is regulated by the various provisions of rule XVII; and this provision of the parliamentary law is practically obsolete.

§ 354. Procedure of the Member in seeking recognition.

When any Member means to speak, he is to stand up in his place, uncovered, and to address himself, not to the House, or any particular Member, but to the Speaker, who calls him by his name, that the House may take notice who it is that speaks. *Scob., 6; D'Ewes, 487, col. 1; 2 Hats., 77; 4 Grey, 66; 8 Grey, 108.* But Members who are indisposed may be indulged to speak sitting. *2 Hats., 75, 77; 1 Grey, 143.*

In the House a Member seeking recognition is governed by clause 1 of rule XVII, which differs materially from this provision of the parliamentary law. The Speaker, moreover, calls the Member, not by name, but as "the gentleman (or gentlewoman) from ———," naming the State. As long ago as 1832, at least, a Member was not required to rise from his own particular seat since seats are no longer assigned (V, 4979, footnote).

§ 355. Conditions under which a Member's right to the floor is subjected to the will of the House.

When a Member stands up to speak, no question is to be put, but he is to be heard unless the House overrule him. *4 Grey, 390; 5 Grey, 6, 143.*

In the House no question is put as to the right of a Member to the floor, unless he be called to order and dealt with by the House under clause 4 of rule XVII.

§ 356. The parliamentary law as to recognition by the Speaker.

If two or more rise to speak nearly together, the Speaker determines who was first up, and calls him by name, whereupon he proceeds, unless he voluntarily sits down and gives way to the other. But sometimes the House does not acquiesce in the Speaker's decision, in which case the question is put, "which Member was first up?" *2 Hats., 76; Scob., 7; D'Ewes, 434, col. 1, 2.*

In the Senate of the United States the President's decision is without appeal.

In the House recognition by the Chair is governed by clause 2 of rule XVII and the practice thereunder. There has been no appeal from a decision by the Speaker on a question of recognition since 1881, on which occasion Speaker Randall stated that the power of recognition is "just as absolute in the Chair as the judgment of the Supreme Court of the United States is absolute as to the interpretation of the law" (II, 1425–1428), and in the later practice no appeal is permitted (VIII, 2429, 2646, 2762).

§ 357. Right of the Member to be heard a second time.

No man may speak more than once on the same bill on the same day; or even on another day, if the debate be adjourned. But if it be read more than once in the same day, he may speak once at every reading. *Co., 12, 115; Hakew., 148; Scob., 58; 2 Hats., 75.* Even a change of opinion does not give a right to be heard a second time. *Smyth's Comw. L., 2, c. 3; Arcan, Parl., 17.*

But he may be permitted to speak again to clear a matter of fact, *3 Grey, 357, 416;* or merely to explain himself, *2 Hats., 73,* in some material part of his speech, *Ib., 75;* or to the manner or words of the question, keeping himself to that only, and not traveling into the merits of it, *Memorials in Hakew., 29;* or to the orders of the House, if they be transgressed, keeping within that line, and not falling into the matter itself. *Mem. Hakew., 30, 31.*

The House has modified the parliamentary law as to a Member's right to speak a second time by clause 3 of rule XVII and by permitting a Member controlling time in debate to yield to another more than once (Apr. 5, 2000, p. 4497). In ordinary practice rule XVII is not rigidly enforced, and Members find little difficulty in making such explanations as are contemplated by the parliamentary law.

§ 358. Participation of the Speaker in debate.

But if the Speaker rise to speak, the Member standing up ought to sit down, that he may be first heard. *Town., col. 205; Hale Parl., 133; Mem. in Hakew., 30, 31.* Nevertheless, though the Speaker may of right speak to matters of order, and be first heard, he is restrained from speaking on any other subject, except where the House have occasion for facts within his knowledge; then he may, with their leave, state the matter of fact. *3 Grey, 38.*

This provision is usually observed in the practice of the House only with regard to the conduct of the Speaker when he is in the chair. In several instances the Speaker has been permitted by the House to make a statement from the chair, as in a case wherein his past conduct had been criticized (II, 1369), and in a case wherein there had been unusual occurrences in the joint session to count the electoral vote (II, 1372), and in a matter relating to a contest for the seat of the Speaker as a Member (II, 1360). In rare instances the Speaker has made brief explanations from the chair without asking the assent of the House (II, 1373, 1374). Speakers have called others to the chair and participated in debate, usually without asking consent of the House (II, 1360, 1367, footnote, 1368, 1371; III, 1950), and in one case a Speaker on the floor debated a point of order which the Speaker pro tempore was to decide (V, 6097). In rare instances Speakers have left the chair to make motions on the floor (II, 1367, footnote). Speakers may participate in debate in Committee of the Whole, although the privilege was rarely exercised in early practice (II, 1367, footnote).

During the House's consideration of several measures relating to the use of military force in the Persian Gulf, the Speaker took the floor not only to debate the pending question but also to commend the House on the quality of its recent debates on matters of war and peace and to explain his decision to vote on measures relating thereto even though not required to do so (Jan. 12, 1991, p. 1085).

§ 359. Impertinent, superfluous, or tedious speaking.

No one is to speak impertinently or beside the question, superfluous, or tediously. *Scob., 31, 33; 2 Hats., 166, 168; Hale Parl., 133.*

The House, by clause 1 of rule XVII, provides that the Member shall address himself to the question under debate, but neither by rule nor prac-

tice has the House suppressed superfluous or tedious speaking, its hour rule (clause 2 of rule XVII) being a sufficient safeguard in this respect.

§ 360. Language reflecting on the House.

No person is to use indecent language against the proceedings of the House; no prior determination of which is to be reflected on by any Member, unless he means to conclude with a motion to rescind it. *2 Hats., 169, 170; Rushw., p. 3, v. 1, fol. 42.* But while a proposition under consideration is still *in fieri,* though it has even been reported by a committee, reflections on it are no reflections on the House. *9 Grey, 508.*

In the practice of the House it has been held out of order in debate to cast reflections on either the House or its membership or its decisions, whether present or past (V, 5132–5138). A Member who had used offensive words against the character of the House, and who declined to explain, was censured (II, 1247). Words impeaching the loyalty of a portion of the membership have also been ruled out (V, 5139). Where a Member reiterated on the floor certain published charges against the House, action was taken, although other business had intervened, the question being considered one of privilege (III, 2637). It has been held inappropriate and not in order in debate to refer to the proceedings of a committee except such as have been formally reported to the House (V, 5080–5083; VIII, 2269, 2485–2493; June 24, 1958, pp. 12120, 12122), but this rule does not apply to the proceedings of a committee of a previous Congress (Feb. 2, 1914, p. 2782), and the rationale for this limitation on debate is in part obsolete under the modern practice of the House insofar as the doctrine is applied to open committee meetings and hearings.

§ 361. Personalities in debate forbidden.

No person, in speaking, is to mention a Member then present by his name, but to describe him by his seat in the House, or who spoke last, or on the other side of the question, &c., *Mem. in Hakew., 3; Smyth's Comw., L. 2, c. 3;* nor to digress from the matter to fall upon the person, *Scob., 31; Hale Parl., 133; 2 Hats., 166,* by speaking reviling, nipping,

or unmannerly words against a particular Member. *Smyth's Comw., L. 2, c. 3.* * * *

In the practice of the House, a Member is not permitted to refer to another Member by name (V, 5144; VIII, 2526, 2529, 2536), or to address him in the second person (V, 5140–5143; VI, 600; VIII, 2529). The proper reference to another Member is "the gentleman (or gentlewoman) from ———," naming the Member's State (June 14, 1978, p. 17615; July 21, 1982, p. 17314). A mere reference to a Member's voting record does not form a basis for a point of order against those remarks (June 13, 2002, p. ——, p. ——).

By rule of the House (clause 1 of rule XVII), as well as by parliamentary law, personalities are forbidden (V, 4979, 5145, 5163, 5169), whether against the Member in the Member's capacity as Representative or otherwise (V, 5152, 5153), even if the references may be relevant to the pending question (Sept. 28, 1996, p. 25778). The House has censured a Member for gross personalities (II, 1251). The Chair may intervene to prevent improper references where it is evident that a particular Member is being described (Nov. 3, 1989, p. 27077).

The Chair does not rule on the veracity of a statement made by a Member in debate (Apr. 9, 1997, p. 4926). Although accusing another Member of deceit engages in personality, merely accusing another Member of making a mistake does not (Oct. 26, 2000, p. 24921).

Clause 1 of rule XVII has been held to proscribe: (1) referring to an identifiable group of sitting Members as having committed a crime (*e.g.*, stealing an election or obstructing justice) (Feb. 27, 1985, p. 3898; Speaker Wright, Mar. 21, 1989, p. 5016; May 19, 1998, p. 9738; July 15, 2004, p. ——); (2) referring in a personally critical manner to the political tactics of the Speaker or other Members (June 25, 1981, p. 14056); (3) referring to a particular Member of the House in a derogatory fashion (Nov. 3, 1989, p. 27077); (4) characterizing a Member as "the most impolite Member" (June 27, 1996, p. 15915); (5) questioning the integrity of a Member (July 25, 1996, p. 19170); (6) denunciating the spirit in which a Member had spoken (V, 6981); and (7) using a Member's surname as though an adjective for a word of ridicule (June 13, 2002, p. ——).

A distinction has been drawn between general language, which characterizes a measure or the political motivations behind a measure, and personalities (V, 5153, 5163, 5169). Although remarks in debate may not include personal attacks against a Member or an identifiable group of Members, they may address political motivations for legislative positions (Jan. 24, 1995, p. 2214; Mar. 8, 1995, pp. 7307, 7308; Nov. 17, 1995, p. 33832; June 13, 1996, p. 14043). For example, references to "down-in-the-dirt gutter politics" and "you people are going to pay" were held not to be personal references (Nov. 14, 1995, p. 32388). Similarly, characterizing a pending measure as a "patently petty political terrorist tactic" was held in order as a reference to the pending measure rather than to the motive or char-

acter of the measure's proponent (Nov. 9, 1995, p. 31413). The Chair also has held in order a general reference that "big donors" receive "access to leadership power and decisions" because the reference did not identify a specific Member as engaging in an improper quid pro quo (Apr. 9, 1997, p. 4926). A general statement that seemed to invoke racial stereotypes, but not in a context so inflammatory as to constitute a breach of decorum, was held not unparliamentary (Apr. 9, 2003, p. ——).

A Member should refrain from references in debate to the official conduct of a Member where such conduct is not the subject then pending before the House by way of either a report of the Committee on Standards of Official Conduct or another question of the privileges of the House (see, *e.g.*, July 24, 1990, p. 18917; Mar. 19, 1992, p. 6078; May 25, 1995, pp. 14434–37; Sept. 19, 1995, pp. 25454, 25455; Apr. 27, 2005, p. ——); and, although such references are ordinarily enforced by the Chair in response to a point of order, the Chair may take the initiative in order to maintain proper decorum (Apr. 1, 1992; June 17, 2004, p. ——). This stricture also precludes a Member from reciting news articles discussing a Member's conduct (Sept. 24, 1996, p. 24318), reciting the content of a previously tabled resolution raising a question of the privileges of the House (Nov. 17, 1995, p. 33853; Sept. 19, 1996, p. 23855), or even referring to a Member's conduct by mere insinuation (Sept. 12, 1996, p. 22899). Notice of an intention to offer a resolution as a question of the privileges of the House under rule IX does not render a resolution "pending" and thereby permit references to conduct of a Member proposed to be addressed therein (Sept. 19, 1996, p. 23811).

The stricture against references to a Member's conduct not then pending before the House applies to the conduct of all sitting Members (Apr. 1, 1992, p. 7899), including conduct that has previously been resolved by the Committee on Standards of Official Conduct or the House (Sept. 24, 1996, pp. 24483, 24485; Apr. 17, 1997, p. 5831). This stricture does not apply to the conduct of a former Member, provided the reference is not made in an attempt to compare the conduct of a former Member with the conduct of a sitting Member (Sept. 20, 1995, pp. 25825, 25826; Sept. 12, 1996, pp. 22900, 22901).

Debate on a pending privileged resolution recommending disciplinary action against a Member may necessarily involve personalities. However, clause 1 of rule XVII still prohibits the use of language that is personally abusive (see, *e.g.*, July 31, 1979, p. 21584; Jan. 21, 1997, p. 393) and the Chair may take the initiative to prevent violations of the rule (July 24, 2002, p. ——). Furthermore, during the actual pendency of such a resolution, a Member may discuss a prior case reported to the House by the Committee on Standards of Official Conduct for the purpose of comparing the severity of the sanction recommended in that case with the severity of the sanction recommended in the pending case, provided that the Member does not identify, or discuss the details of the past conduct of, a sitting Member (Dec. 18, 1987, p. 36271).

In addition to the prohibition against addressing a Member's conduct when it is not actually pending before the House, the Speaker has advised that Members should refrain from references in debate (1) to the motivations of a Member who filed a complaint before the Committee on Standards of Official Conduct (June 15, 1988, p. 14623; July 6, 1988, p. 16630; Mar. 22, 1989, p. 5130; May 2, 1989, p. 7735; Nov. 3, 1989, p. 27077); (2) to personal criticism of a member of the Committee on Standards of Official Conduct (Apr. 1, 1992, p. 7899; Mar. 3, 1995, p. 6715; Sept. 19, 1996, p. 23812; Sept. 24, 1996, p. 24317); and (3) to an investigation undertaken by the Committee on Standards of Official Conduct, including suggestion of a course of action (Mar. 3, 1995, p. 6715; Sept. 24, 1996, p. 24317; Sept. 28, 1996, p. 25778) or advocacy of an interim status report by the Committee (Sept. 12, 1996, p. 22900; Sept. 28, 1996, p. 25778).

A Member may not read in debate extraneous material critical of another Member, which would be improper if spoken in the Member's own words (May 25, 1995, pp. 14436, 14437; Sept. 12, 1996, p. 22898). Thus, words in a telegram read in debate which repudiated the "lies and half-truths" of a House committee report were ruled out of order as reflecting on the integrity of committee members (June 16, 1947, p. 7065), and unparliamentary references in debate to newspaper accounts used in support of a Member's personal criticism of another Member were similarly ruled out of order (Feb. 25, 1985, p. 3346).

For precedents applicable to references in debate to the President, see § 370, *infra*, or Members of the Senate, see § 371, *infra*.

§ 362. Criticism of the Speaker.

Complaint of the conduct of the Speaker should be presented directly for the action of the House and not by way of debate on other matters (V, 5188). In a case wherein a Member used words insulting to the Speaker the House on a subsequent day, and after other business had intervened, censured the offender (II, 1248). In such a case the Speaker would ordinarily leave the chair while action should be taken by the House (II, 1366; V, 5188; VI, 565). In the 104th Congress the Chair reaffirmed that it is not in order to speak disrespectfully of the Speaker, and that under the precedents the sanctions for such violations transcend the ordinary requirements for timeliness of challenges (II, 1248; Jan. 4, 1995, p. 552; Jan. 19, 1995, p. 1599). It is not in order to arraign the personal conduct of the Speaker (Jan. 18, 1995, p. 1441; Jan. 19, 1995, p. 1601). For example, it is not in order to charge dishonesty or disregard of the rules (July 11, 1985, p. 18550), to reflect on his patriotism by accusing him of "kowtowing" to persons who would desecrate the flag (June 20, 1990, p. 14877), to refer to him as a "crybaby" (Nov. 16, 1995, p. 33394), or to refer to official conduct of the Speaker that has previously been resolved by the Committee on Standards of Official Conduct or the House (Apr. 17, 1997, p. 5831). The Chair may take the initiative to admonish Members for references in debate that disparage the Speaker (June 25, 1981, p. 14056; Mar. 22, 1996, p. 6077). Debate on a resolution authorizing the Speaker to entertain mo-

tions to suspend the rules may not engage in personality by discussing the official conduct of the Speaker, even if possibly relevant to the question of empowerment of the Speaker (Sept. 24, 1996, p. 24485).

§ 363. Motives of Members not to be arraigned.

* * * The consequences of a measure may be reprobated in strong terms; but to arraign the motives of those who propose to advocate it is a personality, and against order. *Qui digreditur a materia ad personam,* Mr. Speaker ought to suppress. *Ord. Com., 1604, Apr. 19.*

The arraignment of the motives of Members is not permitted (V, 5147–51; Dec. 13, 1973, p. 41270), and the Speakers have intervened to prevent it, in the earlier practice preventing even mildest imputations (V, 5161, 5162). However, remarks in debate may address political, but not personal, motivations for legislative positions (Jan. 24, 1995, p. 2214; Mar. 8, 1995, pp. 7307, 7308; Nov. 17, 1995, p. 33832; June 13, 1996, p. 14043) or for committee membership (July 10, 1995, pp. 18257–59). Accusing another Member of hypocrisy has been held not in order (July 24, 1979, p. 20380; Mar. 29, 1995, p. 9675), and characterizing the motivation of a Member in offering an amendment as deceptive and hypocritical was ruled out of order (June 12, 1979, p. 11461). A statement in debate that an amendment could only be demagogic or racist because only demagoguery or racism impelled such an amendment was ruled out of order as impugning the motives of the Member offering the amendment (Dec. 3, 1973, pp. 41270, 41271). However, debate characterizing a pending measure as a "patently petty political terrorist tactic" was held in order as directed at the pending measure rather than the motive or the character of its proponent (Nov. 9, 1995, p. 31413). While in debate the assertion of one Member may be declared untrue by another, yet in so doing an intentional misrepresentation must not be implied (V, 5157–5160), and if stated or implied is censurable (II, 1305) and presents a question of privilege (III, 2717; VI, 607). A Member in debate having declared the words of another "a base lie," censure was inflicted by the House on the offender (II, 1249).

§ 364. Disorder and interruptions during debate.

No one is to disturb another in his speech by hissing, coughing, spitting, *6 Grey, 322; Scob., 8; D'Ewes, 332, col. 1, 640, col. 2,* speaking or whispering to another, *Scob., 6; D'Ewes, 487, col. 1;* nor stand up to interrupt him, *Town, col. 205; Mem.*

in Hakew., 31; nor to pass between the Speaker and the speaking Member, nor to go across the House, *Scob., 6,* or to walk up and down it, or to take books or papers from the table, or write there, *2 Hats., 171, p. 170.*

The House has, by clause 5 of rule XVII, prescribed certain rules of decorum differing somewhat from this provision of the parliamentary law, but supplemental to it rather than antagonistic. In one respect, however, the practice of the House differs from the apparent intent of the parliamentary law. In the House a Member may interrupt by addressing the Chair for permission of the Member speaking (V, 5006; VIII, 2465); but it is entirely within the discretion of the Member occupying the floor to determine when and by whom he shall be interrupted (V, 5007, 5008; VIII, 2463, 2465). There is no rule of the House requiring a Member having the floor to yield to another Member to whom he has referred during debate (Aug. 2, 1984, p. 22241). A Member may ask another to yield from any microphone in the Chamber, including those in the well, so long as not crossing between the Member having the floor and the Chair (June 5, 1998, p. 11170). The Chair may take the initiative in preserving order when a Member declining to yield in debate continues to be interrupted by another Member, may order that the interrupting Member's remarks not appear in the Record (July 26, 1984, p. 21247), and may admonish Members not to converse with a Member attempting to address the House (Feb. 21, 1984, p. 2758), as it is not in order to engage in disruption while another is delivering remarks in debate (June 27, 1996, p. 15915). On the opening day of the 103d Congress, during the customary announcement of policies with respect to particular aspects of the legislative process, the Chair elaborated on the rules of order in debate with a general statement concerning decorum in the House (Jan. 5, 1993, p. 105). Under this provision, the Chair may require a line of Members waiting to sign a discharge petition to proceed to the rostrum from the far right-hand aisle and require the line not to stand between the Chair and Members engaging in debate (Oct. 24, 1997, p. 23293). Hissing and jeering is not proper decorum in the House (May 21, 1998, p. 10282). For further discussion of interruptions in debate, see § 946, *infra*.

§ 365. Parliamentary method of silencing a tedious Member.

Nevertheless, if a Member finds that it is not the inclination of the House to hear him, and that by conversation or any other noise they endeavor to drown his voice, it is his most prudent way to submit to the pleasure of the House, and sit

down; for it scarcely ever happens that they are guilty of this piece of ill manners without sufficient reason, or inattention to a Member who says anything worth their hearing. *2 Hats., 77, 78.*

In the House, where the previous question and hour rule of debate have been used for many years, the parliamentary method of suppressing a tedious Member has never been imported into the practice (V, 5445).

§ 366. The parliamentary law as to naming a disorderly Member.

If repeated calls do not produce order, the Speaker may call by his name any Member obstinately persisting in irregularity; whereupon the House may require the Member to withdraw. He is then to be heard in exculpation, and to withdraw. Then the Speaker states the offense committed; and the House considers the degree of punishment they will inflict. *2 Hats., 167, 7, 8, 172.*

This provision of parliamentary law should be in conjunction with clause 4 of rule XVII, §§ 960–961, *infra*, particularly as this provision relates to the ultimate authority of the House to determine whether a Member ignoring repeated calls to order should be permitted to proceed in order.

§ 367. Proceedings in cases of assaults and affrays.

For instances of assaults and affrays in the House of Commons, and the proceedings thereon, see *1 Pet. Misc., 82; 3 Grey, 128; 4 Grey, 328; 5 Grey, 382; 6 Grey, 254; 10 Grey, 8.* Whenever warm words or an assault have passed between Members, the House, for the protection of their Members, requires them to declare in their places not to prosecute any quarrel, *3 Grey, 128, 293; 5 Grey, 280;* or orders them to attend the Speaker, who is to accommodate their differences, and report to the House, *3 Grey, 419;*

and they are put under restraint if they refuse, or until they do. *9 Grey, 234, 312.*

In several instances assaults and affrays have occurred on the floor of the House. Sometimes the House has allowed these affairs to pass without notice, the Members concerned making apologies either personally or through other Members (II, 1658–1662). In other cases the House has exacted apologies (II, 1646–1651, 1657), or required the offending Members to pledge themselves before the House to keep the peace (II, 1643). In case of an aggravated assault by one Member on another on the portico of the Capitol for words spoken in debate, the House censured the assailant and three other Members who had been present, armed, to prevent interference (II, 1655, 1656). Assaults or affrays in the Committee of the Whole are dealt with by the House (II, 1648–1651).

§ 368. Parliamentary law as to taking down disorderly words.

Disorderly words are not to be noticed till the Member has finished his speech. *5 Grey, 356; 6 Grey, 60.* Then the person objecting to them, and desiring them to be taken down by the Clerk at the table, must repeat them. The Speaker then may direct the Clerk to take them down in his minutes; but if he thinks them not disorderly, he delays the direction. If the call becomes pretty general, he orders the Clerk to take them down, as stated by the objecting Member. They are then a part of his minutes, and when read to the offending Member, he may deny they were his words, and the House must then decide by a question whether they are his words or not. Then the Member may justify them, or explain the sense in which he used them, or apologize. If the House is satisfied, no further proceeding is necessary. But if two Members still insist to take the sense of the House, the Member must withdraw before that question is stated, and then the sense of the House is to be taken. *2 Hats., 199;*

4 Grey, 170; 6 Grey, 59. When any Member has spoken, or other business intervened, after offensive words spoken, they can not be taken notice of for censure. And this is for the common security of all, and to prevent mistakes which must happen if words are not taken down immediately. Formerly they might be taken down at any time the same day. *2 Hats., 196; Mem. in Hakew., 71; 3 Grey, 48; 9 Grey, 514.*

The House has, by clause 4 of rule XVII, provided a method of procedure in cases of disorderly words. The House permits and requires them to be noticed as soon as uttered, and has not insisted that the offending Member withdraw while the House is deciding as to its course of action.

§ 369. Disorderly words taken down and reported from Committee of the Whole.

Disorderly words spoken in a committee must be written down as in the House; but the committee can only report them to the House for animadversion. *6 Grey, 46.*

This provision of the parliamentary law has been applied to the Committee of the Whole, rather than to select or standing committees, which are separately empowered to enforce rules of decorum (clause 1(a) of rule XI, which incorporates the provisions of rule XVII where applicable). The House has censured a Member for disorderly words spoken in Committee of the Whole and reported therefrom (II, 1259).

§ 370. References in debate to the Executive.

In Parliament, to speak irreverently or seditiously against the King is against order. *Smyth's Comw., L. 2, c. 3; 2 Hats., 170.*

This provision of the parliamentary law is manifestly inapplicable to the House (V, 5086); and it has been held in order in debate to refer to the President of the United States or his opinions, either with approval or criticism, provided that such reference be relevant to the subject under discussion and otherwise conformable to the Rules of the House (V, 5087–5091; VIII, 2500). Under this standard the following references are in order: (1) a reference to the probable action of the President (V, 5092); (2) an adjuration to the President to keep his word (although an improper form

of address) (Dec. 19, 1995, p. 37601); and (3) an accusation that the President "frivolously vetoed" a bill (Nov. 8, 1995, p. 31785).

Although wide latitude is permitted in debate on a proposition to impeach the President (V, 5093), Members must abstain from language personally offensive (V, 5094; Dec. 18, 1998, p. 27829); and Members must abstain from comparisons to the personal conduct of sitting Members of the House or Senate (Dec. 18, 1998, p. 27829). Furthermore, Members may not refer to evidence of alleged impeachable offenses by the President contained in a communication from an independent counsel pending before a House committee (Sept. 14, 1998, p. 20171; Sept. 17, 1998, p. 20758), although they may refer to the communication, itself, within the confines of proper decorum in debate (Oct. 6, 1998, p. 23841).

Personal abuse, innuendo, or ridicule of the President, is not permitted (VIII, 2497; Aug. 12, 1986, p. 21078; Oct. 21, 1987, p. 8857; Sept. 21, 1994, p. 25147). Under this standard it is not in order to call the President, or a presumptive major-party nominee for President, a "liar" or accuse him of "lying" (June 26, 1985, p. 17394; Sept. 24, 1992, pp. 27345, 27346; Nov. 15, 1995, p. 32587; June 6, 1996, pp. 13228, 13229; Mar. 18, 1998, p. 3937; Nov. 14, 2002, p. ——; July 15, 2003, p. ——; Mar. 24, 2004, p. ——). Indeed, any suggestion of mendacity is out of order. For example, the following remarks have been held out of order: (1) suggesting that the President misrepresented the truth, attempted to obstruct justice, and encouraged others to perjure themselves (Feb. 25, 1998, p. 2621); (2) accusing him of dishonesty (July 13, 2004, p. ——; June 29, 2005, p. ——), charging him with intent to be intellectually dishonest (May 9, 1990, p. 9828), or stating that many were convinced he had "not been honest" (Mar. 5, 1998, p. 2620); (3) accusing him of "raping" the truth (Apr. 24, 1996, p. 8807), not telling the truth (Oct. 29, 2003, p. ——), or distorting the truth (Sept. 9, 2003, p. ——); (4) stating that he was not being "straight with us" (Nov. 19, 2003, p. ——); (5) accusing him of being deceptive (Mar. 29, 2004, p. ——; Mar. 31, 2004, p. ——), fabricating an issue (July 6, 2004, p. ——), or intending to mislead the public (Oct. 6, 2004, p. ——; June 9, 2005, p. ——); (6) accusing him of intentional mischaracterization, although mischaracterization without intent to deceive is not necessarily out of order (July 19, 2005, p. ——).

Furthermore, the following remarks have been held out of order as unparliamentary references to the President, or to a presumptive major-party nominee for President: (1) attributing to him "hypocrisy" (Sept. 25, 1992, p. 27674); (2) accusing him of giving "aid and comfort to the enemy" (Jan. 25, 1995, p. 2352; May 6, 2004, p. ——); (3) accusing him of "demagoguery" (Jan. 23, 1996, p. 1144; Jan. 24, 1996, pp. 1220, 1221; May 30, 1996, pp. 12646, 12647); (4) calling him a "draft-dodger" (Apr. 24, 1996, pp. 8807, 8808; Sept. 30, 1996, p. 26603) or alleging unexcused absences from military service (May 5, 2004, p. ——), including allegations that the President was "A.W.O.L." (Sept. 22, 2004, p. ——); (5) describing his action as "cowardly" (Oct. 25, 1989, p. 25817); (6) referring to him as "a little bugger"

(Nov. 18, 1995, p. 33974); (7) alluding to alleged sexual misconduct on his part (May 10, 1994, p. 9697; Feb. 25, 1998, p. 1828; Mar. 5, 1998, p. 2620; May 18, 1998, p. 9418); (8) alluding to unethical behavior or corruption (*e.g.*, June 20, 1996, p. 14829; July 9, 2002, p. ——; Oct. 29, 2003, p. ——), such as implying a cause-and-effect relationship between political contributions and his actions as President (*e.g.*, May 22, 2001, p. ——; Sept. 29, 2004, p. ——), including an accusation that the President had "lined the pockets" of his "political cronies" and filled "campaign coffers" (Sept. 14, 2005, p. ——); (9) discussing "charges" leveled at the President or under investigation (Mar. 19, 1998, p. 4094; June 11, 1998, p. 12025), including alluding to "fund-raising abuses" (Mar. 14, 2000, p. 2716) or speculating that the Vice President might someday pardon the President for certain charges (Apr. 12, 2000, p. 5419); or discussing alleged criminal conduct (Sept. 10, 1998, p. 19976); (10) discussing personal conduct even as a point of reference or comparison (July 16, 1998, p. 15784; Sept. 9, 1998, p. 19735); (11) asserting that a major-party nominee had done something "disgusting" and "despicable' (Mar. 11, 2004, p. ——); (12) asserting that a major-party nominee is not "a large enough person" to apologize (Mar. 11, 2004, p. ——) or that the President does not care about black people (Sept. 8, 2005, p. ——). The Chair may admonish Members transgressing this stricture even after other debate has intervened (Jan. 23, 1996, p. 1144).

A Member may not read in debate extraneous material personally abusive of the President, which would be improper if spoken in the Member's own words (July 12, 1996, pp. 17109, 17110; July 26, 1996, p. 19458; Feb. 25, 1998, p. 1831; Mar. 3, 1993, p. 3958; Nov. 15, 1995, p. 32587; May 2, 1996, p. 10010; Mar. 17, 1998, p. 3799; July 15, 2003, p. ——; Sept. 16, 2003, p. ——). This prohibition includes the recitation of another Member's criticism of the President made off the floor (even if recited as a rebuttal to such criticism) (Dec. 17, 1998, p. 27775).

The Chair has advised that the protections afforded by Jefferson's Manual and the precedents against unparliamentary references to the President, himself, do not necessarily obtain for members of his family (July 12, 1990, p. 17206).

References in debate to former Presidents are not governed by these standards (Nov. 15, 1945, p. ——; June 27, 2002, p. ——).

In the 102d Congress, the Speaker enunciated a minimal standard of propriety for all debate concerning nominated candidates for the Presidency, based on the traditional proscription against personally offensive references to the President even in his capacity as a candidate (Speaker Foley, Sept. 24, 1992, p. 27344); and this policy has been extended to a presumptive major-party nominee for President (*e.g.*, Apr. 22, 2004, p. ——). However, references to the past statements or views of such nominee are not unparliamentary (May 6, 2004, p. ——).

For discussion of the stricture against addressing remarks in debate to the President, as in the second person, see § 945, *infra*.

On January 27, 1909 (VIII, 2497), the House adopted a report of a committee appointed to investigate the question, which report in part stated:

"The freedom of speech in debate in the House should never be denied or abridged, but freedom of speech in debate does not mean license to indulge in personal abuses or ridicule. The right of Members of the two Houses of Congress to criticize the official acts of the President and other executive officers is beyond question, but this right is subject to proper rules requiring decorum in debate. Such right of criticism is inherent upon legislative authority. The right to legislate involves the right to consider conditions as they are and to contrast present conditions with those of the past or those desired in the future. The right to correct abuses by legislation carries the right to consider and discuss abuses which exist or which are feared.

"It is, however, the duty of the House to require its Members in speech or debate to preserve that proper restraint which will permit the House to conduct its business in an orderly manner and without unnecessarily and unduly exciting animosity among its Members or antagonism from those other branches of the Government with which the House is correlated."

§ 371. References in debate to the other House and its Members.

It is a breach of order in debate to notice what has been said on the same subject in the other House, or the particular votes or majorities on it there; because the opinion of each House should be left to its own independency, not to be influenced by the proceedings of the other; and the quoting them might beget reflections leading to a misunderstanding between the two Houses. *8 Grey, 22.*

Until former clause 1 of rule XIV (currently clause 1 of rule XVII) was amended in the 100th and 101st Congresses (H. Res. 5, Jan. 6, 1987, p. 6; H. Res. 5, Jan. 3, 1989, p. 72), this principle of comity and parliamentary law as described by Jefferson governed debate in the House to the full extent of its provisions (see generally, V, 5095–5130; VIII, 2501–21; July 31, 1984, p. 21670; Deschler-Brown, ch. 29, § 44). From the 101st Congress through the 108th Congress, clause 1 of rule XVII permitted some factual references that were a matter of public record, references to the pendency or sponsorship in the Senate of certain measures, factual descriptions concerning a measure under debate in the House, and quotations from Senate proceedings relevant to the making of legislative history on a pending measure. In the 109th Congress clause 1 was amended to permit debate to include references to the Senate or its Members but within the general

stricture that requires Members to avoid personality (sec. 2(g), H. Res. 5, Jan. 4, 2005, p. ——). For a recitation of precedents under the former rule, see § 371 of the House Rules and Manual for the 108th Congress (H. Doc. 107–284). Since the adoption of the new rule, the following references to Members of the Senate have been held unparliamentary: (1) accusing Senate Republicans of hypocrisy (May 16, 2005, p. ——); (2) referring to Senate Democrats as "cowardly" (May 18, 2005, p. ——); (3) accusing a Senator of making slanderous statements (June 17, 2005, p. ——; June 21, 2005, p. ——).

It remains the duty of the Chair to call to order a Member who engages in personality with respect to a Senator (see § 374, *infra*), and the Chair may admonish a Member for unparliamentary references even after intervening recognition (Oct. 12, 1999, p. 24954; Nov. 15, 2001, p. ——). Although the Chair is under a duty to caution Members against unparliamentary references, the Chair will not advise Members on how to construct their remarks to avoid improper references (Feb. 25, 2004, p. ——).

Under the earlier form of the rule, the Chair had consistently held that the prohibition against improper references to Senators included (1) a reference not explicitly naming the Senator (VIII, 2512; Feb. 23, 1994, p. 2658; June 30, 1995, p. 18153; Feb. 27, 1997, pp. 2768, 2769), such as a recitation of a quote by "a Member of the other body" (Feb., 12, 2003, p. ——); (2) the reading of a paper making criticisms of a Senator (V, 5127); and (3) a reference to another person's criticism of a Senator (Aug. 4, 1983, p. 23145). Similarly, the Chair has consistently held that if references to the Senate are appropriate, the Member delivering them is not required to use the term "the other body," (Oct. 4, 1984, p. 30047) and, by the same token, references to "the other body" will not cure unparliamentary references directed to the Senate (*e.g.*, Oct. 2, 2002, p. ——; Apr. 2, 2004, p. ——).

Under the earlier form of the rule, the Chair held that remarks in debate during the pendency of an impeachment resolution may not include comparisons to the personal conduct of sitting Members of the House or Senate (Dec. 18, 1998, p. 27829) and remarks in debate may not criticize words spoken in the Senate by one not a Member of that body in the course of an impeachment trial (V, 5106). After examination by a committee under the earlier form of the rule, a speech reflecting on the character of the Senate was ordered to be stricken from the Record on the ground that it tended to create "unfriendly conditions between the two bodies * * * obstructive of wise legislation and little short of a public calamity" (V, 5129). Under the earlier form of the rule, where a Member had been assailed in the Senate, he was permitted to explain his own conduct and motives without bringing the whole controversy into discussion or assailing the Senator (V, 5123–5126). Propositions relating to breaches of these principles were entertained as a matter of privilege (V, 5129, 6980).

Under the earlier form of the rule, the Chair held (1) that a Member of the House may refer to a speech made in the Senate by one no longer

a Member of that body (V, 5112); and (2) that the precise standard in clause 1 of rule XVII (formerly rule XIV) for references to "individual Members of the Senate" did not apply to references to former Senators (Dec. 14, 1995, p. 36968).

Under the earlier form of the rule, references in debate to the Vice President (as President of the Senate) were governed by the standards of reference permitted toward the President. The new form of the rule does not change those standards. As such, a Member may criticize in debate the policies, or candidacy, of the Vice President but may not engage in personality (Dec. 14, 1995, p. 36968; July 14, 1998, p. 15314; Sept. 20, 2000, p. 18639). For example, it is not in order to allude to "wrongdoings [including] fund-raising telephone calls by the Vice President" (Mar. 14, 2000, p. ——); to speculate that he might someday "pardon" the President (Apr. 12, 2000, p. 5419); to accuse him of lying (Sept. 20, 2000, p. 18639; Sept. 21, 2000, p. 18789); to suggest "he has a problem with the truth" (Oct. 5, 2000, p. 21014); to allege "unethical behavior" or "corruption" (*e.g.*, Oct. 29, 2003, p. ——; Nov. 4, 2003, p. ——), including innuendo suggesting policy choices were made on the basis of personal pecuniary gain (July 7, 2004, p. ——; Sept. 13, 2005, p. ——) and accusations of abuse of power (July 14, 2004, p. ——). The rule also precludes the insertion in the Record of a paper making improper references to the Vice President (Sept. 19, 2000, p. 18580).

Under the earlier form of the rule, the Chair held that references to Members of the Senate in their capacities as candidates for President or Vice President were not prohibited. Where a Senator was a candidate for President or Vice President his official policies, actions, and opinions as a candidate were permitted to be criticized in terms not personally offensive (Speaker Wright, Sept. 29, 1988, p. 26683), but references attacking the character or integrity of a Senator even in that context were not in order (Oct. 30, 1979, p. 30150). The new form of the rule obviates the distinction between a sitting Senator who is a candidate for President and a sitting Senator who is not.

Under the earlier form of the rule, the Chair held the following references to the Senate out of order: (1) characterization of Senate action as a "further injustice" (Oct. 6, 1999, p. 24186), (2) accusation that the Senate was governed by "arcane budget rules" (Oct. 2, 2002, p. ——), (3) inference that the Senate had failed to follow the law (Oct. 3, 2002, p. ——); (4) questioning of the Senate with respect to its courage or resolve to take an action (Aug. 4, 1989, p. 19315); (5) accusation that the Senate minority held a bill "hostage" (Oct. 5, 1999, p. 23805); (6) speculation as to the intent or motives of a Senator (Oct. 11, 1984, pp. 32221–23; Oct. 21, 1997, p. 22328; Nov. 6, 2001, p. ——; Apr. 11, 2003, p. ——).

Under the earlier form of the rule, the Chair held that it was in order in debate, while discussing a question involving conference committee procedure, to state what actually occurred in a conference committee session,

without referring to or criticizing a named Member of the Senate (July 29, 1935, p. 12011).

§ 373. Complaint by one House of conduct of a Member of the other.

Neither House can exercise any authority over a Member or officer of the other, but should complain to the House of which he is, and leave the punishment to them.

In a notable instance, wherein a Member of the House had assaulted a Senator in the Senate Chamber for words spoken in debate, the Senate examined the breach of privilege and transmitted its report to the House, which punished the Member (II, 1622). A Senator having assailed a House Member in debate, the House messaged to the Senate a resolution declaring the language a breach of privilege and requested the Senate to take appropriate action (Sept. 27, 1951, p. 12270). The Senator subsequently asked unanimous consent to correct his remarks in the permanent Congressional Record, but objection was raised (Sept. 28, 1951, p. 12383). But where certain Members of the House, in a published letter, sought to influence the vote of a Senator in an impeachment trial, the House declined to consider the matter as a breach of privilege (III, 2657). While on one occasion it was held that a resolution offered in the House requesting the Senate to expunge from the Record statements in criticism of a Member of the House did not constitute a question of privilege, being in violation of the rule prohibiting references to the Senate in debate (VIII, 2519), a properly drafted resolution referring to language published in the record on a designated page of Senate proceedings as constituting a breach of privilege and requesting the Senate to take appropriate action concerning the subject has been held to present a question of the privileges of the House (VIII, 2516).

§ 374. Duty of the Speaker to prevent expressions offensive to the other House.

* * * Where the complaint is of words disrespectfully spoken by a Member of another House, it is difficult to obtain punishment, because of the rules supposed necessary to be observed (as to the immediate noting down of words) for the security of Members. Therefore it is the duty of the House, and more particularly of the Speaker, to interfere immediately, and not to permit expressions to go unnoticed which may give a ground of complaint to the other House, and in-

troduce proceedings and mutual accusations between the two Houses, which can hardly be terminated without difficulty and disorder. *3 Hats., 51.*

A rule of comity prohibiting most references in debate to the Senate was first enunciated in Jefferson's Manual and was strictly enforced in the House through the 108th Congress (albeit with certain exceptions adopted in the 100th and 101st Congresses in the former clause 1(b) of rule XVII) (§ 371, *supra* and § 945, *infra*). In the 109th Congress clause 1 was amended to permit references to the Senate or its Members, even critical references, so long as avoiding personality. (sec. 2(g), H. Res. 5, Jan. 4, 2005, p. ——). Nevertheless, it remains the duty of the Chair to call to order a Member who violates the rule in debate or through an insertion in the Record.

The Chair has distinguished between engaging in personality toward another Member of the House, as to which the Chair normally awaits a point of order from the floor, and improper references to Members of the Senate, which violate comity between the Houses, as to which the Chair normally takes initiative (Feb. 27, 1997, pp. 2778, 2779). The Chair may admonish Members to avoid unparliamentary references to the Senate even after intervening recognition (Oct. 12, 1999, p. 24954). Pending consideration of a measure relating to the Senate, the Speaker announced his intention to strictly enforce this provision of Jefferson's Manual prohibiting improper references to the Senate, and to deny recognition to Members violating the prohibition, subject to permission of the House to proceed in order (Speaker O'Neill, June 16, 1982, p. 13843). Under the earlier form of clause 1 of rule XVII, the Chair refused to respond to hypothetical questions as to the propriety of possible characterizations of Senate actions before their use in debate (Oct. 24, 1985, p. 28819). For a further discussion of the Speaker's duties regarding unparliamentary debate, see §§ 960–961, *infra*.

§ 375. Course of the Member when business concerning himself is under debate.

No Member may be present when a bill or any business concerning himself is debating; nor is any Member to speak to the merits of it till he withdraws. *2 Hats., 219.* The rule is that if a charge against a Member arise out of a report of a committee, or examination of witnesses in the House, as the Member knows from that to what points he is to direct his exculpation, he may be

heard to those points before any question is moved or stated against him. He is then to be heard, and withdraw before any question is moved. But if the question itself is the charge, as for breach of order or matter arising in the debate, then the charge must be stated (that is, the question must be moved), himself heard, and then to withdraw. *2 Hats., 121, 122.*

In 1832, during proceedings for the censure of a Member, the Speaker informed the Member that he should retire (II, 1366); but this seems to be an exceptional instance of the enforcement of the law of Parliament. In other cases, after the proposition for censure or expulsion has been proposed, Members have been heard in debate, either as a matter of right (II, 1286), as a matter of course (II, 1246, 1253), by express provision (II, 1273), and in writing (II, 1273), or by unanimous consent (II, 1275). A Member against whom a resolution of censure was pending was asked by the Speaker if he desired to be heard (VI, 236). But a Member was not permitted to depute another Member to speak in his behalf (II, 1273). In modern practice the Member has been permitted to speak in his own behalf, both in censure (June 10, 1980, pp. 13802–11) and expulsion proceedings (Oct. 2, 1980, pp. 28953–78). A Member-elect has been permitted to participate in debate on a resolution relating to his right to take the oath (Jan. 10, 1967, p. 23).

§ 376. Disqualifying personal interest of a Member.

Where the private interests of a Member are concerned in a bill or question he is to withdraw. And where such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man to be a judge in his own cause, it is for the honor of the House that this rule of immemorial observance should be strictly adhered to. *2 Hats., 119, 121; 6 Grey, 368.*

In the House it has not been usual for the Member to withdraw when his private interests are concerned in a pending measure, but the House

has provided by clause 1 of rule III that the Member shall not vote in such a contingency. In one instance the Senate disallowed a vote given by a Senator on a question relating to his own right to a seat; but the House has never had occasion to proceed so far (V, 5959).

§ 377. Wearing of hats by Members.

No Member is to come into the House with his head covered, nor to remove from one place to another with his hat on, nor is to put on his hat in coming in or removing, until he be set down in his place. *Scob., 6.*

In 1837 the parliamentary practice of wearing hats during the session was abolished by adoption of current clause 5 of rule XVII. See § 962, *infra*.

§ 378. Adjournment of questions of order.

A question of order may be adjourned to give time to look into precedents. *2 Hats., 118.*

As described in § 628, *infra*, the Speaker has declined, on a difficult question of order, to rule until he had taken time for examination (III, 2725; VI, 432; VII, 2106; VIII, 2174, 2396, 3475), and may take a parliamentary inquiry under advisement, especially where not related to the pending proceedings (VIII, 2174; Apr. 7, 1992, p. 8274). However, it is conceivable that a case might arise wherein this privilege of the Chair would require approval of the majority of the House to prevent arbitrary obstruction of the pending business by the Chair. The law of Parliament evidently contemplates that the adjournment of a question of order shall be controlled by the House. On occasion, the Chair has reversed as erroneous a decision previously made (VI, 639; VII, 849; VIII, 2794, 3435).

§ 379. House's control over question of the Speaker.

In Parliament, all decisions of the Speaker may be controlled by the House. *3 Grey, 319.*

The Speaker's decision on a decision of order is subject to appeal by any Member (clause 5 of rule I).

SEC. XVIII—ORDERS OF THE HOUSE

§ 380. Keeping of the doors of the House.

Of right, the door of the House ought not to be shut, but to be kept by porters, or Sergeants-at-Arms, assigned for that purpose. *Mod ten. Parl., 23.*

§ 381. Right of the Member to demand execution of the subsisting order.

The only case where a Member has a right to insist on anything, is where he calls for the execution of a subsisting order of the House. Here there having been already a resolution, any person has a right to insist that the Speaker, or any other whose duty it is, shall carry it into execution; and no debate or delay can be had on it.

As a request for unanimous consent to consider a bill is in effect a request to suspend the order of business temporarily, a Member has the right at any time to demand the "regular order" (IV, 3058). Where the regular order is demanded pending a request for unanimous consent, further reservation of the right to object thereto is precluded (Speaker Foley, Nov. 14, 1991, p. 32128). Occasionally a Member may incorrectly demand the "regular order" to assert that remarks are not confined to the question under debate. On such an occasion the Chair may treat the demand as a point of order requiring a ruling by the Chair (May 1, 1996, pp. 9888, 9889).

§ 382. Parliamentary law for clearing the galleries.

Thus any Member has a right to have the House or gallery cleared of strangers, an order existing for that purpose; or to have the House told when there is not a quorum present. *2 Hats., 87, 129.* How far an order of the House is binding, see *Hakew., 392.*

Absent an existing order for that purpose, a Member may not demand that the galleries be cleared, as this power resides in the House (II, 1353), which has by rule extended the power to the Speaker (clause 2 of rule I) and the Chairman of the Committee of the Whole (clause 1 of rule XVIII), but not to the individual Member.

§ 383. Parliamentary law as to proceeding with orders of the day.

But where an order is made that any particular matter be taken up on a particular day, there a question is to be put, when it is called for, whether the House will now proceed to that matter? Where orders of the day are on impor-

tant or interesting matter, they ought not to be proceeded on till an hour at which the House is usually full [which in Senate is at noon].

The rule of the House providing for raising the question of consideration (clause 3 of rule XVI) has, in connection with the practice as to special orders of business, superseded this provision of the parliamentary law. The House always proceeds with business at its hour of meeting, unless prevented by a point that no quorum is present (IV, 2732).

§ 384. Orders of the day now obsolete.

Orders of the day may be discharged at any time, and a new one made for a different day, *3 Grey, 48, 313.*

The House found the use of "Orders of the day" as a method of disposing business impracticable as long ago as 1818, and not long after abandoned their use (IV, 3057), although an interesting reference to them survives in clause 1 of rule XIV. The House proceeds under rule XIV unless that order is displaced by the use of special orders of business or the intervention of privileged business.

§ 385. Business at the end of a session.

When a session is drawing to a close and the important bills are all brought in, the House, in order to prevent interruption by further unimportant bills, sometimes comes to a resolution that no new bill be brought in, except it be sent from the other House. *3 Grey, 156.*

This provision is obsolete so far as the practice of the House is concerned, as business goes on uninterruptedly until the Congress expires (clause 6 of rule XI).

§ 386. Effect of end of the session on existing orders, especially as to imprisonment.

All orders of the House determine with the session; and one taken under such an order may, after the session is ended, be discharged on a habeas corpus. *Raym., 120; Jacob's L. D. by Ruffhead; Parliament, 1 Lev., 165, Pitchara's case.*

The House, by clause 6 of rule XI and the practice thereunder, has modified the rule of Parliament as to business pending at the end of a session which is not at the same time the end of a Congress. A standing order,

like that providing for the hour of daily meeting of the House, expires with a session (I, 104–109). The House uses few standing orders. However, in the first session of the 104th Congress, the House continued a standing order regarding special-order and morning-hour speeches for the remainder of the entire Congress (May 12, 1995, p. 12765). In 1866 the House discussed its power to imprison for a period longer than the duration of the existing session (II, 1629), and in 1870, for assaulting a Member returning to the House from absence on leave. Patrick Woods was committed for a term extending beyond the adjournment of the session, but not beyond the term of the existing House (II, 1628).

§ 387. Jefferson's views as to the constitutional power to make rules.

Where the Constitution authorizes each House to determine the rules of its proceedings it must mean in those cases (legislative, executive, or judiciary) submitted to them by the Constitution, or in something relating to these, and necessary toward their execution. But orders and resolutions are sometimes entered in the journals having no relation to these, such as acceptances of invitations to attend orations, to take part in procession, etc. These must be understood to be merely conventional among those who are willing to participate in the ceremony, and are therefore, perhaps, improperly placed among the records of the House.

§ 388. The House's construction of its power to adopt rules.

The House has frequently examined its constitutional power to make rules, and this power also has been discussed by the Supreme Court (V, 6755). It has been settled that Congress may not by law interfere with the constitutional right of a future House to make its own rules (I, 82; V, 6765, 6766), or to determine for itself the order of proceedings in effecting its organization (I, 242–245; V, 6765, 6766). It also has been determined, after long discussion and trial by practice, that one House may not continue its rules in force to and over its successor (I, 187, 210; V, 6002, 6743–6747; Jan. 22, 1971, p. 132). Congress may bind itself in matters of procedure (II, 1341; V, 6767, 6768), but its ability to so bind a succeeding Congress has been called into doubt (V, 6766). In one case the Chair denied the authority of such a law that conflicted with a rule of the House (IV, 3579). The theories involved in this question have been most carefully ex-

amined and decisively determined in reference to the law of 1851, which directs the method of procedure for the House in its constitutional function of judging the elections of its Members; and it has been determined that this law is not of absolute binding force on the House, but rather a wholesome rule not to be departed from except for cause (I, 597, 713, 726, 833; II, 1122). In modern practice, existing statutory procedures, including provisions of concurrent resolutions, are readopted as Rules of the House at the beginning of each Congress (see, *e.g.*, H. Res. 6, Jan. 4, 1995, p. 462). This practice was codified in clause 1 of rule XXVIII when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 75, see § 1013, *infra*). Where the House amended a standing rule of general applicability during a session and the amended rule did not require prospective application, the rule was interpreted to apply retroactively (Sept. 28, 1993, p. 22719).

As to the participation on occasions of ceremony, the House has entered its orders on its journal; but it rarely attends outside the Capitol building as a body, usually preferring that its Members go individually (V, 7061–7064) or that it be represented by a committee (V, 7053–7056). It has discussed, but not settled, its power to compel a Member to accompany it without the Hall on an occasion of combined business and ceremony (II, 1139). But the House remains in session for the inauguration of the President on the portico of the Capitol (Jan. 20, 1969, pp. 1288–92) and the mace is carried to the ceremony.

SEC. XIX—PETITION

§ 389. Petitions, remonstrances, and memorials.

A petition prays something. A remonstrance has no prayer. *1 Grey, 58.*

The Rules of the House make no mention of remonstrances, but do mention petitions and memorials (clause 3 of rule XII). Resolutions of State legislatures and of primary assemblies of the people are received as memorials (IV, 3326, 3327), but papers general or descriptive in form may not be presented as memorials (IV, 3325).

§ 390. Signing and presentation of petitions.

Petitions must be subscribed by the petitioners *Scob., 87; L. Parl., c. 22; 9 Grey, 362,* unless they are attending, *1 Grey, 401* or unable to sign, and averred by a member, *3 Grey, 418.* But a petition not subscribed, but which the member presenting it affirmed to be all in the handwriting

of the petitioner, and his name written in the beginning, was on the question (March 14, 1800) received by the Senate. The averment of a member, or of somebody without doors, that they know the handwriting of the petitioners, is necessary, if it be questioned. *6 Grey, 36.* It must be presented by a member, not by the petitioners, and must be opened by him holding it in his hand. *10 Grey, 57.*

In the House petitions have been presented for many years by filing with the Clerk (clause 3 of rule XII). Members file them, and petitioners do not attend on the House in the sense implied in the parliamentary law. In cases where a petition set forth serious changes, the petitioner was required to have his signature attested by a notary (III, 2030, footnote).

§ 391. Parliamentary law for the reception of petitions.

Regularly a motion for receiving it must be made and seconded, and a question put, whether it shall be received, but a cry from the House of "received," or even silence, dispenses with the formality of this question. It is then to be read at the table and disposed of.

Before the adoption of the provisions of clause 3 of rule XII, petitions were presented from the floor by Members, and questions frequently arose as to the reception thereof (IV, 3350–3356). But under the present practice such procedure does not occur.

SEC. XX—MOTION

§ 392. Parliamentary law as to making, withdrawing, and reading of motions.

When a motion has been made, it is not to be put to the question or debated until it is seconded. *Scob., 21.*

It is then, and not till then, in possession of the House, and can not be withdrawn but by leave of the House. It is to be put into writing, if the House or Speaker require it, and must be

read to the House by the Speaker as often as any Member desires it for his information. *2 Hats., 82.*

The House has long since dispensed with the requirement of a second for ordinary motions (clause 1 of rule XVI; V, 5304); and the requirement of a second for a motion to suspend the rules was eliminated in the 102d Congress (H. Res. 5, Jan. 3, 1991, p. 39). Clause 2 of rule XVI provides further that a motion may be withdrawn before decision or amendment (see § 904, *infra*); and clause 1 of the same rule provides that the motion shall be reduced to writing on the demand of any Member (see § 902, *infra*). In the practice of the House, when a paper on which the House is to vote has been read once, the reading may not be required again unless the House shall order it read (V, 5260).

§ 393. Interruptions of the Member having the floor.

It might be asked whether a motion for adjournment or for the orders of the day can be made by one Member while another is speaking? It can not. When two Members offer to speak, he who rose first is to be heard, and it is a breach of order in another to interrupt him, unless by calling him to order if he departs from it. And the question of order being decided, he is still to be heard through. A call for adjournment, or for the order of the day, or for the question, by gentlemen from their seats, is not a motion. No motion

§ 394. Members required to rise to make motions, call for the order of business, etc.

can be made without rising and addressing the Chair. Such calls are themselves breaches of order, which, though the Member who has risen may respect, as an expression of impatience of the House against further debate, yet, if he chooses, he has a right to go on.

The practice of the House has modified the principle that the Member who rises first is to be recognized (clause 2 of rule XVII); but in other respects the principles of this paragraph of the law of Parliament are in force.

SEC. XXI—RESOLUTIONS

§ 395. Orders and resolutions of the House.

When the House commands, it is by an "order." But fact, principles, and their own opinions and purposes, are expressed in the form of resolutions.

A resolution for an allowance of money to the clerks being moved, it was objected to as not in order, and so ruled by the Chair; but on appeal to the Senate (*i.e.,* a call for their sense by the President, on account of doubt in his mind, according to [clause 5 of rule XXII]) the decision was overruled. *Jour., Senate, June 1, 1796.* I presume the doubt was, whether an allowance of money could be made otherwise than by bill.

§ 396. Concurrent resolutions of the two Houses.

Mr. Jefferson's citation in section XXI has been conformed to current Rules of the House. In the modern practice concurrent resolutions have been developed as a means of expressing fact, principles, opinions, and purposes of the two Houses (II, 1566, 1567). Joint committees are authorized by resolutions of this form (III, 1998, 1999), and they are used in authorizing correction of bills agreed to by both Houses (VII, 1042), amendment of enrolled bills (VII, 1041), amendment of conference reports (VIII, 3308), requests for return of bills sent to the President (VII, 1090, 1091), authorizing the printing of certain enrolled bills by hand in the remaining days of a session (H. Con. Res. 436, Dec. 20, 1982, p. 32875), providing for joint session to receive message from the President (VIII, 3335, 3336), authorizing the printing of congressional documents (H. Con. Res. 66, July 1, 1969, p. 17948); paying a birthday tribute to former President Truman (H. Con. Res. 216, Apr. 24, 1969, p. 10213); calling for the humane treatment of prisoners of war in Vietnam (H. Con. Res. 454, Dec. 15, 1969, p. 39037), and fixing time for final adjournment (VIII, 3365). The Congressional Budget Act of 1974 (P.L. 93–344) provides for the adoption by both Houses of concurrent resolutions on the budget which become binding on both Houses with respect to congressional budget procedures (see § 1127, *infra*). A concurrent resolution is binding on neither House until agreed to by both (IV, 3379), and, since not legislative in nature, is not sent to the President for approval (IV, 3483). A concurrent resolution is not a bill or joint resolution within the meaning of clause 5 of rule XXI (requiring

a three-fifths vote for approval of such a measure if carrying an increase in a rate of tax on income) (Speaker Gingrich, May 18, 1995, p. 13499). In the 106th Congress the Senate neglected to adopt a House concurrent resolution vacating signatures of the Presiding Officers on an enrolled bill and laying that bill on the table as overtaken by another enactment (H. Con. Res. 234, adopted by the House on Nov. 18, 1999, p. 30719). The Congress subsequently enacted section 1401 of the Miscellaneous Appropriations Act of 2001, which adopted that concurrent resolution (as enacted by P.L. 106–554).

§ 397. Joint resolutions.

Another development of the modern practice is the joint resolution, which is a bill so far as the processes of the Congress in relation to it are concerned (IV, 3375; VII, 1036). With the exception of joint resolutions proposing amendments to the Constitution (V, 7029), all these resolutions are sent to the President for approval and have the full force of law. They are used for what may be called the incidental, unusual, or inferior purposes of legislating (IV, 3372), as extending the national thanks to individuals (IV, 3370), the invitation to Lafayette to visit America (V, 7082, footnote), the welcome to Kossuth (V, 7083), notice to a foreign government of the abrogation of a treaty (V, 6270), declaration of intervention in Cuba (V, 6321), correction of an error in an existing act of legislation (IV, 3519; VII, 1092), enlargement of scope of inquiries provided by law (VII, 1040), election of managers for National Soldiers' Homes (V, 7336), special appropriations for minor and incidental purposes (V, 7319), continuing appropriations (H.J. Res. 790, P.L. 91–33, p. 17015); establishing the date for convening of Congress (H.J. Res. 1041, P.L. 91–182, p. 40982); extending the submission date under law for transmittal of the Budget and Economic Report to Congress by the President (H.J. Res. 635, P.L. 97–469, p. 32936); and extending the termination date for a law (H.J. Res. 864, P.L. 91–59, p. 22546). At one time they were used for purposes of general legislation; but the two Houses finally concluded that a bill was the proper instrumentality for this purpose (IV, 3370–3373). A joint resolution has been changed to a bill by amendment (IV, 3374), but in the later practice it has become impracticable to do so.

Where a choice between a concurrent resolution and a joint resolution is not dictated by law, the House by its votes on consideration of a measure decides which is the appropriate vehicle (and a point of order does not lie that a concurrent rather than a joint resolution would be more appropriate to express the sense of the Congress on an issue) (Mar. 16, 1983, p. 5669).

* * * * *

SEC. XXIII—BILLS, LEAVE TO BRING IN

§ 398. Obsolete provisions as to introduction of bills.

When a Member desires to bring in a bill on any subject, he states to the House in general terms the causes for doing it, and concludes by moving for leave to bring in a bill, entitled, &c. Leave being given, on the question, a committee is appointed to prepare and bring in the bill. The mover and seconder are always appointed of this committee, and one or more in addition. *Hakew., 132; Scob., 40.* It is to be presented fairly written, without any erasure or interlineation, or the Speaker may refuse it. *Scob., 41; 1 Grey, 82, 84.*

This provision is obsolete, rule XII providing an entirely different method of introducing bills through the hopper. The introduction of bills by leave was gradually dropped by the practice of the House, and after 1850 the present free system of permitting Members to introduce at will bills for printing and reference began to develop (IV, 3365).

SEC. XXIV—BILLS, FIRST READING

§ 399. Obsolete requirements as to first reading of bills.

When a bill is first presented, the Clerk reads it at the table, and hands it to the Speaker, who, rising, states to the House the title of the bill; that this is the first time of reading it; and the question will be, whether it shall be read a second time? then sitting down to give an opening for objections. If none be made, he rises again, and puts the question, whether it shall be read a second time? *Hakew., 137, 141.* A bill cannot be amended on the first reading, *6 Grey, 286;* nor is it usual for it to be opposed then, but it may be done, and rejected. *D'Ewes, 335, col. 1; 3 Hats., 198.*

This provision is obsolete, the practice under clause 8 of rule XVI now governing the procedure of the House.

SEC. XXV—BILLS, SECOND READING

§ 400. Obsolete parliamentary law as to second reading.

The second reading must regularly be on another day. *Hakew., 143.* It is done by the Clerk at the table, who then hands it to the Speaker. The Speaker, rising, states to the House the title of the bill; that this is the second time of reading it; and that the question will be, whether it shall be committed, or engrossed and read a third time? But if the bill came from the other House, as it always comes engrossed, he states that the question will be, whether it shall be read a third time? and before he has so reported the state of the bill, no one is to speak to it. *Hakew., 143, 146.*

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

The provisions of this paragraph are to a large extent obsolete, the practice under clause 8 of rule XVI now governing.

SEC. XXVI—BILLS, COMMITMENT

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

If on motion and question it be decided that the bill shall be committed, it may then be moved to be referred to Committee of the Whole House, or to a special committee. If the latter, the Speaker

proceeds to name the committee. Any member also may name a single person, and Clerk is to write him down as of the committee. But the House have a controlling power over the names and number, if a question be moved against any one; and may in any case put in and put out whom they please.

This paragraph is to a large extent obsolete. Bills are referred in the first instance by the Speaker to standing committees as prescribed by the rules (rule XII), and references of reported bills to the proper calendar of the House are also made under direction of the Speaker (clause 2 of rule XIII). Reference of a matter under consideration is made by a motion to refer which specifies the committee and may provide for a select committee of a specified number of persons (IV, 4402). But such committee is appointed only by the Speaker (clause 11 of rule I).

Clause 2 of rule XIX provides that the Speaker may entertain a motion to commit to a standing or select committee with or without instructions pending or following the ordering of the previous question.

§ 402. Obsolete provisions as to constitution of committees.

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

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

§ 403. Delivery of bills to committees.

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

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

§ 404. Obsolete provision for ordering a committee to withdraw and bring back a bill.

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

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

§ 405. Commital with directions to report forthwith.

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

§ 406. Discharge of a committee.

The motion to discharge a committee from the consideration of an ordinary legislative proposition is not privileged under the rules (IV, 3533, 4693; VIII, 2316), but where a matter involves a question of privilege (III, 2585, 2709; VIII, 2316), or is privileged under the rule relating to resolutions of inquiry (clause 7 of rule XIII; III, 1871; IV, 4695) or is provided privilege under statutes enacted under the rulemaking power of the House (see § 1130, *infra*), the motion to discharge is admitted. The motion is not debatable (III, 1868; IV, 4695), except as follows: (1) under statutory procedures; (2) under clause 2 of rule XV; and (3) under modern practice of the House, a motion to discharge a vetoed bill (Mar. 7, 1990, p. 3620; Sept. 19, 1996, p. 23815). The motion may be laid on the table (V, 5407; VI, 415), but the question of consideration may not be demanded against it (V, 4977).

§ 407. Meetings and action of committees.

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

For discussion of committee procedure generally, see § 791, *infra*. In the House the standing committees usually meet in their committee rooms, but there is no rule requiring them to meet there, and in the absence of direction by the House, committees designate the time and place of their meetings (VIII, 2214).

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

§ 408. Authorization of reports of committees.

The House has adhered to the principle that a report must be authorized by a committee acting together, and a paper signed by a majority of the committee acting separately has been ruled out (IV, 4584; VIII, 2210–2212, 2220; see also clause 2(h) of rule XI).

No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present (clause 2(h) of rule XI). A report is sometimes authorized by less than a majority of the whole committee, some members being silent or absent (II, 985, 986). In a rare instance a majority of a committee agreed to a report, but disagreed on the facts necessary to sustain the report (I, 819). In the situation where a committee finds itself unable to agree to a positive recommendation, being equally divided, it may report the fact to the House (I, 347; IV, 4665, 4666) and may include evidence, majority and minority views (III, 2403), minority views alone (II, 945), or propositions representing the opposing contentions (III, 2497; IV, 4664).

For each record vote in committee on amending or reporting a public measure or matter, the report to the House must disclose the total number of votes cast for and against and the names of those voting for and against

(clause 3 of rule XIII). A resolution alleging that a committee report on a bill contained descriptions of recorded votes on certain amendments as prescribed by clause 3(b) of rule XIII that were deliberate mischaracterizations and directing the chairman of the committee to file a supplemental report to change those descriptions (May 3, 2005, p. ——).

It is the duty of the chairman of each committee to report or cause to be reported promptly any measure approved by his committee and to take or cause to be taken necessary steps to bring the matter to a vote (clause 2 of rule XIII); and a report must be filed within seven days following the submission of a written request, signed by a majority of the committee members, directing such filing (clause 2 of rule XIII). A motion in committee directing its chairman to use all parliamentary means to bring a bill before the House was held to include the right to call up the bill on Calendar Wednesday (VII, 2217). Clause 2 of rule XIII, requiring the chairman of each committee to report or cause to be reported promptly measures approved by his committee and to take such necessary steps to bring the matter to a vote, is sufficient authority for the chairman to call up a bill on Calendar Wednesday (Speaker Rayburn, Feb. 22, 1950, p. 2161).

It is not essential that the report of a committee be signed (II, 1274; VIII, 2229), but the minority or other separate views are signed by those concurring in them (IV, 4671; VIII, 2229). In a case where a majority of a committee signed a report it was held valid, although a necessary one of that majority did not concur in all the statements (IV, 4587). If a report is actually sustained by the majority of a committee, it is not impeached by the fact that a lesser number sign it (II, 1091), or by the fact that later by the action of absentees more than a majority of the whole committee are found to have signed minority views (IV, 4585).

Objection being made that a report had not been authorized by a committee and there being doubt as to the validity of the authorization, the question as to the reception of the report is submitted to the House (IV, 4588–4591). But where the Speaker is satisfied of the validity or of the invalidity of the authorization he may decide the question (IV, 4584, 4592, 4593; VIII, 2211, 2212, 2222–2224). And in a case wherein it was shown that a majority of a committee had met and authorized a report he did not heed the fact that the meeting was not regularly called (IV, 4594). A bill improperly reported is not entitled to its place on the calendar (IV, 3117); but the validity of a report may not be questioned after the House has voted to consider it (IV, 4598), or after actual consideration has begun (IV, 4599; VIII, 2223, 2225).

Where a question was raised regarding a chairman's alteration of a committee amendment, the Speaker indicated that the proper time to raise a point of order was when the unprivileged report was called up for consideration (or when before the Committee on Rules for a special order of business) and not when filed in the hopper (May 16, 1989, p. 9356). A resolution including an allegation that the chairman deliberately and improperly refused to recognize a legitimate and timely objection by a member of the

committee to dispense with the reading of an amendment and resolving that the House disapproves of the manner in which the chairman conducted the markup and finding that the bill considered at that markup was not validly ordered reported was held to constitute a question of the privileges of the House (July 18, 2003, p. ——; July 23, 2003, p. ——).

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

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

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

A quorum of a committee may transact business and a majority of the quorum, even though it be a minority of the whole committee, may authorize a report (IV, 4586), but an actual quorum of a committee must be present to make action taken valid (VIII, 2212, 2222), unless the House authorizes less than a quorum to act (IV, 4553, 4554). A quorum of a committee must be present when alleged perjurious testimony is given in order to support a charge of perjury (Christoffel *v.* United States, 388 U.S. 84 (1949)). The absence of a quorum of a committee at the time a witness willfully fails to produce subpoenaed documents is not a valid defense in a prosecution for contempt where the witness failed to raise that objection before the committee (United States *v.* Bryan, 339 U.S. 323 (1950); United States *v.* Fleischman, 339 U.S. 349 (1950)).

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

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

This phrase must be read in conjunction with the power of a committee of the House to conduct proceedings in executive session (see clause 2(g) of rule XI). Thus, a committee may close its doors in executive session

meetings to persons not invited or required, including Members of the House who are not members of the committee (III, 1694; IV, 4558–4565; see discussion at IV, 4540). In the 95th Congress, clause 2(g)(2) of rule XI was amended to prohibit the exclusion of noncommittee members from nonparticipatory attendance in any closed hearing, except in the Committee on Standards of Official Conduct, unless the House by majority vote authorizes a committee or subcommittee to close its hearings to noncommittee members (H. Res. 5, 95th Cong., Jan. 4, 1977, pp. 53–70).

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

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

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

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

The paper before a committee, whether select or of the whole, may be a bill, resolutions, draught of an address, &c., and it may either originate with them or be referred to them. In every case the whole paper is read first by the Clerk, and then by the chairman, by paragraphs, *Scob., 49,* pausing at the end of each paragraph, and putting questions for amending, if proposed. In the case of resolutions or distinct subjects, originating with themselves, a question is put on each separately, as amended or unamended, and no final question on the whole, *3 Hats., 276;* but if they relate to the same subject, a question is put on the whole. If it be a bill, draught of an address, or other paper originating with them, they proceed by paragraphs, putting questions for amending, either by insertion or striking out, if proposed; but no question on agreeing to the paragraphs separately; this is reserved to the close, when a question is put on the whole, for

agreeing to it as amended or unamended. But if it be a paper referred to them, they proceed to put questions of amendment, if proposed, but no final question on the whole; because all parts of the paper, having been adopted by the House, stand, of course, unless altered or struck out by a vote. Even if they are opposed to the whole paper, and think it cannot be made good by amendments, they cannot reject it, but must report it back to the House without amendments, and there make their opposition.

In the House it has generally been held that a select or standing committee may not report a bill unless the subject matter has been referred to it (IV, 4355–4360), except that under the modern practice reports filed from the floor as privileged pursuant to clause 5 of rule XIII have been permitted on bills and resolutions originating in certain committees and not formally referred thereto. Pursuant to this paragraph some committees have originated drafts of bills for consideration and amendment before the introduction and referral of a numbered bill to committee(s). In the older practice the Committee of the Whole originated resolutions and bills (IV, 4705); but the later development of the rules governing the order of business would prevent the offering of a motion to go into Committee of the Whole for such a purpose, except by unanimous consent.

§ 413. Order of amending bills in the House.

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

produce advantages overweighing their inconveniences.

In the House, amendments to House bills are made before the previous question is ordered, pending the engrossment and third reading (IV, 3392; V, 5781; VII, 1051), and to Senate bills before the third reading (IV, 3393). Amendments may be offered to any part of the bill without proceeding consecutively section by section or paragraph by paragraph (IV, 3392). In Committee of the Whole, bills are read section by section or paragraph by paragraph and after a section or paragraph has been passed it is no longer subject to amendment (clause 5 of rule XVIII; § 980, *infra*; July 12, 1961, p. 12405).

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

To this natural order of beginning at the beginning there is a single exception found in parliamentary usage. When a bill is taken up in committee, or on its second reading, they postpone the preamble till the other parts of the bill are gone through. The reason is, that on consideration of the body of the bill such alterations may therein be made as may also occasion the alteration of the preamble. *Scob., 50; 7 Grey, 431.*

On this head the following case occurred in the Senate, March 6, 1800: A resolution which had no preamble having been already amended by the House so that a few words only of the original remained in it, a motion was made to prefix a preamble, which having an aspect very different from the resolution, the mover intimated that he should afterwards propose a correspondent amendment in the body of the resolution. It was objected that a preamble could not be taken up till the body of the resolution is done with; but the preamble was received, because we are in fact through the body of the res-

olution; we have amended that as far as amendments have been offered, and, indeed, till little of the original is left. It is the proper time, therefore, to consider a preamble; and whether the one offered be consistent with the resolution is for the House to determine. The mover, indeed, has intimated that he shall offer a subsequent proposition for the body of the resolution; but the House is not in possession of it; it remains in his breast, and may be withheld. The Rules of the House can only operate on what is before them. The practice of the Senate, too, allows recurrences backward and forward for the purpose of amendment, not permitting amendments in a subsequent to preclude those in a prior part, or *e converso.*

In the practice of the House the preamble of a joint resolution is amended after the engrossment and before the third reading (IV, 3414; V, 5469, 5470; VII, 1064), but the preamble of the joint resolution is not voted on separately in the later practice even if amended, since the question on passage covers the preamble as well as the resolving clause (Oct. 29, 1975, p. 34283). After an amendment to the preamble has been considered it is too late to propose amendments to the text of the bill (VII, 1065). In Committee of the Whole, amendments to the preamble of a joint resolution are considered following disposition of any amendments to the resolving clause (Mar. 9, 1967, pp. 6032–34; Mar. 22, 1967, pp. 7679–83; May 25, 1993, p. 11036). On the passage of a joint resolution a separate vote may not be demanded on the preamble (V, 6147, 6148); but where a simple resolution of the House has a preamble, the preamble may be laid on the table without affecting the status of the accompanying resolution (V, 5430). Amendments to the preamble of a concurrent or simple resolution are considered in the House following the adoption of the resolution (Dec. 4, 1973, p. 39337; June 8, 1970, pp. 18668–71). The House considers an amendment reported from the Committee of the Whole to the preamble of a Senate joint resolution following disposition of amendment to the text and pending third reading (May 25, 1993, p. 11036).

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

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

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

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

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

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

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

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

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

SEC. XXVII—REPORT OF COMMITTEE

§ 418. Parliamentary method of submitting reports.

The chairman of the committee, standing in his place, informs the House that the committee to whom was referred such a bill, have, according to order, had the same under consideration, and have directed him to report the same without any amendment, or with sundry amendments (as the case may be), which he is ready to do when the House pleases to receive it. And he or any other may move that it be now received; but the cry of "now, now," from the House, generally dispenses with the formality of a motion and question. He then reads the amendments, with the coherence in the bill, and opens the alterations and the reasons of the committee for such amendments, until he has gone through the whole. He then delivers it at the Clerk's table, where the amendments reported are read by the

Clerk without the coherence; whereupon the papers lie upon the table till the House, at its convenience, shall take up the report. *Scob., 52; Hakew., 148.*

This provision is to a large extent obsolete so far as the practice of the House is concerned. Most of the reports of committees are made by filing them with the Clerk without reading (clause 2 of rule XIII), and only the reports of committees having leave to report at any time are made by the chairman or other member of the committee from the floor (clause 5 of rule XIII). Except as provided in clause 2(c) of rule XIII, committee reports must be submitted while the House is in session; and this requirement may be waived by only by order of the House (by rule, suspension, or unanimous consent but not by motion) (Dec. 17, 1982, p. 31951). Subject to availability requirements under clause 4 and timing considerations under clause 6 of rule XIII, all reports privileged under clause 5 of rule XIII may be called up for consideration immediately after being filed (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34406). For a discussion of the three-day layover rule, see § 850, *infra*.

§ 419. Reports; dissolution and revival of select committees.

The report being made, the committee is dissolved and can act no more without a new power. *Scob. 51.* But it may be revived by a vote, and the same matter recommitted to them. *4 Grey, 361.*

This provision does not apply now to the Committees of the Whole or to the standing committees. It does apply to select committees, which expire when they report finally, but may be revived by the action of the House in referring in open House a new matter (IV, 4404, 4405). The provision does not preclude a standing committee from reporting a bill similar to one previously reported by such committee (VIII, 2311).

SEC. XXVIII—BILL, RECOMMITMENT

§ 420. Recommittal of a bill to a committee.

After a bill has been committed and reported, it ought not, in any ordinary course, to be recommitted; but in cases of importance, and for special reasons, it is sometimes recommitted, and usually to the same committee. *Hakew, 151.* If a report be recommitted before agreed to in the House, what has

passed in committee is of no validity; the whole question is again before the committee, and a new resolution must be again moved, as if nothing had passed. *3 Hats., 131—note.*

In Senate, January, 1800, the salvage bill was recommitted three times after the commitment.

Where a matter is recommitted with instructions the committee must confine itself within the instructions (IV, 4404), and if the instructions relate to a certain portion only of a bill, other portions may not be reviewed (V, 5526). When a report has been disposed of adversely a motion to recommit it is not in order (V, 5559). Bills are sometimes recommitted to the Committee of the Whole as the indirect result of the action of the House (clause 9 of rule XVIII; IV, 4784) or directly on motion either with or without instructions (V, 5552, 5553).

§ 421. Division of matters for reference to committees.

A particular clause of a bill may be committed without the whole bill, *3 Hats., 131;* or so much of a paper to one and so much to another committee.

In the usage of the House before the rules provided that petitions should be filed with the Clerk instead of being referred from the floor, it was the practice to refer a portion of a petition to one committee and the remainder to another when the subject matter called for such division (IV, 3359). Clause 2 of rule XII now permits the Speaker to refer bills, and resolutions, with or without time limitations, either (1) simultaneously to two or more committees for concurrent consideration, while indicating one committee of primary jurisdiction, (2) sequentially to appropriate committees after the report of the committee or committees initially considering the matter, (3) to divide the matter for referral, (4) to appoint an ad hoc committee with the approval of the House, or (5) to make other appropriate provisions, in order to assure that to the maximum extent feasible each committee with subject matter jurisdiction over provisions in that measure may consider and report to the House with respect thereto. Under former precedents a bill, resolution, or communication could not be divided for reference (IV, 4372, 4376).

SEC. XXIX—BILL, REPORTS TAKEN UP

§ 422. Consideration and action on reports.

When the report of a paper originating with a committee is taken up by the House, they proceed exactly as in

committee. Here, as in committee, when the paragraphs have, on distinct questions, been agreed to *seriatim, 5 Grey, 366; 6 Grey, 368; 8 Grey, 47, 104, 360; 1 Torbuck's Deb., 125; 3 Hats., 348,* no question needs be put on the whole report. *5 Grey, 381.*

In the House committees usually report bills, joint resolutions, concurrent resolutions, or simple resolutions. These come before the House for action while the written reports accompanying them, which are always printed, do not (IV, 4674), and even the reading of the reports is in order only in the time of debate (V, 5292). The Chair will not recognize a Member during debate on a bill in the House or in the Committee of the Whole for unanimous consent to amend the accompanying committee report in a specified manner, as the House should not change the substance of a committee report upon which it is not called to vote (Apr. 2, 1985, p. 7209; Nov. 7, 1989, p. 27762). In rare instances, however, committees submit merely written reports without propositions for action. Such reports being before the House may be debated before any specific motion has been made (V, 4987, 4988), and are in such case read to the House (IV, 4663) and after being considered the question is taken on agreeing. In such cases the report appears in full on the Journal (II, 1364; IV, 4675; V, 7177). When reports are acted on in this way it has not been the practice of the House to consider them by paragraphs, but the question has been put on the whole report (II, 1364).

§ 423. Action by the House on amendments recommended by committees.

On taking up a bill reported with amendments the amendments only are read by the Clerk. The Speaker then reads the first, and puts it to the question, and so on till the whole are adopted or rejected, before any other amendment be admitted, except it be an amendment to an amendment. *Elsynge's Mem., 53.* When through the amendments of the committee, the Speaker pauses, and gives time for amendments to be proposed in the House to the body of the bill; as he does also if it has been reported without amendments; putting no questions but on amendments

proposed; and when through the whole, he puts the question whether the bill shall be read a third time?

The procedure outlined by this provision of the parliamentary law applies to bills when reported from the Committee of the Whole; but in practice it is usual to vote on the amendments in gross. But any Member may demand a separate vote (see § 337, *supra*). The principle that the committee amendments should be voted on before amendments proposed by individual Members is recognized (IV, 4872–4876; V, 5773; VIII, 2862, 2863), except when it is proposed to amend a committee amendment. The Clerk reads the amendments and the Speaker does not again read them. Frequently the House orders the previous question on the committee amendments and the bill to final passage, thus preventing further amendment. When a bill is of such nature that it does not go to Committee of the Whole, it comes before the House from the House Calendar, on which it has been placed on being reported from the standing or select committee or pursuant to a special order of business. On being taken from the House Calendar the bill is read through and then the amendments proposed by the committee are read. In modern practice the House may adopt a special order "self-executing" the adoption of the reported committee amendments in the House, and may permit further amendment to the amended text (*e.g.*, H. Res. 245, 106th Cong., July 15, 1999, p. 16216).

SEC. XXX—QUASI-COMMITTEE

§ 424. Procedure "in the House as in Committee of the Whole."

If on motion and question the bill be not committed, or if no proposition for commitment be made, then the proceedings in the Senate of the United States and in Parliament are totally different. The former shall be first stated.

The proceeding of the Senate as in a Committee of the Whole, or in quasi-committee, is precisely as in a real Committee of the Whole, taking no question but on amendments. When through the whole, they consider the quasi-committee as risen, the House resumed without any motion, question, or resolution to that effect, and the President reports that "the House, acting as

in a Committee of the Whole, have had under their consideration the bill entitled, &c., and have made sundry amendments, which he will now report to the House." The bill is then before them, as it would have been if reported from a committee, and the questions are regularly to be put again on every amendment; which being gone through, the President pauses to give time to the House to propose amendments to the body of the bill, and, when through, puts the question whether it shall be read a third time?

The House may proceed "in the House as in Committee of the Whole" only by unanimous consent (IV, 4923) or special rule (Dec. 18, 1974, p. 40858). 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 the Committee of the Whole (Apr. 6, 1966, p. 7749; Aug. 3, 1970, p. 26918; Deschler, ch. 22, § 2.2). In the modern practice of the House an order for this procedure means merely that the bill will be considered as having been read for amendment and will be open for amendment and debate under the five-minute rule (Aug. 10, 1970, p. 28050; clause 5 of rule XVIII), without general debate (IV, 4924, 4925; VI, 639; VIII, 2431, 2432). The Speaker remains in the chair and, when the previous question is moved, makes no report but puts the question on ordering the previous question and then on engrossment and third reading and on passage.

For further description of the procedures applicable to the House as in the Committee of the Whole, and the application of those procedures to committees of the House, see § 427, *infra*.

§ 425. Motion to refer admitted "in the House as in Committee of the Whole."

After progress in amending the bill in quasi-committee, a motion may be made to refer it to a special committee. If the motion prevails, it is equivalent in effect to the several votes, that the committee rise, the House resume itself, discharge the Committee of the Whole, and refer the bill to a special committee. In that case, the amendments already made fall. But if the mo-

tion fails, the quasi-committee stands *in status quo.*

§ 426. Motions and procedure in quasi-committee in Jefferson's time.

How far does this XXVIIIth rule [of the Senate] subject the House, when in quasi-committee, to the laws which regulate the proceedings of Committees of the Whole? The particulars in which these differ from proceedings in the House are the following: 1. In a committee every member may speak as often as he pleases. 2. The votes of a committee may be rejected or altered when reported to the House. 3. A committee, even of the whole, cannot refer any matter to another committee. 4. In a committee no previous question can be taken; the only means to avoid an improper discussion is to move that the committee rise; and if it be apprehended that the same discussion will be attempted on returning into committee, the House can discharge them, and proceed itself on the business, keeping down the improper discussion by the previous question. 5. A committee cannot punish a breach of order in the House or in the gallery. *9 Grey, 113.* It can only rise and report it to the House, who may proceed to punish. The first and second of these peculiarities attach to the quasi-committee of the Senate, as every day's practice proves, and it seems to be the only ones to which the XXVIIIth rule meant to subject them; for it continues to be a House, and, therefore, though it acts in some respects as a committee, in others it preserves its character as a House. Thus (3) it is in the daily habit of referring its business to

a special committee. 4. It admits of the previous question. If it did not, it would have no means of preventing an improper discussion; not being able, as a committee is, to avoid it by returning into the House, for the moment it would resume the same subject there, the XXVIIIth rule declares it again a quasi-committee. 5. It would doubtless exercise its powers as a House on any breach of order. 6. It takes a question by yea and nay, as the House does. 7. It receives messages from the President and the other House. 8. In the midst of a debate it receives a motion to adjourn, and adjourns as a House, not as a committee.

§ 427. Motions and procedure "in the House as in Committee of the Whole."

In the modern practice of the House, the rule of Jefferson's Manual is followed to the extent that the House, while acting "in the House as in Committee of the Whole" may deal with disorder, take the yeas and nays, adjourn, refer to a committee even though the reading by sections may not have begun (IV, 4931, 4932), admit the motion to reconsider (VIII, 2793), receive messages (IV, 4923), and use the previous question (VI, 369; Procedure, ch. 23, § 6.3) (which differs from the previous question of Jefferson's time). The previous question may not be moved on a single section of a bill (IV, 4930), but it may be demanded on the bill while Members yet desire to offer amendments (IV, 4926–4929; VI, 639). Formerly a motion to close debate on the pending section of a bill being read by section for amendment in the House as in the Committee of the Whole was in order (IV, 4935), but under current practice a bill considered in the House as in Committee of the Whole is considered as read and open for amendment at any point (Aug. 10, 1970, p. 28050), and a motion is in order in the House as in Committee of the Whole to close debate on the bill or on an amendment (June 26, 1973, p. 21314). An amendment may be withdrawn at any time before action has been had on it (IV, 4935; June 26, 1973, p. 21305). An amendment in the nature of a substitute is in order after perfecting amendments have been considered (IV, 4933, 4934; V, 5788). The title also is amended after the bill has been considered (IV, 3416). A quorum of the House (and not of the Committee of the Whole) is required in the House as in the Committee of the Whole (VI, 639).

The procedures applicable in the House as in the Committee of the Whole generally apply to proceedings in committees of the House, except that a measure considered in committee must be read (by section) for amendment (see § 412, *supra*). Therefore, in committee a motion to limit debate under the five-minute rule must be confined to the portion of the measure then pending. Moreover, although the previous question may be moved on any pending amendment, it may be moved on the measure, itself, only when the entire measure has been read for amendment (or considered as read by unanimous consent).

SEC. XXXI—BILL, SECOND READING IN THE HOUSE

§ 428. Manner of reading a bill the second time.

In Parliament, after the bill has been read a second time, if on the motion and question it be not committed, or if no proposition for commitment be made, the speaker reads it by paragraphs, pausing between each, but putting no question but on amendments proposed; but when through the whole, he puts the question whether it shall be read a third time, if it came from the other house, or, if originating with themselves, whether it shall be engrossed and read a third time. The speaker reads sitting, but rises to put questions. The clerk stands while he reads.

But the Senate of the United States is so much in the habit of making many and material amendments at the third reading that it has become the practice not to engross a bill till it has passed—an irregular and dangerous practice, because in this way the paper which passes the Senate is not that which goes to the other House, and that which goes to the other House as the act of the Senate has never been seen in the Senate. In reducing numerous, difficult, and illegible amendments into the text the Secretary

may, with the most innocent intentions, commit errors which can never again be corrected.

In the House the Clerk and not the Speaker or Chairman of the Committee of the Whole reads bills on second reading. After the second reading, which is by paragraph or section in the Committee of the Whole, the bill is open to amendment (see § 980, *infra*). Clause 8 of rule XVI, as explained in § 942, *infra*, governs first and second readings of bills in the House and in Committee of the Whole.

§ 429. Test of strength on engrossment after amendment.

The bill being now as perfect as its friends can make it, this is the proper stage for those fundamentally opposed to make their first attack. All attempts at earlier periods are with disjointed efforts, because many who do not expect to be in favor of the bill ultimately, are willing to let it go on to its perfect state, to take time to examine it themselves and to hear what can be said for it, knowing that after all they will have sufficient opportunities of giving it their veto. Its two last stages, therefore, are reserved for this—that is to say, on the question whether it shall be engrossed and read a third time, and, lastly, whether it shall pass. The first of these is usually the most interesting contest, because then the whole subject is new and engaging, and the minds of the Members having not yet been declared by any trying vote the issue is the more doubtful. In this stage, therefore, is the main trial of strength between its friends and opponents, and it behooves everyone to make up his mind decisively for this question, or he loses the main battle; and accident and management may, and often do, prevent a successful rallying on the next and last question, whether it shall pass.

§ 430. Test of strength on a bill before amending.

In the House there are two other means of testing strength—one by raising the question of consideration when the bill first comes up (clause 3 of rule XVI), and the other by moving to strike out the enacting words when it is first open to amendment (clause 9 of rule XVIII). By these methods an adverse opinion may be expressed without permitting the bill to consume the time of the House.

§ 431. Endorsement of the title on an engrossed bill.

When the bill is engrossed the title is to be indorsed on the back, and not within the bill. *Hakew, 250.*

In the practice of the House and the Senate the title appears in its proper place in the engrossed bill, and also is endorsed, with the number, on the back.

SEC. XXXII—READING PAPERS

§ 432. Parliamentary law as to the reading of papers.

Where papers are laid before the House or referred to a committee every Member has a right to have them once read at the table before he can be compelled to vote on them; but it is a great though common error to suppose that he has a right, *toties quoties,* to have acts, journals, accounts, or papers on the table read independently of the will of the House. The delay and interruption which this might be made to produce evince the impossibility of the existence of such a right. There is, indeed, so manifest a propriety of permitting every Member to have as much information as possible on every question on which he is to vote, that when he desires the reading, if it be seen that it is really for information and not for delay, the Speaker directs it to be read without putting a question, if no one objects; but if objected to, a question must be put. *2 Hats., 117, 118.*

Until the 103d Congress the House, by former rule XXX, had a provision regarding the reading a paper other than that on which the House is called to give a final vote (see §§ 964, 965, *infra*).

§ 433. Papers not necessarily to be read on plea of privilege.

It is equally an error to suppose that any Member has a right, without a question put, to lay a book or paper on the table, and have it read, on suggesting that it contains matter infringing on the privileges of the House. *Ib.*

§ 434. Member not always privileged to read a paper in his place.

For the same reason a Member has not a right to read a paper in his place, if it be objected to, without leave of the House. But this rigor is never exercised but where there is an intentional or gross abuse of the time and patience of the House.

A Member has not a right even to read his own speech, committed to writing, without leave. This also is to prevent an abuse of time, and therefore is not refused but where that is intended. *2 Grey, 227.*

§ 435. Reports of committees not read except on order or in debate.

A report of a committee of the Senate on a bill from the House of Representatives being under consideration: on motion that the report of the committee of the House of Representatives on the same bill be read in the Senate, it passed in the negative. *Feb. 28, 1793.*

In the House ordinary reports are read only in time of debate (V, 5292), and subject to the authority of the House (V, 5293). But in a few cases, where a report does not accompany a bill or other proposition of action, but presents facts and conclusions, it is read to the House if acted on (II, 1364; IV, 4663).

§ 436. Reading of papers on reference.

Formerly, when papers were referred to a committee, they used to be first read; but of late only the titles, unless a Member insists they shall be read, and then nobody can oppose it. *2 Hats., 117.*

Under the rules, petitions, memorials, and communications are referred through the Clerk's desk, so that there is no opportunity for reading before reference, though messages from the President are read (clauses 1 and 3 of rule XII; clause 2 of rule XIV).

SEC. XXXIII—PRIVILEGED QUESTIONS

§ 437. Possession of a bill by the House.

It is no possession of a bill unless it be delivered to the Clerk to read, or the Speaker reads the title. *Lex. Parl., 274; Elysynge Mem., 85; Ord. House of Commons, 64.*

§ 438. Theory as to privileged questions.

It is a general rule that the question first moved and seconded shall be first put. *Scob., 28, 22; 2 Hats., 81.* But this rule gives way to what may be called privileged questions; and the privileged questions are of different grades among themselves.

In the House, by rule and practice, the system of privileged motions and privileged questions has been highly developed (rule IX, clause 5 of rule XIII, clause 1 of rule XIV, and clause 4 of rule XVI).

§ 439. Precedence of the motion to adjourn.

A motion to adjourn simply takes place of all others; for otherwise the House might be kept sitting against its will, and indefinitely. Yet this motion can not be received after another question is actually put and while the House is engaged in voting.

The rules and practice of the House have prescribed comprehensively the privilege and status of the motion to adjourn (clause 4 of rule XVI). The motion intervenes between the putting of the question and the voting, and also between the different methods of voting, as between a vote by

division and a vote by yeas and nays, as after the yeas and nays are ordered and before the roll call begins (V, 5366). But after the roll call begins it may not be interrupted (V, 6053). Clause 4 of rule XVI was amended in the 93d Congress to provide that a motion that when the House adjourns on that day it stand adjourned to meet at a day and time certain is of equal privilege with the motion to adjourn, if the Speaker in his discretion recognizes for that purpose (H. Res. 6, p. 26). In the 102d Congress the motion to authorize the Speaker to declare a recess was given an equal privilege (H. Res. 5, Jan. 3, 1991, p. 39).

§ 440. Obsolete parliamentary law governing orders of the day.

Orders of the day take place of all other questions, except for adjournment—that is to say, the question which is the subject of an order is made a privileged one, *pro hac vice.* The order is a repeal of the general rule as to this special case. When any Member moves, therefore, for the order of the day to be read, no further debate is permitted on the question which was before the House; for if the debate might proceed it might continue through the day and defeat the order. This motion, to entitle it to precedence, must be for the orders generally, and not for any particular one; and if it be carried on the question, "Whether the House will now proceed to the orders of the day?" they must be read and proceeded on in the course in which they stand, *2 Hats., 83;* for priority of order gives priority of right, which cannot be taken away but by another special order of business.

"Orders of the day" are part of the regular and daily order of business (IV, 3151). Although a mention of them has survived in clause 1 of rule XIV, "orders of the day" have disappeared from the practice of the House (IV, 3057) and should not be confused with "special orders of business," which are resolutions reported from the Committee on Rules pursuant to clause 5 of rule XIII to provide for consideration of matters not regularly in order. The term "special orders" is also used separately to describe permissions for Members to address the House at the conclusion of legislative business.

§ 441. Jefferson's discussion of certain privileged motions.

After these there are other privileged questions, which will require considerable explanation.

It is proper that every parliamentary assembly should have certain forms of questions, so adapted as to enable them fitly to dispose of every proposition which can be made to them. Such are: 1. The previous question. 2. To postpone indefinitely. 3. To adjourn a question to a definite day. 4. To lie on the table. 5. To commit. 6. To amend. The proper occasion for each of these questions should be understood.

The House by clause 4 of rule XVI has established the priority and other conditions of motions of this kind.

§ 442. Obsolete use of the previous question.

1. When a proposition is moved which it is useless or inexpedient now to express or discuss, the previous question has been introduced for suppressing for that time the motion and its discussion. *3 Hats., 188, 189.*

The previous question of the parliamentary law has been changed by the House into an instrument of entirely different use (V, 5445; clause 1 of rule XIX).

§ 443. The motion to postpone indefinitely.

2. But as the previous question gets rid of it only for that day, and the same proposition may recur the next day, if they wish to suppress it for the whole of that session, they postpone it indefinitely. *3 Hats., 183.* This quashes the proposition for that session, as an indefinite adjournment is a dissolution, or the continuance of a suit *sine die* is a discontinuance of it.

As already explained, in the House the previous question is no longer used as a method of postponement (V, 5445) but a means to bring the pending matter to an immediate vote. The House does use the motion to postpone indefinitely, and in clause 4 of rule XVI and the practice thereunder, has defined the nature and use of the motion.

§ 444. Postponement to a day certain.

3. When a motion is made which it will be proper to act on, but information is wanted, or something more pressing claims the present time, the question or debate is adjourned to such a day within the session as will answer the views of the House. *2 Hats., 81.* And those who have spoken before may not speak again when the adjourned debate is resumed. *2 Hats., 73.* Sometimes, however, this has been abusively used by adjourning it to a day beyond the session, to get rid of it altogether as would be done by an indefinite postponement.

The House does not use the motion to adjourn a debate. But it accomplishes the purpose of such a procedure by the motion to postpone to a day certain, which applies, not to a debate, but to the bill or other proposition before the House. Of course, if a bill which is under debate is postponed, the effect is to postpone the debate. The conditions and use of the motion are treated under clause 4 of rule XVI.

§ 445. Motion to lay on the table.

4. When the House has something else which claims its present attention, but would be willing to reserve in their power to take up a proposition whenever it shall suit them, they order it to lie on their table. It may then be called for at any time.

This is the use of the motion to lay on the table which is established in the general parliamentary law, and was followed in the early practice of the House. But by an interesting evolution in the House the motion has now come to serve an entirely new purpose, being used for the final, adverse disposition of a matter (clause 4 of rule XVI; V, 5389). And a matter once laid on the table may be taken therefrom only by suspension of the rules (V, 6288) or similar process, unless it be a matter of privilege (V,

5438, 5439) such as bills vetoed by the President (IV, 3549; V, 5439). A proposition to impeach having been laid on the table, a similar or identical proposition may be again brought up (III, 2049; VI, 541).

§ 446. Delegation of consideration to committee.

5. If the proposition will want more amendment and digestion than the formalities of the House will conveniently admit, they refer it to a committee.

6. But if the proposition be well digested, and may need but few and simple amendments, and especially if these be of leading consequence, they then proceed to consider and amend it themselves.

In the House it is a general rule that all business goes to committees before receiving consideration in the House itself. Occasionally a question of privilege or a minor matter of business is presented and considered at once by the House.

§ 447. Privileged motions in the Senate and in Parliament.

The Senate, in their practice, vary from this regular graduation of forms. Their practice comparatively with that of Parliament stands thus:

FOR THE PARLIAMENTARY: THE SENATE USES:

Postponement indefinite,	Postponement to a day beyond the session.
Adjournment,	Postponement to a day within the session.
Lying on table,	Postponement indefinite. Lying on the table.

In their eighth rule, therefore, which declares that while a question is before the Senate no

motion shall be received, unless it be for the previous question, or to postpone, commit, or amend the main question, the term postponement must be understood according to their broad use of it, and not in its parliamentary sense. Their rule, then, establishes as privileged questions the previous question, postponement, commitment, and amendment.

The House governs these motions by clause 4 of rule XVI.

§ 448. Obsolete provision as to priority of privileged motions.

But it may be asked: Have these questions any privilege among themselves? or are they so equal that the common principle of the "first moved first put" takes place among them? This will need explanation. Their competitions may be as follows:

1. Previous question and postpone
   commit
   amend
2. Postpone and previous question
   commit
   amend
3. Commit and previous question
   postpone
   amend
4. Amend and previous question
   postpone
   commit

In the first, second, and third classes, and the first member of the fourth class, the rule "first moved first put" takes place.

In the first class, where the previous question is first moved, the effect is peculiar; for it not only prevents the after motion to postpone or commit from being put to question before it, but also from being put after it; for if the previous question be decided affirmatively, to wit, that the main question shall *now* be put, it would of course be against the decision to postpone or commit; and if it be decided negatively, to wit, that the main question shall not now be put, this puts the House out of possession of the main question, and consequently there is nothing before them to postpone or commit. So that neither voting for nor against the previous question will enable the advocates for postponing or committing to get at their object. Whether it may be amended shall be examined hereafter.

While clause 4 of rule XVI now governs the priority of motions, these provisions of the Manual remain of interest because of the parliamentary theory they present.

§ 449. General principles of priority of motions.

Second class. If postponement be decided affirmatively, the proposition is removed from before the House, and consequently there is no ground for the previous question, commitment or amendment; but if decided negatively (that it shall not be postponed), the main question may then be suppressed by the previous question, or may be committed, or amended.

The previous question is used now for bringing a vote on the main question and not for suppressing it.

The third class is subject to the same observations as the second.

The fourth class. Amendment of the main question first moved, and afterwards the previous question, the question of amendment shall be first put.

In present practice of the House the question on the previous question would be put first, and being decided affirmatively would force a vote on the amendment and then on the main question.

Amendment and postponement competing, postponement is first put, as the equivalent proposition to adjourn the main question would be in Parliament. The reason is that the question for amendment is not suppressed by postponing or adjourning the main question, but remains before the House whenever the main question is resumed; and it might be that the occasion for other urgent business might go by, and be lost by length of debate on the amendment, if the House had it not in their power to postpone the whole subject.

Amendment and commitment. The question for committing, though last moved shall be first put; because, in truth, it facilitates and befriends the motion to amend. *Scobell* is express: "On motion to amend a bill, anyone may notwithstanding move to commit it, and the question for commitment shall be first put." *Scob., 46.*

These principles of priority of privileged motions are recognized in the House, and are provided for by clause 4 of rule XVI.

§ 450. Applications of the previous question to debatable secondary and privileged motions.

We have hitherto considered the case of two or more of the privileged questions contending for privilege between themselves, when both are moved on the original or main question; but now let us suppose one of them to be moved, not on the original primary question, but on the secondary one, *e.g.:*

Suppose a motion to postpone, commit, or amend the main question, and that it be moved to suppress that motion by putting a previous question on it. This is not allowed, because it would embarrass questions too much to allow them to be piled on one another several stories high; and the same result may be had in a more simple way—by deciding against the postponement, commitment, or amendment. *2. Hats., 81, 2, 3, 4.*

While the general principle that one secondary or privileged motion should not be applied to another is generally recognized in the House, yet the entire change in the nature of the previous question (V, 5445) from a means of postponing a matter to a means of compelling an immediate vote, makes obsolete the parliamentary rule. For as the motions to postpone, commit, and amend, are all debatable, the modern previous question of course applies to them (clause 1 of rule XIX).

§ 451. Motion to postpone not applicable to other secondary motions.

Suppose a motion for the previous question, or commitment or amendment of the main question, and that it be then moved to postpone the motion for the previous question, or for commitment or amendment of the main question. 1. It would be absurd to postpone the previous question, commitment, or amendment, alone, and thus separate the appendage from its principal; yet it

must be postponed separately from its original, if at all; because the eighth rule of the Senate says that when a main question is before the House no motion shall be received but to commit, amend, or pre-question the original question, which is the parliamentary doctrine also. Therefore the motion to postpone the secondary motion for the previous question, or for committing or amending, can not be received. 2. This is a piling of questions one on another; which, to avoid embarrassment, is not allowed. 3. The same result may be had more simply by voting against the previous question, commitment, or amendment.

Suppose a commitment moved of a motion for the previous question, or to postpone or amend. The first, second, and third reasons, before stated, all hold against this.

The principles of this paragraph are in harmony with the practice of the House, which provides further that a motion to suspend the rules may not be postponed (V, 5322).

§ 452. The motion to amend not applicable to the previous question.

Suppose an amendment moved to a motion for the previous question. Answer: The previous question can not be amended. Parliamentary usage, as well as the ninth rule of the Senate, has fixed its form to be, "Shall the main question be now put?"—*i.e.*, at this instant; and as the present instant is but one, it can admit of no modification. To change it to to-morrow, or any other moment, is without example and without utility. * * *

Although the nature of the previous question has entirely changed, yet the principle of the parliamentary law applies to the new form.

§ 453. Motion to amend applicable to motions to postpone or refer.

* * * But suppose a motion to amend a motion for postponement, as to one day instead of another, or to a special instead of an indefinite time. The useful character of amendment gives it a privilege of attaching itself to a secondary and privileged motion; that is, we may amend a postponement of a main question. So, we may amend a commitment of a main question, as by adding, for example, "with instructions to inquire," &c. * * *

This principle is recognized in the practice of the House (V, 5521).

§ 454. Amendment in the third degree not in order.

* * * In like manner, if an amendment be moved to an amendment, it is admitted; but it would not be admitted in another degree, to wit, to amend an amendment to an amendment of a main question. This would lead to too much embarrassment. The line must be drawn somewhere, and usage has drawn it after the amendment to the amendment. The same result must be sought by deciding against the amendment to the amendment, and then moving it again as it was wished to be amended. In this form it becomes only an amendment to an amendment.

This rule of the parliamentary law is considered fundamental in the House (clause 6 of rule XVI).

§ 455. Filling blanks; and amendment to numbers.

[In filling a blank with a sum, the largest sum shall be first put to the question, by the thirteenth rule of the Senate, contrary to the rule of Parliament, which privileges the smallest sum and longest time. *5 Grey, 179; 2 Hats., 8, 83; 3 Hats., 132,*

133.] And this is considered to be not in the form of an amendment to the question, but as alternative or successive originals. In all cases of time or number, we must consider whether the larger comprehends the lesser, as in a question to what day a postponement shall be, the number of a committee, amount of a fine, term of an imprisonment, term of irredeemability of a loan, or the terminus in quem in any other case; then the question must begin a maximo. Or whether the lesser includes the greater, as in questions on the limitation of the rate of interest, on what day the session shall be closed by adjournment, on what day the next shall commence, when an act shall commence or the terminus a quo in any other case where the question must begin a minimo; the object being not to begin at that extreme which, and more, being within every man's wish, no one could negative it, and yet, if he should vote in the affirmative, every question for more would be precluded; but at that extreme which would unite few, and then to advance or recede till you get to a number which will unite a bare majority. *3 Grey, 376, 384, 385.* "The fair question in this case is not that to which, and more, all will agree, but whether there shall be addition to the question." *1 Grey, 365.*

The thirteenth rule of the Senate has been dropped. The House has no rule on the subject other than this provision of the parliamentary law. It is very rare for the House to fill blanks for numbers. When a number in pending text is to be changed by amendment, the practice of the House permits to be pending: the alternative number proposed in the amendment to the text; a second alternative number as an amendment to the amendment; a third as a substitute; and a fourth as an amendment to the sub-

stitute. Thus, if the pending text itself states a number, then five alternative numbers may be pending simultaneously. With respect to a concurrent resolution on the budget (which is considered as read and open to amendment at any point and to which amendments must be mathematically consistent under clause 10 of rule XVIII), adoption of a perfecting amendment changing several figures precludes further amendment merely changing those figures, but does not preclude more comprehensive amendments changing other portions of the resolution which have not been amended as well (Apr. 27, 1977, p. 12485). In recent practice an amount in an appropriation bill has been changed by inserting a parenthetical "increased by" or "decreased by" after the amount rather than by directly changing the number.

§ 456. Priority of amendments over motions to strike out or agree.

Another exception to the rule of priority is when a motion has been made to strike out, or agree to, a paragraph. Motions to amend it are to be put to the question before a vote is taken on striking out or agreeing to the whole paragraph.

In the House the principle that a text should be perfected before a question is taken on striking it out, and that an amendment should be perfected before agreeing to it, is well established. But in considering bills, even by paragraphs, the House does not agree to the paragraphs severally; but after amending one passes to the next, and the question on agreeing is taken only on the whole bill by the several votes on engrossment and passage.

§ 457. Incidental questions, like points of order, which intervene during consideration of the main question.

But there are several questions which, being incidental to every one, will take place of every one, privileged or not; to wit, a question of order arising out of any other question must be decided before that question. *2 Hats., 88.*

This principle governs the procedure of the House, but a question of order arising after a motion for the previous question must be decided without debate (clause 1 of rule XIX).

§ 458. Matters of privilege as intervening questions.

A matter of privilege arising out of any question, or from a quarrel between two Members, or any other cause, supersedes the consideration of the original question, and must be first disposed of. *2 Hats., 88.*

Rule IX of the House and the practice thereunder, confirm and amplify the principles of this provision of the parliamentary law.

§ 459. Intervention of questions relating to reading of papers.

Reading papers relative to the question before the House. This question must be put before the principal one. *2 Hats., 88.*

This provision formerly applied in the House to the reading of papers other than those on which the House was to vote. That was under an earlier form of clause 6 of rule XVII, which now applies only to the use of exhibits in debate. For a history of the former rule on reading papers and an explanation of the earlier practice, see §§ 963–964, *infra*.

§ 460. Withdrawal of motions.

Leave asked to withdraw a motion. The rule of Parliament being that a motion made and seconded is in the possession of the House, and can not be withdrawn without leave, the very terms of the rule imply that leave may be given, and, consequently, may be asked and put to the question.

The House does not vote on the withdrawal of motions, but provides by clause 2 of rule XVI and clause 5 of rule XVIII the conditions under which a Member may of his own right withdraw a motion.

SEC. XXXIV—THE PREVIOUS QUESTION

§ 461. The previous question of Parliament.

When any question is before the House, any Member may move a previous question, "Whether that question (called the main question) shall now be put?" If it pass in the affirmative, then the main question is to be put immediately, and no man

may speak anything further to it, either to add or alter. *Memor. in Hakew., 28; 4 Grey, 27.*

§ 462. Manner of putting the previous question.

The previous question being moved and seconded, the question from the Chair shall be, "Shall the main question be now put?" and if the nays prevail, the main question shall not then be put.

In the modern practice of the House the previous question is put as follows: "The gentleman from ——— moves the previous question. As many as are in favor of ordering the previous question will say aye; as many as are opposed will say no" (V, 5443).

§ 463. History, use, etc., of the previous question of Parliament.

This kind of question is understood by Mr. Hatsell to have been introduced in 1604. *2 Hats., 80.* Sir Henry Vane introduced it. *2 Grey, 113, 114; 3 Grey, 384.* When the question was put in this form, "Shall the main question be put?" a determination in the negative suppressed the main question during the session; but since the words "now put" are used, they exclude it for the present only; formerly, indeed, only till the present debate was over, *4 Grey, 43,* but now for that day and no longer. *2 Grey, 113, 114.*

Before the question "Whether the main question shall now be put?" any person might formerly have spoken to the main question, because otherwise he would be precluded from speaking to it at all. *Mem. in Hakew., 28.*

The proper occasion for the previous question is when a subject is brought forward of a delicate nature as to high personages, &c., or the discussion of which may call forth observations which might be of injurious consequences. Then

the previous question is proposed, and in the modern usage the discussion of the main question is suspended and the debate confined to the previous question. The use of it has been extended abusively to other cases, but in these it has been an embarrassing procedure. Its uses would be as well answered by other more simple parliamentary forms, and therefore it should not be favored, but restricted within as narrow limits as possible.

As explained in connection with clause 1 of rule XIX, the House has changed entirely the old use of the previous question (V, 5445).

SEC. XXXV—AMENDMENTS

§ 465. Right of the Member who has spoken to the main question to speak to an amendment.

On an amendment being moved, a Member who had spoken to the main question may speak again to the amendment. *Scob., 23.*

This parliamentary rule applies in the House, where the hour rule of debate (clause 2 of rule XVII) has been in force for many years. A Member who has spoken an hour to the main question, may speak another hour to an amendment (V, 4994; VIII, 2449).

§ 466. The Speaker not to decide as to consistency of a proposed amendment with one already agreed to.

If an amendment be proposed inconsistent with one already agreed to, it is a fit ground for its rejection by the House, but not within the competence of the Speaker to suppress as if it were against order. For were he permitted to draw questions of consistence within the vortex or order, he might usurp a negative on important modifications, and suppress, instead of subserving, the legislative will.

The practice of the House follows and extends the principle set forth by Jefferson. Thus it has been held that the fact that a proposed amend-

ment is inconsistent with the text or embodies a proposition already voted (II, 1328–1336; VIII, 2834), or would in effect change a provision of text to which both Houses have agreed (II, 1335; V, 6183–6185), or is contained in substance in a later portion of the bill (II, 1327), is a matter to be passed on by the House rather than by the Speaker. It is for the House rather than the Speaker to decide on the legislative or legal effect of a proposition (II, 1323, 1324; VI, 254; VII, 2112; VIII, 2280, 2841), and the change of a single word in the text of a proposition may be sufficient to prevent the Speaker from ruling it out of order as one already disposed of by the House (II, 1274). The principle has been the subject of conflicting decisions, from which may be deduced the rule that the Chair may not rule out the proposition unless it presents a substantially identical proposition (VI, 256; VIII, 2834, 2835, 2838, 2840, 2842, 2850, 2856).

A perfecting amendment offered to an amendment in the nature of a substitute may be offered again as an amendment to the original bill if the amendment is first rejected or if the amendment in the nature of a substitute as perfected is rejected (Sept. 28, 1976, p. 33075). Rejection of an amendment consisting of two sections does not preclude one of those sections being subsequently offered as a separate amendment (July 15, 1981, p. 15898), and the rejection of several amendments considered en bloc does not preclude their being offered separately at a subsequent time (Deschler, ch. 27, § 35.15; Nov. 4, 1991, p. 29932). A point of order against an amendment to a substitute does not lie merely because its adoption would have the same effect as the adoption of a pending amendment to the original amendment and would render the substitute as amended identical to the original amendment as amended (May 4, 1983, p. 11059).

§ 467. The parliamentary law and the Rules of the House as to germane amendments.

Amendments may be made so as totally to alter the nature of the proposition; and it is a way of getting rid of a proposition by making it bear a sense different from what it was intended by the movers, so that they vote against it themselves. *2 Hats., 79; 4, 82, 84.* A new bill may be ingrafted, by way of amendment, on the words, "Be it enacted," etc. *1 Grey, 190, 192.*

This was the rule of Parliament, which did not require an amendment to be germane (V, 5802, 5825). But the House from its first organization, has by rule required that an amendment should be germane to the pending proposition (clause 7 of rule XVI).

§ 468. The amendment to strike out certain words of a bill.

If it be proposed to amend by leaving out certain words, it may be moved, as an amendment to this amendment, to leave out a part of the words of the amendment, which is equivalent to leaving them in the bill. *2 Hats., 80, 9.* The parliamentary question is, always, whether the words shall stand part of the bill.

In the House the question herein described is never put as in Parliament, but is always, whether the words shall be stricken out; and if there is a desire that certain of the words included in the amendment remain part of the bill, it is expressed, not by amending the amendment, but by a preferential perfecting amendment to strike from the specified words in the text of the bill a portion of them. If this is carried that portion of the specified words is stricken from the bill and the vote then recurs on the original amendment (V, 5770). Where a motion to strike an entire title of a bill is pending, it is in order to offer, as a perfecting amendment to that title, a motion to strike out a lesser portion thereof, and the perfecting amendment is voted on first (June 11, 1975, p. 18435). And when a motion to strike out certain words is disagreed to, it is in order to move to strike out a portion of those words (V, 5769); but when it is proposed to strike out certain words in a paragraph, it is not in order to amend those words by including with them other words of the paragraph (V, 5768; VIII, 2848; June 2, 1976, pp. 16208–10). It is in order to insert by way of amendment a paragraph similar (but not actually identical) to one already stricken out by amendment (V, 5760; Sept. 2, 1976, pp. 28939–58).

§ 469. Principles as to perfecting before inserting or striking out.

When it is proposed to amend by inserting a paragraph, or part of one, the friends of the paragraph may make it as perfect as they can by amendments before the question is put for inserting it. If it be received, it cannot be amended afterward in the same stage, because the House has, on a vote, agreed to it in that form. In like manner, if it is proposed to amend by striking out a paragraph, the friends of the paragraph are first to make it as perfect as they can by amendments,

before the question is put for striking it out. If on the question it be retained, it cannot be amended afterward, because a vote against striking out is equivalent to a vote agreeing to it in that form.

These principles are recognized as in force in the House, with the exception that clause 5(c) of rule XVI specifically provides that the rejection of a motion to strike shall preclude neither amendment nor motion to strike out and insert. However, after an amendment to insert has been agreed to, the matter inserted ordinarily may not then be amended (V, 5761–5763; VIII, 2852) in any way that would change its text. Where a special order of business provides that an amendment inserting a provision in the bill be considered as adopted, an amendment to strike that provision is not in order (May 23, 2002, p. ——). However, an amendment may be added at the end (V, 5759, 5764, 5765; Dec. 14, 1973, p. 41740; Oct. 1, 1974, p. 33364), even if the perfecting amendment which was adopted struck out all after the short title of the amendment in the nature of a substitute and inserted a new text (May 16, 1979, p. 11480). Although an amendment which has been adopted to an amendment (in the nature of a substitute) may not be further amended, another amendment adding language at the end of the amendment may still be offered (June 10, 1976, pp. 17368–75, 17381; May 16, 1984, pp. 12566–67), and the Chair will not rule on the consistency of that language with the adopted amendment (June 10, 1976, p. 17381).

Although it may be in order to offer an amendment to the pending portion of the bill that not only changes a provision already amended but also changes an unamended pending portion of the bill, it is not in order merely to amend portions of the bill that have been changed by amendment (Mar. 11, 1999, p. 4335), or to amend unamended portions which have been passed in the reading and are no longer open to amendment (July 12, 1983, p. 18771), or to amend a figure already amended (Deschler, ch. 27, § 33.2; July 17, 1995, p. 19186), even if also changing other matter not already amended, where drafted as though the earlier amendment had not been adopted (Mar. 15, 1995, p. 8025; Mar. 16, 1995, p. 8110; Mar. 16, 1995, p. 8112; July 17, 1995, p. 19196). A point of order that a pending amendment proposes to change portions of the bill that have been changed by earlier amendment may be made after a unanimous-consent request to modify the amendment has been disposed of but before debate has begun (Mar. 11, 1999, p. 4335). Where the vote on an amendment to strike a section and insert new language is postponed by the Chairman of the Committee of the Whole, an amendment to strike the same section and insert different language is in order; and if both amendments are adopted, the second amendment adopted supersedes the first and is the only one reported to the House (Aug. 6, 1998, p. 19125).

When it is proposed to perfect a paragraph, a motion to strike it out, if already pending, must remain in abeyance until the amendments to perfect have been moved and voted on (V, 5758; VIII, 2860; May 5, 1992, p. 10110; Oct. 12, 1995, p. 27816; July 27, 1999, p. 18074). If further proceedings are postponed on the perfecting amendment, debate may continue on the underlying motion to strike (July 27, 1999). While amendments are pending to a section, a motion to strike it out may not be offered (V, 5771; VIII, 2861; Sept. 23, 1982, p. 24963; July 25, 1995, p. 20299). The motion to strike may be voted on (if already pending) or subsequently offered after disposition of the perfecting amendment, so long as the provision sought to be stricken has not been rewritten entirely (Sept. 23, 1982, p. 24963; July 25, 1995, p. 20299). While a motion to strike out is pending, it is in order to offer an amendment to perfect the language proposed to be stricken (Apr. 24, 1996, p. 8777); such an amendment, which is in the first degree, may be amended by a substitute, and amendments to the substitute are also in order (Oct. 19, 1983, p. 28283), and such perfecting amendment, if agreed to when voted on first, remains part of the bill if the motion to strike is then rejected (Sept. 18, 1986, p. 28123). When a motion to strike out a paragraph is pending and the paragraph is perfected by an amendment, striking and inserting an entire new text, the pending motion to strike out must fall, since it would not be in order to strike out exactly what has been just voted to insert (V, 5792; VIII, 2854; July 12, 1951, p. 8090; Sept. 23, 1975, p. 29835; Aug. 5, 1986, p. 19059; May 18, 1988, p. 11404; Apr. 24, 1996, p. 8781). A motion to strike out and insert a portion of a pending section is not in order as a substitute for a motion to strike out the section, but may be offered as a perfecting amendment to the section and is voted on first, subject to being eliminated by subsequent adoption of the motion to strike out (July 16, 1981, p. 16057).

§ 470. Reading the motion and putting the question on a motion to strike out and insert.

When it is moved to amend by striking out certain words and inserting others, the manner of stating the question is first to read the whole passage to be amended as it stands at present, then the words proposed to be struck out, next those to be inserted, and lastly the whole passage as it will be when amended. And the question, if desired, is then to be divided, and put first on striking out. If carried, it is next on inserting the words proposed. If that be lost, it may be moved to insert others. *2 Hats., 80, 7.*

Clause 5(c) of rule XVI of the House provides specifically that the motion to strike out and insert shall not be divided. Otherwise, as to the manner of stating the question, it is usual for the Clerk to read only the words to be stricken out and the words to be inserted. Usually this is sufficient, as the Members may have before them printed copies of the bill under consideration.

§ 471. Conditions of repetition of motions to strike out and insert.

A motion is made to amend by striking out certain words and inserting others in their place, which is negatived. Then it is moved to strike out the same words, and to insert others of a tenor entirely different from those first proposed. It is negatived. Then it is moved to strike out the same words and insert nothing, which is agreed to. All this is admissible, because to strike out and insert A is one proposition. To strike out and insert B is a different proposition. And to strike out and insert nothing is still different. And the rejection of one proposition does not preclude the offering a different one. Nor would it change the case were the first motion divided by putting the question first on striking out, and that negatived; for, as putting the whole motion to the question at once would not have precluded, the putting the half of it cannot do it.

As to Jefferson's supposition that the principle would hold good in case of division of the motion to strike out and insert it is not necessary to inquire, since clause 5(c) of rule XVI forbids division of the motion. In a footnote Jefferson expressed himself as follows: "In the case of a division of the question, and a decision against striking out, I advanced doubtingly the opinion here expressed. I find no authority either way, and I know it may be viewed under a different aspect. It may be thought that, having decided separately not to strike out the passage, the same question for striking out cannot be put over again, though with a view to a different insertion. Still I think it more reasonable and convenient to consider the striking out and insertion as forming one proposition, but should readily yield to any evidence that the contrary is the practice in Parliament." Where two amendments proposing inconsistent motions to strike and in-

sert a pending section are considered as separate first degree amendments (not one as a substitute for the other) before either is finally disposed of under a special procedure permitting the Chair to postpone requests for a recorded vote, the Chair's order of voting on the matter as unfinished business determines which amendment (if both were adopted) would be reported to the House (Aug. 6, 1998, pp. 19098–107).

§ 472. Application of the motion to strike out.

The principle set forth by Jefferson as to repetition of the motion to strike out prevails in the House, where it has been held in order, after the failure of a motion to strike out certain words, to move to strike out a portion of those words (V, 5769; VIII, 2858). When a bill is under consideration by paragraphs, a motion to strike out applies only to the paragraph under consideration (V, 5774).

§ 473. Effect of affirmative vote on motion to strike out and insert.

But if it had been carried affirmatively to strike out the words and to insert A, it could not afterward be permitted to strike out A and insert B. The mover of B should have notified, while the insertion of A was under debate, that he would move to insert B; in which case those who preferred it would join in rejecting A.

This principle controls the practice of the House (July 17, 1985, p. 19444; July 18, 1985, p. 19649; Deschler, ch. 27, § 31.14).

§ 474. Conditions of striking out an amendment already agreed to.

After A is inserted, however, it may be moved to strike out a portion of the original paragraph, comprehending A, provided the coherence to be struck out be so substantial as to make this effectively a different proposition; for then it is resolved into the common case of striking out a paragraph after amending it. Nor does anything forbid a new insertion, instead of A and its coherence.

While it is not in order to move to strike a provision inserted by amendment (Oct. 9, 1985, p. 26957), a motion to strike more than that provision inserted would be in order (Apr. 23, 1975, p. 11536). But an amendment to strike out the pending title of a bill and re-insert all sections of that

title except one is not in order where that section has previously been amended in its entirety (Aug. 1, 1975, p. 26946).

§ 475. Amendments filling blanks as to time.

In Senate, January 25, 1798, a motion to postpone until the second Tuesday in February some amendments proposed to the Constitution; the words "until the second Tuesday in February" were struck out by way of amendment. Then it was moved to add, "until the first day of June." Objected that it was not in order, as the question should be first put on the longest time; therefore, after a shorter time decided against, a longer cannot be put to question. It was answered that this rule takes place only in filling blanks for time. But when a specific time stands part of a motion, that may be struck out as well as any other part of the motion; and when struck out, a motion may be received to insert any other. In fact, it is not until they are struck out, and a blank for the time thereby produced, that the rule can begin to operate, by receiving all the propositions for different times, and putting the questions successively on the longest. Otherwise it would be in the power of the mover by inserting originally a short time, to preclude the possibility of a longer; for till the short time is struck out, you cannot insert a longer; and if, after it is struck out, you cannot do it, then it cannot be done at all. Suppose the first motion had been made to amend by striking out "the second Tuesday in February," and inserting instead thereof "the first of June," it would have been regular, then, to divide the question, by

proposing first the question to strike out, and then that to insert. Now, this is precisely the effect of the present proceeding; only, instead of one motion and two questions, there are two motions and two questions to effect it—the motion being divided as well as the question.

The principles of this paragraph have been followed in the House (V, 5763; Aug. 16, 1961, p. 16059), but in one case wherein words embodying a distinct substantive proposition had been agreed to as an amendment to a paragraph, it was held not in order to strike out a part of the words of this amendment with other words of the paragraph (V, 5766).

The motion to strike out and insert may not be divided in the House (clause 5(c) of rule XVI).

§ 476. Joining and dividing bills.

When the matter contained in two bills might be better put into one, the manner is to reject the one and incorporate its matter into another bill by way of amendment. So if the matter of one bill would be better distributed into two, any part may be struck out by way of amendment, and put into a new bill. * * *

In the modern practice of the House each bill comes before the House by itself; and if it were proposed to join one bill to another it would be done by offering the text of the one as an amendment to the other, without disturbing the first bill in its place on the calendar. Where it is proposed to divide a bill, the object is accomplished in the House by moving to recommit with instructions to the committee to report two bills (V, 5527, 5528). The Committee on Rules may report a special order providing for consideration of two bills and, after separate passage of each, "linking" the two by adding the text of the second to the engrossment of the first and tabling the separate version of the second (*e.g.*, H. Res. 209, 106th Cong., June 16, 1999, p. 13080).

§ 477. Transposition of the sections of a bill.

* * * If a section is to be transposed, a question must be put on striking it out where it stands and another for inserting it in the place desired.

This principle is followed in the practice of the House (V, 5775, 5776).

§ 478. Filling blanks left by the other House.

A bill passed by the one House with blanks. These may be filled up by the other by way of amendments, returned to the first as such, and passed *3 Hats., 83.*

§ 479. Clerk amends the section numbers of a bill.

The number prefixed to the section of a bill, be merely a marginal indication, and no part of the text of the bill, the Clerk regulates that—the House or committee is only to amend the text.

In the modern practice of the House, section numbers and other internal references are considered as part of the text which may be altered by amendment. The House sometimes authorizes the Clerk to make appropriate changes in section numbers, paragraphs and punctuation, and cross references when preparing the engrossment of the bill. Such a request is properly made in the House, following passage of the bill (Apr. 29, 1969, p. 10753).

SEC. XXXVI—DIVISION OF THE QUESTION

§ 480. Parliamentary law for division of the question.

If a question contain more parts than one, it may be divided into two or more questions. *Mem. in Hakew., 29.* But not as the right of an individual member, but with the consent of the House. For who is to decide whether a question is complicated or not—where it is complicated—into how many propositions it may be divided? The fact is, that the only mode of separating a complicated question is by moving amendments to it; and these must be decided by the House, on a question, unless the House orders it to be divided; as, on the question, December 2, 1640, making void the election of the knights for Worcester, on a motion it was resolved to make two questions of it, to wit, one on each knight.

2 Hats., 85, 86. So, wherever there are several names in a question, they may be divided and put one by one. *9 Grey, 444.* So, 1729, April 17, on an objection that a question was complicated, it was separated by amendment. *2 Hats., 79.*

The House, by clause 5 of rule XVI and the practice thereunder, has entitled a procedure differing materially from that above set forth. While a resolution electing Members to committees is not divisible (clause 5 of rule XVI), other types of resolutions containing several names may be divided for voting (Mar. 19, 1975, p. 7344).

§ 481. Jefferson's discussion of division of the question.

The soundness of these observations will be evident from the embarrassments produced by the XVIIIth rule of the Senate, which says, "if the question in debate contains several points, any member may have the same divided."

1798, May 30, the alien bill in quasi-committee. To a section and proviso in the original, had been added two new provisos by way of amendment. On a motion to strike out the section as amended, the question was desired to be divided. To do this it must be put first on striking out either the former proviso, or some distinct member of the section. But when nothing remains but the last member of the section and the provisos, they cannot be divided so as to put the last member to question by itself, for the provisos might thus be left standing alone as exceptions to a rule when the rule is taken away; or the new provisos might be left to a second question, after having been decided on once before at the same reading, which is contrary to rule. But the question must be on striking out the last member of the section as amended. This

sweeps away the exceptions with the rule, and relieves from inconsistence. A question to be divisible must comprehend points so distinct and entire that one of them being taken away, the other may stand entire. But a proviso or exception, without an enacting clause, does not contain an entire point or proposition.

May 31.—The same bill being before the Senate. There was a proviso that the bill should not extend—1. To any foreign minister; nor, 2. To any person to whom the President should give a passport; nor, 3. To any alien merchant conforming himself to such regulations as the President shall prescribe; and a division of the question into its simplest elements was called for. It was divided into four parts, the 4th taking in the words "conforming himself," &c. It was objected that the words "any alien merchant," could not be separated from their modifying words, "conforming," &c., because these words, if left by themselves, contain no substantive idea, will make no sense. But admitting that the divisions of a paragraph into separate questions must be so made as that each part may stand by itself, yet the House having, on the question, retained the two first divisions, the words "any alien merchant" may be struck out, and their modifying words will then attach themselves to the preceding description of persons, and become a modification of that description.

§ 482. Division of question as related to debate or amendment.

When a question is divided, after the question on the 1st member, the 2d is open to debate and amendment; because it is a known rule that a person may rise and speak at any time before the question has been completely decided, by putting the negative as well as the affirmative side. But the question is not completely put when the vote has been taken on the first member only. One-half the question, both affirmative and negative, remains still to be put. See *Execut. Jour., June 25, 1795.* The same decision by President Adams.

Where a division of the question is demanded on a portion of an amendment, the Chair puts the question first on the remaining portions of the amendment, and that portion on which the division is demanded remains open for further debate and amendment (Oct. 21, 1981, p. 24785). However, where neither portion of a divided question remains open to further debate or amendment, the question may be put first on the portion identified by the demand for division and then on the remainder (June 8, 1995, p. 15302).

SEC. XXXVII—COEXISTING QUESTIONS

§ 483. Fundamental principles as to coexisting questions.

It may be asked whether the House can be in possession of two motions or propositions at the same time? so that, one of them being decided, the other goes to question without being moved anew? The answer must be special. When a question is interrupted by a vote of adjournment, it is thereby removed from before the House, and does not stand ipso facto before them at their next meeting, but must come forward in the usual way. So, when it is interrupted by the order of the day. Such other privileged questions also as dispose of the main question (*e.g.*, the

previous question, postponement, or commitment), remove it from before the House. But it is only suspended by a motion to amend, to withdraw, to read papers, or by a question of order or privilege, and stands again before the House when these are decided. None but the class of privileged questions can be brought forward while there is another question before the House, the rule being that when a motion has been made and seconded, no other can be received except it be a privileged one.

The principles of this provision must, of course, be viewed in the light of a more highly perfected order of business than existed in Jefferson's time (rule XIV). The motion to withdraw is not known in the practice of the House, not being among the motions enumerated in clause 4 of rule XVI, but a motion before the House may be withdrawn by the mover thereof before a decision is reached (clause 2 of rule XVI).

SEC. XXXVIII—EQUIVALENT QUESTIONS

§ 484. Former practice as to rejection and second reading of bills.

If, on a question for rejection, a bill be retained, it passes, of course, to its next reading. *Hakew., 141; Scob., 42.* And a question for a second reading, determined negatively, is a rejection without further question. *4 Grey, 149.* And see *Elsynge's Memor., 42,* in what case questions are to be taken for rejection.

The House has abandoned the question "Shall the bill be rejected?" (IV, 3391), and the question is now taken in accordance with clause 8 of rule XVI. A vote is not taken on the second reading, the first test coming in the modern practice of the House on the engrossment and third reading.

§ 485. Equivalent questions in general.

Where questions are perfectly equivalent, so that the negative of the one amounts to the affirmative of the other, and leaves no other alternative, the deci-

sion of the one concludes necessarily the other. *4 Grey, 157.* Thus the negative of striking out amounts to the affirmative of agreeing; and therefore to put a question on agreeing after that on striking out, would be to put the same question in effect twice over. Not so in questions of amendments between the two Houses. A motion to recede being negatived, does not amount to a positive vote to insist, because there is another alternative, to wit, to adhere.

The principles set forth in this paragraph are recognized by the practice of the House; but Jefferson's use of the motion to strike out as an illustration is no longer justified, since the practice of the House under clause 5(c) of rule XVI does not permit the negative of the motion to strike out to be equivalent to the affirmative of agreeing.

§ 486. Equivalent questions on amendments between the Houses.

A bill originating in one House is passed by the other with an amendment. A motion in the originating House to agree to the amendment is negatived. Does there result from this a vote of disagreement, or must the question on disagreement be expressly voted? The question respecting amendments from another House are—1st, to agree; 2d, disagree; 3d, recede; 4th, insist; 5th, adhere.

In the House and the Senate the order of precedence of motions is as given in the parliamentary law, and the motions take precedence in that order without regard to the order in which they are moved (V, 6270, 6324). But a motion to amend an amendment of the other House has precedence of the motion to agree or disagree either before the stage of disagreement has been reached or after the House has receded from its disagreement (V, 6164, 6169–6171; VIII, 3203) even after the previous question has been ordered on both motions before the question is divided (Feb. 12, 1923, p. 3512). See also the discussion in § 525, *infra*. But it has been held that when the previous question has been demanded or ordered on a motion to concur, a motion to amend is not in order (V, 5488). The motion to refer also takes precedence of the motions to agree or disagree (V, 6172–

6174), but the demanding or ordering of the previous question does not prevent a motion to refer (V, 5575). The motion to refer takes precedence of the motions to agree or disagree and, under clause 2 of rule XIX is in order pending a demand for or after the ordering of the previous question, before the stage of disagreement has been reached (V, 5575, 6172–6174), but not after the stage of disagreement when the most preferential motion tending to bring the two Houses together is already pending (Speaker Albert, Sept. 16, 1976, p. 30887).

§ 487. The motions to agree and disagree as related to motions to amend.

1st. To agree; 2d. To disagree.—Either of these concludes the other necessarily, for the positive of either is exactly the equivalent to the negative of the other, and no other alternative remains. On either motion amendments to the amendment may be proposed; *e.g.*, if it be moved to disagree, those who are for the amendment have a right to propose amendments, and to make it as perfect as they can, before the question of disagreeing is put.

§ 488. No equivalent questions on motions to recede, insist, and adhere.

3d. To recede.—You may then either insist or adhere.

4th. To insist.—You may then either recede or adhere.

5th. To adhere.—You may then either recede or insist.

Consequently the negative of these is not equivalent to a positive vote the other way. It does not raise so necessary an implication as may authorize the Secretary by inference to enter another vote; for two alternatives still remain, either of which may be adopted by the House.

Under the earlier practice in the House it was held that voting down the motion to recede and concur was tantamount to insistence but not the equivalent of adherence (Speaker Clark, July 2, 1918, p. 8648). But the more recent practice is that when the House disagrees to a motion

to recede and concur in a Senate amendment some further action must be taken to dispose of the amendment (Speaker Bankhead, July 9, 1937, p. 7007; Speaker McCormack, Sept. 19, 1962, p. 19945) and the question may recur on a pending motion to insist or such a motion is then entertained from the floor.

SEC. XXXIX—THE QUESTION

§ 489. Putting the question.

The question is to be put first on the affirmative, and then on the negative side.

Clause 6 of rule I provides more fully for putting the question.

§ 490. Effect of putting the question in ending debate.

After the Speaker has put the affirmative part of the question, any Member who has not spoken before to the question may rise and speak before the negative be put; because it is no full question till the negative part be put. *Scob., 23; 2 Hats., 73.*

§ 491. Informal putting of the question.

But in small matters, and which are of course, such as receiving petitions, reports, withdrawing motions, reading papers, &c., the Speaker most commonly supposes the consent of the House where no objection is expressed, and does not give them the trouble of putting the question formally. *Scob., 22; 2 Hats., 79, 2, 87; 5 Grey, 129; 9 Grey, 301.*

SEC. XL—BILLS, THIRD READING

§ 492. Obsolete requirements as to reading and passage of bills.

To prevent bills from being passed by surprise, the House, by a standing order, directs that they shall not be put on their passage before a fixed hour, naming one at which the house is commonly full. *Hakew., 153.*

The usage of the Senate is not to put bills on their passage till noon.

A bill reported and passed to the third reading, cannot on that day be read the third time and passed; because this would be to pass on two readings in the same day.

§ 493. Obsolete parliamentary law as to third reading.

At the third reading the Clerk reads the bill and delivers it to the Speaker, who states the title, that it is the third time of reading the bill, and that the question will be whether it shall pass. Formerly the Speaker, or those who prepared a bill, prepared also a breviate or summary statement of its contents, which the Speaker read when he declared the state of the bill, at the several readings. Sometimes, however, he read the bill itself, especially on its passage. *Hakew., 136, 137, 153; Coke, 22, 115.* Latterly, instead of this, he, at the third reading, states the whole contents of the bill verbatim, only, instead of reading the formal parts, "Be it enacted," &c., he states that "preamble recites so and so—the 1st section enacts that, &c.; the 2d section enacts," &c.

But in the Senate of the United States, both of these formalities are dispensed with; the breviate presenting but an imperfect view of the bill, and being capable of being made to present a false one; and the full statement being a useless waste of time, immediately after a full reading by the Clerk, and especially as every member has a printed copy in his hand.

None of the restrictions is of effect in the modern practice of the House. Clause 8 of rule XVI permits a bill to be read a third time and passed

on the same day, and it is in order to proceed with a bill at any time, unless the absence of a quorum be shown.

In the House there is no practice justifying the presentation of an abbreviated summary; and the procedure on third reading is definitely prescribed by clause 8 of rule XVI.

§ 494. Committal of a bill on third reading.

A bill on the third reading is not to be committed for the matter or body thereof, but to receive some particular clause or proviso, it hath been sometimes suffered, but as a thing very unusual. *Hakew., 156.* Thus, *27 El., 1584,* a bill was committed on the third reading, having been formerly committed on the second, but is declared not usual. *D'Ewes, 337, col. 2; 414, col. 2.*

In the House it is in order to commit a bill after the engrossment and third reading where the previous question is not ordered (V, 5562); and by clause 2 of rule XIX the House has preserved this opportunity to commit even after the previous question has been ordered.

§ 495. Obsolete parliamentary practice as to riders.

When an essential provision has been omitted, rather than erase the bill and render it suspicious, they add a clause on a separate paper, engrossed and called a rider, which is read and put to the question three times. *Elsynge's Memo., 59; 6 Grey, 335; 1 Blackst., 183.* For examples of riders, see *3 Hats., 121, 122, 124, 156.* Every one is at liberty to bring in a rider without asking leave. *10 Grey, 52.*

This practice is never followed in the House.

§ 496. Obsolete requirements as to reading of amendments.

It is laid down, as a general rule, that amendments proposed at the second reading shall be twice read, and those proposed at the third reading thrice

read; as also all amendments from the other House. *Town., col. 19, 23, 24, 25, 26, 27, 28.*

In the practice of the House, amendments, whether offered in the House or coming from the other House, do not come under the rule requiring different readings.

§ 497. Amendments before the third reading.

It is with great and almost invincible reluctance that amendments are admitted at this reading, which occasion erasures or interlineations. Sometimes a proviso has been cut off from a bill; sometimes erased. *9 Grey, 513.*

This is the proper stage for filling up blanks; for if filled up before, and now altered by erasure, it would be peculiarly unsafe.

In the House bills are amended after the second reading (IV, 3392), and before the engrossment and third reading (V, 5781; VII, 1051, 1052) but not afterwards. Under modern practice of the House, readings are governed by clause 8 of rule XVI and clause 5 of rule XVIII.

§ 498. Debate in relation to the third reading.

At this reading the bill is debated afresh, and for the most part is more spoken to at this time than on any of the former readings. *Hakew., 153.*

The debate on the question whether it should be read a third time, has discovered to its friends and opponents the arguments on which each side relies, and which of these appear to have influence with the House; they have had time to meet them with new arguments, and to put their old ones into new shapes. The former vote has tried the strength of the first opinion, and furnished grounds to estimate the issue; and the question now offered for its passage is the last occasion which is ever to be offered for carrying or rejecting it.

In the House it is usual to debate a bill before and not after the engrossment and third reading, probably because of the frequent use of the previous question, which prevents all debate after it is ordered. When the previous question is not ordered, debate may occur pending the vote on passage.

§ 499. Putting the question on the passage of a bill.

When the debate is ended, the Speaker, holding the bill in his hand, puts the question for its passage, by saying, "Gentlemen, all you who are of opinion that this bill shall pass, say aye;" and after the answer of the ayes, "All those of the contrary opinion, say no." *Hakew., 154.*

In the House the bill is usually in the hands of the Clerk. The Speaker states that "The question is on the passage of the bill," and puts the question in the form prescribed by clause 6 of rule I.

§ 500. Bills not altered after their passage.

After the bill is passed, there can be no further alteration of it in any point. *Hakew., 159.*

This principle controls the practice of the House. However, a bill may be changed if the votes on passage, engrossment, and ordering the previous question have been reconsidered. In addition, the Clerk may be authorized to make changes in the engrossed copy by unanimous consent or by special order of business.

SEC. XLI—DIVISION OF THE HOUSE

§ 501. Division of the House after determination by sound.

The affirmative and negative of the question having been both put and answered, the Speaker declares whether the yeas or nays have it by the sound, if he be himself satisfied, and it stands as the judgment of the House. But if he be not himself satisfied which voice is the greater, or if before any other Member comes into the House, or before any new motion made (for it is too late after that), any Member shall arise and declare himself dissatisfied with the Speaker's

decision, then the Speaker is to divide the House. *Scob., 24; 2 Hats., 140.*

This practice is provided for in different language by clause 6 of rule I.

§ 502. Parliamentary provisions as to division, not applicable in the House.

When the House of Commons is divided, the one party goes forth, and the other remains in the House. This has made it important which go forth and which remain; because the latter gain all the indolent, the indifferent, and inattentive. Their general rule, therefore, is that those who give their vote for the preservation of the orders of the House shall stay in, and those who are for introducing any new matter or alteration, or proceeding contrary to the established course, are to go out. But this rule is subject to many exceptions and modifications. *2 Hats., 134; 1 Rush., p. 3, fol. 92; Scob., 43, 52; Co., 12, 116; D'Ewes, 505, col. 1; Mem. in Hakew., 25, 29.*

The one party being gone forth, the Speaker names two tellers from the affirmative and two from the negative side, who first count those sitting in the House and report the number to the Speaker. Then they place themselves within the door, two on each side, and count those who went forth as they come in and report the number to the Speaker. *Mem. in Hakew., 26.*

In modern practice in the House of Commons, once the Chair determines a sufficient request for a "division," all Members leave the Chamber and are recorded in the yes and no division lobbies. In the House of Representatives, the provision in former clause 5 of rule I that provided for teller votes was repealed by the 103d Congress. Under the former procedure tellers took their place at the rear of the center aisle when named by the Chair, and Members passed between them to be counted but not recorded by name. Clause 1(b) of rule XX provides for taking a recorded vote by

means of the electronic voting system when supported by one-fifth of a quorum.

§ 503. Correction of a vote by tellers after the report.

A mistake in the report of the tellers may be rectified after the report made. *2 Hats., 145, note.*

* * * * *

§ 504. Voting by yeas and nays.

When it is proposed to take the vote by yeas and nays, the President or Speaker states that "the question is whether, *e.g.*, the bill shall pass—that it is proposed that the yeas and nays shall be entered on the journal. Those, therefore, who desire it will rise." If he finds and declares that one-fifth have risen, he then states that "those who are of opinion that the bill shall pass are to answer in the affirmative; those of the contrary opinion in the negative." The Clerk then calls over the names alphabetically, notes the yea or nay of each, and gives the list to the President or Speaker, who declares the result. In the Senate if there be an equal division the Secretary calls on the Vice-President and notes his affirmative or negative, which becomes the decision of the House.

In the House tellers were sometimes, though rarely, ordered to determine whether one-fifth joined in the demand for the yeas and nays (V, 6045) but in the later practice the Speaker's count is not subject to verification (VIII, 3114–3118), and it is not in order to demand a rising vote of those opposed on a count by the Speaker to ascertain if one-fifth concur in demand for yeas and nays (VIII, 3112, 3113). Clause 1 of rule XX of the House provides the method for taking the yeas and nays in the modern practice; but under clause 2 of that rule both the yeas and nays and calls of the House are taken by means of the electronic voting system unless the Speaker in his discretion orders the utilization of other prescribed procedures.

§ 505. Parliamentary law as to giving of votes.

In the House of Commons every member must give his vote the one way or the other, *Scob., 24*, as it is not permitted to anyone to withdraw who is in the House when the question is put, nor is anyone to be told in the division who was not in when the question was put. *2 Hats., 140.*

This last position is always true when the vote is by yeas and nays; where the negative as well as affirmative of the question is stated by the President at the same time, and the vote of both sides begins and proceeds pari passu. It is true also when the question is put in the usual way, if the negative also has been put; but if it has not, the member entering, or any other member may speak, and even propose amendments, by which the debate may be opened again, and the question be greatly deferred. And as some who have answered aye may have been changed by the new arguments, the affirmative must be put over gain. If, then, the member entering may, by speaking a few words, occasion a repetition of a question, it would be useless to deny it on his simple call for it.

Clause 1 of rule III requires Members to vote; but no rule excludes from voting those not present at the putting of the question, and this requirement of the parliamentary law is not observed in the House. No attempt is made to prevent Members from withdrawing after a question is put, unless there be a question as to a quorum, when the House proceeds under clauses 5 and 6 of rule XX.

§ 506. Movements of Members during voting.

While the House is telling, no member may speak or move out of his place, for if any mistake be suspected it must be told again. *Mem. in Hakew., 26; 2 Hats., 143.*

This rule applies in the House on a vote by division, where the Speaker counts; but did not apply to the former vote by tellers, where Members passed between tellers at the rear of the center aisle to be counted.

§ 507. Decisions of points of order during a division.

If any difficulty arises in point of order during the division, the Speaker is to decide peremptorily, subject to the future censure of the House if irregular. He sometimes permits old experienced members to assist him with their advice, which they do sitting in their seats, covered, to avoid the appearance of debate; but this can only be with the Speaker's leave, else the division might last several hours. *2 Hats., 143.*

Representatives no longer sit with their hats on (clause 5 of rule XVII) and always rise to speak; respectfully addressing their remarks to "Mr. Speaker" (clause 1 of rule XVII).

§ 508. Decision by voice of majority; and tie votes.

The voice of the majority decides; for the *lex majoris partis* is the law of all councils, elections, &c., where not otherwise expressly provided. *Hakew., 93. But if the House be equally divided, semper presuamtur pro negante;* that is, the former law is not to be changed but by a majority. *Towns., col. 134.*

The House provides also by rule (clause 1 of rule XX) that in the case of a tie vote the question shall be lost.

§ 509. Two-thirds votes.

The House of Representatives, however, requires a two-thirds vote on a motion to suspend the rules (clause 1 of rule XV), on a motion to dispense with Calendar Wednesday (clause 6 of rule XV), on a motion to dispense with the

call of the Private Calendar on the first Tuesday of each month (clause 5 of rule XV), and to consider a special rule immediately (clause 6 of rule XIII), and the Constitution of the United States requires two-thirds votes for the expulsion of a Member, passing vetoed bills, removing political disabilities, and passing joint resolutions proposing amendments to the Constitution.

§ 509a. Three-fifths votes.

The standing rules also require a three-fifths vote for passage or adoption of a bill, a joint resolution, an amendment thereto, or a conference report thereon, if carrying a Federal income tax rate increase (clause 5(b) of rule XXI).

§ 510. Business suspended by the failure of a quorum.

When from counting the House on a division it appears that there is not a quorum, the matter continues exactly in the state in which it was before the division, and must be resumed at that point on any future day. *2 Hats., 126.*

While under the rules first adopted in the 95th Congress it is not in order to make or entertain a point of no quorum unless the question has been put on the pending motion or proposition, if a quorum in fact does not respond on a call of the House or on a vote, even the most highly privileged business must terminate (IV, 2934; VI, 662) and even debate must stop until a quorum is established (see IV, 2935–2949). No motion is entertained in the absence of a quorum other than a motion relating to the call of the House or to adjourn (IV, 2950; VI, 680). Even in the closing hours of a Congress business has been stopped by the failure of a quorum (V, 6309; Oct. 18, 1972, p. 37199).

§ 511. Change of a vote.

1606, May 1, on a question whether a Member having said yea may afterwards sit and change his opinion, a precedent was remembered by the Speaker, of Mr. Morris, attorney of the wards, in *39 Eliz.,* who in like case changed his opinion. *Mem. in Hakew., 27.*

The House is governed in this respect by the practice under clause 2 of rule XX.

SEC. XLII—TITLES

§ 512. Amendments to the title of a bill.

After the bill has passed, and not before, the title may be amended, and is to be fixed by a question; and the bill is then sent to the other House.

The House by clause 6 of rule XVI embodies this principle with an additional provision as to debate.

SEC XLIII—RECONSIDERATION

§ 513. Early Senate practice as to reconsideration.

1798, Jan. A bill on its second reading being amended, and on the question whether it shall be read a third time negatived, was restored by a decision to reconsider that question. Here the votes of negative and reconsideration, like positive and negative quantities in equation, destroy one another, and are as if they were expunged from the journals. Consequently the bill is open for amendment, just so far as it was the moment preceding the question for the third reading; that is to say, all parts of the bill are open for amendment except those on which votes have been already taken in its present stage. So, also, it may be recommitted.

The rule permitting a reconsideration of a question affixing it to no limitation of time or circumstance, it may be asked whether there is no limitation? If, after the vote, the paper on which it is passed has been parted with, there can be no reconsideration, as if a vote has been for the passage of a bill and the bill has been sent to the other House. But where the paper remains, as on a bill rejected, when or under what

circumstances does it cease to be susceptible of reconsideration? This remains to be settled, unless a sense that the right of reconsideration is a right to waste the time of the House in repeated agitations of the same question, so that it shall never know when a question is done with, should induce them to reform this anomalous proceeding.

The House provides for reconsideration by clause 3 of rule XIX.

§ 514. Parliamentary law as to reconsideration.

In Parliament a question once carried can not be questioned again at the same session, but must stand as the judgment of the House. *Towns., col. 67; Mem. in Hakew., 33.* * * *

§ 515. A bill once rejected not to be brought up again at the same session.

* * * And a bill once rejected, another of the same substance can not be brought in again the same session. *Hakew., 158; 6 Grey, 392.* But this does not extend to prevent putting the same question in different stages of a bill, because every stage of a bill submits the whole and every part of it to the opinion of the House as open for amendment, either by insertion or omission, though the same amendment has been accepted or rejected in a former stage. So in reports of committees, *e.g.*, report of an address, the same question is before the House, and open for free discussion. *Towns., col. 26; 2 Hats., 98, 100, 101.* So orders of the House or instructions to committees may be discharged. So a bill, begun in one House and sent to the other and there rejected, may be renewed again in that other, passed, and sent back. *Ib., 92; 3 Hats., 161.* Or if, instead of

being rejected, they read it once and lay it aside or amend it and put it off a month, they may order in another to the same effect, with the same or a different title. *Hakew., 97, 98.*

In the House, with its rule for reconsideration, there is rarely an attempt to bring forward a bill once rejected at the same session. One instance is recorded (IV, 3384), but the House has declined to consider a bill brought forward after a rejection (IV, 3384; Mar. 9, 1910, p. 2966). The Committee on Rules may report as privileged a resolution making in order the consideration of a measure of the same substance as one previously rejected and to rescind or vacate the action whereby the House had rejected a measure (VIII, 3391; Mar. 17, 1976, p. 6776); and a special order of business nearly identical to one previously rejected by the House, but providing a different scheme for general debate, was held not to violate this section (July 27, 1993, p. 17115).

§ 516. Expedients for changing the effect of bills once passed.

Divers expedients are used to correct the effects of this rule, as, by passing an explanatory act, if anything has been omitted or ill expressed, *3 Hats., 278,* or an act to enforce and make more effectual an act, &c., or to rectify mistakes in an act, &c., or a committee on one bill may be instructed to receive a clause to rectify the mistakes of another. Thus, June 24, 1685, a clause was inserted in a bill for rectifying a mistake committed by a clerk in engrossing a bill of supply. *2 Hats., 194, 6.* Or the session may be closed for one, two, three, or more days and a new one commenced. But then all matters depending must be finished, or they fall, and are to begin de novo. *2 Hats., 94, 98.* Or a part of the subject may be taken up by another bill or taken up in a different way. *6 Grey, 304, 316.*

§ 517. Exceptions to the rule against bringing up a matter once rejected.

And in cases of the last magnitude this rule has not been so strictly and verbally observed as to stop indispensable proceedings altogether. *2 Hats., 92, 98.* Thus when the address on the preliminaries of peace in 1782 had been lost by a majority of one, on account of the importance of the question and smallness of the majority, the same question in substance, though with some words not in the first, and which might change the opinion of some Members, was brought on again and carried, as the motives for it were thought to outweigh the objection of form. *2 Hats, 99, 100.*

§ 518. Passage of supplementary bills.

A second bill may be passed to continue an act of the same session or to enlarge the time limited for its execution. *2 Hats., 95, 98.* This is not in contradiction to the first act.

The House has by a joint resolution corrected an error in a bill that had gone to the President (IV, 3519).

SEC. XLIV—BILLS SENT TO THE OTHER HOUSE

§ 519. Laying on the table bills from the other House.

A bill from the other House is sometimes ordered to lie on the table. *2 Hats., 97.*

This principle is recognized in the practice of the House, both as to Senate bills (IV, 3418, 3419; V, 5437), and as to House bills returned with Senate amendments (V, 5424, 6201–6203). The motion to lay on the table Senate amendments to a House bill does not take precedence over the motion to recede and concur, since the motion would table the entire bill (Speaker Longworth, Jan. 24, 1927, p. 2165), but the motion to lay on the table a motion to recede and concur in a Senate amendment does not carry the amendment and bill to the table, and other motions are in order to dispose of the Senate amendment (Feb. 22, 1978, p. 4072).

§ 520. Requests for information from the other House.

When bills passed in one House and sent to the other are ground on special facts requiring proof, it is usual, either by message or at a conference, to ask the grounds and evidence, and this evidence, whether arising out of papers or from the examination of witnesses, is immediately communicated. *3 Hats., 48.*

The Houses of Congress transmit with bills accompanying papers, which are returned when the bills pass or at final adjournment (V, 7259, footnote). Sometimes one House has asked, by resolution, for papers from the files of the other (V, 7263, 7264). Testimony is also requested (III, 1855).

SEC. XLV—AMENDMENTS BETWEEN THE HOUSES

§ 521. Parliamentary principles as to disagreeing, insisting, and adhering.

When either House, *e.g.*, the House of Commons, send a bill to the other, the other may pass it with amendments. The regular progression in this case is, that the Commons disagree to the amendment; the Lords insist on it; the Commons insist on their disagreement; the Lords adhere to their amendment; the Commons adhere to their disagreement. The term of insisting may be repeated as often as they choose to keep the question open. But the first adherence by either renders it necessary for the other to recede or adhere also; when the matter is usually suffered to fall. *10 Grey, 148.* Latterly, however, there are instances of their having gone to a second adherence. There must be an absolute conclusion of the subject somewhere, or otherwise transactions between the Houses would become endless. *3 Hats., 268, 270.* The term of insisting, we are told by Sir John Trevor, was then (1679)

newly introduced into parliamentary usage by the Lords. *7 Grey, 94.* It was certainly a happy innovation, as it multiplies the opportunities of trying modifications which may bring the Houses to a concurrence. Either House, however, is free to pass over the term of insisting, and to adhere in the first instance; *10 Grey, 146;* but it is not respectful to the other. In the ordinary parliamentary course there are two free conferences, at least, before an adherence. *10 Grey, 147.*

The House and the Senate follow the principles set forth in this paragraph of the parliamentary law, and sometimes dispose of differences without resorting to conferences (V, 6165).

§ 522. Insisting and adhering in the practice of the House.

Where both Houses insist and neither ask a conference nor recede, the bill fails (V, 6228). Where both Houses adhere, the bill fails (V, 6163, 6313, 6324, 6325) even though the difference may be over a very slight amendment (V, 6233–6240). In rare instances in Congress there have been immediate adherences on the first disagreement (V, 6303); but this does not preclude the granting of the request of the other House for a conference (V, 6241–6244). Sometimes the House recedes from its disagreement as to certain amendments and adheres as to others (V, 6229). A House having adhered may at the next stage vote to further adhere (V, 6251). Sometimes the House has receded from adherence (V, 6252, 6401) or reconsidered its action of adherence (V, 6253), after which it has agreed to the amendment with or without amendment (V, 6253, 6401).

§ 523. Parliamentary law as to receding.

Either House may recede from its amendment and agree to the bill; or recede from their disagreement to the amendment, and agree to the same absolutely, or with an amendment; for here the disagreement and receding destroy one another, and the subject stands as before the disagreement. *Elysnge, 23, 27; 9 Grey, 476.*

§ 524. Practice of the House as to receding from its own amendment to a bill of the other House.

In the practice of the two Houses of Congress the motion is to recede from the amendment without at the same time agreeing to the bill, for the bill has already been passed with the amendment, and receding from the amendment leaves the bill passed (V, 6312). But where the House has previously concurred in a Senate amendment with an amendment, the House does not by receding from its amendment agree to the Senate amendment, since the House may then (1) concur in the Senate amendment or (2) concur in the Senate amendment with another amendment (VIII, 3199; Oct. 12, 1977, pp. 33448–54). The House may not through one motion, however, recede from its amendment with an amendment (V, 6212; see § 526, *infra*). A motion in the House to recede from a House amendment to a Senate amendment, and concur in the Senate amendment, is divisible (VIII, 3199). One House has receded from its own amendment after the other House had returned it concurred in with an amendment (V, 6226). However, this has been held insufficient to pass the bill without further action by the House that concurred with an amendment (VIII, 3177; June 26, 1984, p. 18733).

Where one House has receded from an amendment, it may not at a subsequent stage recall its action in order to form a new basis for a conference (V, 6251). Sometimes one House has receded from its amendment although it had previously insisted and asked a conference which had been agreed to (V, 6319). After the Senate has amended a House amendment it is not proper for the House to recede from its amendment directly, but the Senate may recede from its amendment and then the House recede from its amendment (Speaker Reed, June 12, 1890, p. 5981). The motion to recede takes precedence over the motion to insist and ask a conference (V, 6270).

§ 525. Practice of the House as to receding from disagreement to amendment of the other House.

By receding from its disagreement to an amendment of the Senate the House does not thereby agree to it (V, 6215); but the Senate amendment is then open to amendment precisely as before the original disagreement (V, 6212–6214). The stage of disagreement having been reached, the motion to recede and concur takes precedence of the motion to recede and concur with an amendment (V, 6219–6223; VIII, 3198, 3200, 3202); but a motion to recede and concur is divisible (VIII, 3199) and being divided and the House having receded, a motion to amend has precedence of the motion to concur (V, 6209–6211; VIII, 3198), even after the previous question is ordered on both motions before being divided (Feb. 12, 1923, p. 3512).

The motion to recede and concur in a Senate amendment with an amendment takes precedence of a motion to insist further on the House's disagreement to the Senate amendment (V, 6224; VIII, 3204), and a motion to lay certain amendments on the table (Speaker Longworth, Jan. 24, 1927, p. 2165). It has been held that after the previous question has been moved on a motion to adhere, a motion to recede may not be made (V, 6310); and after the previous question is demanded or ordered on a motion to

concur, a motion to amend is not in order (V, 5488); but where the previous question has been demanded on a motion to insist, a motion to recede and concur has been admitted (V, 6208, 6321a).

§ 526. One House not to recede from its own amendment with an amendment; or depart from form fixed by adherence.

But the House can not recede from or insist on its own amendment, with an amendment; for the same reason that it can not send to the other House an amendment to its own act after it has passed the act. They may modify an amendment from the other House by ingrafting an amendment on it, because they have never assented to it; but they can not amend their own amendment, because they have, on the question, passed it in that form. *9 Grey, 363; 10 Grey, 240.* In Senate, March 29, 1798. Nor where one House has adhered to their amendment, and the other agrees with an amendment, can the first House depart from the form which they have fixed by an adherence.

In the case of a money bill, the Lord's proposed amendments become, by delay, confessedly necessary. The Commons, however, refused them as infringing on their privilege as to money bills; but they offered themselves to add to the bill a proviso to the same effect, which had no coherence with the Lords' amendments; and urged that it was an expedient warranted by precedent, and not unparliamentary in a case become impracticable, and irremediable in any other way. *3 Hats., 256, 266, 270, 271.* But the Lords refused, and the bill was lost. *1 Chand., 288.* A like case, *1 Chand., 311.* * * *

In the House it is a recognized principle that the House may not recede from its own amendments with an amendment (V, 6216–6218). The House may not amend its own amendment to a Senate amendment to a House bill (Mar. 16, 1934, p. 4685). However, the stage of disagreement having been reached on a House amendment to a Senate amendment to a House proposition, the House may first recede from its amendment and, having receded, may then concur in the Senate amendment with a different amendment without violating this paragraph (Speaker O'Neill, Oct. 12, 1977, pp. 33448–54).

§ 527. Text to which both Houses have agreed not to be changed.

* * * So the Commons resolved that it is unparliamentary to strike out, at a conference, anything in a bill which hath been agreed and passed by both Houses, *6 Grey, 274; 1 Chand., 312.*

The practice of the two Houses has confirmed this principle of the parliamentary law and established the rule that managers of a conference may not change the text to which both Houses have agreed (V, 6417, 6418, 6420; VIII, 3257; see clause 9 of rule XXII), and neither House, alone, may empower the managers by instruction to make such a change (V, 6388). In the earlier practice, when it was necessary to change text already agreed to, the managers appended a supplementary paragraph to their report, and this was agreed to by unanimous consent in the two Houses (V, 6433–6436); or the two Houses agreed to a concurrent resolution giving the managers the necessary powers (V, 6437–6439; Dec. 17, 1974, p. 40472). Under the current practice the House considers a conference report that changes text already agreed to by unanimous consent, under suspension of the rules, or by report from the Committee on Rules waiving clause 9 of rule XXII.

To change text finally agreed to by both Houses, each House may adopt a concurrent resolution directing the Clerk of the House or the Secretary of the Senate to correct the enrollment. Such a concurrent resolution may be considered by unanimous consent, under suspension of the rules, or by report from the Committee on Rules.

The further principle has been established in practice of the House that it may not, even by unanimous consent (V, 6179), change in the slightest particular (V, 6181) the text to which both Houses have agreed (V, 6180; VIII, 3257). And this prohibition extends, also, to a case wherein it is proposed to add a new section at the end of a bill which has passed both Houses (V, 6182).

§ 528. Consideration of Senate and House amendments; precedence of motions.

A motion to amend an amendment from the other House takes precedence of a motion to agree or disagree.

This is the rule of the House where the stage of disagreement has not been reached (V, 6164, 6169–71; VIII, 3202), or when the House has receded from its disagreement to the amendment in question (VIII, 3196, 3197, 3203). The following discussion summarizes the precedence and consideration of motions to dispose of Senate or House amendments in contemporary practice.

§ 528a. Consideration of Senate or House amendments.

When Senate amendments are before the House for the first time, or when the Senate has returned a bill with House amendments to which it has disagreed (and on which the House has not insisted), no privileged motion is in order in the House except a motion pursuant to clause 1 of rule XXII, made by direction of the committee with subject-matter jurisdiction, to disagree to the Senate amendments or insist on the House amendment and request or agree to a conference with the Senate (see Oct. 11, 1984, p. 32308). Other motions to dispose of amendments between the Houses are not privileged until the stage of disagreement has been reached on a bill with amendments of the other House (clause 4 of rule XXII; IV, 3149, 3150; VI, 756; VIII, 3185, 3194). The stage of disagreement is not reached until the House has either disagreed to Senate amendments or has insisted on its own amendments to a Senate bill, and has notified the Senate. Further House action can only occur when the House has received the papers back from the Senate (Sept. 16, 1976, p. 30868).

Before the stage of disagreement, an amendment to a Senate amendment to a House-passed measure on the Speaker's table is not in order until an order is entered for consideration of the Senate amendment in the House (Speaker O'Neill, June 19, 1986, pp. 14638–40).

If the House does agree to consider a bill with Senate amendment before the stage of disagreement has been reached, by unanimous consent or special order of business, a motion to amend takes precedence over the motion to agree. However, the usual practice in such a situation is to consider a request, either by unanimous consent, suspension of the rules, or special order of business reported by the Committee on Rules, simultaneously providing for consideration and disposition of the Senate amendment (thus precluding the consideration of other requests to dispose of the amendment (see Deschler-Brown, ch. 32, § 5)).

It should be noted that a small category of Senate amendments, those not requiring consideration in the Committee of the Whole, may be taken from the Speaker's table and disposed of by motion pursuant to clause 2 of rule XXII before the stage of disagreement has been reached, but

the vast majority of legislation does affect the Treasury (as described in clause 1 of rule XIII) and requires consideration in Committee of the Whole.

§ 528b. Precedence of motions before the stage of disagreement.

Should the House consider Senate amendments before the stage of disagreement, the precedence of nonprivileged motions is as follows (disregarding the privileged motion to disagree and send to conference by direction of the committee): (1) to concur with amendment; (2) to concur; (3) to disagree and request or agree to a conference; and (4) to disagree. With respect to consideration of House amendments before the stage of disagreement, the precedence of motions is (1) to recede; (2) to insist and request or agree to a conference; and (3) to insist. While the House may adhere, adherence is seldom utilized (since it precludes a conference unless receded from) and is extremely rare on first disagreement (see § 522, *supra*; see also the discussion of adherence in Deschler-Brown, ch. 32, § 12). A motion to adhere is the least privileged motion.

It was formerly held that a motion to send to conference yielded to the simple motion to disagree, or to insist (see Cannon's Procedure in the House of Representatives, p. 120). In current practice, however, the compound motion to disagree to Senate amendments and request or agree to a conference, or to insist on House amendments and request or agree to a conference, has replaced the two-step procedure for getting to conference and, since it brings the two Houses together, takes precedence over simple motions to insist or disagree (or to adhere).

Notwithstanding the foregoing precedence of motions, the ordinary motions applicable to any question which is under debate—to table, to postpone to a day certain, and to refer—remain available under clause 4 of rule XVI. A motion to table Senate amendments brings the bill to the table (V, 5424, 6201–6203; Sept. 28, 1978, p. 32334). It must also be noted that before consideration of any motions to dispose of Senate amendments, the Speaker has the discretionary authority, under clause 2 of rule XIV, to refer such amendments to the appropriate committee, with or without a time limitation for committee consideration. It has been held that before the stage of disagreement, the motion to table the Senate amendment or amendments (V, 6201–6203) or the motion to refer the Senate amendment or amendments (V, 5301, 6172, 6174) take precedence (in that order) over motions to amend, agree, or disagree. And if the previous question has been ordered on another motion to dispose of the Senate amendment, a motion to refer is in order (V, 5575).

§ 528c. Reaching the stage of disagreement.

The House has reached the stage of disagreement on a bill when it is again in possession of the papers thereon, having previously disagreed to Senate amendments or insisted on House amendments (with or without requesting or agreeing to a conference). Only previous insistence or disagreement by the House itself places the House in disagreement (and not merely disagreement, insistence, or amendment by the Senate). For example, where the House has concurred in a Senate amendment to a House bill with

an amendment, insisted on the House amendment and requested a conference, and the Senate has then concurred in the House amendment with a further amendment, the matter is privileged for further disposition in the House since the House has communicated to the Senate its insistence and request for a conference (Sept. 16, 1976, p. 20868). Of course, if the Senate has agreed to a House request for a conference, the bill is committed to conference and motions are not in order for its disposition until after the conferees have reported (the House may unilaterally discharge its conferees and consider the bill, where in possession of the papers, only by unanimous consent, special order, or suspension of the rules, and not by motion).

Once the stage of disagreement has been reached on a bill with amendments, the House remains in the stage of disagreement until the matter is finally disposed of and motions for its disposition are privileged whenever the House is in possession of the papers. This principle applies both where the stage of disagreement is reached without a conference, and where matters remain in disagreement after conferees have reported. It is possible, therefore, for motions to be privileged since the House is in disagreement on the bill, but for the House to have receded from its disagreement or insistence on a particular amendment or to have received a new Senate amendment for the first time. In those cases motions remain privileged, but the precedence of motions on the amendment in question reverts to the precedence of motions before the stage of disagreement, as set forth in § 528b, *supra* (see discussion below of the effect of the House's receding). The two Houses having permitted the amendment process to go beyond the second degree, a motion to concur in a Senate amendment (in the 4th degree), the stage of disagreement having been reached, is privileged but is subject to the motion to lay on the table (Mar. 18, 1986, p. 5217).

§ 528d. Precedence of motions after the stage of disagreement.

Generally, after the stage of disagreement has been reached on a Senate amendment, the precedence of motions is as follows: (1) to recede and concur; (2) to recede and concur with an amendment or amendments; (3) to insist on disagreement and request a (further) conference; (4) to insist on disagreement; and (5) to adhere. The Chair may examine the substance of a pending motion to determine the precedence thereof in relation to another motion, even though in form it may appear preferential. Thus, a proper motion to concur with an amendment to a Senate amendment reported from conference in disagreement (the House having receded) has been offered and voted on before a pending motion drafted as one to concur with an amendment but in actual effect a motion to insist on disagreement to the Senate amendment, because simply reinserting the original House text without change (Deschler-Brown, ch. 31, § 8.12). The ordinary motion to table under clause 4 of rule XVI may be applied to a Senate amendment but carries the bill to the table. When applied to a motion to dispose of a Senate amendment, the motion to table carries to the table only the motion to dispose and not the amendment or bill (see Deschler-Brown,

ch. 32, § 7.27). With respect to the motion to refer (or recommit), a simple motion to refer or recommit only takes precedence over a motion to adhere, after the stage of disagreement has been reached on the bill. After the previous question is ordered on a pending motion to dispose of a Senate amendment, a motion to recommit (pursuant to clause 2 of rule XIX) may only be offered if it constitutes, in effect, a motion which takes precedence over the pending motion to dispose of a Senate amendment. Thus, after the stage of disagreement has been reached on a Senate amendment, a motion to recommit with instructions to report back forthwith with an amendment may not be offered after the previous question has been ordered on a motion to recede and concur, a motion of higher privilege (see Deschler-Brown, ch. 32, § 7.5). However, after the House has receded from disagreement to a Senate amendment, a motion to amend is preferential over a motion to agree, and thus after the previous question is ordered on a motion to concur, the House having already receded, a motion to recommit with instructions to amend would be in order (VIII, 2744). Motions to postpone, either to a day certain or indefinitely, have the lowest privilege with respect to a Senate amendment after the stage of disagreement has been reached. For old examples where the House postponed indefinitely consideration of Senate amendments, see V, 6199, 6200 (in the latter case the Senate had adhered). Clause 8(b)(3) of rule XXII makes preferential and separately debatable a motion to insist on disagreement to a Senate amendment to a general appropriation bill, if: (1) the Senate amendment has been reported from conference in disagreement; (2) the original motion to dispose of the Senate amendment proposes to change existing law; and (3) the motion to insist is timely offered by the chairman of a committee of jurisdiction or a designee.

Where the matter in question is a House amendment or amendments after the stage of disagreement has been reached, the precedence of motions is (1) to recede; (2) to further insist on the amendment and request a (further) conference; and (3) to adhere. For discussion of possible options of the House, having receded from its amendment or amendments, see § 524, *supra,* and Deschler-Brown, ch. 32, § 7. If the House recedes from its amendment to a Senate bill, the bill is passed unless otherwise specified. If the House recedes from its amendment to a Senate amendment, the bill is not passed unless the House takes another step, either to concur in the Senate amendment or amend it. The House having receded from its amendment to a Senate amendment, it is no longer in disagreement on the amendment (although it is on the bill if the stage of disagreement has previously been reached), and the motion to amend the Senate amendment takes precedence over the motion to concur therein. Until the House recedes, however, a motion to recede from the House amendment and concur in the Senate amendment is preferential. A conference report held to violate clause 9 of rule XXII was vitiated, after which a privileged motion to recede and concur in a Senate amendment with an amendment incor-

porating by reference the text of an introduced House bill was offered (Nov. 14, 2002, p. ——).

The same principle as to the precedence of motions after a division of the question applies to a motion to recede and concur in a Senate amendment, the stage of disagreement having been reached. While the motion to recede and concur takes precedence over the motion to recede and concur with an amendment, the former motion may be divided on the demand of any Member. If the House agrees to recede, a motion to concur with an amendment then takes precedence over the motion to concur, is considered as pending if part of the original motion, and is voted on first (Sept. 30, 1988, pp. 27265–74; Oct. 11, 1989, p. 24097). As indicated in Deschler-Brown, ch. 32, § 8.2, a Member offering a preferential motion does not thereby gain control of the debate, which remains in the control of the floor manager recognized to offer the original motion to dispose of amendments between the Houses (and which is divided equally between the majority and minority floor managers with respect to amendments reported from conference in disagreement under clause 7(b) of rule XXII). Recognition to offer a preferential motion goes to the senior committee member seeking the floor who is not the offeror of a displaced motion of lesser privilege (Nov. 16, 1989, p. 29565). Although the manager of a conference report is entitled to prior recognition to offer motions to dispose of amendments in disagreement, he should not be entitled to offer two motions, one preferential to the other, to be pending at the same time. However, where his first motion to insist on disagreement has been superseded by the House's voting to recede from disagreement, then his initial motion is no longer pending; and he may be recognized to offer another motion to concur with an amendment, which would be preferential to the remaining portion of another Member's divided motion to concur (Deschler-Brown, ch 32, § 8.2). This is to be contrasted with the situation where the bill manager offers a motion to dispose of a Senate amendment which is rejected by the House, in which case recognition to offer a subsequent motion to dispose of the pending Senate amendment shifts to another Member who led the opposition to the rejected motion (see § 954, *infra*).

§ 529. Degree of amendments between the Houses.

A bill originating in one House is passed by the other with an amendment.

The originating House agrees to their amendment with an amendment. The other may agree to their amendment with an amendment, that being only in the 2d and not the 3d degree; for, as to the amending House, the first amendment with which they passed the bill is a part of its text. It is the only

text they have agreed to. The amendment to that text by the originating House therefore is only in the 1st degree, and the amendment to that again by the amending House is only in the 2d, to wit, an amendment to an amendment, and so admissible. Just so, when, on a bill from the originating House, the other, at its second reading, makes an amendment; on the third reading this amendment is become the text of the bill, and if an amendment to it be moved an amendment to that amendment may also be moved, as being only in the 2d degree.

This principle is followed in the practice of the House (V, 6176, 6177, 6178). For a discussion of the attitude of the Senate on this topic, see October 31, 1991 (p. 29494).

SEC. XLVI—CONFERENCES

§ 530. Parliamentary law as to asking conferences.

It is on the occasion of amendments between the Houses that conferences are usually asked; but they may be asked in all cases of difference of opinion between the two Houses on matters depending between them. The request of a conference, however, must always be by the House which is possessed of the papers. *3 Hats., 31; 1 Grey, 425.*

The House follows the principles set forth in this paragraph of the parliamentary law. A conference may be asked on only a portion of the amendments in disagreement, leaving the differences as to the remainder to be settled by the action of the two Houses themselves (V, 6401). In very rare instances conferences have been asked by one House after the other has absolutely rejected a main proposition (IV, 3442; V, 6258). A difference over an amendment to a proposed constitutional amendment may be committed to a conference (V, 7037).

§ 531. Conferences over matters other than differences as to amendments.

While conferences between the two Houses of Congress are usually held over differences as to amendments to bills, occasionally differences arise as to the respective prerogatives of the Houses (II, 1485–1495) or as to matters of procedures (V, 6401), as in impeachment proceedings (III, 2304), which are referred to conference. In early and exceptional instances conferences have been asked as to legislative matters when no propositions relating thereto were pending (V, 6255–6257).

§ 532. Conferences by means of select committees.

In very rare cases, also, the Houses interchange views and come to conclusions by means of select committees appointed on the part of each House (I, 3). Thus, in 1821, a joint committee was chosen to consider and report to the two Houses whether or not it was expedient to provide for the admission of Missouri into the Union (IV, 4471), and in 1877 similar committees were appointed to devise a method for counting the electoral vote (III, 1953).

§ 533. Requests for conferences.

The parliamentary law provides that the request for a conference must always be by the House which is possessed of the papers (V, 8254). It was formerly the more regular practice for the House disagreeing to amendments of the other to leave the asking of a conference to that other House if it should decide to insist (V, 6278–6285, 6324); but it is so usual in the later practice for the House disagreeing to an amendment of the other to ask a conference that an omission to do so has even raised a question (V, 6273). Yet it cannot be said that the practice requires a request for a conference to be made by the House disagreeing to the amendments of the other (V, 6274–6277). One House having asked a conference at one session, the other House may agree to the conference at the next session of the same Congress (V, 6286).

§ 534. Requests for conferences declined or neglected.

In rare instances one House has declined the request of the other for a conference (V, 6313–6315; Mar. 20, 1951, p. 2683), sometimes accompanying it by adherence (V, 6313, 6315). In one instance, where the Senate declined a conference, it transmitted, by message, its reasons for so doing (V, 6313). Sometimes, also, one House disregards the request of the other for a conference and recedes from its disagreement, thereby rendering a conference unnecessary (V, 6316–6318). And in one case, where one House has asked a conference to which the other has assented, the asking House receded before the conference took place (V, 6319). Also, a bill returned to the House with a request for a conference has been postponed indefinitely (V, 6199).

§ 535. Motions to request conferences.

After the stage of disagreement has been reached, a motion to ask a conference is considered as distinct from motions to agree or disagree to amendments of the other House (V, 6268) and the motions to agree, recede, or insist are considered as preferential (V, 6269, 6270). Where a motion to request

a conference at this stage has been rejected, its repetition at the same stage of the proceedings, no other motion to dispose of the matter in disagreement having been considered, has not been permitted (V, 6325). Where a conference results in disagreement, a motion to request a new conference is privileged (V, 6586). Sometimes disagreements are voted on by the House and conferences asked through the medium of special orders of business (IV, 3242–3249).

Before the stage of disagreement, any motion with respect to amendments between the two Houses is without privilege, except for motions with respect to the limited number of amendments that qualify under clause 2 of rule XXII or motions under clause 1 of rule XXII, to disagree to Senate amendments (or insist on House amendments) and to request or agree to an initial conference if the motion is authorized by the primary committee and all reporting committees of initial referral and if the Speaker, in his discretion, recognizes for that purpose. A motion under the latter clause may be repeated, if again authorized by the relevant committees, and if the Speaker again agrees to recognize for that purpose, even though the House has once rejected a motion to send the same matter to conference (Speaker Albert, Oct. 3, 1972, p. 33502).

§ 536. Managers of conferences.

While usual, it is not essential that one House, in asking a conference, transmit the names of its managers at the same time (V, 6405). The managers, properly so called (V, 6335), constitute practically two distinct committees, each of which acts by a majority (V, 6334). The Speaker appoints the managers on the part of the House (clause 11 of rule I) and has discretion as to the number to serve on a given bill (V, 6336; VIII, 2193) but must appoint (1) a majority of Members who generally support the House position, as determined by the Speaker; (2) Members who are primarily responsible for the legislation; and (3) to the fullest extent feasible the principal proponents of the major provisions of the bill as it passed the House (clause 11 of rule I). While the practice used to be to appoint three managers from each house (V, 6336), in the absence of joint rules each House may appoint whatever number it sees fit (V, 6328–6330). The two Houses have frequently appointed a disparate number of managers (V, 6331–6333; VIII, 3221); and where the Senate appointed nine and the House but three, a motion to instruct the Speaker to appoint a greater number of managers on the part of the House was held out of order (VII, 2193). In appointing managers the Speaker usually consults the Member in charge of the bill (V, 6336); and where an amendment in disagreement falls within the jurisdiction of two committees of the House, the Speaker has named Members from both committees and specified the respective areas on which they were to confer (Speaker Albert, Nov. 30, 1971, p. 43422). In appointing conferees on the general appropriation bill for fiscal year 1951, Speaker Rayburn appointed a set of managers for each chapter of the bill and four Members to sit on all chapters (Aug. 7, 1950, p. 11894). While the appointment of conferees, both as to their number and composition, is within the

discretion of the Chair (Speaker Garner, June 24, 1932, p. 13876; Speaker Martin, July 8, 1947, p. 8469), and while a point of order will not lie against his exercise of this discretion (VIII, 2193, 3221), the Speaker normally takes into consideration the attitude of the majority and minority of the House on the disagreements in issue (V, 6336–6338; VIII, 3223), the varying views of the Members of the House (V, 6339, 6340), and does not necessarily confine his appointments to members of the committee in charge of the bill (V, 6370). In one case, where the prerogatives of the House were involved, all of the managers were appointed to represent the majority opinion (V, 6338). See also § 637, *infra*.

§ 537. Reappointment of, at second and subsequent conferences.

Where there were several conferences on a bill, it was the early practice to change the managers at each conference (V, 6288–6291, 6324), and so fixed was this practice that their reappointment had a special significance, indicating an unyielding temper (V, 6352–6368); but in the later practice it is the rule to reappoint managers (V, 6341–6344) unless a change be necessary to enable the sentiment of the House to be represented (V, 6369).

§ 538. Vacancies, etc., in managers of conferences.

Managers of a conference are excused from service either by authority of the House (V, 6373–6376; VIII, 3224, 3227) or, since the 103d Congress, by removal by the Speaker (clause 11 of rule I). The absence of a manager may cause a vacancy, which the Speaker fills by appointment (V, 6372; VIII, 3228). Where one House makes a change in its managers, it informs the other House, by message (V, 6377, 6378). According to the later practice the powers of managers who have not reported do not expire by reason of the termination of a session of Congress, unless it be the last session (V, 6260–6262).

§ 539. Parliamentary law as to free and simple conferences.

Conferences may be either simple or free. At a conference simply, written reasons are prepared by the House asking it, and they are read and delivered, without debate, to the managers of the other House at the conference, but are not then to be answered. *4 Grey, 144.* The other House then, if satisfied, vote the reasons satisfactory, or say nothing; if not satisfied they resolve then not satisfactory and ask a conference on the subject of the last conference, where they read and deliver, in like manner, written answer to those reasons. *3 Grey, 183.* They are meant chiefly to

record the justification of each House to the nation at large and to posterity and in proof that the miscarriage of a necessary measure is not imputable to them. *3 Grey, 255.* At free conferences the managers discuss, viva voce and freely, and interchange propositions for such modifications as may be made in a parliamentary way, and may bring the sense of the two Houses together. * * *

§ 540. Free and simple conferences in modern practice.

This provision of the parliamentary law bears little relation to the modern practice of the two Houses of Congress, and that practice has evolved a new definition: "A free conference is that which leaves the committee of conference entirely free to pass upon any subject where the two branches have disagreed in their votes, not, however, including any action upon any subject where there has been a concurrent vote of both branches. A simple conference—perhaps it should more properly be termed a strict or a specific conference, though the parliamentary term is 'simple'—is that which confines the committee of conference to the specific instructions of the body appointing it" (V, 6403). And where the House had asked a free conference it was held not in order to instruct the managers (V, 6384). But it is very rare for the House in asking a conference to specify whether it shall be free or simple.

§ 541. Instruction of managers of a conference.

In their practices as to the instruction of managers of a conference, the House and the Senate do not agree. Only in rare instances has the Senate instructed (V, 6398), and these instances are at variance with its declaration, made after full consideration, that managers may not be instructed (V, 6397). And where the House has instructed its managers, the Senate sometimes has declined to participate and asked a free conference (V, 6402–6404). In the later practice the House does not inform the Senate when it instructs its managers (V, 6399), the Senate having objected to the transmittal of instructions by message (V, 6400, 6401). In one instance where the Senate learned indirectly that the House had instructed its managers, it declared that the conference should be full and free, and instructed its own managers to withdraw if they should find the freedom of the conference impaired (V, 6406). But the House holds to the opinion that the House may instruct its managers (V, 6379–6382), although the propriety of doing so at a first conference has been questioned (V, 6388, footnote). And in rare instances where a free conference is asked instruction is not in order (V, 6384). At a new conference the instructions of a former conference are not in force (V, 6383; VIII, 3240). And instructions may not

direct the managers to do that which they might not otherwise do (V, 6386, 6387; VIII, 3235, 3244), as to effect a change in part of a bill not in disagreement (V, 6391–6394) or change the text to which both Houses have agreed (V, 6388). Although managers may disregard instructions, their report may not for that reason be ruled out of order (V, 6395; VIII, 3246; June 8, 1972, p. 20282), and when a conference report is recommitted with instructions the managers are not confined to the instructions alone (VIII, 3247).

The motion to instruct managers should be offered after the vote to ask for or agree to a conference and before the managers are appointed (V, 6379–6382; VIII, 3233, 3240, 3256). The motion to instruct may be amended unless the previous question is ordered (V, 6525; VIII, 3231, 3240); thus a motion to instruct House conferees to agree to a numbered Senate amendment with an amendment may be amended, upon rejection of the previous question, to instruct the conferees to agree to the Senate amendment (June 9, 1982, pp. 13027, 13028, 13039, 13049). The motion to instruct may be laid on the table without carrying the bill to the table (VIII, 2658). The motion is debatable (see clause 7(b) of rule XXII) unless the previous question is ordered (VIII, 2675, 3240), which the proponent may not move until those allotted time under clause 7(b) have yielded back (Oct. 3, 1989, p. 22842). After a motion to ask or agree to a conference is agreed to, only one valid motion to instruct is in order (VIII, 3236; Speaker Wright, Feb. 17, 1988, p. 1583); but this restriction does not apply to a motion to instruct under clause 7(c) of rule XXII (Aug. 22, 1935, pp. 14162–64).

A member of the minority is first entitled to recognition for a motion to instruct conferees (Speaker Bankhead, Oct. 31, 1939, pp. 1103–05; Speaker Albert, Oct. 19, 1971, pp. 36832–35), and where two minority members of the reporting committee seek recognition to offer a motion to instruct conferees before their appointment, the Chair will recognize the senior minority member of the committee (Oct. 10, 1986, p. 30181; Speaker Wright, Feb. 17, 1988, p. 1583). The ruling out of a motion to instruct conferees does not preclude the offering of a proper motion to instruct (VIII, 3235), but one motion to instruct having been considered and disposed of, further motions to instruct are not in order (VIII, 3236). Such additional instructions should have been offered as amendments to the original motion to instruct.

§ 542. Parliamentary law as to reports of managers of a conference.

* * * And each party report in writing to their respective Houses the substance of what is said on both sides, and it is entered in their journals. *9 Grey, 220; 3 Hats; 280.* This report can not be amended or altered, as that of a committee may be. *Journal Senate, May 24, 1796.*

§ 543. Forms of conference reports.

In the two Houses of Congress conference reports were originally merely suggestions for action and were neither identical in the two Houses nor acted on as a whole (V, 6468–6471). In the House clause 7(a) of rule XXII provides that conference reports may be received at any time, except when the Journal is being read, while the roll is being called, or the House is dividing. They are privileged on or after the third calendar day (excluding Saturdays, Sundays, or legal holidays) after they have been filed and printed in the Record, together with the accompanying statement (clause 8 of rule XXII). The early reports were not signed by the managers (IV, 3905); but in the later practice the signatures of the majority of the managers of each House is required (V, 6497–6502; VIII, 3295). Sometimes a manager indorses the report with a conditional approval or dissent (V, 6489–6496, 6538). However, signatures with conditions are not counted toward a majority (Nov. 18, 1991, p. 32689. Supplemental reports or minority views may not be filed in connection with conference reports (VIII, 3302). The name of an absent manager may not be affixed, but the two Houses by concurrent action may authorize him to sign the report after it has been acted on (V, 6488). The minority portion of the managers of a conference have no authority to make either a written or verbal report concerning the conference (V, 6406). In the later practice reports of managers are identical, and made in duplicate for the two Houses, the House managers signing first the report for their House and the Senate managers signing the other report first (V, 6323, 6426, 6499, 6500, 6504). Under certain circumstances managers may report an entirely new bill on a subject in disagreement, but this bill is acted on as part of the report (V, 6465–6467; see also clause 9 of rule XXII). A quorum among the managers on the part of the House at a committee of conference is established by their signatures on the conference report and joint explanatory statement (Oct. 4, 1994, p. 27662).

§ 544. Partial conference reports.

Managers may report an agreement as to a portion of the numbered amendments in disagreement, leaving the remainder to be disposed of by subsequent action (V, 6460–6464). Where a Senate amendment to the title of a House bill was in conference, but inadvertently omitted from the conference report, the House adopted the report, and, by unanimous consent, insisted on its disagreement to the putatively reported amendment and agreed to a concurrent resolution that deemed the conference report to have "resolved all disagreements" (Oct. 10, 2002, p. ——).

§ 545. Reports of inability to agree.

Where managers of a conference are unable to agree, or where a report is disagreed to in either House, another conference is usually asked (V, 6288–6291). When managers report that they have been unable to agree, the report is not acted on by the House (V, 6562; VIII, 3329; Aug. 23, 1957, p. 15816). While under the earlier practice, when conferees reported in complete disagreement, the amendments in disagreement were considered available for immediate disposition (VIII, 3299, 3332), the current practice (as a result

of the amendment to clause 8(a) of rule XXII that became effective in the 93d Congress) is to require the matter to lay over until the third calendar day (excluding Saturdays, Sundays, or legal holidays) after the report in disagreement is filed and printed in the Record. In the earlier practice reports of inability to agree were made verbally or by unsigned written reports (V, 6563–6567); but in later practice they are written, in identical form, and signed by the managers of the two Houses (V, 6568, 6569).

§ 546. Managers restricted to the disagreements of the two Houses.

The managers of a conference must confine themselves to the differences committed to them (V, 6417, 6418; VIII, 3252, 3255, 3282), and may not include subjects not within the disagreements (V, 6407, 6408; VIII, 3253–3255, 3260, 3282, 3284), even though germane to a question in issue (V, 6419; VIII, 3256; Speaker Albert, Dec. 20, 1974, p. 41849). But they may perfect amendments committed to them if they do not in so doing go beyond the differences (V, 6409, 6413). Thus, where an amendment providing an appropriation to construct a road had been disagreed to, it was held in order to report a provision to provide for a survey for the road (V, 6425). Managers may not change the text to which both Houses have agreed (V, 6417, 6418, 6420, 6433–6436). But where the amendment in issue strikes out all of the bill after the enacting clause and substitutes a new text, the managers have the whole subject before them and may exercise a broad discretion as to details (V, 6424; VIII, 3266), and may even report an entirely new bill on the subject (V, 6421, 6423; VIII, 3248, 3263, 3265, 3276; § 1088, *infra*). Where the amendment in disagreement proposes a substitute differing greatly from the House provision they may eliminate the entire subject matter (Speaker Gillett, Sept. 14, 1922, p. 12598).

§ 547. Remedy where managers exceed their authority.

In the House the Speaker may rule out a conference report if it be shown that the managers have exceeded their authority (V, 6409–6416; VIII, 3256; Oct. 4, 1962, p. 22332; Nov. 14, 2002, p. ——). In the House points of order against reports are made or reserved after the report is read and before the reading of the statement (V, 6424, 6441; VIII, 3282, 3284, 3285, 3287), or consideration begins (V, 6903–6905; VIII, 3286), and comes too late after the report has been agreed to (V, 6442); and in case the statement is read in lieu of the report the point of order must be made or reserved before the statement is read (VIII, 3256, 3265, 3285, 3288, 3289). Where clause 8(c) of rule XXII applies, points of order must be made before debate begins on the report (Nov. 14, 2002, p. ——).

A conference report held to violate clause 9 of rule XXII was vitiated, after which a privileged motion to recede and concur in a Senate amendment with an amendment incorporating by reference the text of an introduced House bill was offered (Nov. 14, 2002, p. ——).

Under the former practice of the Senate, the Chair did not rule out conference reports, but the Senate itself expressed its opinion on the vote to agree to the report (V, 6426–6432). However, on March 8, 1918, the

Senate adopted a "scope" rule providing for a point of order against conferees inserting matter not committed to them or changing the text agreed to by both Houses. This rule of the Senate was strictly construed (VIII, 3273, 3275) until the 104th Congress when the Senate overturned on appeal a ruling of its presiding officer that the inclusion of a special labor-law provision in a conference report exceeded the scope of conference (Oct. 3, 1996, pp. 27147–51). The Chair interpreted that action as tantamount to a change in the Senate rules until the 107th Congress. Public Law 106–553 provided that at the beginning of the 107th Congress the Presiding Officer of the Senate would apply precedents under Senate rule XXVIII as in effect at the end of the 103d Congress.

§ 548. Meeting and action of managers.

The managers of a conference may not report before the other House is notified of their appointment and a meeting is held (V, 6458). Conferences are generally held in the Capitol, and formerly with closed doors, although in rare instances Members and others were admitted to make arguments (V, 6254, footnote, 6263). Clause 12 of rule XXII now provides for at least one open conference meetings except where the House determines by record vote that all or part of the meeting may be closed to the public. The same rule now provides for a point of order in the House against the report and for an automatic request for a new conference if the House managers fail to meet in open session following appointment of the Senate conferees (Dec. 20, 1982, p. 32896). For a discussion of open conference meetings, see § 1093, *infra*. Rarely, also, papers in the nature of petitions have been referred to managers (V, 6263). The managers of the two Houses vote separately (V, 6336).

§ 549. Action on a conference report in the two Houses.

The report of the managers of a conference goes first to one House and then to the other, neither House acting until it is in possession of the papers, which means the original bill and amendments, as well as the report (V, 6322, 6518–6522, 6586; VIII, 3301). The report must be acted on as a whole, being agreed to or disagreed to as an entirety (V, 6472–6480, 6530–6533; VIII, 3304, 3305; Speaker Bankhead, Aug. 22, 1940, p. 10763; Speaker Albert, Nov. 10, 1971, p. 40481); and until the report has been acted on no motion to deal with the individual amendments is in order (V, 6323, 6389, 6390; Speaker Rayburn, Mar. 16, 1942, pp. 2502–04). Under a special order of business recommended by the Committee on Rules, the House has considered a single, indivisible motion to adopt not only a conference report but also sundry motions to dispose of amendments reported from conference in disagreement (June 18, 1992, p. 15453). While ordinarily reports are agreed to by majority vote, a two-thirds vote is required on a report relating to a constitutional amendment (V, 7036). Conference reports must be acted on in both Houses and in a case where the Senate had adopted a report which recommended that it recede from its amendments to a House bill, the House rejected the report and then agreed to the Senate amendments (Mar. 21, 1956, p. 5278). A conference report being

made up but not acted on at the expiration of a Congress, the bill is lost (V, 6309). One House has, by message, reminded the other of its neglect to act on a conference report; but this was an occasion of criticism (V, 6309).

§ 550. Motions in order during action on a conference report.

When a conference report is presented, the question on agreeing is regarded as pending (V, 6517; VIII, 3300), and as the negative of it is equivalent to disagreement, the motion to disagree is not admitted (II, 1473; V, 6517; VIII, 3300). The reading of the amendments to which the report relates is not in order during its consideration (V, 5298). The report may not be amended on motion made in either House alone (V, 6534, 6535; VIII, 3306), but amendment is sometimes made by concurrent action of the two Houses (V, 6536, 6537; VIII, 3308). A motion to refer to a standing committee (V, 6558) or to lay on the table is not entertained in the House (V, 6538–6544); and a conference report may not be sent to Committee of the Whole on suggestion that it contains matter ordinarily requiring consideration in that committee (V, 6559–6561). It is in order on motion to recommit a conference report if the other body, by action on the report, have not discharged their managers (V, 6545–6553, 6609; VIII, 3310), and by concurrent resolution a report may be recommitted to conference after each House has acted thereon (VIII, 3316), but such a proposition would not be privileged in the House (V, 6554–6557; VIII, 3309).

A bill being recommitted to the committee of conference, no further action is taken by the House until it is again reported by the managers (VIII, 3326, 3327), and when reported is subject to another motion to recommit (VIII, 3325). Because instructions included in a motion to recommit a conference report are not binding, adoption of such a motion opens to further negotiation all issues committed to conference (Apr. 21, 1988, p. 8198). A motion to recommit a conference report may not instruct House managers to exceed the scope of conference and (see § 1088, *infra*); and, under clause 7(d) of rule XXII, a motion to instruct may not contain argument (see § 1079, *infra*).

§ 551. Effect of disagreement to a conference report.

When either House disagrees to a conference report the matter is left in the position it was in before the conference was asked (V, 6525), and the amendments in disagreement come up for further action (II, 1473), but do not return to the state they were in before disagreement, so that they need not be considered in Committee of the Whole (V, 6589). Motions for disposition of Senate amendments, sending to conference and instruction of conferees, are again in order (VIII, 3303). However, if a conference report is considered as rejected pursuant to the provisions of clause 10 of rule XXII because of the inclusion of nongermane matter, the pending question is as specified in those clauses and, depending on the nature of the text in disagreement, may be to recede and concur with an amendment, to insist on the House position, or to insist on disagreement (see §§ 1089, 1090, *infra*).

§ 552. Custody of papers when a conference is asked before disagreement.

A conference may be asked, before the House asking it has come to a resolution of disagreement, insisting or adhering. *3 Hats., 269, 341.* In which case the papers are not left with the other conferees, but are brought back to the foundation of the vote to be given. And this is the most reasonable and respectful proceeding; for, as was urged by the Lords on a particular occasion, "it is held vain, and below the wisdom of Parliament, to reason or argue against fixed resolutions, and upon terms of impossibility to persuade." *3 Hats., 226.*
* * *

In the Houses of Congress conferences are sometimes asked before a disagreement, and while the rule as to retention of the papers undoubtedly holds good, neglect to observe it has not been questioned (V, 6585).

§ 553. Relations of adherence and conference under the parliamentary law.

* * * So the Commons say, "an adherence is never delivered at a free conference, which implies debate." *10 Grey, 137.* And on another occasion the Lords made it an objection that the Commons had asked a free conference after they had made resolutions of adhering. It was then affirmed, however, on the part of the Commons that nothing was more parliamentary than to proceed with free conferences after adhering, *3 Hats., 269,* and we do in fact see instances of conference, or of free conference, asked after the resolution of disagreeing, *3 Hats., 251, 253, 260, 286, 291, 316, 349;* of insisting, *ib., 280, 290, 299, 319, 322, 355;* of adhering, *269, 270, 283, 300;* and even of a second or final adherence. *3 Hats., 270.* * * *

§ 554. Relations of adherence and conference under the practice of the two Houses of Congress.

The two Houses not observing the parliamentary distinctions as to free and other conferences, their practice in case of adherence is also different. Conferences are not asked after an adherence by both Houses, but have often been asked and granted where only one House has adhered (V, 6241–6244). A vote to adhere may not be accompanied by a request for a conference (V, 6303; VIII, 3208), as the House that votes to adhere does not ask a conference (V, 6304–6308). The request for a conference in such a case is properly accompanied by a motion to insist (V, 6308). And the House that has adhered may insist on its adherence when it agrees to the conference (V, 6251). But it is not considered necessary either to recede or insist before agreeing to the conference (V, 6242, 6244, 6310, 6311).

§ 555. Custody of the papers after an effective conference.

* * * And in all cases of conference asked after a vote of disagreement, &c., the conferees of the House asking it are to leave the papers with the conferees of the other; and in one case where they refused to receive them they were left on the table in the conference chamber. *Ib., 271, 317, 323, 354; 10 Grey, 146.*

This principle of the parliamentary law is recognized as of effect in the two Houses of Congress, and is customarily followed in cases wherein the managers of the conference come to an agreement on which a report may be based (July 31, 1981, p. 18884). If conferees of House agreeing to conference surrender papers to House asking conference, the report can be received first by House asking the conference (VIII, 3330). In the 101st Congress, where a report following a successful conference was filed in both Houses, an objection to a unanimous-consent request in the Senate prevented the release of papers held at the Senate desk to the House, where the Senate in the normal course of events was scheduled to act first on the report (June 28, 1990, p. 16249).

§ 556. Custody of papers when managers of a conference fail to agree.

Where a conference breaks up without reaching any agreement the managers for the House that requested the conference, who have the papers by right, are justified in retaining them and carrying them back to the House (IV, 3905, footnote; V, 6246, 6254, 6571–6584; VIII, 3332). And in one case wherein under such circumstances the papers were taken back to the Senate, which was the body agreeing to the conference, the Senate after consideration sent them to the House, since it seemed proper for the asking House to take the first action (V, 6573).

But sometimes managers have brought the papers to the agreeing House without question (V, 6239, footnote; July 14, 1988, p. 18411).

§ 557. Free or instructed conferences.

After a free conference the usage is to proceed with free conferences and not to return again to a conference. *3 Hats., 270; 9 Grey, 229.*

After a conference denied a free conference may be asked. *1 Grey, 45.*

The House instructs its managers whenever it sees fit, without regard to whether or not the preceding conference has been free or instructed.

§ 558. Parliamentary law as to purposes for which conferences may be held.

When a conference is asked, the subject of it must be expressed or the conference not agreed to. *Ord. H. Com., 89; 1 Grey, 425; 7 Grey, 31.* They are sometimes asked to inquire concerning an offense or default of a member of the other House. *6 Grey, 181; 1 Chand., 304.* Or the failure of the other House to present to the King a bill passed by both Houses. *8 Grey, 302.* Or on information received and relating to the safety of the nation. *10 Grey, 171.* Or when the methods of Parliament are thought by the one House to have been departed from by the other a conference is asked to come to a right understanding thereon. *10 Grey, 148.* So when an unparliamentary message has been sent, instead of answering it they ask a conference. *3 Grey, 155.* Formerly an address or articles of impeachment or a bill, with amendments, or a vote of the House, or concurrence in a vote, or a message from the King were sometimes communicated by way of conference. *6 Grey, 128, 300, 387; 7 Grey, 80; 8 Grey, 210, 255; 1 Torbuck's Deb., 278; 10 Grey,*

293; 1 Chandler, 49, 287. But this is not the modern practice. *8 Grey, 255.*

§ 559. Obsolete provision as to conference on first reading.

A conference has been asked after the first reading of a bill. *1 Grey, 194.* This is a singular instance.

The House has no procedure conforming to this provision.

SEC. XLVII—MESSAGES

§ 560. Messages sent only when both Houses are sitting.

Messages between the Houses are to be sent only while both Houses are sitting. *3 Hats., 15.* * * *

Formerly this rule was observed (V, 6603, 6604), but since the 62d Congress messages have been received by the House when the Senate was not in session (VIII, 3338). Clause 2 of rule II was added in the 97th Congress to authorize the Clerk to receive messages from the President and the Senate at any time that the House is not in session (H. Res. 5, Jan. 5, 1981, p. 98).

§ 561. Messages received during debate.

* * * They are received during a debate without adjourning the debate. *3 Hats., 22.*

In the House messages are received during debate, the Member having the floor yielding on request of the Speaker.

§ 562. Reception of messages during voting, in absence of a quorum, etc.

In Senate the messengers are introduced in any state of business, except: 1. While a question is being put. 2. While the yeas and nays are being called. 3. While the ballots are being counted. The first case is short; the second and third are cases where any interruption might occasion errors difficult to be corrected. So arranged June 15, 1798.

In the House messages are not received while a question is being put or during a division by rising vote. However, they are received during the call of the yeas and nays, during consideration of a question of privilege (V, 6640–6642), during a call of the House (V, 6600, 6650; VIII, 3339),

during debate on a motion to approve the Journal (Sept. 13, 1965, p. 23607), and before the organization of the House (V, 6647–6649). But the Speaker exercises his discretion about interrupting the pending business (V, 6602).

§ 563. Informal rising of Committee of the Whole to receive a message.

In the House, as in Parliament, if the House be in committee when a messenger attends, the Speaker takes the chair to receive the message, and then quits it to return into committee without any question or interruption. *4 Grey, 226.*

§ 564. Salutation of messengers by the Speaker.

Messengers are not saluted by the Members, but by the Speaker for the House. *2 Grey, 253, 274.*

The practice of the House as to reception of messages is founded on this paragraph of the parliamentary law and on the former joint rules (V, 6591–6595). The Speaker, with a slight inclination, addresses the messenger, by his title, after the messenger, with an inclination, has addressed "Mr. Speaker" (V, 6591).

§ 565. Correction and return of messages.

If messengers commit an error in delivering their message, they may be admitted or called in to correct their message. *4 Grey, 41.* Accordingly, March 13, 1800, the Senate having made two amendments to a bill from the House, their Secretary, by mistake, delivered one only, which being inadmissible by itself, that House disagreed, and notified the Senate of their disagreement. This produced a discovery of the mistake. The Secretary was sent to the other House to correct his mistake, the correction was received, and the two amendments acted on de novo.

A request of one House for the return of a bill messaged to the other, or the request of one House to correct an error in its message to the other, may qualify as privileged in the House or may be disposed of by unanimous consent (III, 2613; V, 6605; Deschler, ch. 32, § 2; Oct. 1, 1982, p. 27172; May 20, 1996, p. 11809). For example: (1) the House by unanimous consent agreed to a request from the Senate for the return of a Senate bill, to

the end that the Senate effect a specified (substantive) change in its text (May 7, 1998, p. 8386) or to the end that the bill be recommitted to committee (July 15, 2004, p. ——); (2) the House by unanimous consent directed its Clerk to correct an error in a message to the Senate (V, 6607); (3) the House, upon receipt of a request by the Senate to return a bill during consideration of the conference report accompanying that bill, laid the conference report aside and agreed to the Senate request (V, 6609); (4) the House requested the return of a message indicating passage of a Senate joint resolution after learning that both Houses had previously passed an identical House Joint Resolution, so that it could indefinitely postpone action thereon (Nov. 16, 1989, p. 29587); (5) the Speaker laid before the House as privileged a message from the Senate requesting the return of a message where it had erroneously appointed conferees to a bill after the papers had been messaged to the House, so that the message could be changed to reflect the appointment of Senate conferees (May 20, 1996, p. 11809); (6) the Speaker laid before the House as privileged a message from the Senate requesting the return of a Senate bill that included provisions intruding on the constitutional prerogative of the House to originate revenue measures (Oct. 19, 1999, p. 25901; Sept. 28, 2004, p. ——; Sept. 30, 2004, p. ——); (7) where the engrossment failed to depict certain action of the House, the House considered and agreed to a privileged resolution requesting the Senate to return the engrossment of a House bill (July 15, 2004, p. ——) and a House-passed Senate bill (Oct. 8, 2004, p. ——); (8) the Speaker laid before the House as privileged a message from the Senate requesting the return of Senate amendments to a House bill where the engrossment failed to properly depict the action of the Senate (July 12, 2005, p. ——).

§ 566. Disposal of messages after reception.

As soon as the messenger who has brought bills from the other House has retired, the Speaker holds the bills in his hand; and acquaints the House "that the other House have by their messenger sent certain bills," and then reads their titles, and delivers them to the Clerk to be safely kept till they shall be called for to be read. *Hakew., 178.*

In the House the message goes to the Speaker's table, but the Speaker does not acquaint the House, as they have already heard the message. From the Speaker's table messages are disposed of under clause 2 of rule XIV.

§ 567. Information by message as to bills passed.

It is not the usage for one House to inform the other by what numbers a bill is passed. *10 Grey, 150.* Yet they have sometimes recommended a bill, as of great importance, to the consideration of the House to which it is sent. *3 Hats., 25.* * * *

The Houses of Congress do not communicate by what numbers a bill is passed, or otherwise recommend their bills.

§ 568. Information by message as to rejection of bills.

* * * Nor when they have rejected a bill from the other House, do they give notice of it; but it passes sub silentio, to prevent unbecoming altercations. *1 Blackst., 183.*

But in Congress the rejection is notified by message to the House in which the bill originated.

In the two Houses of Congress the fact of the rejection of a bill is messaged to the House in which the bill originated, as in the days of Jefferson, although the joint rule requiring it has disappeared (IV, 3422; V, 6601). And in a case wherein the House had stricken out the enacting words of a Senate bill, the Senate was notified that the bill had been rejected (IV, 3423; VII, 2638; Oct. 4, 1972, pp. 33785–87).

§ 569. Questions asked by conference, not by message.

A question is never asked by the one House of the other by way of message, but only at a conference; for this is an interrogatory, not a message. *3 Grey, 151, 181.*

In 1798 the House asked of the Senate a question by way of conference, but this appears to be the only instance (V, 6256).

§ 570. Messages as to neglected bills.

When a bill is sent by one House to the other, and is neglected, they may send a message to remind them of it. *3 Hats., 25; 5 Grey, 154.* But if it be mere inattention, it is better to have it done informally by

communication between the Speakers or Members of the two Houses.

It does not appear that either House of Congress has by message reminded the other of a neglected bill.

§ 571. Messages from the President to the two Houses.

Where the subject of a message is of a nature that it can properly be communicated to both Houses of Parliament, it is expected that this communication should be made to both on the same day. But where a message was accompanied with an original declaration, signed by the party to which the message referred, its being sent to one House was not noticed by the other, because the declaration being original, could not possibly be sent to both Houses at the same time. *2 Hats., 260, 261, 262.*

The King having sent original letters to the Commons afterward desires they may be returned, that he may communicate them to the Lords. *1 Chandler, 303.*

A message of the President of the United States is usually communicated to both Houses on the same day when its nature permits (V, 6590); but an original document accompanying can, of course, be sent to but one House (V, 6616, 6617). The President having by inadvertence included certain papers in a message, was allowed to withdraw them (V, 6651). In the House the Speaker has the discretion, which he rarely exercises, to suspend a roll call in order to receive a message from the President.

SEC. XLVIII—ASSENT

§ 572. Parliamentary law as to presenting a bill for the King's assent.

The House which has received a bill and passed it may present it for the King's assent, and ought to do it, though they have not by message notified to the other their passage of it. Yet the notifying by message is a form which ought to be

observed between the two Houses from motives of respect and good understanding. *2 Hats., 242.* Were the bill to be withheld from being presented to the King, it would be an infringement of the rules of Parliament. *Ib.*

In the House it was held that where there had been no unreasonable delay in transmitting an enrolled bill to the President, a resolution relating thereto did not present a question of privilege (III, 2601).

§ 573. Parliamentary law as to enrollment of bills.

When a bill has passed both Houses of Congress, the House last acting on it notifies its passage to the other, and delivers the bill to the Joint Committee on Enrollment, who sees that it is truly enrolled in parchment. When the bill is enrolled it is not to be written in paragraphs, but solidly, and all of a piece, that the blanks between the paragraphs may not give room for forgery. *9 Grey, 143.* * * *

§ 574. Practice of the two Houses of Congress as to enrollment of bills.

Formerly the enrollment in the House and the Senate was in writing (IV, 3436, 3437); but in 1893 the two Houses, by concurrent resolution, provided that bills should be enrolled on parchment by printing instead of by writing, and also that the engrossment of bills before sending them to the other House for action should be in printing (IV, 3433), and in 1895 this concurrent resolution was approved by statute (IV, 3435; 1 U.S.C. 106). In the last six days of a session of Congress the two Houses, by concurrent resolution, may permit the enrolling and engrossing to be done by hand (IV, 3435, 3438; H. Con. Res. 436, Dec. 20, 1982, p. 32875; H. Con. Res. 375, Oct. 11, 1984, p. 32149), and such a concurrent resolution is privileged for consideration in the House during the last six days of the session (see 1 U.S.C. 106 for authority to waive ordinary printing requirements at the end of a session), but before the last six days, a joint resolution changing the law to permit hand enrollments is required and may be considered in the House by unanimous consent (Dec. 10, 1985, p. 35741) or by special order of business (H. Res. 580, Oct. 8, 1998, p. 24735). The two Houses have by joint resolution authorized not only a "hand enrollment" of a time-sensitive bill but also a parchment enrollment of the same measure, to be prepared at a later time for deposit in the National Archives with the original (P.L. 100–199, Dec. 21, 1987;

P.L. 100–454, Sept. 29, 1988). Where an enrolled bill enacts another numbered bill by reference, that same law may require the Archivist to include as an appendix to that law the text of the referenced bill (see, *e.g.,* 106–554). Only in a very exceptional case have the two Houses waived the requirement that bills shall be enrolled (IV, 3442). The enrolling clerk should make no change, however unimportant, in the text of a bill to which the House has agreed (III, 2598); but the two Houses may by concurrent resolution authorize the correction of an error when enrollment is made (IV, 3446–3450), and this seems a better practice than earlier methods by authority of the Committee on Enrolled Bills (IV, 3444, 3445).

§ 575. Signing of enrolled bills for presentation to the President.

* * * It is then put into the hands of the Clerk of the House to have it signed by the Speaker. The Clerk then brings it by way of message to the Senate to be signed by their President. The Secretary of the Senate returns it to the Committee of Enrollment, who present it to the President of the United States. * * *

The practice of the two Houses of Congress for the signing of enrolled bills was formerly governed by joint rules, and has continued since those rules were abrogated in 1876 (IV, 3430). The bills are signed first by the Speaker, then by the President of the Senate (IV, 3429). By unanimous consent where errors are found in enrolled bills that have been signed, the two Houses by concurrent action may authorize the cancellation of the signatures and a reenrollment (IV, 3453–3459), and in the same way the signatures may be cancelled on a bill prematurely enrolled (IV, 3454).

§ 576. Authority of pro tempore presiding officers to sign enrolled bills.

A Speaker pro tempore elected by the House (II, 1401), or whose designation has received the approval of the House (II, 1404; VI, 277), signs enrolled bills (see clause 4 of rule I); but a Member merely called to the chair during the day (II, 1399, 1400; VI, 276), or designated in writing by the Speaker, does not exercise this function (II, 1401).

The Senate, by rule, has empowered a presiding officer by written designation to sign enrolled bills (II, 1403).

§ 577. Presentation of enrolled bills to the President.

In early days a joint committee took enrolled bills to the President (IV, 3432); but in the later practice the chairman of the committee in each House that had responsibility for the enrollment of bills also had the responsibility of presenting the bills from that House, and submitted from his committee daily a report of the bills presented for entry in the Journal (IV, 3431). In the 107th Congress the responsibility in the House for en-

rolled bills was transferred from the Committee on House Administration to the Clerk (sec. 2(b), H. Res. 5, Jan. 3, 2001, p. 25). Enrolled bills pending at the close of a session have, at the next session of the same Congress, been ordered to be treated as if no adjournment had taken place (IV, 3487–3488). Enrolled bills signed by the presiding officers at one session have been sent to the President and approved at the next session of the same Congress (IV, 3486). At the close of the 97th Congress, some enrollments were presented to the President, and were signed by him, after the convening of the 98th Congress.

SEC. XLIX—JOURNALS

* * * * *

§ 578. Obsolete provisions as to entry of motions in the journal.

If a question is interrupted by a vote to adjourn, or to proceed to the orders of the day, the original question is never printed in the journal, it never having been a vote, nor introductory to any vote; but when suppressed by the previous question, the first question must be stated, in order to introduce and make intelligible the second. *2 Hats., 83.*

This provision of the parliamentary law is superseded by clause 1 of rule XVI, which requires every motion entertained by the Speaker to be entered on the Journal.

§ 579. Journal entries of questions postponed or laid on the table.

So also when a question is postponed, adjourned, or laid on the table, the original question, though not yet a vote, must be expressed in the journals, because it makes part of the vote of postponement, adjourning, or laying it on the table.

In the House a question is not adjourned, except in the sense that it may be left to go over as unfinished business by reason of a vote to adjourn.

§ 580. Entry of amendments in the Journal.

Where amendments are made to a question, those amendments are not printed in the journals, separated from the question; but only the question as

finally agreed to by the House. The rule of entering in the journals only what the House has agreed to, is founded in great prudence and good sense, as there may be many questions proposed which it may be improper to publish to the world in the form in which they are made. *2 Hats., 85.*

In the practice of the House a motion to amend is entered on the Journal as any other motion, under clause 1 of rule XVI.

* * * * *

§ 581. Entry of votes in journal of the House of Commons.

The first order for printing the votes of the House of Commons was October 30, 1685. *1 Chandler, 387.*

§ 582. The Journal as an official record.

Some judges have been of opinion that the journals of the House of Commons are no records, but only remembrances. But this is not law. *Hob., 110, 111; Lex. Parl., 114, 115; Jour. H. C., Mar. 17, 1592; Hale, Parl., 105.* For the Lords in their House have power of judicature, the Commons in their House have power of judicature, and both Houses together have power of judicature; and the book of the Clerk of the House of Commons is a record, as is affirmed by act of Parl., *6 H. 8, c. 16; 4 Inst., 23, 24;* and every member of the House of Commons hath a judicial place. *4 Inst., 15.* As records they are open to every person, and a printed vote of either House is sufficient ground for the other to notice it. Either may appoint a committee to inspect the journals of the other, and report what has been done by the other in any particular case. *2 Hats., 261; 3 Hats., 27–30.* Every member has a right to see

the journals and to take and publish votes from them. Being a record, every one may see and publish them. *6 Grey, 118, 119.*

The Journal of the House is the official record of the proceedings of the House (IV, 2727), and certified copies are admitted as evidence in the courts of the United States (IV, 2810; 28 U.S.C. 1736). A Senate committee concluded that the Journal entries of a legislative body were conclusive as to all the proceedings had, and might not be contradicted by ex parte evidence (I, 563).

§ 583. Correction of the Journal through a committee.

On information of a misentry or omission of an entry in the journal, a committee may be appointed to examine and rectify it, and report it to the House. *2 Hats., 194, 195.*

SEC. L—ADJOURNMENT

§ 584. Parliamentary law as to adjournment of the Commons and Lords.

The two Houses of Parliament have the sole, separate, and independent power of adjourning each their respective Houses. The King has no authority to adjourn them; he can only signify his desire, and it is in the wisdom and prudence of either House to comply with his requisition, or not, as they see fitting. *2 Hats., 232; 1 Blackst., 186; 5 Grey, 122.*

* * * * *

§ 585. Motion to adjourn not to be amended.

A motion to adjourn, simply cannot be amended, as by adding "to a particular day;" but must be put simply "that this House do now adjourn;" and if carried in the affirmative, it is adjourned to the next sitting day, unless it has come to a previous resolution, "that at its rising it will adjourn to a

particular day," and then the House is adjourned to that day. *2 Hats., 82.*

The modern practice of the House adheres to this principle (§§ 912–913, *infra*). Clause 4 of rule XVI admits at the discretion of the Speaker a separate motion of equal privilege that when the House adjourns on that day it stand adjourned to a day and time certain (consistent with article I, section 5, clause 4 of the Constitution, not in excess of three days).

§ 586. Motion for a recess.

Where it is convenient that the business of the House be suspended for a short time, as for a conference presently to be held, &c., it adjourns during pleasure; *2 Hats., 305;* or for a quarter of an hour. *4 Grey, 331.*

An adjournment during pleasure is effected in the House by a motion for a recess. A recess may not be taken by less than a quorum (IV, 2958–2960), and consequently the motion for it is not in order in the absence of a quorum (IV, 2955–2957). When the hour previously fixed for a recess arrives, the Chair declares the House in recess even in the midst of a division or when a quorum is not present (IV, 664; V, 6665, 6666); but a roll call is not in this way interrupted (V, 6054, 6055). Where a special order requires a recess at a certain hour of a certain day, the recess is not taken if the encroachment of a prior legislative day prevents the existence of the said certain day as a legislative day (IV, 3192). And an adjournment at a time before the hour fixed for a recess vacates the recess (IV, 3283). A motion for a recess must, when entertained, be voted on, even though the taking of the vote may have been prevented until after the hour specified for the conclusion of the proposed recess (V, 6667). A Committee of the Whole takes a recess only by permission of the House (V, 6669–6671; VIII, 3362). The motion for a recess is not privileged (V, 4302, 5301, 6740), in the House or in Committee of the Whole (June 26, 1981, p. 14356) against a demand that business proceed in the regular order (V, 6663; VIII, 3354–3356). However, beginning in the 102d Congress a motion to authorize the Speaker to declare a recess was given a privilege equal to that of the motion to adjourn (clause 4 of rule XVI); and beginning in the 103d Congress the Speaker was authorized to declare a recess "for a short time when no question is pending" (clause 12 of rule I). For the Speaker's authority to declare an emergency recess when notified of an imminent threat to the safety of the House, see § 639, *infra*.

§ 587. Adjournment pronounced by the Speaker.

If a question be put for adjournment, it is no adjournment till the Speaker pronounces it. *5 Grey, 137.* And from courtesy and respect, no member leaves his place till the Speaker has passed on.

SEC. LI—A SESSION

§ 588. Sessions of Parliament.

Parliament have three modes of separation, to wit: by adjournment, by prorogation or dissolution by the King, or by the efflux of the term for which they were elected. Prorogation or dissolution constitutes there what is called a session; provided some act was passed. In this case all matters depending before them are discontinued, and at their next meeting are to be taken up de novo, if taken up at all. *1 Blackst., 186.* Adjournment, which is by themselves, is no more than a continuance of the session from one day to another, of for a fortnight, a month, &c., ad libitum. All matters depending remain in statu quo, and when they meet again, be the term ever so distant, are resumed, without any fresh commencement, at the point at which they were left. *1 Lev., 165; Lex. Parl., c. 2; 1 Ro. Rep., 29; 4 Inst., 7, 27, 28; Hutt., 61; 1 Mod., 252; Ruffh. Jac., L. Dict. Parliament; 1 Blackst., 186.* Their whole session is considered in law but as one day, and has relation to the first day thereof. *Bro. Abr. Parliament, 86.*

§ 589. Sitting of committees in recesses and creation of commissions to sit after Congress adjourns.

Committees may be appointed to sit during a recess by adjournment, but not by prorogation. *5 Grey, 374; 9 Grey, 350; 1 Chandler, 50.* Neither House can continue any portion of itself in any parliamentary function beyond the end of the session without the consent of the other two branches. When done, it is by a bill constituting them commissioners for the particular purpose.

The House may empower a committee to sit during a recess which is within the constitutional term of the House (IV, 4541–4543), but not thereafter (IV, 4545). Therefore committees are created commissions by law if their functions are to extend beyond the term of the Congress (IV, 4545). Under clause 2(m)(1)(A) of rule XI, all committees are authorized to sit and act anywhere within the United States, and to issue subpoenas, whether the House is in session or has adjourned to a date certain or adjourned sine die, even after the second regular session of a Congress until the end of the constitutional term. Under clause 1(b)(4) of rule XI, all committees are authorized to file investigative reports and annual activities reports following sine die adjournment.

§ 590. Sessions and recesses of Congress.

Congress separate in two ways only, to wit, by adjournment, or dissolution by the efflux of their time. What, then, constitutes a session with them? A dissolution certainly closes one session, and the meeting of the new Congress begins another. The Constitution authorizes the President, "on extraordinary occasions to convene both Houses, or either of them." *I. 3.* If convened by the President's proclamation, this must begin a new session, and of course determine the preceding one to have been a session. So if it meets under the clause of the Constitution which says, "the Congress shall assemble at least once in every year, and such

meeting shall be on the first Monday in December, unless they shall by law appoint a different day." *I. 4.* This must begin a new session; for even if the last adjournment was to this day the act of adjournment is merged in the higher authority of the Constitution, and the meeting will be under that, and not under their adjournment. So far we have fixed landmarks for determining sessions. * * *

The twentieth amendment to the Constitution, clause 2, now provides that the Congress shall assemble at least once in every year, at noon on the 3d day of January, unless they shall by law appoint a different day. Section 132 of the Legislative Reorganization Act of 1946, 60 Stat. 812, as amended by section 461 of the Legislative Reorganization Act of 1970, 84 Stat. 1140, provides that except in time of war the two Houses shall adjourn sine die not later than the last day of July (Sundays excepted) unless otherwise provided by the Congress. (For form of resolution used to continue in session past July 31, see H. Con. Res. 648, 92d Cong., July 25, 1972, p. 25145.) The same section contemplates an adjournment of Congress from the thirtieth day before to the second day following Labor Day in the first session of a Congress (each odd-numbered year) in lieu of a sine die adjournment. See § 1105, *infra*. Congress is adjourned for more than three days by a concurrent resolution (IV, 4031, footnote), and such adjournments to a day certain, within the session, do not terminate the session (V, 6676, 6677). In one instance the two Houses by concurrent resolution provided for adjournment to a day certain with the provision that if there be no quorum present on that day the session should terminate (V, 6686). Before the adoption of the twentieth amendment it had become established practice that a meeting of Congress once within the year did not make uncertain the constitutional mandate to meet on the first Monday of December (I, 10, 11). And where a special session continued until the time prescribed by the Constitution for the annual meeting without an appreciable intervening time (V, 6690, 6692), a question arose as to whether there had actually been a recess of Congress (V, 6687, 6693), with the conclusion that a recess was a real and not an imaginary time (V, 6687).

§ 591. Manner of closing a session by action of the two Houses.

* * * In other cases it is declared by the joint vote authorizing the President of the Senate and the Speaker to close the session on a fixed day, which is usually in the following form: "Resolved by the

Senate and House of Representatives, that the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on the —— day of ——."

In the modern practice the resolving clause of the concurrent resolution is in form different from that given by Jefferson. For a history and chronology of adjournment resolutions, see § 84, *supra*.

§ 592. Parliamentary law as to business at the termination of a session.

When it was said above that all matters depending before Parliament were discontinued by the determination of the session, it was not meant for judiciary cases depending before the House of Lords, such as impeachments, appeals, and writs of error. These stand continued, of course, to the next session. *Raym., 120, 381; Ruffh. Fac., L. D., Parliament.*

Impeachments stand, in like manner, continued before the Senate of the United States.

For a discussion of continuance of impeachments, see § 620, *infra*.

SEC. LII—TREATIES

* * * * *

§ 593. General nature of treaties.

Treaties are legislative acts. A treaty is the law of the land. It differs from other laws only as it must have the consent of a foreign nation, being but a contract with respect to that nation. In all countries, I believe, except England, treaties are made by the legislative power; and there, also, if they touch the laws of the land they must be approved by Parliament. Ware *v.* Hylton, *3 Dallas's Rep., 223.* It is acknowledged, for in-

stance, that the King of Great Britain cannot by a treaty make a citizen of an alien. *Vattel, b. 1, c. 19, sec. 214.* An act of Parliament was necessary to validate the American treaty of 1783. And abundant examples of such acts can be cited. In the case of the treaty of Utrecht, in 1712, the commercial articles required the concurrence of Parliament; but a bill brought in for that purpose was rejected. France, the other contracting party, suffered these articles, in practice, to be not insisted on, and adhered to the rest of the treaty. *4 Russell's Hist. Mod. Europe, 457; 2 Smollet, 242, 246.*

§ 594. Jefferson's discussion of treaties under the Constitution.

By the Constitution of the United States this department of legislation is confined to two branches only of the ordinary legislature—the President originating and the Senate having a negative. To what subjects this power extends has not been defined in detail by the Constitution; nor are we entirely agreed among ourselves. 1. It is admitted that it must concern the foreign nation party to the contract, or it would be a mere nullity, res inter alias acta. 2. By the general power to make treaties, the Constitution must have intended to comprehend only those subjects which are usually regulated by treaty, and can not be otherwise regulated. 3. It must have meant to except out of these the rights reserved to the States; for surely the President and Senate can not do by treaty what the whole Government is interdicted from doing in any way. 4. And also to except those subjects of legislation in which it gave a

participation to the House. This last exception is denied by some on the ground that it would leave very little matter for the treaty power to work on. The less the better, say others. The Constitution thought it wise to restrain the executive and Senate from entangling and embroiling our affairs with those of Europe. Besides, as the negotiations are carried on by the executive alone, the subjecting to the ratification of the representatives such articles as are within their participation is no more inconvenient than to the Senate. But the ground of this exception is denied as unfounded. For examine, *e.g.*, the treaty of commerce with France, and it will be found that, out of thirty-one articles, there are not more than small portions of two or three of them which would not still remain as subjects of treaties, untouched by these exceptions.

§ 595. General action of the House as to treaties.

The participation of the House in the treaty-making power has been often examined since Jefferson's Manual was written. The House has in several instances taken action in carrying into effect, terminating, enforcing, and suggesting treaties (II, 1502–1505, 1520–1522), although sometimes the propriety of requesting the executive to negotiate a treaty has been questioned (II, 1514–1517).

§ 596. Authority of the House as to treaties in general.

The exact authority of the House in the making of general treaties has been the subject of differences of opinion. In 1796 the House affirmed that, when a treaty related to subjects within the power of Congress, it was the constitutional duty of the House to deliberate on the expediency of carrying such treaty into effect (II, 1509); and in 1816, after a discussion with the Senate, the House maintained its position that a treaty must depend on a law of Congress for its execution as to such stipulations as relate to subjects constitutionally entrusted to Congress (II, 1506). In 1868 the House's assertion of right to a voice in carrying out the stipulations of certain treaties was conceded in a modified form (II, 1508). Again, in 1871, the House asserted its prerogative (II, 1523). In 1820 and 1868 there were discussions of the House's functions as to treaties ceding or acquiring

foreign territory (II, 1507, 1508), and at various other times there have been discussions of the general subject (II, 1509, 1546, 1547; VI, 324–326).

§ 597. Authority of the House as to revenue treaties.

After long and careful consideration the Judiciary Committee of the House decided, in 1887, that the executive branch of the Government might not conclude a treaty affecting the revenue without the assent of the House (II, 1528–1530), and a Senate committee after examination concluded that duties were more properly regulated with the publicity of congressional action than by treaties negotiated by the President and ratified by the Senate in secrecy (II, 1532). In practice the House has acted on revenue treaties (II, 1531, 1533); and in 1880 it declared the negotiation of a revenue treaty an invasion of its prerogatives (II, 1524). At other times the subject has been discussed (II, 1525–1528, 1531, 1533).

§ 598. House approves Indian treaties.

After long discussion the House, in 1871, successfully asserted its right to a voice in approving Indian treaties (II, 1535, 1536), although in earlier times this prerogative had been jealously guarded by the executive (II, 1534).

There have been various conflicts with the executive over requests of the House for papers relating to treaties (II, 1509–1513, 1518, 1519, 1561).

§ 599. Treaties abrogated by law.

Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded. This was accordingly the process adopted in the case of France in 1798.

Notice to a foreign government of the abrogation of a treaty is authorized by a joint resolution (V, 6270). A resolution alleging an unconstitutional abrogation of a treaty by the President, and calling on the President to seek the approval of Congress before such abrogation, does not constitute a question of the privileges of the House under rule IX (June 6, 2002, p. —— (sustained by tabling of appeal)).

§ 600. Procedure of the Senate as to treaties.

It has been the usage for the Executive, when it communicates a treaty to the Senate for their ratification, to communicate also the correspondence of the negotiators. This having been omitted in the case of the Prussian treaty, was asked by a vote of the House of February 12, 1800, and was obtained.

And in December, 1800, the convention of that year between the United States and France, with the report of the negotiations by the envoys, but not their instructions, being laid before the Senate, the instructions were asked for and communicated by the President.

The mode of voting on questions of ratification is by nominal call.

The Senate now has rules governing its procedure on treaties.

SEC. LIII—IMPEACHMENT

* * * * *

§ 601. Jurisdiction of Lords and Commons as to impeachments.

These are the provisions of the Constitution of the United States on the subject of impeachments. The following is a sketch of some of the principles and practices of England on the same subject:

Jurisdiction. The Lords can not impeach any to themselves, nor join in the accusation, because they are the judges. *Seld. Judic. in Parl., 12, 63.* Nor can they proceed against a commoner but on complaint of the Commons. *Ib., 84.* The Lords may not, by the law, try a commoner for a capital offense, on the information of the King or a private person, because the accused is entitled to a trial by his peers generally; but on accusation by the House of Commons, they may proceed against the delinquent, of whatsoever degree, and whatsoever be the nature of the offense; for there they do not assume to themselves trial at common law. The Commons are then instead of a jury, and the judgment is given on their demand, which is instead of a verdict.

So the Lords do only judge, but not try the delinquent. *Ib., 6, 7.* But Wooddeson denies that a commoner can now be charged capitally before the Lords, even by the Commons; and cites Fitzharris's case, 1681, impeached of high treason, where the Lords remitted the prosecution to the inferior court. *8 Grey's Deb., 325–7; 2 Wooddeson, 576, 601; 3 Seld., 1604, 1610, 1618, 1619, 1641; 4 Blackst., 25; 9 Seld., 1656; 73 Seld., 1604–18.*

§ 602. Parliamentary law as to accusation in impeachment.

Accusation. The Commons, as the grand inquest of the nation, becomes suitors for penal justice. *2 Wood., 597; 6 Grey, 356.* The general course is to pass a resolution containing a criminal charge against the supposed delinquent, and then to direct some member to impeach him by oral accusation, at the bar of the House of Lords, in the name of the Commons. The person signifies that the articles will be exhibited, and desires that the delinquent may be sequestered from his seat, or be committed, or that the peers will take order for his appearance. *Sachev. Trial, 325; 2 Wood., 602, 605; Lords' Journ., 3 June, 1701; 1 Wms., 616; 6 Grey, 324.*

§ 603. Inception of impeachment proceedings in the House.

In the House there are various methods of setting an impeachment in motion: by charges made on the floor on the responsibility of a Member or Delegate (II, 1303; III, 2342, 2400, 2469; VI, 525, 526, 528, 535, 536); by charges preferred by a memorial, which is usually referred to a committee for examination (III, 2364, 2491, 2494, 2496, 2499, 2515; VI, 543); by a resolution dropped in the hopper by a Member and referred to a committee (Apr. 15, 1970, p. 11941; Oct. 23, 1973, p. 34873); by a message from the President (III, 2294, 2319; VI, 498); by charges transmitted from the legislature of a State (III, 2469) or territory (III, 2487) or from a grand jury (III, 2488); or from facts developed and reported

by an investigating committee of the House (III, 2399, 2444). In the 93d Congress, the Vice President sought to initiate an investigation by the House of charges against him of possibly impeachable offenses. The Speaker and the House took no action on the request since the matter was pending in the courts and the offenses did not relate to activities during the Vice President's term of office (Sept. 25, 1973, p. 31368; III, 2510 (wherein the Committee on the Judiciary, to which the matter had been referred by privileged resolution, reported that the Vice President could not be impeached for acts or omissions committed before his term of office)). On the other hand, in 1826 the Vice President's request that the House investigate charges against his prior official conduct as Secretary of War was referred, on motion, to a select committee (III, 1736). On September 9, 1998, an independent counsel transmitted to the House under 28 U.S.C. 595(c) a communication containing evidence of alleged impeachable offenses by the President. The House adopted a privileged resolution reported by the Committee on Rules referring the communication to the Committee on the Judiciary, restricting Members' access to the communication, and restricting access to committee meetings and hearings on the communication (H. Res. 525, Sept. 11, 1998, p. 20020). Later, the House adopted a privileged resolution reported by the Committee on the Judiciary authorizing an impeachment inquiry by that committee (H. Res. 581, Oct. 8, 1998, p. 24679). The authority to appoint an independent counsel under 28 U.S.C. 573 expired on June 30, 1999.

§ 604. A proposition to impeach a question of privilege.

A direct proposition to impeach is a question of high privilege in the House and at once supersedes business otherwise in order under the rules governing the order of business (III, 2045–2048, 2051, 2398; VI, 468, 469; July 22, 1986, p. 17294; Aug. 3, 1988, p. 20206; May 10, 1989, p. 8814; Sept. 23, 1998, pp. 21560–62; see Deschler, ch. 14, § 8). It may not even be superseded by an election case, which is also a matter of high privilege (III, 2581). It does not lose its privilege from the fact that a similar proposition has been made at a previous time during the same session of Congress (III, 2408), previous action of the House not affecting it (III, 2053). As such, a report of the Committee on the Judiciary accompanying an impeachment resolution is filed from the floor as privileged (Dec. 17, 1998, p. 27819), and is called up as privileged (Dec. 18, 1998, p. 27828). The addition of new articles of impeachment offered by the managers but not reported by committee are also privileged (III, 2401), as is a proposition to refer to committee the papers and testimony in an impeachment of the preceding Congress (V, 7261). To a privileged resolution of impeachment, an amendment proposing instead censure, which is not privileged, was held not germane (Dec. 19, 1998, p. 28107). On several occasions the Committee on the Judiciary, having been referred a question of impeachment, reported a recommendation that impeachment was not warranted and, thereafter, called up the report as a question of privilege (Deschler, ch. 14, § 1.3). Under 28 U.S.C. 596(a) an independent counsel appointed to

investigate the President may be impeached; and a resolution impeaching such independent counsel constitutes a question of the privileges of the House under rule IX (Sept. 23, 1998, p. 21560).

Propositions relating to an impeachment already made also are privileged (III, 2400, 2402, 2410; July 22, 1986, p. 17294; Dec. 2, 1987, p. 33720; Aug. 3, 1988, p. 20206), such as resolutions providing for selection of managers of an impeachment (VI, 517; Dec. 19, 1998, p. 28112), proposing abatement of impeachment proceedings (VI, 514), reappointing managers for impeachment proceedings continued in the Senate from the previous Congress (Jan. 3, 1989, p. 84; Jan. 6, 1999, p. 14), empowering managers to hire special legal and clerical personnel and providing for their pay, and to carry out other responsibilities (Jan. 3, 1989, p. 84; Dec. 19, 1998, p. 28112; Jan. 6, 1999, p. 240), and replacing an excused manager (Feb. 7, 1989, p. 1726); but a resolution simply proposing an investigation, even though impeachment may be a possible consequence, is not privileged (III, 2050, 2546; VI, 463).

Where a resolution of investigation positively proposes impeachment or suggests that end, it has been admitted as of privilege (III, 2051, 2052, 2401, 2402), such as a resolution reported by the Committee on the Judiciary authorizing an impeachment inquiry by that committee and investing the committee with special investigative authorities to facilitate the inquiry (III, 2029; VI, 498, 528, 549; Deschler, ch. 14, §§ 5.8, 6.2; H. Res. 581, Oct. 8, 1998, p. 24679). A committee to which has been referred privileged resolutions for the impeachment of an officer may call up as privileged resolutions incidental to consideration of the impeachment question, including conferral of subpoena authority and funding of the investigation from the contingent fund (now referred to as "applicable accounts of the House described in clause 1(j)(1) of rule X") (VI, 549; Feb. 6, 1974, p. 2349). Similarly, a resolution authorizing depositions by committee counsel in an impeachment inquiry is privileged under rule IX as incidental to impeachment (Speaker Wright, Oct. 3, 1988, p. 27781).

§ 605. Investigation of impeachment charges.

The impeachment having been made on the floor by a Member (III, 2342, 2400; VI, 525, 526, 528, 535, 536), or charges suggesting impeachment having been made by memorial (III, 2495, 2516, 2520; VI, 552), or even appearing through common fame (III, 2385, 2506), the House has at times ordered an investigation at once. At other times it has refrained from ordering investigation until the charges had been examined by a committee (III, 2364, 2488, 2491, 2492, 2494, 2504, 2513). Under the later practice, resolutions introduced through the hopper that directly call for the impeachment of an officer have been referred to the Committee on the Judiciary, while resolutions calling for an investigation by that committee or by a select committee with a view toward impeachment have been referred to the Committee on Rules (Oct. 23, 1973, p. 34873). Upon receipt of a communication from an independent counsel transmitting to the House under 28 U.S.C. 595(c) a communication containing evidence of alleged impeachable offenses by

the President, the House adopted a resolution reported by the Committee on Rules referring the communication to the Committee on the Judiciary to conduct a review (H. Res. 525, 106th Cong., Sept. 11, 1998, p. 20020). Later, the House adopted a privileged resolution reported by the Committee on the Judiciary authorizing an impeachment inquiry by that committee (H. Res. 581, Oct. 8, 1998, pp. 24679, 24735).

§ 606. Procedure of committee in investigating.

The House has always examined the charges by its own committee before it has voted to impeach (III, 2294, 2487, 2501). This committee has sometimes been a select committee (III, 2342, 2487, 2494), sometimes a standing committee (III, 2400, 2409). In some instances the committee has made its inquiry ex parte (III, 2319, 2343, 2366, 2385, 2403, 2496, 2511); but in the later practice the sentiment of committees has been in favor of permitting the accused to explain, present witnesses, cross-examine (III, 2445, 2471, 2518), and be represented by counsel (III, 2470, 2501, 2511, 2516; 93d Cong., Aug. 20, 1974, p. 29219; H. Rept. 105–830, Dec. 16, 1998). The Committee on the Judiciary having been directed by the House to investigate whether sufficient grounds existed for the impeachment of President Nixon, and the President having resigned following the decision of that committee to recommend his impeachment to the House, the chairman of the committee submitted from the floor as privileged the committee's report containing the articles of impeachment approved by the committee but without an accompanying resolution of impeachment. The House thereupon adopted a resolution (1) taking notice of the committee's action on a resolution and Articles of Impeachment and of the President's resignation; (2) accepting the report and authorizing its printing, with additional views; and (3) commending the chairman and members of the committee for their efforts (Aug. 20, 1974, p. 29361).

§ 606a. Procedure of House in considering.

During the pendency of an impeachment resolution, remarks in debate may include references to personal misconduct on the part of the President but may not include language generally abusive toward the President and may not include comparisons to the personal conduct of sitting Members of the House or Senate (Dec. 18, 1998, p. 27829). A resolution setting forth four separate articles of impeachment may be divided among the articles (Dec. 19, 1998, p. 28110).

§ 607. Impeachment carried to the Senate.

Its committee on investigation having reported, the House may vote the impeachment (III, 2367, 2412; VI, 500, 514; Mar. 2, 1936, pp. 3067–91), and, after having notified the Senate by message (III, 2413, 2446), may direct the impeachment to be presented at the bar of the Senate by a single Member (III, 2294), or by two (III, 2319, 2343, 2367), or five (III, 2445) or nine (July 22, 1986, p. 17306) or 13 (Dec. 19, 1998, p. 28112). These Members in two notable cases represented the majority party alone (*e.g.*, Dec. 19, 1998, p. 28112), but ordinarily include representation of the minority party (III, 2445, 2472, 2505). Under early practice the House elected managers

by ballot (III, 2300, 2323, 2345, 2368, 2417). In two instances the Speaker appointed the managers on behalf of the House pursuant to an order of the House (III, 2388, 2475). Since 1912 the House has adopted a resolution appointing managers. In the later practice the House considers together the resolution and articles of impeachment (VI, 499, 500, 514; Mar. 2, 1936, pp. 3067–91) and following their adoption adopts resolutions electing managers to present the articles before the Senate, notifying the Senate of the adoption of articles and election of managers, and authorizing the managers to prepare for and to conduct the trial in the Senate (VI, 500, 514, 517; Mar. 6, 1936, pp. 3393, 3394; July 22, 1986, p. 17306; Aug. 3, 1988, p. 20206). These privileged incidental resolutions may be merged into a single indivisible privileged resolution (H. Res. 614, Dec. 19, 1998, p. 28112; H. Res. 10, Jan. 6, 1999, p. 240).

§ 608. Impeachment process in the Senate.

Process. If the party do not appear, proclamations are to be issued, giving him a day to appear. On their return they are strictly examined. If any error be found in them, a new proclamation issues, giving a short day. If he appear not, his goods may be arrested, and they may proceed. *Seld. Jud. 98, 99.*

§ 608a. Senate impeachment proceedings against President Clinton.

Under an order of the Senate, the Secretary of the Senate informed the House and the Chief Justice that it was ready to receive the House managers for the purpose of exhibiting articles of impeachment against President Clinton (Jan. 6, 1999, p. 37). At the appointed hour the House managers were announced and escorted into the Senate chamber by the Senate Sergeant-at-Arms (Jan. 7, 1999, p. 272). The managers presented the articles of impeachment by reading two resolutions as follows: (1) the appointment of managers (H. Res. 10, Jan. 7, 1999, p. 272); and (2) the two articles of impeachment (H. Res. 611, Jan. 7, 1999, p. 273). Thereupon, the managers requested the Senate take order for trial (Jan. 7, 1999, p. 273).

The Senate adopted a resolution governing the initial impeachment proceedings of President Clinton (S. Res. 16, Jan. 8, 1999, p. 349). Later it adopted a second resolution governing the remaining proceedings (S. Res. 30, Jan. 28, 1999, p. 1843). The first resolution issued the summons in the usual form. It also provided a timetable for (1) the filing of an answer by the President; (2) the filing of a reply by the House, together with the record consisting of publicly available materials that had been submitted to or produced by the House Judiciary Committee (the resolution further directed that the record be admitted into evidence, printed, and made available to Senators); (3) the filing of a trial brief by the House; (4) the filing of any motions permitted under the rules of impeachment (except for mo-

tions to subpoena witnesses or to present evidence not in the record); (5) the filing of responses to any such motions; (6) the filing of a trial brief by the President; (7) the filing of a rebuttal brief by the House; and (8) arguments on such motions. The resolution then directed the Senate to dispose of any such motions and established a further timetable for (1) the House to make its presentation in support of the articles of impeachment (such argument to be confined to the record); (2) the President to make his presentation in opposition to the articles of impeachment; and (3) the Senators to question the parties. The resolution directed the Senate, upon completion of that phase of the proceedings, to dispose of a motion to dismiss, and if defeated, to dispose of a motion to subpoena witnesses or to present any evidence not in the record. The resolution further provided that, if the motion to call witnesses were adopted, the witnesses would first be deposed and then the Senate would decide which witnesses should testify. It further provided that if the Senate failed to dismiss the case, the parties would proceed to present evidence. Finally, the resolution directed the Senate to vote on each article of impeachment at the conclusion of the deliberations. The evidentiary record (summons, answer, replies, and trial briefs) was printed in the Record by unanimous consent (Jan. 14, 1999, p. 357). Pursuant to the previous order of the Senate (S. Res. 16, Jan. 8, 1999, p. 349), the House managers were recognized for 24 hours to present their case in support of conviction and removal of President Clinton (Jan. 14, 1999, p. 521); counsel for the President was then recognized for 24 hours to present the President's defense (Jan. 19, 1999, p. 1055); and Senators submitted questions in writing of either the House managers or the President's counsel (which were read by the Chief Justice, alternating between parties) for a period not to exceed 16 hours (Jan. 22, 1999, p. 1244). The Chief Justice ruled that a House manager could not object to a question although he could object to an answer (Jan. 22, 1999, p. 1250; Jan. 23, 1999, p. 1320). The Senate adopted a motion to consider a motion to dismiss in executive session (Jan. 25, 1999, p. 1339), and the motion to dismiss was defeated (Jan. 27, 1999, p. 1397). The Senate adopted a motion to consider a motion of the House managers to subpoena witnesses in executive session (Jan. 26, 1999, p. 1370). The Senate adopted that motion, which: (1) authorized the issuance of subpoenas for depositions of three witnesses; (2) admitted miscellaneous documents into the trial record; and (3) petitioned the Senate to request the appearance of President Clinton at a deposition (Jan. 26, 1999, p. 1370).

The Senate subsequently adopted a resolution governing the remaining impeachment proceedings as follows: (1) establishment of a timetable for conducting and reviewing depositions, resolving any objections made during the depositions, and considering motions to admit any portions of the depositions into evidence; (2) consideration of motions for additional discovery (if made by the two Leaders jointly); (3) disposition of motions governing the presentation of evidence or witnesses before the Senate and motions by the President's counsel (specifically precluding a motion to re-

open the record and specifically permitting a motion to allow final deliberations in open session); (4) establishment of a timetable to vote on the articles of impeachment; and (5) authorization to issue subpoenas to take certain depositions and to establish procedures for conducting depositions (S. Res. 30, Jan. 28, 1999, p. 1453). The Senate adopted two parts of a divided motion as follows: (1) permitting the House managers to admit transcripts and videotapes of oral depositions into evidence (Feb. 4, 1999, p. 1817); and (2) permitting the parties to present before the Senate for an equally divided specified period of time portions of videotapes or oral depositions admitted into evidence, having first rejected a preemptive motion to restrict the House managers' presentation of evidence to written transcripts (Feb. 4, 1999, p. 1817). The Senate rejected the portion of the divided motion that would have authorized a subpoena for the appearance of a named witness (Feb. 4, 1999, p. 1827). During debate on the motion, the Senate, by unanimous consent, permitted the House managers and counsel for the President to make references to videotaped oral depositions (Feb. 4, 1999, p. 1817). The Senate rejected two additional motions as follows: (1) a motion to proceed directly to closing arguments and an immediate vote on the articles of impeachment (Feb. 4, 1999, p. 1827); and (2) a motion that the House managers provide written notice to counsel for the President by a time certain of those portions of videotaped deposition testimony they planned to use during their evidentiary presentation or during closing arguments (Feb. 4, 1999, p. 1827). By unanimous consent the Senate printed certain deposition transcripts in the Record and transmitted to the House managers and the counsel for the President deposition transcripts and videotapes (Feb. 4, 1999, p. 1827). The Chief Justice held inadmissible a portion of a videotaped deposition not entered as evidence into the Senate record (other portions of which were admitted under an order of the Senate), and a unanimous-consent request nevertheless to admit that portion of a deposition was objected to (Feb. 6, 1999, p. 1954). After closing arguments, the Senate adopted a motion to consider the articles of impeachment in closed session (Feb. 9, 1999, p. 2055). After closed deliberations the Senate Clerk read the articles of impeachment against President Clinton in open session, and each Senator voted "guilty" or "not guilty" on each article (Feb. 12, 1999, p. 2375). By votes of 45–55 and 50–50 respectively, the Senate adjudged President Clinton not guilty on each article of impeachment (Feb. 12, 1999, p. 2375). The Senate communicated to the House and the Secretary of State the judgment of the Senate (Feb. 12, 1999, p. 2375).

See S. Doc. 93–102, "Procedure and Guidelines for Impeachment Trials in the United States Senate," for precedents relating to the conduct of Senate impeachments.

§ 609. Exhibition and form of articles.

Articles. The accusation (articles) of the Commons is substituted in place of an indictment. Thus, by the usage of

Parliament, in impeachment for writing or speaking, the particular words need not be specified. *Sach. Tr., 325; 2 Wood., 602, 605; Lords' Journ., 3 June, 1701; 1 Wms., 616.*

Having delivered the impeachment, the committee returns to the House and reports verbally (III, 2413, 2446; VI, 501). Formerly, the House exhibited its articles after the impeachment had been carried to the bar of the Senate; in the later practice, the resolution and articles of impeachment have been considered together and exhibited simultaneously in the Senate by the managers (VI, 501, 515; Mar. 10, 1936, pp. 3485–88; Oct. 7, 1986, p. 29126; Jan. 7, 1999, p. 272). The managers, who are elected by the House (III, 2300, 2345, 2417, 2448; VI, 500, 514, 517; Mar. 2, 1936, pp. 3393, 3394) or appointed by the Speaker (III, 2388, 2475), carry the articles in obedience to a resolution of the House (III, 2417, 2419, 2448) to the bar of the Senate (III, 2420, 2449, 2476), the House having previously informed the Senate (III, 2419, 2448) and received a message informing them of the readiness of the latter body to receive the articles (III, 2078, 2325, 2345; Aug. 6, 1986, p. 19335; Jan. 6, 1999, p. 240). Having exhibited the articles the managers return and report verbally to the House (III, 2449, 2476).

The articles in the Belknap impeachment were held sufficient, although attacked for not describing the respondent as one subject to impeachment (III, 2123). In the proceedings against Judge Ritter, objections to the articles of impeachment, on the ground that they duplicated and accumulated separate offenses, were overruled (Apr. 3, 1936, p. 4898; Apr. 17, 1936, p. 5606). These articles are signed by the Speaker and attested by the Clerk (III, 2302, 2449), and in form approved by the practice of the House (III, 2420, 2449, 2476).

Articles of impeachment which have been exhibited to the Senate may be subsequently modified or amended by the House (VI, 520; Mar. 30, 1936, pp. 4597–99), and a resolution proposing to amend articles of impeachment previously adopted by the House is privileged for consideration when reported by the managers on the part of the House (VI, 520; Mar. 30, 1936, p. 4597).

For discussion of substantive charges contained in articles of impeachment and the constitutional grounds for impeachment, see § 175, *supra* (accompanying Const., art. II, sec. 4). For a discussion of the presentation of the House managers in support of the impeachment of President Clinton, and related matters, see § 608a, *supra*.

§ 610. Parliamentary law as to appearance of respondent.

Appearance. If he appear, and the case be capital, he answers in custody; though not if the accusation be general. He is not to be committed but on special accusations. If it be for a misdemeanor only, he answers, a lord in his place, a commoner at the bar, and not in custody, unless, on the answer, the Lords find cause to commit him, till he finds sureties to attend, and lest he should fly. *Seld. Jud., 98, 99.* A copy of the articles is given him, and a day fixed for his answer. *T. Ray.; 1 Rushw., 268; Fost., 232; 1 Clar. Hist. of the Reb., 379.* On a misdemeanor, his appearance may be in person, or he may answer in writing, or by attorney. *Seld. Jud., 100.* The general rule on accusation for a misdemeanor is, that in such a state of liberty or restraint as the party is when the Commons complain of him, in such he is to answer. *Ib., 101.* If previously committed by the commons, he answers as a prisoner. But this may be called in some sort judicium parium suorum. *Ib.* In misdemeanors the party has a right to counsel by the common law, but not in capital cases. *Seld. Jud., 102, 105.*

§ 611. Requirements of the Senate as to appearance of respondent.

This paragraph of the parliamentary law is largely obsolete so far as the practice of the House and the Senate are concerned. The accused may appear in person or by attorney (III, 2127, 2349, 2424), and take the stand in his own behalf (VI, 511, 524; Apr. 11, 1936, pp. 5370–86; Oct. 7, 1986, p. 29149), or he may not appear at all (III, 2307, 2333, 2393). In case he does not appear the House does not ask that he be compelled to appear (III, 2308), but the trial proceeds as on a plea of "not guilty." It has been decided that the Senate has no power to take into custody the body of the accused (III, 2324, 2367). The writ of summons to the accused recites the articles and notifies him to appear at a fixed time and place and file his answer (III, 2127). In all cases respondent

may appear by counsel (III, 2129), and in one trial, when a petition set forth that respondent was insane, the counsel of his son was admitted to be heard and present evidence in support of the petition, but not to make argument (III, 2333). For a discussion of answers, arguments, and presentations of the respondent in the Clinton impeachment proceedings, see § 608a, *supra*.

The chairman of the committee impeaches at the bar of the Senate by oral accusation (III, 2413, 2446, 2473), and the managers for the House attend in the Senate after the articles have been exhibited and demand that process issue for the attendance of respondent (III, 2451, 2478), after which they return and report verbally to the House (III, 2423, 2451; VI, 501). The Senate thereupon issue a writ of summons, fixing the day of return (III, 2423, 2451; S. Res. 16, Jan. 8, 1999, p. 349); and in a case wherein the respondent did not appear by person or attorney the Senate published a proclamation for him to appear (III, 2393). But the respondent's goods were not attached. In only one case has the parliamentary law as to sequestration and committal been followed (III, 2118, 2296), later inquiry resulting in the conclusion that the Senate had no power to take into custody the body of the accused (III, 2324, 2367).

§ 612. Answer of respondent.

Answer. The answer need not observe great strictness of the form. He may plead guilty as to part, and defend as to the residue; or, saving all exceptions, deny the whole or give a particular answer to each article separately. *1 Rush., 274; 2 Rush., 1374; 12 Parl. Hist., 442; 3 Lords' Journ., 13 Nov., 1643; 2 Wood., 607.* But he cannot plead a pardon in bar to the impeachment. *2 Wood., 615; 2 St. Tr., 735.*

In the Senate proceedings of the impeachment of President Andrew Johnson, the answer of the President took up the articles one by one, denying some of the charges, admitting others but denying that they set forth impeachable offenses, and excepting to the sufficiency of others (III, 2428). The form of this answer was commented on during preparation of the replication in the House (III, 2431). In the Senate proceedings on the impeachment of President Clinton, the answer of the President also took up the articles one by one, denying some of the charges and admitting others but denying that they set forth impeachable offenses (Jan. 14, 1999, pp. 359–361). Blount and Belknap demurred to the charges on the ground that they were not civil officers within the meaning of the Constitution (III, 2310, 2453), and Swayne also raised questions as to the jurisdiction of the Senate (III, 2481). The answer is part of the pleadings, and exhibits

in the nature of evidence may not properly be attached thereto (III, 2124). The answer of the respondent in impeachment proceedings is messaged to the House and subsequently referred to the managers on the part of the House (VI, 506; Apr. 6, 1936, p. 5020; Sept. 9, 1986, p. 22317).

For a chronology of arguments and presentations of the respondent in the Clinton impeachment proceedings, see § 608a, *supra*.

§ 613. Other pleadings.

Replication, rejoinder, &c. There may be a replication, rejoinder, &c. *Sel. Jud., 114; 8 Grey's Deb., 233; Sach. Tr., 15; Journ. H. of Commons, 6 March, 1640–1.*

A replication is always filed (for the form of replication in modern practice, see Sept. 26, 1988, p. 25357), and in one instance the pleadings proceeded to a rejoinder, surrejoinder, and similiter (III, 2455). A respondent also has filed a protest instead of pleading on the merits (III, 2461), but there was objection to this and the Senate barely permitted it. In another case respondent interposed a plea as to jurisdiction of offenses charged in certain articles, but declined to admit that it was a demurrer with the admissions pertinent thereto (III, 2125, 2431). In the Belknap trial the House was sustained in averring in pleadings as to jurisdiction matters not averred in the articles (III, 2123). The right of the House to allege in the replication matters not touched in the articles has been discussed (III, 2457). In the Louderback (VI, 522) and Ritter (Apr. 6, 1936, p. 4971) impeachment proceedings, the managers on the part of the House prepared and submitted the replication to the Senate without its consideration by the House, contrary to former practice (VI, 506). The Senate may consider in closed session various preliminary motions made by respondent (*e.g.*, to declare the Senate rule on appointment of a committee to receive evidence to be unconstitutional, to declare beyond a reasonable doubt as the standard of proof in an impeachment trial, and to postpone the impeachment trial) before voting in open session to dispose of those motions (Oct. 7, 8, 1986, pp. 29151, 29412).

For a chronology in the Senate of disposition of motions permitted under Senate impeachment rules, see § 608a, *supra*.

§ 614. Examination of witnesses.

Witnesses. The practice is to swear the witnesses in open House, and then examine them there; or a committee may be named, who shall examine them in committee, either on interrogatories agreed on in the House, or such as the committee in their discretion shall demand. *Seld. Jud., 120, 123.*

In trials before the Senate witnesses have always been examined in open Senate, although examination by a committee has been suggested (III, 2217) and utilized (S. Res. 38, 101st Cong., Mar. 16, 1989, p. 4533). In the 74th Congress, the Senate amended its rules for impeachment trials to allow the presiding officer, upon the order of the Senate, to appoint a committee to receive evidence and take testimony in the trial of any impeachment (May 28, 1935, p. 8309). In the trial of Judge Claiborne the Senate directed the appointment of a committee of twelve Senators to take evidence and testimony pursuant to rule XI of the Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials (S. Res. 481, Aug. 15, 1986, p. 22035); and in Nixon *v.* United States, 113 S. Ct. 732 (1993), the Supreme Court refused to declare unconstitutional the appointment of such a committee to take evidence and testimony.

For a chronology of motions to subpoena witnesses during the Senate impeachment proceedings against President Clinton, see § 608a, *supra*.

§ 615. Relation of jury trial to impeachment.

Jury. In the case of Alice Pierce, *1 R., 2,* a jury was impaneled for her trial before a committee. *Seld. Jud., 123.* But this was on a complaint, not on impeachment by the Commons. *Seld. Jud., 163.* It must also have been for a misdemeanor only, as the Lords spiritual sat in the case, which they do on misdemeanors, but not in capital cases. *Id., 148.* The judgment was a forfeiture of all her lands and goods. *Id., 188.* This, Selden says, is the only jury he finds recorded in Parliament for misdemeanors; but he makes no doubt, if the delinquent doth put himself on the trial of his country, a jury ought to be impaneled, and he adds that it is not so on impeachment by the Commons, for they are in loco proprio, and there no jury ought to be impaneled. *Id., 124.* The Ld. Berkeley, *6 E., 3,* was arraigned for the murder of L. 2, on an information on the part of the King, and not on impeachment of the Commons; for then they had been patria sua. He waived his peerage, and was tried by a jury of

Gloucestershire and Warwickshire. *Id., 126.* In *1 H., 7,* the Commons protest that they are not to be considered as parties to any judgment given, or hereafter to be given in Parliament. *Id., 133.* They have been generally and more justly considered, as is before stated, as the grand jury; for the conceit of Selden is certainly not accurate, that they are the patria sua of the accused, and that the Lords do only judge, but not try. It is undeniable that they do try; for they examine witnesses as to the facts, and acquit or condemn, according to their own belief of them. And Lord Hale says, "the peers are judges of law as well as of fact;" *2 Hale, P. C., 275;* Consequently of fact as well as of law.

No jury is possible as part of an impeachment trial under the Constitution (III, 2313). In 1868, after mature consideration, the Senate overruled the old view of its functions (III, 2057), and decided that it sat for impeachment trials as the Senate and not as a court (III, 2057), and eliminated from its rules all mention of itself as a "high court of impeachment" (III, 2079, 2082). However, the modern view of the Senate as a court was evident during the impeachment trial of President Clinton. There the Senate convened as a "Court of Impeachment" (see, *e.g.*, Jan. 7, 1999, p. 272). In response to an objection raised by a Senator, the Chief Justice held that the Senate was not sitting as a "jury" but was sitting as a "court" during the impeachment trial of President Clinton. As such, the House managers were directed to refrain from referring to the Senators as "jurors" (Jan. 15, 1999, p. 580).

§ 615a. The presiding officer.

An anxiety lest the Chief Justice might have a vote in the approaching trial of the President seems to have prompted this earlier action (III, 2057). There was examination of the question of the Chief Justice's power to vote (III, 2098); but the Senate declined to declare his incapacity to vote, and he did in fact give a casting vote on incidental questions (III, 2067). Under the earlier practice, the Senate declined to require that the Chief Justice be sworn when about to preside (III, 2080); but the Chief Justice had the oath administered by an associate justice (III, 2422). The President pro tempore of the Senate, pursuant to an earlier order of the Senate, appointed a committee to escort the Chief Justice into the Senate chamber to preside over the impeachment trial of President Clinton, administered the oath to him,

and the Chief Justice in turn administered the oath to the Senators (Jan. 7, 1999, p. 272).

In impeachments for officers other than the President of the United States the presiding officer of the Senate presides, whether he be Vice President, the regular President pro tempore (III, 2309, footnote, 2337, 2394) or a special President pro tempore chosen to preside at the trial only (III, 2089, 2477).

§ 615b. Oath and quorum.

Senators elected after the beginning of an impeachment trial are sworn as in the case of other Senators (III, 2375). The quorum of the Senate sitting for an impeachment trial is a quorum of the Senate itself, and not merely a quorum of the Senators sworn for the trial (III, 2063). The vote required for conviction is two-thirds of those Senators present and voting (Oct. 20, 1989, p. 25335). In 1868, when certain States were without representation, the Senate declined to question its competency to try an impeachment case (III, 2060). The President pro tempore of the Senate administered the oath to the Chief Justice presiding over the impeachment trial of President Clinton, and the Chief Justice in turn administered the oath to the Senators (Jan. 7, 1999, p. 272).

§ 616. Attendance of the Commons.

Presence of Commons. The Commons are to be present at the examination of witnesses. *Seld. Jud., 124.* Indeed, they are to attend throughout, either as a committee of the whole House, or otherwise, at discretion, appoint managers to conduct the proofs. *Rushw. Tr. of Straff., 37; Com. Journ., 4 Feb., 1709–10; 2 Wood., 614.* And judgment is not to be given till they demand it. *Seld. Jud., 124.* But they are not to be present on impeachment when the Lords consider of the answer or proofs and determine of their judgment. Their presence, however, is necessary at the answer and judgment in case capital *Id., 58, 158,* as well as not capital; *162.* * * *.

§ 617. Attendance of the House of Representatives.

The House has consulted its own inclination and convenience about attending its managers at an impeachment. It did not attend at all in the trials of Blount, Swayne, Archbald. Louderback and Ritter (III, 2318, 2483; VI, 504, 516); and after attending at the answer of Belknap, decided

that it would be represented for the remainder of the trial by its managers alone (III, 2453). At the trial of the President the House, in Committee of the Whole, attended throughout the trial (III, 2427), but this is exceptional. In the Peck trial the House discussed the subject (III, 2377) and reconsidered its decision to attend the trial daily (III, 2028). While the Senate is deliberating the House does not attend (III, 2435); but when the Senate votes on the charges, as at the other open proceedings of the trial, it may attend (III, 2383, 2388, 2440). While it has frequently attended in Committee of the Whole, it may attend as a House (III, 2338).

§ 618. Voting on the articles in an impeachment trial.

* * * The Lords debate the judgment among themselves. Then the vote is first taken on the question of guilty or not guilty; and if they convict, the question, or particular sentence, is out of that which seemeth to be most generally agreed on. *Seld. Jud., 167; 2 Wood., 612.*

The question in judgment in an impeachment trial has occasioned contention in the Senate (III, 2339, 2340), and in the trial of the President the form was left to the Chief Justice (III, 2438, 2439). In the Belknap trial there was much deliberation over this subject (III, 2466). In the Chase trial the Senate modified its former rule as to form of final question (III, 2363). The yeas and nays are taken on each article separately (III, 2098, 2339) in the form "Senators, how say you? is the respondent guilty or not guilty?" (Oct. 9, 1986, p. 29871). But in the trial of President Johnson the Senate, by order, voted on the articles in an order differing from the numerical order (III, 2440), adjourned after voting on one article (III, 2441), and adjourned without day after voting on three of the eleven articles (III, 2443). In other impeachments, the Senate has adopted an order to provide the method of voting and putting the question separately and successively on each article (VI, 524; Apr. 16, 1936, p. 5558). For a discussion of the vote of the Senate on each article of impeachment of President Clinton, see § 608a, *supra*.

§ 619. Judgment in impeachments.

Judgment. Judgments in Parliament, for death have been strictly guided per legem terrae, which they can not alter; and not at all according to their discretion. They can neither omit any part of the legal judgment nor add to it. Their sentence must be secundum non ultra legem. *Seld. Jud., 168, 171.*

This trial, though it varies in external ceremony, yet differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments, prevailed; for impeachments are not framed to alter the law, but to carry it into more effectual execution against too powerful delinquents. The judgment, therefore, is to be such as is warranted by legal principles or precedents. *6 Sta. Tr., 14; 2 Wood., 611.* The Chancellor gives judgment in misdemeanors; the Lord High Steward formerly in cases of life and death. *Seld. Jud., 180.* But now the Steward is deemed not necessary. *Fost., 144; 2 Wood., 613.* In misdemeanors the greatest corporal punishment hath been imprisonment. *Seld. Jud., 184.* The King's assent is necessary to capital judgments (but *2 Wood., 614,* contra), but not in misdemeanors, *Seld. Jud., 136.*

The Constitution of the United States (art. I, sec. 3, cl. 7) limits the judgment to removal and disqualification. The order of judgment following conviction in an impeachment trial is divisible for a separate vote if it contains both removal and disqualification (III, 2397; VI, 512; Apr. 17, 1936, p. 5606), and an order of judgment (such as disqualification) requires a majority vote (VI, 512; Apr. 17, 1936, p. 5607). Under earlier practice, after a conviction the Senate voted separately on the question of disqualification (III, 2339, 2397), but no vote is required by the Senate on judgment of removal from office following conviction, since removal follows automatically from conviction under article II, section 4 of the Constitution (Apr. 17, 1936, p. 5607). Thus, the presiding officer directs judgment of removal from office to be entered and the respondent removed from office without separate action by the Senate where disqualification is not contemplated (Oct. 9, 1986, p. 29873). A resolution impeaching the President may provide only for his removal from office (H. Res. 1333, 93d Cong., Aug. 20, 1974, p. 29361) or for both his removal and disqualification from holding any future office (H. Res. 611, 105th Cong., Dec. 19, 1998, p. 27828).

§ 620. Impeachment not interrupted by adjournments.

Continuance. An impeachment is not discontinued by the dissolution of Parliament, but may be resumed by the new Parliament. *T. Ray 383; 4 Com. Journ., 23 Dec., 1790; Lord's Jour., May 15, 1791; 2 Wood., 618.*

In Congress impeachment proceedings are not discontinued by a recess (III, 2299, 2304, 2344, 2375, 2407, 2505, see also § 592, *supra*). The following impeachment proceedings extended from one Congress to the next: (1) the impeachment of Judge Pickering was presented in the Senate on the last day of the Seventh Congress (III, 2320), and the Senate conducted the trial in the Eighth Congress (III, 2321); (2) the impeachment of Judge Louderback was presented in the Senate on the last day of the 72d Congress (VI, 515), and the Senate conducted the trial in the 73d Congress (VI, 516); (3) the impeachment of Judge Hastings was presented in the Senate during the second session of the 100th Congress (Aug. 3, 1988, p. 20223) and the trial in the Senate continued into the 101st Congress (Jan. 3, 1989, p. 84); (4) the impeachment of President Clinton was presented to the Senate after the Senate had adjourned sine die for the 105th Congress (Jan. 6, 1999, p. 14), and the Senate conducted the trial in the 106th Congress (Jan. 7, 1999, p. 272). While impeachment proceedings may continue from one Congress to the next, the authority of the managers appointed by the House expires at the end of a Congress; and the managers must be reappointed when a new Congress convenes (Jan. 6, 1999, p. 15).

RULES OF THE HOUSE OF REPRESENTATIVES

RULES OF THE HOUSE OF REPRESENTATIVES, WITH NOTES AND ANNOTATIONS

RULE I

THE SPEAKER

Approval of the Journal

1. The Speaker shall take the Chair on every legislative day precisely at the hour to which the House last adjourned and immediately call the House to order. Having examined and approved the Journal of the last day's proceedings, the Speaker shall announce to the House his approval thereof. The Speaker's approval of the Journal shall be deemed agreed to unless a Member, Delegate, or Resident Commissioner demands a vote thereon. If such a vote is decided in the affirmative, it shall not be subject to a motion to reconsider. If such a vote is decided in the negative, then one motion that the Journal be read shall be privileged, shall be decided without debate, and shall not be subject to a motion to reconsider.

§ 621. Journal; Speaker's approval.

This clause was adopted in 1789, amended in 1811, 1824 (II, 1310), 1971 (H. Res. 5, Jan. 22, 1971, pp. 140–44, with the implementation of the Legislative Reorganization Act of 1970, 84 Stat. 1140), and 1979 (H. Res. 5, 96th Cong., Jan. 15, 1979, pp. 7, 16). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

The hour of meeting is fixed by standing order, and was traditionally set at 12 m. (I, 104–109, 116, 117; IV, 4325); but beginning in the 95th

Congress, the House by standing order formalized the practice of varying its convening time to accommodate committee meetings on certain days of the week and to maximize time for floor action on other days (H. Res. 7, Jan. 4, 1977, p. 70; H. Res. 949, Jan. 19, 1978, p. 108; H. Res. 9, Jan. 15, 1979, p. 17; H. Res. 522, Jan. 22, 1980, p. 188; H. Res. 8, Jan. 5, 1981, p. 114; H. Res. 313, Jan. 25, 1982, p. 62; H. Res. 8, Jan. 3, 1983, p. 51; H. Res. 388, Jan. 23, 1984, p. 74; H. Res. 9, Jan. 3, 1985, p. 414; H. Res. 355, Jan. 21, 1986, p. 2; H. Res. 7, Jan. 6, 1987, p. 19; H. Res. 348, Jan. 25, 1988, p. 39; H. Res. 7, Jan. 3, 1989, p. 82; H. Res. 304, Jan. 23, 1990, p. 3; H. Res. 7, Jan. 3, 1991, p. 63; H. Res. 330, Jan. 28, 1992, p. 684; H. Res. 7, Jan. 5, 1993, p. 101; H. Res. 327, Jan. 25, 1994, p. 88; H. Res. 8, Jan. 4, 1995, p. 547; H. Res. 327, Jan. 3, 1996, p. 36; H. Res. 9, Jan. 7, 1997, p. 143; H. Res. 337, Jan. 27, 1998, p. 75; H. Res. 14, Jan. 6, 1999, p. 246; H. Res. 403, Jan. 27, 2000, p. 132; H. Res. 9, Jan. 3, 2001, p. ——; H. Res. 333, Jan. 23, 2002, p. ——). In the 108th Congress and first session of the 109th Congress, the House provided that it would meet at 2 p.m. on Mondays, noon on Tuesdays, and 10 a.m. on the balance of the week through a date certain in May, after which it would meet at noon on Mondays, 10 a.m. on Tuesdays, Wednesdays, and Thursdays, and 9 a.m. on the balance of the week for the remainder of the session (H. Res. 9, Jan. 7, 2003, p. ——; H. Res. 488, Jan. 20, 2004, p. ——; H. Res. 8, Jan. 4, 2005, p. ——). The House retains the right to vary from this schedule by use of the motion to fix the day and time to which the House shall adjourn as provided in clause 4 of rule XVI. By special order, the House may provide for a session of the House on a Sunday, traditionally a "dies non" under the precedents of the House (Dec. 17, 1982, p. 31946; Dec. 18, 1987, p. 36352; Nov. 19, 1989, p. 30029; Aug. 20, 1994, p. 23367; Nov. 7, 1997, p. 25160; Oct. 10, 1998, p. 25483). Beginning in the second session of the 103d Congress, the House has by unanimous consent agreed to convene earlier on Mondays and Tuesdays for morning-hour debate and then recess to the hour established for convening under a previous order (see § 951, *infra*).

Immediately after the Members are called to order, the prayer is offered by the Chaplain (IV, 3056), and the Speaker declines to entertain a point of no quorum before prayer is offered (VI, 663; clause 7 of rule XX). Before the 96th Congress, clause 1 of rule I directed the Speaker to announce his approval of the Journal on the appearance of a quorum after having called the House to order. Under that form of the rule, a point of no quorum could be made after the prayer and before the approval of the Journal when the House convened, notwithstanding the provisions of former clause 6(e) of rule XV (now clause 7 of rule XX), allowing such points of order in the House only when the Speaker had put the pending motion or proposition to a vote (Oct. 3, 1977, p. 31987). Similarly, prior practice had permitted a point of no quorum before the reading of the Journal (IV, 2733; VI, 625) or during its reading (VI, 624). In the 96th Congress, the House eliminated the necessity for the appearance of a quorum before the Speak-

er's announcement of his approval of the Journal (H. Res. 5, Jan. 15, 1979, pp. 7, 16). If a quorum fails to respond on a motion incident to the approval, reading, or amendment of the Journal, and there is an objection to the vote, a call of the House under clause 6 of rule XX is automatic (Feb. 2, 1977, p. 3342).

Pursuant to clause 8 of rule XX, the Speaker may postpone until a later time on the same legislative day a record vote on the Speaker's approval of the Journal. Where the House adjourns on consecutive days without having approved the Journal of the previous days' proceedings, the Speaker puts the question de novo in chronological order as the first order of business on the subsequent day (Nov. 3, 1987, p. 30592).

Before the 92d Congress, the reading of the Journal was mandatory, could not be dispensed with except by unanimous consent (VI, 625; Sept. 19, 1962, p. 19941), or by motion to suspend the rules (IV, 2747–2750). It had to be read in full when demanded by any Member (IV, 2739–2741; VI, 627, 628; Feb. 22, 1950, p. 2152), but the demand came too late after the Journal was approved (VI, 626). Under the rule as in effect from the 92d Congress through the 95th Congress, any Member could offer a privileged, nondebatable motion that the Journal be read pending the Speaker's announcement of his approval and before agreement by the House (Apr. 23, 1975, p. 11482).

The Journal of the last day of a session is not read on the first day of the next session (IV, 2742). No business is transacted before the approval of the Journal (or the postponement of a vote under clause 8 of rule XX on agreeing to the Speaker's approval), including consideration of a conference report (IV, 2751–2756; VI, 629, 630, 637). However, the motion to adjourn (IV, 2757; Speaker Wright, Nov. 2, 1987, p. 30387) and the swearing-in of a Member (I, 172) could take precedence.

Once begun, the reading may not be interrupted, even by business so highly privileged as a conference report (V, 6443; rule XXII). However, a parliamentary inquiry (VI, 624), an arraignment of impeachment (VI, 469), or a question of privilege relating to a breach of privilege (such as an assault occurring during the reading) may interrupt its reading or approval (II, 1630).

Under the prior rule, the Speaker's examination and approval of the Journal was preliminary to the reading and did not preclude subsequent amendment by the House itself (IV, 2734–2738). If the Speaker's approval of the Journal is rejected, a motion to amend takes precedence of a motion to approve (IV, 2760; VI, 633), and a Member offering an amendment is recognized under the hour rule (Mar. 19, 1990, p. 4488); but the motion is not admissible after the previous question is demanded on the motion to approve (IV, 2770; VI, 633; VIII, 2684; Sept. 13, 1965, p. 23600).

Preservation of order

§ 622. Speaker preserves order on floor and in galleries and lobby.

2. The Speaker shall preserve order and decorum and, in case of disturbance or disorderly conduct in the galleries or in the lobby, may cause the same to be cleared.

This clause was adopted in 1789 and amended in 1794 (II, 1343). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

The Speaker may name a Member who is disorderly, but may not, of his own authority, censure or punish him (II, 1344, 1345; VI, 237). In cases of extreme disorder in the Committee of the Whole the Speaker has taken the chair and restored order without a formal rising of the Committee (II, 1348, 1648–1653, 1657); and the Speaker, as an exercise of his authority under this clause, has on his own initiative declared the House in recess in an emergency (Speaker Martin, 83d Cong., Mar. 1, 1954, p. 2424). A former Member must observe the rules of decorum while on the floor, and the Speaker may request the Sergeant-at-Arms to assist him in maintaining such decorum (Sept. 17, 1997, pp. 19026, 19027).

The authority to have the galleries cleared has been exercised but rarely (II, 1352; Speaker Albert, Jan. 18, 1972, p. 9). On one occasion, acting on the basis of police reports and other evidence, the Speaker ordered the galleries cleared before the House convened (May 10, 1972, p. 16576) and then informed the House of his decision. In an early instance the Speaker ordered the arrest of a person in the gallery; but this exercise of power was questioned (II, 1605). In response to a disruptive demonstration in the gallery, the Chair notes for the Record the disruptive character of the demonstration and enlists the Sergeant-at-Arms to remove the offending parties (Oct. 8, 2002, p. ——; Oct. 10, 2002, p. ——).

Although Members are permitted to use exhibits such as charts during debate (subject to clause 6 of rule XVII), the Speaker may direct the removal of a chart from the well of the House which is not being utilized during debate (Apr. 1, 1982, p. 6304; Apr. 19, 1990, p. 7402). The Speaker's responsibility to preserve decorum requires that he disallow the use of exhibits in debate which would be demeaning to the House, or to any Member of the House, or which would be disruptive of the decorum thereof (Sept. 13, 1989, p. 20362; Oct. 16, 1990, p. 29647; Oct. 1, 1991, p. 24828; Nov. 16, 1995, p. 33395; Jan. 3, 1996, p. 42). The Speaker has disallowed the use of a person on the floor as a guest of the House as an "exhibit," including a Member's child (see § 678, *infra*). The Chair also has cautioned Members to refrain from using audio devices during debate (May 24, 2005, p. ——). Although a Member may enlist the assistance of a page to manage the placement of an exhibit on an easel, it is not appropriate to refer to

the page or to use the page as though part of the exhibit (June 11, 2003, p. ——; Speaker Hastert, June 12, 2003, p. ——). The Chair will distinguish between using an exhibit in the immediate area the Member is addressing the House as a visual aid for the edification of Members and staging an exhibition; for example, a Member having a large number of his colleagues accompany him in the well, each carrying a part of his exhibit, was held to impair the decorum of the House (June 12, 2003, p. ——). The Speaker may inquire as to a Member's intentions, as to the use of exhibits, before conferring recognition to address the House (Mar. 21, 1984, p. 6187). In the 101st Congress both the Speaker and the Chairman of the Committee of the Whole reinforced the Chair's authority to control the use of exhibits in debate, distinguishing between the constitutional authority of the House to make its own rules and first amendment rights of free speech, and the use of all exhibits was prohibited during the consideration of a bill in the Committee of the Whole (Oct. 11, 1990, p. 28650). The Speaker may permit the display of an exhibit in the Speaker's lobby during debate on a measure (May 20, 1999, p. 10280). Just as an appeal may be entertained on a decision from the Chair that a Member has engaged in personalities in debate (Sept. 28, 1996, pp. 25780–82; see also clause 4 of rule XVII), so also may an appeal be entertained on a ruling of the Chair on the propriety of an exhibit (Nov. 16, 1995, p. 33395).

At the request of the Committee on Standards of Official Conduct, the Speaker announced that (1) all handouts distributed on or adjacent to the floor must bear the name of a Member authorizing the distribution; (2) the content of such handouts must comport with the standards applicable to words used in debate; (3) failure to comply with these standards may constitute a breach of decorum and thus give rise to a question of privilege; (4) staff are prohibited in the Chamber or rooms leading thereto from distributing handouts and from attempting to influence Members with regard to legislation; and (5) Members should minimize the use of handouts to enhance the quality of debate (Sept. 27, 1995, p. 26567; Mar. 20, 1996, p. 5644).

Questions having been raised concerning proper attire for Members in the Chamber (thermostat controls having been raised to comply with a Presidential directive conserving energy in the summer months), the Speaker announced he considered traditional attire for Members appropriate, including coats and ties for male Members and appropriate attire for female Members, but that he would recognize for a question of privileges of the House to relax such standards. The Speaker also requested a Member in violation of those standards to remove himself from the Chamber and appear in appropriate attire, and refused to recognize such Member until he did so (Speaker O'Neill, July 17, 1979, p. 19008). The House later agreed to a resolution (presented as a question of the privileges of the House) requiring Members to wear proper attire as determined by the Speaker (July 17, 1979, p. 19072).

Recognition is within the discretion of the Chair, and in order to uphold order and decorum in the House as required under clause 2 of rule I, the Speaker may deny a Member recognition for a "one-minute speech" (Aug. 27, 1980, p. 23456). Furthermore, it is a breach of decorum for a Member to continue to speak beyond the time for which recognized (Mar. 22, 1996, p. 6086; May 22, 2003, p. ——; Oct. 2, 2003, p. ——), and the Speaker may deny further recognition to such Member (Mar. 16, 1988, p. 4081), from which there is no appeal (see § 629, *infra*). Even before adoption of the rules, the Speaker may maintain decorum by directing a Member engaging in such breach of decorum to be removed from the well and by directing the Sergeant-at-Arms to present the mace as the traditional symbol of order (Jan. 3, 1991, p. 58). A Member's comportment may constitute a breach of decorum even though the content of that Member's speech is not, itself, unparliamentary (July 29, 1994, p. 18609). Under this standard the Chair may deny further recognition to a Member engaged in unparliamentary debate who ignores repeated admonitions by the Chair to proceed in order (unless the Member is permitted to proceed by order of the House) (Sept. 18, 1996, p. 23535).

Control of Capitol facilities

§ 623. Speaker's control of the Hall, corridors, and rooms.

3. Except as otherwise provided by rule or law, the Speaker shall have general control of the Hall of the House, the corridors and passages in the part of the Capitol assigned to the use of the House, and the disposal of unappropriated rooms in that part of the Capitol.

This clause was adopted in 1811 and amended in 1824, 1885 (II, 1354), and 1911 (VI, 261). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

Control of the appropriated rooms in the House portion of the Capitol is exercised by the House itself (V, 7273–7279), but repairs and alterations have been authorized by statute (V, 7280–7281; 59 Stat. 472). On January 15, 1979, the Speaker announced his directive concerning free access by Members in the corridors approaching the Chamber (p. 19). The Speaker has declined to recognize for a unanimous-consent request to change the decor in the Chamber, stating that he would take the suggestion under advisement in exercising his authority under this clause (Mar. 2, 1989, p. 3220). The Speaker has announced that a joint Republican Conference and Democratic Caucus meeting would be held in the Chamber following the adjournment of the House on that day (July 27, 1998, p. 17466).

Signature of documents

§ 624. Speaker's signature to acts, warrants, subpoenas, etc.

4. The Speaker shall sign all acts and joint resolutions passed by the two Houses and all writs, warrants, and subpoenas of, or issued by order of, the House. The Speaker may sign enrolled bills and joint resolutions whether or not the House is in session.

The Speaker was given authority to sign acts, warrants, subpoenas, etc., in 1794 (II, 1313). The last sentence of this clause, granting the Speaker standing authority to sign enrolled bills, even if the House is not in session, was added in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113). Before the House recodified its rules in the 106th Congress, clauses 4 and 5 occupied a single clause (H. Res. 5, Jan. 6, 1999, p. 47).

§ 625. Signing of enrolled bills.

Enrolled bills are signed first by the Speaker (IV, 3429). For precedents relevant to the signing of enrolled bills before this clause was amended to permit the Speaker to sign at any time, see IV, 3458, and V, 5705. Before the adoption of clause 2(d)(2) of rule II (enabling the Clerk to examine enrolled bills), the House authorized the Speaker to sign an enrolled bill before the Committee on Enrolled Bills could attest to its accuracy (IV, 3452). In cases of error the House has permitted the Speaker's signature to be vacated (IV, 3453, 3455–3457; VII, 1077–1080). Under the modern practice, the Committee of the Whole may rise informally without motion to enable the Speaker to assume the Chair and to sign an enrolled bill and lay it before the House (Jan. 28, 1980, p. 888; Apr. 30, 1980, p. 9505).

§ 626. Signing of warrants, subpoenas, etc.

Warrants, subpoenas, etc., during recesses of Congress are signed only by authority specially given (III, 1753, 1763, 1806). The issuing of warrants must be specially authorized by the House (I, 287) or pursuant to a standing rule (clause 6 of rule XX; § 1026, *infra*). Instance wherein the House authorized the Speaker to warrant for the arrest of absentees (VI, 638). The Speaker also signs the articles, replications, etc., in impeachments (III, 2370, 2455; *e.g.*, H. Res. 611, Dec. 19, 1998, p. 28112); and certifies cases of contumacious witnesses for action by the courts (III, 1691, 1769; VI, 385; 2 U.S.C. 194). A subpoena validly issued by a committee authorized by the House under clause 2(m) of rule XI to issue subpoenas need only be signed by the chairman of that committee, whereas when the House issues an order or warrant, the Speaker must issue the summons under his hand and seal, and it must be attested by the Clerk (III, 1668; see H. Rept. 96–1078, p. 22).

Questions of order

5. The Speaker shall decide all questions of order, subject to appeal by a Member, Delegate, or Resident Commissioner. On such an appeal a Member, Delegate, or Resident Commissioner may not speak more than once without permission of the House.

§ 627. Questions of order.

This rule was adopted in 1789 and amended in 1811. Before the House recodified its rules in the 106th Congress, clauses 4 and 5 occupied a single clause (H. Res. 5, Jan. 6, 1999, p. 47).

§ 628. Practice governing the Speaker in deciding points of order.

The Speaker may require that a question of order be presented in writing (V, 6865). When enough of a proposition has been read to show that it is out of order, the question of order may be raised without waiting for the reading to be completed (V, 6886, 6887; VIII, 2912, 3378, 3437), though the Chair may decline to rule until the entire proposition has been read (Dec. 14, 1973, pp. 41716–18). For example, the Chair declined to entertain a point of order that a motion to recommit was not germane before any nongermane portion of the motion had been read (May 9, 2003, p. ——); and a motion to recommit with instructions was ruled out of order before the entire motion had been read as a matter of form where a special order of business precluded instructions (May 6, 2004, p. ——). Questions arising during a division are decided peremptorily (V, 5926), and when they arise out of any other question must be decided before that question (V, 6864). In rare instances the Speaker has declined to rule until he has taken time for examination of the question (III, 2725; VI, 432; VII, 2106; VIII, 2174, 2396, 3475).

Debate on a point of order, being for the Chair's information, is within the Chair's discretion (see, *e.g.*, V, 6919, 6920; VIII, 3446–3448; Deschler-Brown, ch. 29, § 67.3; Jan. 24, 1996, p. 1248; Sept. 12, 1996, p. 22901; Oct. 10, 1998, p. 25420). Debate is confined to the question of order and may not extend to the merits of the proposition against which it lies or to parliamentarily similar propositions permitted to remain in the pending bill by waivers of points of order (*e.g.*, July 18, 1995, p. 19335; June 22, 2000, p. 12078; Oct. 16, 2003, p. ——). Members must address the Chair and cannot engage in colloquies on the point of order (*e.g.*, Sept. 18, 1986, p. 24083; Oct. 16, 2003, p. ——), nor can they offer pro forma amendments to debate the point of order (July 21, 1998, p. 16369). To ensure that the arguments recorded on a question of order are those actually heard by the Chair before ruling, the Chair will not entertain a unanimous-consent request to permit a Member to revise and extend remarks on a point of order (Sept. 22, 1976, p. 31873; May 15, 1997, p. 8493, 8494; July 24, 1998, p. 17278). However, the Committee of the Whole by unanimous con-

sent has allowed a Member to revise and extend his remarks to follow the ruling on a point of order (July 13, 2000, p. 14095). A Member may raise multiple points of order simultaneously, and the Chair may hear argument and rule on each question individually (Mar. 28, 1996, pp. 6931, 6933); or the Chair may choose to rule on only one of the points of order raised (July 24, 1998, p. 17278). Where a Member incorrectly demands the "regular order," rather than making a point of order to assert that remarks are not confined to the question under debate, the Chair may treat the demand as a point of order and rule thereon (May 1, 1996, p. 9889).

The Chair is constrained to give precedent its proper influence (II, 1317; VI, 248). While the Chair will normally not disregard a decision of the Chair previously made on the same facts (IV, 4045), such precedents may be examined and reversed where shown to be erroneous (IV, 4637; VI, 639; VII, 849; VIII, 2794, 3435; Sept. 12, 1986, p. 23178). The authoritative source for proper interpretations of the rules are statements made directly from the Chair and not comments made by the Speaker in other contexts (May 25, 1995, p. 14437; Sept. 19, 1995, p. 25454). Preserving the authority and binding force of parliamentary law is as much the duty of each Member of the House as it is the duty of the Chair (VII, 1479). The Speaker's decisions are recorded in the Journal (IV, 2840, 2841), but responses to parliamentary inquiries are not so recorded (IV, 2842).

The Chair does not decide on the legislative or legal effect of propositions (II, 1274, 1323, 1324; VI, 254; VII, 2112; VIII, 2280, 2841; Mar. 16, 1983, p. 5669; May 13, 1998, p. 9129), on the consistency of proposed action with other acts of the House (II, 1327–1336; VII, 2112, 2136; VIII, 3237, 3458), whether Members have abused leave to print (V, 6998–7000; VIII, 3475), or on the propriety or expediency of a proposed course of action (II, 1275, 1325, 1326, 1337; IV, 3091–3093, 3127).

Also, the Chair does not rule on: (1) the constitutional power of the House (II, 1490; IV, 3507), such as the constitutional authority of the House to propose a rule of the House, such matter appropriately being decided by way of the question of consideration or disposition of the proposal (Jan. 4, 2005, p. ——); (2) the constitutional competency of proposed legislation (II, 1255, 1318–1322, VI, 250, 251; VIII, 2225, 3031, 3427; July 21, 1947, pp. 9522, 9551; May 13, 1948, p. 5817; Oct. 10, 1998, p. 25424); (3) the constitutional rights of Members (VIII, 3071).

The Chair is not required to decide a question not directly presented by the proceedings (II, 1314). Furthermore, it is not his duty to decide a hypothetical question (VI, 249, 253; Nov. 20, 1989, p. 30225), including: (1) the germaneness of an amendment not yet offered (Dec. 12, 1985, p. 36167; May 5, 1988, p. 9936; May 18, 1988, p. 11404; Mar. 22, 2000, p. 3283) or previously offered and entertained without a point of order (June 6, 1990, p. 13194); (2) the admissibility under existing Budget Act allocations of an amendment not yet offered, particularly where the Chair's response might depend on the disposition of a prior amendment on which

proceedings had been postponed (June 27, 1994, p. 14593; June 12, 2000, p. 10377); (3) the admissibility under clause 2 of rule XXI of an amendment already pending (July 29, 1998, p. 17963), against which all points of order had been waived (July 27, 1995, p. 20800); (4) the admissibility of an amendment at a future date, pending a ruling of the Chair on its immediate admissibility (June 25, 1997, p. 12488). The Chair will not declare judgment on the propriety of words taken down before they are read to the House (Sept. 21, 2001, p. ——). The Chair does not take cognizance of complaints relating to pairs (VIII, 3087). The Chair passes on the validity of conference reports (V, 6409, 6410, 6414–6416; VIII, 3256, 3264), but not on the sufficiency of the accompanying statements as distinguished from the form (V, 6511–6513), or on the question of whether a conference report violates instructions of the House (V, 6395; VIII, 3246). As to reports of committees, he does not decide as to their sufficiency (II, 1339; IV, 4653), or whether the committee has followed instructions (II, 1338; IV, 4404, 4689); or on matters arising in the Committee of the Whole (V, 6927, 6928, 6932–6937; Dec. 12, 1985, p. 36173); but he has decided as to the validity of the authorization of a report (IV, 4592, 4593) and has indicated that a point of order could be raised at a proper time where the content of a filed report varies from that approved by the committee (May 16, 1989, p. 9356). An objection to the use of an exhibit under clause 6 of rule XVII (formerly rule XXX) is not a point of order on which the Chair must rule (July 31, 1996, pp. 20694, 20700). Before the rule was rewritten in the 107th Congress, it required that the Chair put the question whether the exhibit may be used. It now merely permits the Chair to put such question (sec. 2(o), H. Res. 5, Jan. 3, 2001, p. 25). A complaint that certain remarks that might be uttered in debate would improperly disclose executive-session material of a committee is not cognizable as a point of order in the House where the Chair is not aware of the executive-session status of the information (Nov. 5, 1997, p. 24648). A request that the voting display be turned on during debate is not in order (Oct. 12, 1998, p. 25770). The assertion that a Member may be inconvenienced by the legislative schedule announced by the Leadership does not give rise to a point of order that the Member cannot attend both to House and constituent duties at the same time (Nov. 10, 1999, p. 29537).

Before the 104th Congress, precedents and applicable guidelines allowed the Chair to refine a ruling on a point of order in the Record in order to clarify the ruling without changing its substance, including one sustained by the House on appeal (Feb. 19, 1992, p. 2461; see H. Res. 230, 99th Cong., July 31, 1985, p. 21783; and H. Rept. 99–228 (in accordance with existing accepted practices, the Chair may make such technical or parliamentary corrections or insertions in transcript as may be necessary to conform to rule, custom, or precedent); see also H. Res. 330, 101st Cong., Feb. 7, 1990, p. 1515, and report of House Administration task force on Record inserted by Speaker Foley, Oct. 27, 1990, p. 37124). However, the Chair ruled that the requirement of former clause 9 of rule XIV (now clause

8 of rule XVII) that the Record be a substantially verbatim account of remarks made during House proceedings, extended to statements and rulings of the Chair (Jan. 20, 1995, p. 1866).

In interpreting the language of a special order adopted by the House, the Chair will not look behind the unambiguous language of the resolution itself (June 18, 1986, p. 14267). Questions concerning informal guidelines of the Committee on Rules for advance submission of amendments for possible inclusion under a "modified closed" rule may not be raised under the guise of parliamentary inquiry (May 5, 1988, p. 9938). Because the Chair refrains from issuing advisory opinions on hypothetical or anticipatory questions of order, the Chair will not interpret a special order before it is adopted by the House (Oct. 14, 1986, p. 30862; July 27, 1993, p. 17116; July 27, 1995, p. 20741; Jan. 5, 1996, p. 366; Mar. 28, 1996, p. 7064; June 28, 2000, p. 12649; Mar. 8, 2001, p. 3229; May 22, 2002, p. ——; Oct. 17, 2003, p. ——). Thus, the Chair has declined to identify provisions in a bill as ostensible objects of a waiver in the pending resolution providing a special order for that bill (Oct. 19, 1995, pp. 28503, 28504; Oct. 26, 1995, p. 29477; Mar. 28, 1996, p. 7064); to determine whether a bill, for which the pending resolution provides a special order waiving any requirement for a three-fifths vote on passage, actually "carries" a Federal income tax rate increase under clause 5 of rule XXI (Oct. 26, 1995, p. 29477); or to opine whether an amendment might be in order in the Committee of the Whole (May 22, 2002, p. ——; Oct. 17, 2003, p. ——). The Chair will not compare the text made in order by a pending special order as original text for further amendment with the text reported by the committee of jurisdiction (Oct. 19, 1995, p. 28503). Similarly, the Chair will not issue an advisory opinion on how debate on a pending resolution will bear on the Chair's ultimate interpretation of the resolution as an order of the House (Sept. 18, 1997, p. 19343).

Recognition for parliamentary inquiry lies in the discretion of the Chair (VI, 541; Apr. 7, 1992, p. 8273). The Speaker may recognize and respond to a parliamentary inquiry although the previous question may have been demanded (Mar. 27, 1926, p. 6469). While the Chair may in his discretion recognize Members for parliamentary inquiries when no other Member is occupying the floor for debate, when another Member has the floor he must yield for a parliamentary inquiry (Oct. 1, 1986, p. 27465; July 13, 1989, p. 14633). A Member under recognition for a parliamentary inquiry may not yield to another Member (Nov. 22, 2002, p. ——).

On a difficult question of order, the Speaker has declined to rule until he has taken time for examination (III, 2725; VI, 432; VII, 2106; VIII, 2174, 2396, 3475); and he may take a parliamentary inquiry under advisement, especially where not related to the pending proceedings (VIII, 2174; Apr. 7, 1992, p. 8273). The Chair responds to parliamentary inquiries relating in a practical sense to the pending proceedings but does not respond to requests to place them in historical context (June 25, 1992, p. 16174; Jan. 3, 1996, pp. 36–41; Nov. 5, 1997, p. 24653; Sept. 9, 2003, p. ——).

The Speaker may entertain a parliamentary inquiry during a record vote if it relates to the vote (Oct. 9, 1997, p. 22017; Oct. 6, 1999, p. 24199; Sept. 9, 2003, p. ——; Mar. 30, 2004, p. ——). However, the Speaker will not respond to a request to place the length of a record vote in historical context (Sept. 9, 2003, p. ——) or explain the exercise of his discretion to hold a vote open beyond the minimum time prescribed under clause 2 of rule XX (Mar. 30, 2004, p. ——).

A proper parliamentary inquiry relates to an interpretation of a House rule, not of a statute or of the Constitution (Oct. 10, 1998, p. 25424). The Chair will not respond to a parliamentary inquiry to: (1) judge the propriety of words spoken in debate pending a demand that those words be "taken down" as unparliamentary (June 8, 1995, p. 15267); (2) judge the veracity of remarks in debate (June 5, 1996, p. 13195; June 17, 2004, p. ——); (3) judge the propriety of words uttered earlier in debate (June 15, 2000, p. 11106); (4) reexamine and explain the validity of a prior ruling (Oct. 26, 1995, p. 29477); (5) anticipate the precedential effect of a ruling (Oct. 10, 1998, p. 25424); (6) judge the accuracy of the content of an exhibit (Nov. 10, 1995, p. 32142); (7) indicate which side of the aisle has failed under the Speaker's guidelines to clear a unanimous-consent request (Feb. 1, 1996, p. 2260; Nov. 22, 2002, p. ——); (8) respond to political commentary (June 25, 1998, p. 13978; Apr. 4, 2001, p. 5417; Oct. 8, 2004, p. ——); (9) comment on the effect of time consumed on a pending amendment as a tactic to prevent the offering of other amendments under a special order adopted by the House (May 10, 2000, p. 7508); (10) anticipate whether bill language would trigger certain executive actions; (11) interpret a pending proposition (Sept. 20, 1989, p. 20969; May 13, 1998, p. 9129); (12) judge the appropriateness of Senate action (Apr. 10, 2003, p. ——). The Chair may clarify a prior response to a parliamentary inquiry (July 31, 1996, p. 20700).

The Speaker rarely submits a question directly to the House for its decision (IV, 3173, 3282, 4930; V, 5014, 5323, 6701; VI, 49; Speaker Longworth, Apr. 8, 1926, p. 7148; Dec. 19, 1998, p. 28107), and rarely raises and submits a question on his own initiative (II, 1277, 1315, 1316; VIII, 3405). Even as to questions of privilege he usually, in later practice, makes a preliminary decision instead of submitting the question directly to the House (III, 2648, 2649, 2650, 2654, 2678; Speaker Wright, Mar. 11, 1987, p. 5404).

§ 629. Practice, governing appeals.

The right of appeal insures the House against the arbitrary control of the Speaker and cannot be taken away from the House (V, 6002). While a decision of the Chair on a point of order is subject to appeal on demand of any Member, a Member cannot secure a recorded vote on a point of order absent an appeal and the Chair's putting the question thereon (June 20, 1996, p. 14847).

An appeal may not be entertained from the following: (1) response to a parliamentary inquiry (V, 6955; VIII, 3457); (2) decision on recognition

(II, 1425–1428; VI, 292; VIII, 2429, 2646, 2762; July 23, 1993, p. 16820; Apr. 4, 1995, p. 10298; June 17, 1999, p. 13465); (3) decision on dilatoriness of motions (V, 5731); (4) question on which an appeal has just been decided (IV, 3036; V, 6877); (5) Chair's count of the number rising to demand tellers (VIII, 3105), to demand a recorded vote (June 24, 1976, p. 20390; June 14, 2000, p. 10841) or the yeas and nays (Sept. 12, 1978, p. 28950), or to object to a request under the former rule that required a committee have permission to sit during floor proceedings under the five-minute rule (Sept. 12, 1978, p. 28984); (6) Chair's count of a quorum (July 24, 1974, p. 25012); (7) Chair's call of a voice vote (Aug. 10, 1994, p. 20766); (8) Chair's refusal to recapitulate a vote (VIII, 3128); (9) Chair's refusal under clause 7 of rule XX (formerly clause 6(e) of rule XV) to entertain a point of no quorum when a pending question has not been put to a vote (Sept. 16, 1977, p. 29594); (10) determination that a Member's time in debate has expired (Mar. 22, 1996, p. 6086); (11) the Speaker's announcement of the whole number of the House upon the death, resignation, expulsion, disqualification, or removal of a Member (clause 5(d) of rule XX); (12) the Speaker's announcement of the content of a catastrophic quorum failure report under clause 5(c) of rule XX (§ 1024a, *infra*). Although an announcement by the Chair that an objection to a unanimous-consent request has been heard is not subject to appeal, the Chair's ruling on the timeliness of the objection is subject to appeal (Apr. 14, 2005, p. ——).

An appeal also may not be entertained: (1) while another is pending (V, 6939–6941); (2) between the motion to adjourn and vote thereon (V, 5361); (3) during a call of the yeas and nays (V, 6051); or (4) when dilatory (V, 5715–5722; VIII, 2822).

An appeal may be debated (VII, 1608; VIII, 2347, 2375, 3453–3455; June 24, 2003, p. ——); unless the motion is made to lay on the table (V, 5301; Mar. 16, 1988, p. 4086), or the previous question is ordered (V, 5448, 5449). An appeal from a decision relating to the priority of business (V, 6952), or relevancy of debate (V, 5056–5063) is not debatable. In practice in the House, a Member in favor of the ruling usually moves to lay the appeal on the table, thus shutting off debate (*e.g.*, Oct. 8, 1968, p. 30215; Apr. 6, 1995, p. 10614). Debate in the House is under the hour rule (V, 4978), but may be closed at any time by the adoption of a motion for the previous question (V, 6947); or to lay on the table (VIII, 3453). Debate on an appeal in the Committee of the Whole is under the five-minute rule (VII, 1608; VIII, 2347, 2556a, 3454, 3455; June 24, 2003, p. ——), and may be closed by motion to close debate or to rise and report (V, 6947, 6950; VIII, 3453). An appeal of a ruling of the Chair may be withdrawn in the Committee of the Whole as a matter of right (June 8, 2000, p. 9954). An appeal may be withdrawn at any time before action by the House thereon (as where the Chair has not even stated the question on appeal) (May 6, 2004, p. ——).

A motion to postpone an appeal has been held in order (VIII, 2613). The Speaker may vote to sustain his own decision (IV, 4569; V, 5686, 6956, 6957).

Form of a question

§ 630. Putting of the question by the Speaker.

6. The Speaker shall rise to put a question but may state it sitting. The Speaker shall put a question in this form: "Those in favor (of the question), say 'Aye.'"; and after the affirmative voice is expressed, "Those opposed, say 'No.'". After a vote by voice under this clause, the Speaker may use such voting procedures as may be invoked under rule XX.

This clause was adopted in 1789 (II, 1311). Before the House recodified its rules in the 106th Congress, this clause (formerly clause 5) consisted of this clause and current clause 1(a), clause 1(b), and clause 2(a) of rule XX (H. Res. 5, Jan. 6, 1999, p. 47).

The motion as stated by the Chair in putting the question and not as stated by the Member in offering the motion, is the proposition voted on (VI, 247). Under this paragraph the Speaker must put the pending question to a voice vote before entertaining a demand for a recorded vote or the yeas and nays (Speaker Foley, Mar. 9, 1992, p. 4698). It is not in order for a Member having the floor in debate to conduct a "straw vote" or otherwise ask for a show of support for a proposition (Nov. 18, 1995, p. 33973).

Discretion to vote

§ 631. The Speaker's vote. Tie vote.

7. The Speaker is not required to vote in ordinary legislative proceedings, except when his vote would be decisive or when the House is engaged in voting by ballot.

This clause was adopted in 1789, and amended in 1850 (V, 5964) and 1911. Before the House recodified its rules in the 106th Congress, clause 7 (formerly clause 6) consisted of this clause and current clause 1(c) of rule XX (H. Res. 5, Jan. 6, 1999, p. 47).

Although the amendment of 1850 granted the Speaker the same right to vote as other Members (V, 5966, 5967), he has historically rarely exercised it (V, 5964, footnote). The Speaker's name is not on the roll from which the yeas and nays are called (V, 5970), is called only on his request (V, 5965), and is then called at the end of the roll by name (V, 5965; VIII,

3075). During an electronic vote, the Speaker directs the Clerk to record him and verifies that instruction by submitting a vote card (Oct. 17, 1990, p. 30229). The Speaker may vote to make a tie and so decide a question in the negative, as he may vote to break a tie and so decide a question in the affirmative (VIII, 3100; Aug. 14, 1957, p. 14783). The Speaker never has two votes on the same question; that is, having voted as a Member, he may not vote again should the result be a tie (V, 5964). The duty of giving a decisive vote may be exercised after the intervention of other business, or after the announcement of the result or on another day, if a correction of the roll shows a condition wherein his vote would be decisive (V, 5969, 6061–6063; VIII, 3075). In one instance the Speaker asserted a right to withdraw his vote where a correction indicated that it was unnecessary (V, 5971).

Before the vote by tellers was repealed (§§ 1012–1013, *infra*), the Chairman of the Committee of the Whole could be counted on a vote by tellers without passing through the tellers (V, 5996, 5997; VIII, 3100, 3101).

Speaker pro tempore

§ 632. Speaker pro tempore.

8. (a) The Speaker may appoint a Member to perform the duties of the Chair. Except as specified in paragraph (b), such an appointment may not extend beyond three legislative days.

(b)(1) In the case of his illness, the Speaker may appoint a Member to perform the duties of the Chair for a period not exceeding 10 days, subject to the approval of the House. If the Speaker is absent and has omitted to make such an appointment, then the House shall elect a Speaker pro tempore to act during the absence of the Speaker.

(2) With the approval of the House, the Speaker may appoint a Member to act as Speaker pro tempore only to sign enrolled bills and joint resolutions for a specified period of time.

(3)(A) In the case of a vacancy in the Office of Speaker, the next Member on the list described in subdivision (B) shall act as Speaker pro tem-

pore until the election of a Speaker or a Speaker pro tempore. Pending such election the Member acting as Speaker pro tempore may exercise such authorities of the Office of Speaker as may be necessary and appropriate to that end.

(B) As soon as practicable after his election and whenever he deems appropriate thereafter, the Speaker shall deliver to the Clerk a list of Members in the order in which each shall act as Speaker pro tempore under subdivision (A).

(C) For purposes of subdivision (A), a vacancy in the Office of Speaker may exist by reason of the physical inability of the Speaker to discharge the duties of the office.

This clause was adopted in 1811, and amended in 1876 (II, 1377) and in 1920 (VI, 263). The clause was again amended in the 99th Congress to authorize the Speaker, with approval of the House, to designate a Speaker pro tempore to sign enrolled bills (H. Res. 7, Jan. 3, 1985, p. 393). Before the House recodified its rules in the 106th Congress, clause 8 (formerly clause 7) and clause 9 occupied a single clause (H. Res. 5, Jan. 6, 1999, p. 47). Clause 8(b)(3) was added in the 108th Congress (sec. 2(a), H. Res. 5, Jan. 7, 2003, p. ——). The Speaker delivers to the Clerk the list required under clause 8(b)(3)(B) and announces such delivery to the House (*e.g.*, Mar. 13, 2003, p. ——; Jan. 20, 2005, p. ——).

§ 634. Election, oath, and designation of Speaker pro tempore.

The right of the House to elect a Speaker pro tempore in the absence of the Speaker was exercised before the rule was adopted (II, 1405), although the House sometimes preferred to adjourn (I, 179). An elected Speaker pro tempore in the earlier practice was not sworn (I, 229; II, 1386); but the Senate and sometimes the President were notified of his election (II, 1386–1389, 1405–1412; VI, 275). On August 31, 1961 (p. 17765), the House adopted House Resolution 445, electing Hon. John W. McCormack as Speaker pro tempore in the absence and terminal illness of Speaker Rayburn. The resolution provided that the Clerk notify the President and the Senate. The chairman of the Democratic Caucus then administered the oath. The Speaker has appointed a Speaker pro tempore to perform the duties of the Chair for a fourth consecutive day on account of illness (Speaker Hastert, Feb. 26, 2001, p. 2192). Elected Speakers pro tempore have signed enrolled bills, appointed select committees, administered the oath of office to a Member-elect (Mar. 17, 1998, p. 3836), etc., functions

not exercised by a Speaker pro tempore designated under paragraph (a) of this clause (II, 1399, 1400, 1404; VI, 274, 277; Sept. 21, 1961, p. 20572; June 21, 1984, p. 17708). The House agreed by unanimous consent to the Speaker's appointment under this clause of two Members in the alternative to act as Speakers pro tempore to sign enrollments through a date certain (*e.g.*, Aug. 6, 1998, p. 19128; Nov. 18, 1999, p. 30790).

A call of the House may take place with a Speaker pro tempore in the chair (IV, 2989), and the Speaker pro tempore may issue a warrant for the arrest of absent Members under a call of the House (VI, 688). When the Speaker is not present at the opening of a session, including morning-hour debates, he designates a Speaker pro tempore in writing (II, 1378, 1401); but he does not always announce the Member whom he calls to the chair temporarily during the day's sitting (II, 1379, 1400). The presence of the Speaker either at the opening of morning-hour debates or at the opening of the regular session on a day satisfies the requirement that the Speaker be present to convene the House at least every fourth day. A Speaker pro tempore elected under clause 8 of rule I may in turn designate another Member to act as Speaker pro tempore on a day certain (II, 1384; VI, 275; Feb. 23, 1996, p. 2807). Members of the minority have been called to the chair on occasions of ceremony (II, 1383; VI, 270; Jan. 31, 1951, p. 779; Jan. 6, 1999, p. 41), but in rare instances on other occasions (II, 1382, 1390; III, 2596; VI, 264).

Other responsibilities

§ 635. Drug testing in the House.

9. The Speaker, in consultation with the Minority Leader, shall develop through an appropriate entity of the House a system for drug testing in the House. The system may provide for the testing of a Member, Delegate, Resident Commissioner, officer, or employee of the House, and otherwise shall be comparable in scope to the system for drug testing in the executive branch pursuant to Executive Order 12564 (Sept. 15, 1986). The expenses of the system may be paid from applicable accounts of the House for official expenses.

This clause was added in the 105th Congress (H. Res. 5, Jan. 7, 1997, p. 121). Clerical and stylistic changes to this clause were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). This clause was redesignated from clause 13 to clause 9 in the 108th Congress (sec. 2(b), H. Res. 5, Jan. 7, 2003, p. ——).

§ 635a. Former Term limit.

Clause 9 formerly was occupied by a prohibition against the Speaker serving for more than four consecutive Congresses, which was added in the 104th Congress (sec. 103(a), H. Res. 6, Jan. 4, 1995, p. 462) and repealed in the 108th Congress (sec. 2(b), H. Res. 5, Jan. 7, 2003, p. ——). Before the House recodified its rules in the 106th Congress, the former term-limit rule and current clause 8 occupied a single clause (formerly clause 7) (H. Res. 5, Jan. 6, 1999, p. 47).

Designation of travel

§ 636. Travel authority.

10. The Speaker may designate a Member, Delegate, Resident Commissioner, officer, or employee of the House to travel on the business of the House within or without the United States, whether the House is meeting, has recessed, or has adjourned. Expenses for such travel may be paid from applicable accounts of the House described in clause 1(j)(1) of rule X on vouchers approved and signed solely by the Speaker.

This clause was adopted in the 94th Congress (H. Res. 5, Jan. 14, 1975, p. 20). In the 105th Congress this clause was amended to update archaic references to the "contingent fund" (H. Res. 5, Jan. 7, 1997, p. 121). In the 106th and 109th Congresses, clerical corrections were effected with respect to the "applicable accounts of the House" (H. Res. 5, Jan. 6, 1999, p. 47; sec. 2(a), H. Res. 5, Jan. 4, 2005, p. ——). Before the House recodified its rules in the 106th Congress, this clause and the provision now found in clause 10 of rule XXIV together occupied former clause 8 of this rule (H. Res. 5, Jan. 6, 1999, p. 47). See also §§ 769, 770, *infra*, for discussion of the Speaker's authority under section 502(b) of the Mutual Security Act of 1954 (22 U.S.C. 1754) to authorize use of counterpart funds for Members and employees for foreign travel, except where authorized by the chairman of the committee for members and employees thereof.

Committee appointment

§ 637. Select and conference committees.

11. The Speaker shall appoint all select, joint, and conference committees ordered by the House. At any time after an original appointment, the Speaker

may remove Members, Delegates, or the Resident Commissioner from, or appoint additional Members, Delegates, or the Resident Commissioner to, a select or conference committee. In appointing Members, Delegates, or the Resident Commissioner to conference committees, the Speaker shall appoint no less than a majority who generally supported the House position as determined by the Speaker, shall name those who are primarily responsible for the legislation, and shall, to the fullest extent feasible, include the principal proponents of the major provisions of the bill or resolution passed or adopted by the House.

The provision of this clause relating to select committees was adopted in 1880, and the provision relating to conference committees was first adopted in 1890, although the practice of leaving the appointment of conference committees to the Speaker had existed from the earliest years of the House's history (IV, 4470; VIII, 2192). The provision authorizing the Speaker to add or remove select committee members or conferees after his initial appointment was added in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. 49). The provision requiring the Speaker to appoint a majority of Members who generally supported the House position became effective on January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). The provision requiring the Speaker to appoint Members primarily responsible for the legislation was added in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6(f) of rule X (H. Res. 5, Jan. 6, 1999, p. 47).

Before 1880 the House might take from the Speaker the appointment of a select committee (IV, 4448, 4470; VIII, 2192) and on several occasions did so (IV, 4471–4476). In the earlier practice of the House, the Member moving a select committee was appointed its chairman (II, 1275; III, 2342; IV, 4514–4516). However, in modern practice, except for matters of ceremony, the inconvenience and even impropriety of the usage has caused it often to be disregarded (IV, 4517–4523, 4671). The Speaker has removed Members from a select committee (*e.g.*, Sept. 8, 2004, p. ——).

It is within the discretion of the Chair as to whom he appoints as conferees (June 24, 1932, p. 13876; July 8, 1947, p. 8469), and his discretion is not subject to challenge on a point of order even though clause 11 requires

the Speaker to appoint as conferees Members who are primarily responsible for the legislation (Speaker O'Neill, Oct. 12, 1977, p. 33434). A motion to instruct the Speaker as to the number and composition of a conference committee on the part of the House is not in order (VIII, 2193, 3221), and a motion to instruct conferees does not necessarily form the basis for the Speaker's determination under this clause as to which Members support the legislation (May 9, 1990, p. 9830).

The Speaker may appoint conferees from committees (1) which have not reported a measure, (2) which have jurisdiction over provisions of a nongermane Senate amendment to a House amendment to a Senate bill originally narrower in scope (Speaker O'Neill, Nov. 28, 1979, p. 33904), or (3) which have jurisdiction over provisions of an original Senate bill where the House amendment was narrower in scope (Speaker O'Neill, July 28, 1980, p. 19875; July 11, 1985, p. 18545). The Speaker may also appoint one who, although not a member of the committee of jurisdiction, is a principal proponent of the measure (Speaker Gingrich, Feb. 1, 1995, p. 3258) or a principal proponent of an adopted floor amendment (June 21, 1977, p. 20132). The Speaker has appointed as sole conferees on a nongermane portion of a Senate bill or amendment only members from the committee having jurisdiction over the subject matter thereof (Speaker O'Neill, Aug. 27, 1980, p. 23548; July 24, 1986, p. 17644), and also members from such committees as additional rather than exclusive conferees on other nongermane portions of the Senate bill (July 24, 1986, p. 17644). Where a comprehensive matter is committed to conference, the Speaker may appoint separate groups of conferees from several committees for concurrent or exclusive consideration of provisions within their respective jurisdictions (Feb. 7, 1990, p. 1522; May 9, 1990, p. 9830). Pursuant to this clause the Speaker may by the terms of his appointment empower a group of exclusive conferees to report in total disagreement (June 10, 1988, p. 14077; Sept. 20, 1989, p. 20955). Pursuant to this clause the Speaker may remove a conferee (*e.g.,* Mar. 10, 1998, p. 3049). In the 102d Congress the Speaker reiterated his announced policy of simplifying conference appointments by noting on the occasion of a relatively complex appointment that, inasmuch as conference committees are select committees that dissolve when their report is acted upon, conference appointments should not be construed as jurisdictional precedent (Speaker Foley, June 3, 1992, p. 13288). The Speaker may fill a vacancy on a conference committee by appointment but may not accept a resignation from a conference committee (as contrasted with his authority to remove) absent an order of the House (Nov. 4, 1987, p. 30808).

For a further discussion of the Speaker's authority to appoint conferees, see § 536, *supra*.

Recess and Convening Authorities

12. (a) To suspend the business of the House for a short time when no question is pending before the House, the Speaker may declare a recess subject to the call of the Chair.

§ 638. Short recess authority.

This paragraph was added as clause 12 of rule I in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. 49). It was redesignated as paragraph (a) in the 108th Congress (sec. 2(c), H. Res. 5, Jan. 7, 2003, p. ——). Having postponed proceedings on a pending question, the Speaker may declare a recess for a short time under this paragraph (there being no question then pending before the House) (Apr. 30, 1998, p. 7381). A Member's mere revelation that he seeks to offer a motion to adjourn does not suffice to make that motion "pending," and thus the Chair remains able to declare a short recess under this paragraph (Oct. 28, 1997, p. 23524; June 25, 2003, p. ——).

(b) To suspend the business of the House when notified of an imminent threat to its safety, the Speaker may declare an emergency recess subject to the call of the Chair.

§ 639. Emergency recess and reconvening authority.

(c) During any recess or adjournment of not more than three days, if the Speaker is notified by the Sergeant-at-Arms of an imminent impairment of the place of reconvening at the time previously appointed, then he may, in consultation with the Minority Leader—

(1) postpone the time for reconvening within the limits of clause 4, section 5, article I of the Constitution and notify Members accordingly; or

(2) reconvene the House before the time previously appointed solely to declare the House in recess within the limits of clause 4, section

5, article I of the Constitution and notify Members accordingly.

(d) The Speaker may convene the House in a place at the seat of government other than the Hall of the House whenever, in his opinion, the public interest shall warrant it.

Paragraphs (b)–(d) were added in the 108th Congress (sec. 2(c), H. Res. 5, Jan. 7, 2003, p. ——). For similar authority in the Senate, see Senate Resolution 296 (108th Cong., Feb. 3, 2003, p. ——). An emergency recess under paragraph (b) was declared by the Speaker pro tempore on May 11, 2005 (p. ——) and by the Chairman of the Committee of the Whole on June 29, 2005 (p. ——).

RULE II

OTHER OFFICERS AND OFFICIALS

Elections

§ 640. Election, oath, and removal of officers.

1. There shall be elected at the commencement of each Congress, to continue in office until their successors are chosen and qualified, a Clerk, a Sergeant-at-Arms, a Chief Administrative Officer, and a Chaplain. Each of these officers shall take an oath to support the Constitution of the United States, and for the true and faithful exercise of the duties of his office to the best of his knowledge and ability, and to keep the secrets of the House. Each of these officers shall appoint all of the employees of his department provided for by law. The Clerk, Sergeant-at-Arms, and Chief Administrative Officer may be removed by the House or by the Speaker.

When the House recodified its rules, it consolidated former rules II through VII, former clauses 10 and 11 of rule I, former clause 6 of rule XIII, and former clause 5 of rule XVI under rule II (H. Res. 5, Jan. 6, 1999, p. 47). A rudimentary form of this clause was adopted in 1789, and

was amended several times before 1880, when it assumed the form it retained for more than a century (I, 187). During the 102d Congress, section 2 of the House Administrative Reform Resolution of 1992 amended the clause to abolish the Office of the Postmaster (see § 668, *infra*) and to empower the Speaker to remove elected officers (H. Res. 423, Apr. 9, 1992, p. 9039). The 104th Congress made conforming changes to the clause to reflect the abolishment of the Office of the Doorkeeper and the establishment of an elected Chief Administrative Officer (sec. 201(a), H. Res. 6, Jan. 4, 1995, p. 463). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). For a discussion of the former Office of the Doorkeeper, see § 663a, *infra*; and for a discussion of the evolution of the Chief Administrative Officer (an elected officer) from the former Director of Non-legislative and Financial Services (an officer appointed jointly by the Speaker and the Majority and Minority Leaders under clause 1 of rule VI of the 103d Congress), see § 664, *infra*.

The House having discarded a theory that the rules might be imposed by one House on its successor (V, 6743–6745), it follows that this clause is not operative at the organization before the rules are adopted. Before the House recodified its rules in the 106th Congress, the House was required under former rule II to elect its Speaker and other officers by a viva voce vote following nominations (I, 204, 208). However, the officers mentioned in the rule, other than Speaker, were, even then, usually chosen by resolution, which is not a viva voce election (I, 193, 194). A majority vote is required for the election of officers of both Houses of Congress (VI, 23). The oath is administered by the Speaker to the officers (I, 81; § 198, *supra*). The requirement that the officers be sworn to keep the secrets of the House had become obsolete (I, 187), but the 104th Congress adopted a requirement that Members, officers, and employees subscribe an oath of secrecy regarding classified information (clause 13 of rule XXIII). Clause 4(d)(1)(A) of rule X requires the Committee on House Administration to provide policy direction for, and oversight of, the Inspector General, and oversight of the Clerk, Sergeant-at-Arms, and Chief Administrative Officer (see § 752, *infra*).

The House has declined to interfere with the Clerk's power of removing his subordinates (I, 249). Employees under the Clerk and other officers are to be assigned only to the duties for which they are appointed (V, 7232). The Sergeant-at-Arms having died, the Clerk was elected by the House to serve temporarily also as Sergeant-at-Arms without additional compensation (July 8, 1953, p. 8242). The Legislative Reorganization Act of 1946 (2 U.S.C. 75a–1) authorizes the Speaker to fill temporary vacancies in the offices of Clerk, Sergeant-at-Arms, Chief Administrative Officer, and Chaplain. A former version of the Act also permitted temporary appointments to the former offices of Doorkeeper and Postmaster. The Speaker has exercised his authority to fill temporary vacancies in the offices of Sergeant-at-Arms (Jan. 6, 1954, p. 8; June 30, 1972, p. 23665; Feb. 28,

1980, p. 4350; and Mar. 12, 1992, p. 5519), Clerk (Nov. 15, 1975, p. 36901; Jan. 6, 1999, p. 257), Chaplain (Mar. 14, 1966, p. 5712; Mar. 23, 2000, p. 3481), Doorkeeper (Dec. 20, 1974, p. 41855), and Chief Administrative Officer (Jan. 9, 1997, p. 279). A resolution electing a House officer is presented as a question of privilege (July 31, 1997, p. 17021). The resignation of an elected officer of the House is subject to acceptance by the House (Mar. 23, 2000, p. 3480).

Clerk

§ 641. Clerk; commencement of first session.

2. (a) At the commencement of the first session of each Congress, the Clerk shall call the Members, Delegates, and Resident Commissioner to order and proceed to record their presence by States in alphabetical order, either by call of the roll or by use of the electronic voting system. Pending the election of a Speaker or Speaker pro tempore, the Clerk shall preserve order and decorum and decide all questions of order, subject to appeal by a Member, Delegate, or Resident Commissioner.

In 1880 several rules, adopted at different periods from 1794 to 1846, were consolidated into this clause, which, before the House recodified its rules in the 106th Congress, was found in rule III (H. Res. 5, Jan. 6, 1999, p. 47). Paragraph (a) was initially framed in 1880, on a basis furnished by a rule of 1860 (I, 64), and amended in 1911.

§ 642. Other duties of the Clerk.

Various administrative duties, similar to those specified in this clause, are imposed on the Clerk by law (I, 253; Legislative Reorganization Act of 1946, 60 Stat. 812); and the law also makes it his duty to furnish stationery, blank books, etc., to the committees and officers of the House (V, 7322); to exercise discretionary authority as to reprinting of bills and documents (V, 7319); to receive the testimony taken in election contests (I, 703, 705; see also Federal Contested Election Act, P.L. 91–138, 83 Stat. 284), to serve as an ex officio member of the Federal Election Commission established pursuant to Public Law 94–283; 2 U.S.C. 437c; and to make certain reports on receipts and expenditures (2 U.S.C. 102, 103, 113; see § 655, *infra*). Instance of Clerk serving temporarily also as Sergeant-at-Arms (July 8, 1953, p. 8242).

§ 643. Clerk's duties at organization.

As rules are not usually adopted until after the election of the Speaker, this paragraph is not in force at the time of organization of a new House. The procedure at organization does, however, follow a practice conforming to the terms of the paragraph (I, 81), although the House may depart from it. Since the 97th Congress, for example, the House has permitted by unanimous consent the alphabetical roll call of Members by States to be conducted by electronic device to establish a quorum (Jan. 5, 1981, pp. 93–96). For a discussion of procedure in the House before the adoption of rules, including the procedure by which the Clerk conducts the election of the Speaker, see §§ 27, 60, *supra.* The Clerk, in presiding before the election of the Speaker, recognizes Members (I, 74). The Members-elect have, before the election of the Speaker or adoption of rules, authorized the Clerk and Sergeant-at-Arms of the last House to preserve order (I, 101); but usually such action has not been taken, although an occasion might arise to make it necessary (I, 76, 77).

While the Speaker ceases to be an officer of the House with the expiration of a Congress, the Clerk, by old usage, continues in a new Congress (I, 187, 188, 235, 244).

§ 644. The roll of Members-elect.

The roll of Members is made up by the Clerk from the credentials, in accordance with a provision of law (I, 14–62; VI, 2; 2 U.S.C. 26). A certificate of election in due form having been filed, the Clerk placed the name of the Member-elect on the roll, although he was subsequently advised that a State Supreme Court had issued a writ restraining the Secretary of State from issuing such certificate (Jan. 3, 1949, p. 8). The call of the roll may not be interrupted, especially by one not on that roll (I, 84), and a person not on the roll may not be recognized (I, 86). A motion to proceed to the election of the Speaker is of higher privilege than a motion to correct the roll (I, 19–24). The House has declined to permit enrollment by the Clerk to be final as to prima facie right (I, 376, 589, 592).

§ 645. Clerk as presiding officer at organizations.

In early years the authority of the Clerk to decide questions of order pending the election of a Speaker was questioned (I, 65). The Clerks often declined to make decisions (I, 68–72; V, 5325). However, in 1855 and 1997 the Clerk decided a question of order; and in 1997 the Clerk was sustained on appeal (I, 91; Jan. 7, 1997, pp. 115, 116). During the existence of a rule that applied the rules of a prior House to a successor House (1860 through 1890) (I, 64; V, 6743–6747) the Clerks made several rulings (I, 76, 77; VI, 623).

In a case of a vacancy in the Office of the Speaker arising after the adoption of the rules, this rule would be operative and conclude questions as to the Clerk's authority. For example, upon the death of the Speaker during a sine die adjournment of the first session of the 87th Congress, the Clerk called the House to order on the first day of the second session (Jan. 10, 1962, p. 5). However, this rule should be read in light of clause

8(b)(3) of rule I, which requires the Speaker to deliver to the Clerk a list of Members in the order in which each shall act as Speaker pro tempore in the case of a vacancy.

The Clerk having died, and in the absence of the Sergeant-at-Arms, the Doorkeeper of the 79th Congress presided at organization of the 80th Congress (Jan. 3, 1947, p. 33). The Clerk, having been appointed pursuant to 2 U.S.C. 75a–1 by the previous Speaker at the end of the 105th Congress to fill a vacancy caused by resignation of the Clerk elected for that Congress, presided at the organization of the 106th Congress (Jan. 6, 1999, p. 41).

§ 646. Clerk furnishes a list of reports.

(b) At the commencement of every regular session of Congress, the Clerk shall make and cause to be delivered to each Member, Delegate, and the Resident Commissioner a list of the reports that any officer or Department is required to make to Congress, citing the law or resolution in which the requirement may be contained and placing under the name of each officer the list of reports he is required to make.

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2 of rule II (H. Res. 5, Jan. 6, 1999, p. 47). The paragraph was initially adopted in 1822 (I, 252). It was amended in the 107th Congress to permit the Clerk to publish the list in a form other than printed (sec. 2(a), H. Res. 5, Jan. 3, 2001, p. 25).

§ 647. Clerk's duty as to Journal and documents.

(c) The Clerk shall—

(1) note all questions of order, with the decisions thereon, the record of which shall be appended to the Journal of each session;

(2) enter on the Journal the hour at which the House adjourns;

(3) complete the distribution of the Journal to Members, Delegates, and the Resident Commissioner, together with an accurate and

complete index, as soon as possible after the close of a session; and

(4) send a copy of the Journal to the executive of and to each branch of the legislature of every State as may be requested by such State officials.

Before the House recodified its rules in the 106th Congress, this paragraph (except subparagraph (2)) was found in former clause 3 of rule III; and subparagraph (2) was found in former clause 5 of rule XVI (H. Res. 5, Jan. 6, 1999, p. 47). Subparagraph (2) was adopted initially in 1837 and amended in 1880 (V, 6740). Former provisions directing the Clerk to make all contracts, keep contingent and stationery accounts, and pay officers and employees were stricken by section 3 of the House Administrative Reform Resolution of 1992 (H. Res. 423, 102d Cong., Apr. 9, 1992, p. 9050), to relieve the Clerk of functions to be transferred to the Director of Non-legislative and Financial Services pursuant to section 7 of that resolution (see §664, *infra*). Clerical corrections were effected at the beginning of the 104th Congress (sec. 223(f), H. Res. 6, Jan. 4, 1995, p. 469) and the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). During the 104th Congress the requirement to send a printed copy of the Journal to each branch of every State legislature was changed to an authorization to send such copies on request (H. Res. 254, Nov. 30, 1995, p. 35077). Subparagraphs (3) and (4) were amended in the 107th Congress to permit the Clerk to publish the Journal in a form other than printed (sec. 2(a), H. Res. 5, Jan. 3, 2001, p. 25).

§648. Attests and seals process and certifies passage of bills; oversees engrossment and enrollment process.

(d)(1) The Clerk shall attest and affix the seal of the House to all writs, warrants, and subpoenas issued by order of the House and certify the passage of all bills and joint resolutions.

(2) The Clerk shall examine all bills, amendments, and joint resolutions after passage by the House and, in cooperation with the Senate, examine all bills and joint resolutions that have passed both Houses to see that they are correctly enrolled and forthwith present those bills and joint resolutions that originated in the House to the President in person after their sig-

nature by the Speaker and the President of the Senate, and report to the House the fact and date of their presentment.

Before the House recodified its rules in the 106th Congress, subparagraph (1) was found in former clause 3 of rule III (H. Res. 5, Jan. 6, 1999, p. 47). When the House issues an order or warrant, the Speaker must issue the summons under his hand and seal, and it must be attested by the Clerk; but when the power is granted to a committee to send for persons and papers under clause 2(m) of rule XI, a summons signed by the chairman of the committee is sufficient (III, 1668).

The enrollment process was originally the responsibility of the Committee on Enrolled Bills, which was created in 1789 by a joint rule of the two Houses (IV, 4350). This joint rule lapsed in 1876 with other joint rules, but in 1880 the Rules of the House were amended to again recognize the Committee on Enrolled Bills (IV, 4350, 4416; VII, 2099). Responsibility for the engrossment and enrollment process was given to the Committee on House Administration when that Committee was created effective January 2, 1947 as part of the Legislative Reorganization Act of 1946 (60 Stat. 812) as an enumerated subject of legislative jurisdiction. That responsibility was transferred from the Committee's legislative jurisdiction to its special oversight jurisdiction (see former clause 4(d)(1)(A) of rule X) by the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470) and was transferred to the Clerk in the 107th Congress (sec. 2(b), H. Res. 5, Jan. 3, 2001, p. 28). The Clerk and the Secretary of the Senate make comparisons of bills of their respective Houses for enrollment, and the two cooperate in the interchange of bills for signature.

§ 649. Calendars distributed.

(e) The Clerk shall cause the calendars of the House to be distributed each legislative day.

Before the House recodified its rules in the 106th Congress, paragraph (e) was found in former clause 6 of rule XIII (H. Res. 5, Jan. 6, 1999, p. 47). This paragraph was adopted initially in the 62d Congress, April 5, 1911 (VI, 743), and amended December 8, 1931 (pp. 10, 83). It was amended in the 107th Congress to permit the Clerk to publish the calendars in a form other than printed (sec. 2(a), H. Res. 5, Jan. 3, 2001, p. 25).

§ 650. Documents.

(f) The Clerk shall—

(1) retain in the library at the Office of the Clerk for the use of the Members, Delegates, Resident Commis-

sioner, and officers of the House, and not to be withdrawn therefrom, two copies of all the books and printed documents deposited there; and

(2) deliver to any Member, Delegate, or the Resident Commissioner an extra copy of each document requested by that Member, Delegate, or Resident Commissioner that has been printed by order of either House of Congress in any Congress in which the Member, Delegate, or Resident Commissioner served.

Before the House recodified its rules in the 106th Congress, paragraphs (c) and (f) were found in former clause 3 of rule III (H. Res. 5, Jan. 6, 1999, p. 47). They were amended in the 92d Congress to include Delegates and the Resident Commissioner among those entitled to the listed services (H. Res. 5, Jan. 22, 1971, pp. 140–44; H. Res. 1153, Oct. 13, 1972, pp. 36013–15). It was amended in the 107th Congress to permit the Clerk to distribute documents by a method other than mail and in a form other than bound (sec. 2(a), H. Res. 5, Jan. 3, 2001, p. 25).

§ 651. Official to act as Clerk upon designation.

(g) The Clerk shall provide for his temporary absence or disability by designating an official in the Office of the Clerk to sign all papers that may require the official signature of the Clerk and to perform all other official acts that the Clerk may be required to perform under the rules and practices of the House, except such official acts as are provided for by statute. Official acts performed by the designated official shall be under the name of the Clerk. The designation shall be in writing and shall be laid before the House and entered on the Journal.

Before the House recodified its rules in the 106th Congress, this paragraph was found in former clause 4 of rule III (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially on January 18, 1912 (VI, 25) and was amend-

ed January 3, 1953 (p. 16). Form of designation of a Clerk pro tempore (VI, 26). Technical corrections to the clause were effected in the 108th Congress (sec. 2(u), H. Res. 5, Jan. 7, 2003, p. ——).

§ 652. Authority to receive messages.

(h) The Clerk may receive messages from the President and from the Senate at any time when the House is not in session.

Before the House recodified its rules in the 106th Congress, this paragraph was found in former clause 5 of rule III (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113). In the case of Kennedy *v.* Sampson, 511 F.2d 430 (D.C. Cir. 1974) (see § 113, *supra*, accompanying Const., art. I, sec. 7, cl. 2) a United States Court of Appeals held that a bill could not be pocket-vetoed by the President during an "intrasession" adjournment of Congress to a day certain for more than three days, where the House of origin has made appropriate arrangements for the receipt of Presidential messages during the adjournment. Under this clause the Clerk may receive messages during recesses as well as during adjournments (Dec. 22, 1987, p. 37966).

§ 653. Administration of vacant Member's office.

(i)(1) The Clerk shall supervise the staff and manage the office of a Member, Delegate, or Resident Commissioner who has died, resigned, or been expelled until a successor is elected. The Clerk shall perform similar duties in the event that a vacancy is declared by the House in any congressional district because of the incapacity of the person representing such district or other reason. Whenever the Clerk is acting as a supervisory authority over such staff, he shall have authority to terminate employees and, with the approval of the Committee on House Administration, may appoint such staff as is required to operate the office until a successor is elected.

(2) For 60 days following the death of a former Speaker, the Clerk shall maintain on the House payroll, and shall supervise in the same manner,

staff appointed under House Resolution 1238, Ninety-first Congress (as enacted into permanent law by chapter VIII of the Supplemental Appropriations Act, 1971) (2 U.S.C. 31b–5).

Before the House recodified its rules in the 106th Congress, this paragraph was found in former clause 6 of rule III (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially in the 98th Congress (H. Res. 5, Jan. 3, 1983, p. 34). It was amended in the 104th and 106th Congresses to reflect changes in the name of the Committee on House Administration (sec. 202(b), H. Res. 6, Jan. 4, 1995, p. 464; H. Res. 5, Jan. 6, 1999, p. 47).

§ 654. Semi-annual reports.

(j) In addition to any other reports required by the Speaker or the Committee on House Administration, the Clerk shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or on December 31 on the financial and operational status of each function under the jurisdiction of the Clerk. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

§ 655. Cooperation with others.

(k) The Clerk shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

Before the House recodified its rules in the 106th Congress, paragraphs (j) and (k) were found in former clauses 7 and 8 of rule III (H. Res. 5, Jan. 6, 1999, p. 47). They were adopted initially in the 104th Congress (sec. 201(b), H. Res. 6, Jan. 4, 1995, p. 463). A conforming change was effected at the beginning of the 106th Congress in the name of the Committee on House Administration (H. Res. 5, Jan. 6, 1999, p. 47).

The Clerk is also required to make certain reports on receipts and expenditures under law (2 U.S.C. 102, 103, 113), which are available to the

public. However, members of the public have no statutory or constitutional right to examine the actual financial records that are used in preparing such reports (Trimble *v.* Johnston, 173 F. Supp. 651, D.C. Cir. 1959).

Sergeant-at-Arms

§ 656. Sergeant-at-Arms enforces authority of House.

3. (a) The Sergeant-at-Arms shall attend the House during its sittings and maintain order under the direction of the Speaker or other presiding officer. The Sergeant-at-Arms shall execute the commands of the House, and all processes issued by authority thereof, directed to him by the Speaker.

Before the House recodified its rules in the 106th Congress, this paragraph was found in former clause 1 of rule IV (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially in 1789, with additions and amendments in 1838, 1877, 1890 (I, 257), 1911 (VI, 29), and 1971. Amendments adopted in the 92d Congress clarified the responsibility of the Sergeant-at-Arms to keep the accounts for the pay and mileage of the Delegates from the District of Columbia, Guam, and the Virgin Islands and the Resident Commissioner from Puerto Rico as well as for Members (H. Res. 5, Jan. 22, 1971, p. 144; H. Res. 1153, Oct. 13, 1972, pp. 36013–15). In the 94th Congress, the provisions of House Resolution 732, directing the Sergeant-at-Arms to enter into agreements with State officials, with the approval of the Committee on House Administration, to withhold State income taxes from the pay of each Member subject to such State income tax and requesting such withholding, were enacted into permanent law (90 Stat. 1448; 2 U.S.C. 60e–1b). Former provisions of this clause directing the Sergeant-at-Arms to keep the accounts for the pay and mileage of Members and Delegates and the Resident Commissioner from Puerto Rico were stricken by section 4 of the House Administrative Reform Resolution of 1992 (H. Res. 423, 102d Cong., Apr. 9, 1992, p. 9039), to relieve the Sergeant-at-Arms of functions to be transferred to the Director of Non-legislative and Financial Services pursuant to section 7 of that resolution (see § 664, *supra*). During the 102d Congress, the House adopted a resolution presented by the Majority Leader as a question of the privileges of the House to terminate all bank and check-cashing operations in the Office of the Sergeant-at-Arms and direct the Committee on Standards of Official Conduct to review GAO audits of such operations (Oct. 3, 1991, p. 25435). When former rule IV was rewritten in the 104th Congress, clause 1 was restated without change (sec. 201(c), H. Res. 6, Jan. 4, 1995, p. 463).

The Sergeant-at-Arms is authorized to make payments from the contingent fund of the House (now referred to as "applicable accounts of the House described in clause 1(j)(1) of rule X"), under rules prescribed by the Committee on House Administration, to defray the expenses of the funeral of a deceased Member of the House and the expenses of any delegation of Members of Congress duly appointed to attend (76 Stat. 686; 2 U.S.C. 124).

The Speaker ordered that documents received in a communication from an independent counsel advising the House of substantial and credible information that may constitute grounds for impeachment of the President be kept under armed guard of the Sergeant-at-Arms until the House determined which documents to make available to the public (Sept. 9, 1998, p. 19769).

At the organization of the House in a new Congress the election of Speaker occurs before the adoption of rules. Therefore this rule is not in force at that time, and in case of necessity a special rule may be adopted conferring the authority, as was done in 1849 and 1859 (I, 101, 102).

Duties are imposed on the Sergeant-at-Arms by law (I, 258): Control of Capitol police; and the making up of the roll of Members-elect and presiding over the organization of a new Congress in case of vacancy in the Office of the Clerk, or the absence or disability of that officer (2 U.S.C. 26). The death of the Sergeant-at-Arms being announced, the House passed appropriate resolutions and adjourned as a mark of respect (VI, 32; July 8, 1953, p. 8263). The Clerk having died, and in the absence of the Sergeant-at-Arms, the Doorkeeper of the 79th Congress presided at the organization of the 80th Congress (Jan. 3, 1947, p. 33). In the 83d Congress the Sergeant-at-Arms having died, the Clerk was elected to serve temporarily both as Clerk and Sergeant-at-Arms (July 8, 1953, p. 8242), and upon resignation by the Clerk from his additional position of Sergeant-at-Arms, the Speaker, pursuant to 2 U.S.C. 75a–1, appointed a temporary Sergeant-at-Arms (Jan. 6, 1954, p. 8). The Sergeant-at-Arms having resigned in the 96th Congress, the Speaker appointed a temporary Sergeant-at-Arms pursuant to the statute (Feb. 28, 1980, pp. 4349–50); and the same occurred in the 102d Congress (Mar. 12, 1992, p. 5519). Instance where the Senate by resolution removed its Sergeant-at-Arms (VI, 37).

§ 657. The mace is the symbol of Sergeant-at-Arms' office.

(b) The symbol of the Office of the Sergeant-at-Arms shall be the mace, which shall be borne by him while enforcing order on the floor.

Before the House recodified its rules in the 106th Congress, this paragraph was found in former clause 2 of rule IV (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially in 1789 (II, 1346). When former rule IV was rewritten entirely in the 104th Congress, the paragraph was restated without change (sec. 201(c), H. Res. 6, Jan. 4, 1995, p. 463). An attempt

to enforce order without the mace gave rise to a question of privilege (II, 1347). Extreme disorder arising on the floor, the Speaker directed the Sergeant-at-Arms to enforce order with the mace (VI, 258; VIII, 2530).

§ 658. Doorkeeping.

(c) The Sergeant-at-Arms shall enforce strictly the rules relating to the privileges of the Hall of the House and be responsible to the House for the official conduct of his employees.

(d) The Sergeant-at-Arms may not allow a person to enter the room over the Hall of the House during its sittings; and from 15 minutes before the hour of the meeting of the House each day until 10 minutes after adjournment, he shall see that the floor is cleared of all persons except those privileged to remain.

Before the House recodified its rules in the 106th Congress, paragraphs (c) and (d) were found in former clauses 3 and 4 of rule IV (H. Res. 5, Jan. 6, 1999, p. 47). They were adopted initially in the 104th Congress to transfer functions incident to the abolishment of the Office of the Doorkeeper (sec. 201(c), H. Res. 6, Jan. 4, 1995, p. 463). For the history of the Office of the Doorkeeper, see § 663a, *infra*.

§ 659. Semi-annual reports.

(e) In addition to any other reports required by the Speaker or the Committee on House Administration, the Sergeant-at-Arms shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or on December 31 on the financial and operational status of each function under the jurisdiction of the Sergeant-at-Arms. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

§ 660. Cooperation with others.

(f) The Sergeant-at-Arms shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

Before the House recodified its rules in the 106th Congress, paragraphs (e) and (f) were found in former clauses 5 and 6 of rule IV (H. Res. 5, Jan. 6, 1999, p. 47). They were adopted initially in the 104th Congress (sec. 201(c), H. Res. 6, Jan. 4, 1995, p. 463). A conforming change was effected at the beginning of the 106th Congress in the name of the Committee on House Administration (H. Res. 5, Jan. 6, 1999, p. 47).

Chief Administrative Officer

§ 661. Duties.

4. (a) The Chief Administrative Officer shall have operational and financial responsibility for functions as assigned by the Committee on House Administration and shall be subject to the oversight of the Committee on House Administration.

§ 662. Semi-annual reports.

(b) In addition to any other reports required by the Committee on House Administration, the Chief Administrative Officer shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or December 31 on the financial and operational status of each function under the jurisdiction of the Chief Administrative Officer. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

§ 663. Cooperation with others.

(c) The Chief Administrative Officer shall fully cooperate with the appropriate offices and persons in the perform-

ance of reviews and audits of financial records and administrative operations.

Before the House recodified its rules in the 106th Congress, clause 4 was found in former rule V (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially in this form in the 104th Congress (sec. 201(c), H. Res. 6, Jan. 4, 1995, p. 463). It was amended in the 105th Congress to eliminate the supervisory role of the Speaker over the Chief Administrative Officer (H. Res. 5, Jan. 7, 1997, p. 121). A conforming change was effected at the beginning of the 106th Congress in the name of the Committee on House Administration (H. Res. 5, Jan. 6, 1999, p. 47). It was amended in the 107th Congress to reflect the removal of the requirement that the Committee on House Administration provide policy direction to the Chief Administrative Officer (sec. 2(g), H. Res. 5, Jan. 3, 2001, p. 25). The earlier form of the rule enumerated the duties of the Doorkeeper, which were transferred to the Sergeant-at-Arms incident to the abolishment of the Office of the Doorkeeper.

§ 663a. Former Office of Doorkeeper.

Before the 104th Congress (sec. 201(c), H. Res. 6, Jan. 4, 1995, p. 463), rule V enumerated the duties of the Doorkeeper, who enforced the rules relating to the privileges of the Hall of the House. The earlier form of the rule was adopted in 1838 and amended in 1869, 1880 (I, 260), and 1890 (V, 7295). By law the Doorkeeper was assigned certain administrative duties (I, 262), including certain housekeeping functions. Through his employees and appointees, the Doorkeeper also discharged various duties not enumerated in the law or in the rules, such as announcing at the door of the Hall of the House all messengers from the President and the Senate (V, 6591). The Clerk having died, and the Sergeant-at-Arms having been absent, the Doorkeeper of the 79th Congress presided at the organization of the 80th Congress (Jan. 3, 1947, p. 33). In the 78th Congress, the House adopted a resolution on the death of the Doorkeeper and appointed a committee to attend his funeral (Jan. 28, 1943, pp. 421–22).

§ 664. Former Director of Non-legislative and Financial Services.

The Chief Administrative Officer supplanted the Director of Non-legislative and Financial Services formerly provided for under clause 1 of rule VI in the 103d Congress, which corresponded to an erstwhile rule LII of the 102d Congress. Certain functions and entities formerly within the purview of elected officers were transferred to the Director of Non-legislative and Financial Services pursuant to section 7 of the House Administrative Reform Resolution of 1992 (H. Res. 423, Apr. 9, 1992, p. 9040). Section 7(b) of that resolution vested the Committee on House Administration with authority to prescribe regulations providing for the orderly transfer of such functions and entities and any other transfers necessary for the improvement of non-legislative and financial services in the House, so long as not transferring a function or entity within the jurisdiction of the committee under rule X. Section 13 of the resolution provided that

previous responsibility for a function or entity would remain fixed until such function or entity were transferred. Pursuant to clause 1 of rule VI of the 103d Congress (then still designated as rule LII of the 102d Congress), the Speaker, the Majority Leader, and the Minority Leader jointly appointed the first Director of Non-legislative and Financial Services of the House on October 23, 1992 (Oct. 29, 1992, p. 34802).

Chaplain

5. The Chaplain shall offer a prayer at the commencement of each day's sitting of the House.

§ 665. Duties of the Chaplain.

Before the House recodified its rules in the 106th Congress, this clause was found in former rule VII (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially in 1880 (I, 272), but the sessions of the House were opened with prayer from the first, and the Chaplain was an officer of the House before the adoption of the rule (I, 273–282). The Chaplain takes the oath prescribed for the officers of the House (VI, 31; Feb. 1, 1950, p. 1311). Prayer by the Chaplain is not business requiring the presence of a quorum and the Speaker declines to entertain a point of no quorum before prayer is offered (VI, 663; clause 7(a)(1) of rule XX). There is no precedent for prayer to be offered by the Chaplain during a continuous session of the House, absent an adjournment or recess (compare Apr. 22 and 23, 1985, pp. 8753 and 8959). Form of resignation of the Chaplain (Feb. 28, 1921, p. 4075; Jan. 30, 1950, p. 1097; Mar. 23, 2000, p. 3480). Form of resolution electing a Chaplain emeritus (VI, 31; Jan. 30, 1950, p. 1095; Nov. 10, 1999, p. 29493).

During the 97th Congress, the Supreme Court held that employment of a chaplain for the legislative body of Nebraska did not violate the Establishment Clause of the first amendment to the Constitution (Marsh *v.* Chambers, 463 U.S. 783 (1983)). The Court of Appeals cited the Marsh decision as controlling authority in a similar challenge to the House Chaplain (Murray *v.* Buchanan, 729 F.2d 689 (D.C. Cir. 1983)). The House adopted a privileged resolution articulating its position in the Murray case (H. Res. 413, Mar. 30, 1982, p. 5890).

Office of Inspector General

6. (a) There is established an Office of Inspector General.

§ 667. Inspector General.

(b) The Inspector General shall be appointed for a Congress by the Speaker, the Majority Leader, and the Minority Leader, acting jointly.

(c) Subject to the policy direction and oversight of the Committee on House Administration, the Inspector General shall only—

(1) conduct periodic audits of the financial and administrative functions of the House and of joint entities;

(2) inform the officers or other officials who are the subject of an audit of the results of that audit and suggesting appropriate curative actions;

(3) simultaneously notify the Speaker, the Majority Leader, the Minority Leader, and the chairman and ranking minority member of the Committee on House Administration in the case of any financial irregularity discovered in the course of carrying out responsibilities under this clause;

(4) simultaneously submit to the Speaker, the Majority Leader, the Minority Leader, and the chairman and ranking minority member of the Committee on House Administration a report of each audit conducted under this clause; and

(5) report to the Committee on Standards of Official Conduct information involving possible violations by a Member, Delegate, Resident Commissioner, officer, or employee of the House of any rule of the House or of any law applicable to the performance of official duties or the discharge of official responsibilities that may require referral to the appropriate Federal or State authorities under clause 3(a)(3) of rule XI.

Before the House recodified its rules in the 106th Congress, this clause was found in former rule VI (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially in this form at the beginning of the 104th Congress (sec. 201(c), H. Res. 6, Jan. 4, 1995, p. 463). Later in the 104th Congress and in the 106th Congress it was amended to effect a technical correction (H. Res. 254, Nov. 30, 1995, p. 35077; H. Res. 5, Jan. 6, 1999, p. 47). Its predecessor form was composed in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. 49) by combining two rules adopted in the House Administrative Reform Resolution of 1992 (H. Res. 423, 102d Cong., Apr. 9, 1992, p. 9040). For the history of former rule VI before 1992, see § 668, *infra*.

In the form of the rule adopted in the 103d Congress, paragraph (a) (formerly clause 1) corresponded to an erstwhile rule LII of the 102d Congress (relating to the Director of Non-legislative and Financial Services, who in the 104th Congress was supplanted by the Chief Administrative Officer; see clause 4 of rule II, §§ 661–663, *supra*), and paragraph (b) (formerly clause 2) corresponded to an erstwhile rule LIII of the 102d Congress (relating to the Inspector General). The 104th Congress rewrote clause 2 of rule VI (as it was composed in the 103d Congress) to occupy all of rule VI and to: broaden the auditing responsibilities beyond the offices of the elected officers (paragraph (c)(1), formerly clause 2(c)(1)); add requirements for simultaneous reporting (paragraphs (c)(3) and (4), formerly clauses 2(c)(3) and (4)); delete a provision relating to classification of employees (formerly clause 2(d)); and add the responsibility to report certain information to the Committee on Standards of Official Conduct (paragraph (c)(5)) (sec. 201, H. Res. 6, Jan. 4, 1995, p. 464). The 104th Congress also mandated that the Inspector General, in consultation with the Speaker and the Committee on House Administration, procure an independent and comprehensive audit of House financial records and administrative operations and report the results thereof in accord with this rule (sec. 107, H. Res. 6, Jan. 4, 1995, p. 463).

§ 668. Former Office of the Postmaster.

Until the 102d Congress, former rule VI provided for an Office of the Postmaster, who superintended the post offices of the House and the delivery of its mail. The earlier form of the rule was adopted in 1838 and amended in 1880 (I, 270), 1911 (VI, 34), 1971 (H. Res. 5, 92d Cong., p. 144), and 1972 (H. Res. 1153, 92d Cong., pp. 36013–15). The Office of the Postmaster was abolished during the 102d Congress by sections 2 and 5 of the House Administrative Reform Resolution of 1992 (H. Res. 423, Apr. 9, 1992, p. 9040).

Office of the Historian

§ 669. Historian.

7. There is established an Office of the Historian of the House of Representatives. The Speaker shall appoint

and set the annual rate of pay for employees of the Office of the Historian.

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 10 of rule I (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially in the 101st Congress (H. Res. 5, Jan. 3, 1989, p. 72). The second sentence was added in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). An earlier form of this clause provided for the seven-year establishment of an Office for the Bicentennial to coordinate the commemoration of the two-hundredth anniversary of the House of Representatives (H. Res. 621, 97th Cong., Dec. 17, 1982, p. 31951). The management, supervision, and administration of the office was under the direction of the Speaker and was staffed by a professional historian appointed by the Speaker on a nonpartisan basis. In 1984 the Office of the Bicentennial was removed from the standing rules and established by law for the remainder of its existence in P.L. 98–367 (2 U.S.C. 29c). Apart from the Office of the Historian, the History of the House Awareness and Preservation Act requires the Librarian of Congress to prepare a new and complete written history of the House in consultation with the Committee on House Administration (2 U.S.C. 183). The Act also requires the Librarian to accept for deposit, preserve, maintain, and make accessible an oral history of the House as told by its Members and former Members (2 U.S.C. 183a).

Office of General Counsel

§ 670. General Counsel.

8. There is established an Office of General Counsel for the purpose of providing legal assistance and representation to the House. Legal assistance and representation shall be provided without regard to political affiliation. The Office of General Counsel shall function pursuant to the direction of the Speaker, who shall consult with a Bipartisan Legal Advisory Group, which shall include the majority and minority leaderships. The Speaker shall appoint and set the annual rate of pay for employees of the Office of General Counsel.

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 11 of rule I (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted intially in the 103d Congress (H. Res. 5, Jan. 5, 1993,

p. 49). The previous year, in section 12 of the House Administrative Reform Resolution of 1992 (H. Res. 423, Apr. 9, 1992, p. 9040), the House had directed the Committee on House Administration to provide for an Office of General Counsel in a manner ensuring appropriate coordination with and participation by both the majority and minority leaderships in matters of representation and litigation.

The General Counsel is authorized by law to appear in any proceeding before a State or Federal court (except the United States Supreme Court) without compliance with admission requirements of such court (2 U.S.C. 130f(a)). Furthermore, the law requires the Attorney General to notify the General Counsel of a determination not to appeal a court decision affecting the constitutionality of an Act (2 U.S.C. 130f(b)).

RULE III

THE MEMBERS, DELEGATES, AND RESIDENT COMMISSIONER OF PUERTO RICO

Voting

§671. Personal interest.

1. Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented, and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.

When the House recodified its rules, it consolidated former rule VIII, rule XII, and clause 6(h) of rule X under rule III, except that viable provisions of former clause 2 of rule VIII were transferred to current clause 3 of rule XX. This clause was adopted initially in 1789, with amendment in 1890 (V, 5941). Before the House recodified its rules in the 106th Congress, this clause was found in former clause 1 of rule VIII (H. Res. 5, Jan. 6, 1999, p. 47).

Leaves of absence are presented pending the motion to adjourn (IV, 3151), and are usually granted by unanimous consent, but sometimes are opposed or even refused (II, 1142–1145). Application for leave of absence is properly presented by filing with the Clerk the printed form to be secured at the desk rather than by oral request from the floor (VI, 199). Whether or not they are privileged is a matter of doubt (II, 1146, 1147). Excuses for absence, as distinguished from leaves of absence, may be granted by less than a quorum (IV, 3000–3002). The statutes provide that deductions may be made from the salaries of Members who are absent without sufficient excuse (II, 1149, 1150); and while this law has been enforced (IV,

3011, footnote; VI, 30, 198), its general application is not practical under modern conditions. Form of resolution for the arrest of Members absent without leave (VI, 686).

§ 672. Member's control of his own vote.

It has been found impracticable to enforce the provision requiring every Member to vote (V, 5942–5948), and such question, even if entertained, may not interrupt a pending record vote (V, 5947). The weight of authority also favors the idea that there is no authority in the House to deprive a Member of the right to vote (V, 5937, 5952, 5959, 5966, 5967; VIII, 3072). In one or two early instances the Speaker decided that because of personal interest, a Member should not vote (V, 5955, 5958); but on all other occasions and in the later practice the Speaker has held that the Member himself and not the Chair should determine this question (V, 5950, 5951; VIII, 3071; Speaker Albert, Dec. 2, 1975, p. 38135; Speaker O'Neill, Mar. 1, 1979, p. 3748; July 30, 1996, p. 19952), and the Speaker has denied his own power to deprive a Member of the constitutional right to vote (V, 5956; Speaker Albert, Dec. 2, 1975, p. 38135; Speaker O'Neill, Mar. 1, 1979, p. 3748). Members may not vote in the House by proxy (VII, 1014). Instance where a Member submitted his resignation from a committee on grounds of disqualifying personal interest (VIII, 3074).

The House has frequently excused Members from voting in cases of personal interest (III, 2294; V, 5962; Aug. 2, 1949, pp. 10591, 10592; Oct. 20, 1951, p. 13746; July 21, 1954, p. 11262; July 28, 1955, p. 11930; July 12, 1956, p. 12566).

§ 673. Nature of disqualifying personal interest.

It is a principle of "immemorial observance" that a Member should withdraw when a question concerning himself arises (V, 5949); but it has been held that the disqualifying interest must be such as affects the Member directly (V, 5954, 5955, 5963), and not as one of a class (V, 5952; VIII, 3071, 3072; Speaker Bankhead, May 31, 1939, p. 6359; Speaker Albert, Dec. 2, 1975, p. 38135). In a case where question affected the titles of several Members to their seats, each refrained from voting in his own case, but did vote on the identical cases of his associates (V, 5957, 5958). While a Member should not vote on the direct questions affecting himself, he has sometimes voted on incidental questions (V, 5960, 5961).

§ 674. Voting.

2. (a) A Member may not authorize any other person to cast his vote or record his presence in the House or the Committee of the Whole House on the state of the Union.

(b) No other person may cast a Member's vote or record a Member's presence in the House or

the Committee of the Whole House on the state of the Union.

Before the House recodified its rules in the 106th Congress, this clause was found in former clause 3 of rule VIII (H. Res. 5, Jan. 6, 1999, p. 47). The Committee on Standards of Official Conduct recommended this addition to the rules in its May 15, 1980, report on voting anomalies which had occurred in the House (H. Rept. 96–991), and the House adopted the rule in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113). Even before the addition of this clause, however, "ghost voting" was considered unethical (VII, 1014; Dec. 18, 1987, p. 36274).

Delegates and the Resident Commissioner

§ 675. Committee service.

3. (a) Each Delegate and the Resident Commissioner shall be elected to serve on standing committees in the same manner as Members of the House and shall possess in such committees the same powers and privileges as the other members of the committee.

Before the House recodified its rules in the 106th Congress, this provision was found in former rule XII (H. Res. 5, Jan. 6, 1999, p. 47). Paragraph (a) resumed basically this form in the 104th Congress (sec. 212, H. Res. 6, Jan. 4, 1995, p. 462). The first form of paragraph (a) was adopted in 1871, and it was perfected by amendments in 1876, 1880, 1887, and 1892 (II, 1297). Reference to the Resident Commissioner was first found in 1904 (II, 1306). Paragraph (a) was again amended on January 2, 1947 (Legislative Reorganization Act of 1946), August 2, 1949 (p. 10618), February 2, 1951 (p. 883), January 22, 1971 (H. Res. 5, 92d Cong., p. 144), January 3, 1973 (H. Res. 6, 93d Cong., p. 26), and January 3, 1991 (H. Res. 5, 102d Cong., p. 39). Paragraph (a) was completely revised in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. 49) to provide that each of the Delegates and the Resident Commissioner be elected to committees of the House on the same bases, vote in any committees on which they serve, and vote on questions arising in the Committee of the Whole House on the state of the Union. The latter power was affected by former clause 2(d) of rule XXIII (providing for immediate reconsideration in the House of questions resolved in the Committee of the Whole by a margin within which the votes of Delegates and the Resident Commissioner were decisive; see § 984, *infra*).

The constitutionality of granting to Delegates the right to vote in the Committee of the Whole under the former rule, as circumscribed by former clause 2(d) of rule XXIII, was upheld based on the premise that immediate

"revote" where votes cast by Delegates had been decisive rendered their votes merely symbolic and not an investment of true legislative power (Michel *v.* Anderson, 14 F.3d 623 (D.C. Cir. 1994)). The changes effected in the 103d Congress were revoked in the 104th Congress (sec. 212, H. Res. 6, Jan. 4, 1995, p. 462).

The Office of Delegate was established by ordinance of the Continental Congress and confirmed by a law of Congress (I, 400, 421). The nature of the office has been the subject of much discussion (I, 400, 403, 473); and except as provided by law (I, 431, 526) the qualifications of the Delegate also have been a matter of discussion (I, 421, 423, 469, 470, 473). A territory or district must be organized by law before the House will admit a Delegate (I, 405, 407, 411, 412). The Office of Delegate from the District of Columbia was established by Public Law 91–405 (84 Stat. 845). The Offices of Delegate from the Territories of Guam and the Virgin Islands were established by Public Law 92–271 (86 Stat. 118). The Office of Delegate from American Samoa was established by Public Law 95–556 (92 Stat. 2078) and was first filled by the general Federal election of 1980. The Office of Resident Commissioner was established (with a four-year term) by the Act of March 2, 1917 (39 Stat. 963; 48 U.S.C. 891). The Act of May 17, 1932, changed the name of Porto Rico to Puerto Rico (48 U.S.C. 731a).

Under an earlier practice, Delegates did not vote in committee (VI, 243); but this had not always been so (II, 1301). The Resident Commissioner, who under the rules of the 91st and earlier Congresses, was designated as an additional member of the Committees on Agriculture, Armed Services, and Interior and Insular Affairs, is now elected to committees in the same fashion as are other Members and may exercise in those committees on which he serves the same powers as other members, including the right to vote.

The law provides that on the floor of the House a Delegate may debate (II, 1290), and he may in debate call a Member to order (II, 1295). He may make any motion which a Member may make except the motion to reconsider (II, 1291, 1292). A Delegate may make a point of order (VI, 240). A Delegate has even moved an impeachment (II, 1303). However, a resolution offered from the floor to permit the Delegate of the District of Columbia to vote on the articles of impeachment against the President was held not to constitute a question of the privileges of the House under rule IX (Dec. 18, 1998, p. 27825). He may be appointed a teller (II, 1302); but the law forbids him to vote (II, 1290). He has been recognized to object to the consideration of a bill (VI, 241), to a unanimous-consent request to concur in a Senate amendment (June 29, 1984, p. 20267), and has made reports for committees (July 1, 1958, p. 12870). A discharge petition may not be signed by a Delegate or the Resident Commissioner, even by unanimous consent (Oct. 1, 2003, p. ——) because the phrase in clause 2 of rule XV "a majority of the total membership of the House" is construed to mean 218 Members (Speaker Byrns, Apr. 15, 1936, p. 5509), not including Delegates or the Resident Commissioner. The rights and prerogatives

of a Delegate in parliamentary matters are not limited to legislation affecting his own territory (VI, 240).

At the organization of the House, the Delegates and Resident Commissioner are sworn (I, 400, 401); but the Clerk does not put them on the roll (I, 61, 62; Jan. 6, 1999, p. 41). In the 103d Congress on recorded votes in the Committee of the Whole, their names were listed alphabetically with the names of Members (Feb. 3, 1993, p. 2035).

A Delegate resigns in a communication addressed to the Speaker (II, 1304). He may be arrested and censured for disorderly conduct (II, 1305), but there has been disagreement as to whether he should be expelled by a majority or two-thirds vote (I, 469).

The privileges of the floor with the right to debate were extended to Resident Commissioners in the 60th Congress (VI, 244). Before the independence of the Philippines it was represented in the House by a Resident Commissioner (Deschler, ch. 7, § 3.3).

§ 676. Appointment to select and conference committees.

(b) The Delegates and the Resident Commissioner may be appointed to any select committee and to any conference committee.

Before the House recodified its rules in the 106th Congress, paragraph (b) was found in former clause 6(h) of rule X (H. Res. 5, Jan. 6, 1999, p. 47). Paragraph (b), effective January 3, 1975, initially authorized the appointment of Delegates and the Resident Commissioner to certain conferences (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). Paragraph (b) was amended in the 96th Congress to authorize their appointment to select committees (H. Res. 5, Jan. 15, 1979, pp. 7–16), and again in the 103d Congress to authorize their appointment to any conference (H. Res. 5, Jan. 5, 1993, p. 49).

Before the adoption and refinement of this paragraph, a Delegate or the Resident Commissioner could not be appointed to a conference committee (Sept. 18, 1973, p. 30144; July 20, 1973, p. 25201); and they could be appointed to a select committee only with the permission of the House (Sept. 21, 1976, p. 31673).

RULE IV

THE HALL OF THE HOUSE

Use and admittance

§ 677. Use of the Hall of the House.

1. The Hall of the House shall be used only for the legislative business of the House and for caucus and con-

ference meetings of its Members, except when the House agrees to take part in any ceremonies to be observed therein. The Speaker may not entertain a motion for the suspension of this clause.

When the House recodified its rules in the 106th Congress, it consolidated former rules XXXI, XXXII, and XXXIII under rule IV, and clause 1 was found in former rule XXXI (H. Res. 5, Jan. 6, 1999, p. 47). Rules relating to the use of the Hall were adopted as early as 1804. The present form of this clause dates from 1880 (V, 7270). It was renumbered January 3, 1953 (p. 24).

§ 678. Persons and officials admitted to the floor during sessions of the House.

2. (a) Only the following persons shall be admitted to the Hall of the House or rooms leading thereto:

(1) Members of Congress, Members-elect, and contestants in election cases during the pendency of their cases on the floor.

(2) The Delegates and the Resident Commissioner.

(3) The President and Vice President of the United States and their private secretaries.

(4) Justices of the Supreme Court.

(5) Elected officers and minority employees nominated as elected officers of the House.

(6) The Parliamentarian.

(7) Staff of committees when business from their committee is under consideration, and staff of the respective party leaderships when so assigned with the approval of the Speaker.

(8) Not more than one person from the staff of a Member, Delegate, or Resident Commissioner when that Member, Delegate, or Resi-

dent Commissioner has an amendment under consideration (subject to clause 5).

(9) The Architect of the Capitol.

(10) The Librarian of Congress and the assistant in charge of the Law Library.

(11) The Secretary and Sergeant-at-Arms of the Senate.

(12) Heads of departments.

(13) Foreign ministers.

(14) Governors of States.

(15) Former Members, Delegates, and Resident Commissioners; former Parliamentarians of the House; and former elected officers and minority employees nominated as elected officers of the House (subject to clause 4).

(16) One attorney to accompany a Member, Delegate, or Resident Commissioner who is the respondent in an investigation undertaken by the Committee on Standards of Official Conduct when a recommendation of that committee is under consideration in the House.

(17) Such persons as have, by name, received the thanks of Congress.

(b) The Speaker may not entertain a unanimous consent request or a motion to suspend this clause.

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1 of rule XXXII (H. Res. 5, Jan. 6, 1999, p. 47). It was subjected to many changes from 1802 until 1880 (V, 7823; VIII, 3634) and was renumbered in the 83d Congress (Jan. 3, 1953, p. 24). The rule was amended in the 92d Congress to include the Delegate from the District of Columbia among those having the privilege of the floor (H. Res. 5, Jan. 22, 1971, p. 144), and later in that same Congress was again revised to permit all Delegates to enjoy the privilege (H. Res. 1153, Oct. 13, 1972, pp. 36021–23). The latter revision was necessary because of the enactment

of Public Law 92–271, which created the positions of Delegate from Guam and Delegate from the Virgin Islands. Officers and elected employees, both present and former, were given floor privileges by the adoption of this same resolution (H. Res. 1153, Oct. 13, 1972, p. 36013) but had in fact, by custom, been permitted on the floor before this change in the clause. This clause was substantially amended in the 94th Congress (H. Res. 1435, Oct. 1, 1976, pp. 35175–80) and was amended by the Ethics Reform Act of 1989 to permit floor privileges for one attorney for a Member-respondent during consideration of a disciplinary resolution (P.L. 101–194, Nov. 30, 1989). Clause 2(a)(7) was amended in the 108th Congress to extend floor privileges to party leadership staff when so assigned with the approval of the Speaker (sec. 2(d), H. Res. 5, Jan. 7, 2003, p. ——). This amendment codified current practice, including the Speaker's ultimate control over such assignments.

The portion of this clause which permits clerks of committees access to the floor during the consideration of business from their committees has been interpreted by the Speaker to allow four professional staff members and one clerk on the floor at one time (Speaker Albert, June 8, 1972, p. 20318; Speaker O'Neill, Jan. 26, 1977, p. 2333). The Legislative Reorganization Act of 1970, section 503(3) (84 Stat. 1140, 1202; 2 U.S.C. 281b(3)) also allows two staff members of the Legislative Counsel access to the floor to assist the committee.

The portion of the clause forbidding the Speaker to entertain requests for suspension of the rule applies also to the Chairman of the Committee of the Whole (V, 7285). "Heads of departments" means members of the President's Cabinet, and not subordinate executive officers, and "foreign ministers" means ministers from foreign governments only. "Governors of States" does not include governors of territories (V, 7283; VIII, 3634).

An alleged violation of the rule relating to admission to the floor presents a question of privilege (III, 2624, 2625; VI, 579), but not a higher question of privilege than an election case (III, 2626). In one case where a former Member was abusing the privilege, he was excluded by direction of the Speaker (V, 7288), but in another case the Speaker declared it a matter for the House and not the Chair to consider (V, 7286). In one case an alleged abuse was inquired into by a select committee (V, 7287). See § 680, *infra*, for the rule constraining conduct of former Members, Delegates, the Resident Commissioner, officers, and staff while on the floor. The Speaker announced his intention to strictly enforce the rule to prevent a proliferation of committee and other staff on the floor (Aug. 22, 1974, p. 30027; Jan. 19, 1981, p. 402; Jan. 25, 1983, p. 224). The Speaker announced that committee staff would be required to display staff badges on the floor in exchange for identification cards before admission to the floor (Speaker O'Neill, Jan. 21, 1986, p. 5; Jan. 5, 1993, p. 105). It is not in order to refer to persons temporarily on the floor of the House as guests of the House, such as Members' children (Apr. 28, 1994, p. 8783; Dec. 19, 1995, p. 37575; Jan. 22, 1996, p. 682; Apr. 30, 1998, p. 7320; Oct. 7, 1999, p.

——; June 17, 2004, p. ——), other children (May 18, 1995, p. 13490), or Senators exercising floor privileges (May 18, 1995, p. 13491).

§ 679. Admission to the floor when the House is not sitting.

3. (a) Except as provided in paragraph (b), all persons not entitled to the privilege of the floor during the session shall be excluded at all times from the Hall of the House and the cloakrooms.

(b) Until 15 minutes of the hour of the meeting of the House, persons employed in its service, accredited members of the press entitled to admission to the press gallery, and other persons on request of a Member, Delegate, or Resident Commissioner by card or in writing, may be admitted to the Hall of the House.

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2 of rule XXXII (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially in 1902 (V, 7346).

§ 680. Former Members and officers.

4. (a) Former Members, Delegates, and Resident Commissioners; former Parliamentarians of the House; and former elected officers and minority employees nominated as elected officers of the House shall be entitled to the privilege of admission to the Hall of the House and rooms leading thereto only if—

(1) they do not have any direct personal or pecuniary interest in any legislative measure pending before the House or reported by a committee; and

(2) they are not in the employ of, or do not represent, any party or organization for the purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any leg-

islative measure pending before the House, reported by a committee, or under consideration in any of its committees or subcommittees.

(b) The Speaker shall promulgate such regulations as may be necessary to implement this rule and to ensure its enforcement.

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 3 of rule XXXII (H. Res. 5, Jan. 6, 1999, p. 47). This clause was added initially in the 94th Congress (H. Res. 1435, Oct. 1, 1976, pp. 35175–80) to consolidate in one clause and to clarify the restrictions on admittance to the floor of former Members, officers, and employees and to give the Speaker the power to promulgate regulations to enforce the rule. As early as 1945 the Chair held that former Members do not have the privilege of the floor when they are personally interested in legislation (Speaker Rayburn, Oct. 2, 1945, p. 9251). Pursuant to the authority under this clause, the Speaker issued regulations addressing former Members (Jan. 6, 1977, p. 321; June 7, 1978, p. 16625; Speaker Foley, June 9, 1994, p. 12387; Speaker Gingrich, May 24, 1995, p. 14300; Speaker Gingrich, Aug. 1, 1996, p. 21031). A former Member is not entitled to the privileges of the floor under this clause if he (1) has a direct personal or pecuniary interest in legislation under consideration in the House or reported by any committee, or (2) represents any party or organization for the purpose of influencing the disposition of legislation pending before the House, reported by any committee or under consideration in any committee or subcommittee (June 7, 1978, p. 16625). The essence of the rule is the former Member's status as one with a personal or pecuniary interest and not whether the former Member may have a present intent to lobby (Speaker Foley, June 9, 1994, p. 12387). Intent to lobby will be assumed where the former Member is employed or retained as a lobbyist to influence legislative measures as described in (2) above (Aug. 1, 1996, p. 21031). The Speaker has emphasized that the rule applies not only to the floor but also to "rooms leading thereto," and has construed the latter phrase to include the Speaker's Lobby and the cloakrooms (Speaker Gingrich, May 24, 1995, p. 14300; Aug. 1, 1996, p. 21031).

A former Member must observe the rules of proper decorum while on the floor, and the Chair may direct the Sergeant-at-Arms to assist the Chair in maintaining such decorum (Sept. 17, 1997, pp. 19026, 19027). A former Member may not manifest approval or disapproval of the proceedings (VIII, 3635). In the 105th Congress the House adopted a resolution offered as a question of the privileges of the House alleging indecorous behavior of a former Member and instructing the Sergeant-at-Arms to ban the former Member from the floor, and rooms leading thereto, until the resolution of a contested election to which he was party (H. Res. 233, Sept. 18, 1997, p. 19340).

§ 681. Members' staff.

5. A person from the staff of a Member, Delegate, or Resident Commissioner may be admitted to the Hall of the House or rooms leading thereto under clause 2 only upon prior notice to the Speaker. Such persons, and persons from the staff of committees admitted under clause 2, may not engage in efforts in the Hall of the House or rooms leading thereto to influence Members with regard to the legislation being amended. Such persons shall remain at the desk and are admitted only to advise the Member, Delegate, Resident Commissioner, or committee responsible for their admission. A person who violates this clause may be excluded during the session from the Hall of the House and rooms leading thereto by the Speaker.

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 4 of rule XXXII (H. Res. 5, Jan. 6, 1999, p. 47). This clause was added initially in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70) to extend the privilege of the floor to one person from the staff of a Member who has an amendment under consideration but not of a measure's sponsor or during special-order speeches. The Speaker promulgated regulations for the implementation of this clause on January 26, 1977 (p. 2333). In the 97th Congress the Speaker announced that personal staff of Members did not have the privilege of the floor and that committee staff, permitted on the floor when business from their committees is under consideration, were required to remain unobtrusively by the committee tables (Aug. 18, 1982, p. 21934). Staff permitted on the floor under this clause are not permitted to pass out literature or otherwise attempt to influence Members in their votes (Aug. 1, 1990, p. 21519; Sept. 27, 1995, p. 26567) and may not applaud during debate (June 14, 1995, p. 15896).

Gallery

§ 682. The various galleries and admission thereto.

6. (a) The Speaker shall set aside a portion of the west gallery for the use of the President, the members of the Cabinet, justices of the Supreme Court, foreign ministers and suites, and the members of their respective families. The Speaker shall set aside another portion of the same gallery for the accommodation of persons to be admitted on the cards of Members, Delegates, or the Resident Commissioner.

(b) The Speaker shall set aside the southerly half of the east gallery for the use of the families of Members of Congress. The Speaker shall control one bench. On the request of a Member, Delegate, Resident Commissioner, or Senator, the Speaker shall issue a card of admission to his family, which may include their visitors. No other person shall be admitted to this section.

Before the House recodified its rules in the 106th Congress, this provision was found in former rule XXXIII (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially in 1880 (V, 7302) and renumbered January 3, 1953 (p. 24).

On special occasions the House sometimes makes a special rule for admission to the galleries (V, 7303), as on the occasion of the electoral count (III, 1961), of an address by the President, and of public funerals.

Prohibition on campaign contributions

§ 683. Prohibition on distribution of campaign contributions.

7. A Member, Delegate, Resident Commissioner, officer, or employee of the House, or any other person entitled to admission to the Hall of the House or rooms leading thereto by this rule, may not knowingly distribute a political cam-

paign contribution in the Hall of the House or rooms leading thereto.

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5 of rule XXXIII (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially in the 105th Congress (H. Res. 5, Jan. 7, 1997, p. 121).

RULE V

BROADCASTING THE HOUSE

§684. Broadcasting of House proceedings.

1. The Speaker shall administer a system subject to his direction and control for closed-circuit viewing of floor proceedings of the House in the offices of all Members, Delegates, the Resident Commissioner, and committees and in such other places in the Capitol and the House Office Buildings as he considers appropriate. Such system may include other telecommunications functions as the Speaker considers appropriate. Any such telecommunications shall be subject to rules and regulations issued by the Speaker.

2. (a) The Speaker shall administer a system subject to his direction and control for complete and unedited audio and visual broadcasting and recording of the proceedings of the House. The Speaker shall provide for the distribution of such broadcasts and recordings to news media, for the storage of audio and video recordings of the proceedings, and for the closed-captioning of the proceedings for hearing-impaired persons.

(b) All television and radio broadcasting stations, networks, services, and systems (including cable systems) that are accredited to the House

Radio and Television Correspondents' Galleries, and all radio and television correspondents who are so accredited, shall be provided access to the live coverage of the House.

(c) Coverage made available under this clause, including any recording thereof—

(1) may not be used for any political purpose;

(2) may not be used in any commercial advertisement; and

(3) may not be broadcast with commercial sponsorship except as part of a bona fide news program or public affairs documentary program.

3. The Speaker may delegate any of his responsibilities under this rule to such legislative entity as he considers appropriate.

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 9 of rule I (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially in the 96th Congress (H. Res. 5, Jan. 15, 1979, p. 7). The requirement that the televised broadcasts of the proceedings of the House be closed captioned for hearing-impaired individuals was added in the 101st Congress (H. Res. 5, Jan. 3, 1989, p. 72). The authority of the Speaker to make rules governing telecommunications functions within the House was added in the 102d Congress (H. Res. 5, Jan. 3, 1991, p. 39).

In the 95th Congress the House considered as a question of the privileges of the House and adopted a resolution directing the Committee on Rules to investigate the impact on the safety, dignity, and integrity of House proceedings, of a test authorized by the Speaker under his general control over the Hall of the House for the audiovisual broadcast of House proceedings within the Capitol and House Office Buildings (H. Res. 404, Mar. 15, 1977, p. 7608). The resolution directed the Committee on Rules to report to the House at the earliest practicable date its findings and recommendations, including whether such coverage should be made available to the public. The committee reported and the House adopted another resolution that: (1) authorized the Speaker to establish a closed-circuit system for in-House broadcasting of House proceedings; (2) directed the Committee on Rules to study methods for providing complete audio and visual broad-

casting of House proceedings and to report to the House thereon; and (3) directed the Speaker after receipt of the committee's report to establish a system subject to his direction and control for audio and visual broadcast and recording of House proceedings and to provide for distribution and access to the news media (H. Res. 866, Oct. 27, 1977, pp. 35425–37). The Speaker, after receipt of that report (H. Rept. 95–881, Feb. 15, 1978), directed implementation of full audio coverage, with distribution to the media, on June 8, 1978 (p. 16746). Public Law 95–391 (Legislative Branch Appropriations Act, 1979) contained the following proviso in section 306 relating to the broadcasting of House proceedings: "No funds in this bill may be used to implement a system for televising and broadcasting the proceedings of the House pursuant to House Resolution 866, Ninety-Fifth Congress, under which the TV cameras in the Chamber purchased by the House are controlled and operated by persons not in the employ of the House."

Pursuant to his authority under this rule, the Speaker directed the Clerk in the 98th Congress to immediately implement periodic wide-angle television coverage of all "special-order" speeches at the end of legislative business (with captions at the bottom of the screen indicating that legislative business has been completed) (May 10, 1984, p. 11894) but not during "interim" special orders (Dec. 19, 1985, p. 38106). However, in the 103d and 104th Congresses, the Speaker prohibited wide-angle coverage but continued the caption at the bottom of the screen not only during special-order speeches but also during morning-hour debates (Speaker Foley, Feb. 11, 1994, p. 2244; Speaker Gingrich, Jan. 4, 1995, p. 551). In the 99th Congress, the House adopted a resolution, raised as a question of the privileges of the House, authorizing and directing the Speaker to provide for the audio and visual broadcast coverage of the Chamber while Members are voting (H. Res. 150, Apr. 30, 1985, p. 9821). Although paragraph (a) requires complete and unedited broadcast coverage of House proceedings, the House held (by tabling an appeal of a ruling of the Chair) that it does not require in-House microphone amplification of disorderly conduct by a Member following expiration of his recognition for debate (Mar. 16, 1988, p. 4081).

RULE VI

OFFICIAL REPORTERS AND NEWS MEDIA GALLERIES

Official reporters

§ 685. Reporters of debates and committee stenographers.

1. Subject to the direction and control of the Speaker, the Clerk shall appoint, and may remove for cause, the official reporters of the House, includ-

ing stenographers of committees, and shall supervise the execution of their duties.

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1 of rule XXXIV (H. Res. 5, Jan. 6, 1999, p. 47). From 1874 until March 1, 1978, the appointment and removal of the official reporters, and the manner of the execution of their duties, was vested in the Speaker (V, 6958); effective March 1, 1978 (H. Res. 959, Jan. 23, 1978, p. 431) those responsibilities were vested in the Clerk, subject to the direction and control of the Speaker.

The reporters of debates have borne an important part in the evolution by which the House has built up the system of a daily verbatim report of its proceedings, made by its own corps of reporters (V, 6959). Since these reporters have become officers of the House a correction of the Congressional Record has been held a question of privilege (V, 7014–7016).

§ 686. Rules relating to Congressional Record.

The arrangement, style, etc., of the Congressional Record is prescribed by the Joint Committee on Printing pursuant to 44 U.S.C. 901, 904 (see also VIII, 3500). The rules of the Joint Committee on Printing governing publication of the Congressional Record are as follows:

1. *Arrangement of the daily Congressional Record.*—The Public Printer shall arrange the contents of the daily Congressional Record as follows: The Senate proceedings shall alternate with the House proceedings in order of placement in consecutive issues insofar as such an arrangement is feasible, and Extensions of Remarks and Daily Digest shall follow: *Provided,* That the makeup of the Congressional Record shall proceed without regard to alternation whenever the Public Printer deems it necessary in order to meet production and delivery schedules.

2. *Type and style.*—The Public Printer shall print the report of the proceedings and debates of the Senate and House of Representatives, as furnished by the official reporters of the Congressional Record, in 8-point type; and all matter included in the remarks or speeches of Members of Congress, other than their own words, and all reports, documents, and other matter authorized to be inserted in the Congressional Record shall be printed in 7-point type; and all roll calls shall be printed in 6-point type. No italic or black type nor words in capitals or small capitals shall be used for emphasis or prominence; nor will unusual indentions be permitted. These restrictions do not apply to the printing of or quotations from historical, official, or legal documents or papers of which a literal reproduction is necessary.

3. Only as an aid in distinguishing the manner of delivery in order to contribute to the historical accuracy of the Record, statements or insertions in the Record where no part of them was spoken will be preceded and followed by a "bullet" symbol, *i.e.,* ● (now applicable only in Senate).

4. *Return of manuscript.*—When manuscript is submitted to Members for revision it should be returned to the Government Printing Office not

later than 9 o'clock p.m. in order to insure publication in the Congressional Record issued on the following morning; and if all of the manuscript is not furnished at the time specified, the Public Printer is authorized to withhold it from the Congressional Record for 1 day. In no case will a speech be printed in the Congressional Record of the day of its delivery if the manuscript is furnished later than 12 o'clock midnight.

5. *Tabular matter.*—The manuscript of speeches containing tabular statements to be published in the Congressional Record shall be in the hands of the Public Printer not later than 7 o'clock p.m. to insure publication the following morning. When possible, manuscript copy for tabular matter should be sent to the Government Printing Office 2 or more days in advance of the date of publication in the Congressional Record. Proof will be furnished promptly to the Member of Congress to be submitted by him instead of manuscript copy when he offers it for publication in the Congressional Record.

6. *Proof furnished.*—Proofs or "leave to print" and advance speeches will not be furnished the day the manuscript is received but will be submitted the following day, whenever possible to do so without causing delay in the publication of the regular proceedings of Congress. Advance speeches shall be set in the Congressional Record style of type, and not more than six sets of proofs may be furnished to Members without charge.

7. *Notation of withheld remarks.*—If manuscript or proofs have not been returned in time for publication in the proceedings, the Public Printer will insert the words "Mr. —— addressed the Senate (House or Committee). His remarks will appear hereafter in Extensions of Remarks" and proceed with the printing of the Congressional Record.

8. *Thirty-day limit.*—The Public Printer shall not publish in the Congressional Record any speech or extension of remarks which has been withheld for a period exceeding 30 calendar days from the date when its printing was authorized: *Provided,* That at the expiration of each session of Congress the time limit herein fixed shall be 10 days, unless otherwise ordered by the committee.

9. *Corrections.*—The permanent Congressional Record is made up for printing and binding 30 days after each daily publication is issued; therefore all corrections must be sent to the Public Printer within that time: *Provided,* That upon the final adjournment of each session of Congress the time limit shall be 10 days, unless otherwise ordered by the committee: *Provided further,* That no Member of Congress shall be entitled to make more than one revision. Any revision shall consist only of corrections of the original copy and shall not include deletions of correct material, substitutions for correct material, or additions of new subject matter.

10. The Public Printer shall not publish in the Congressional Record the full report or print of any committee or subcommittee when the report or print has been previously printed. This rule shall not be construed to apply to conference reports. However, inasmuch as rule XXII (§ 1082, *infra*)

provides that conference reports be printed in the daily edition of the Congressional Record, they shall not be printed therein a second time.

11. *Makeup of the Extensions of Remarks.*—Extensions of Remarks in the Congressional Record shall be made up by successively taking first an extension from the copy submitted by the official reporters of one House and then an extension from the copy of the other House, so that Senate and House extensions appear alternately as far as possible. The sequence for each House shall follow as closely as possible the order or arrangement in which the copy comes from the official reporters of the respective Houses.

The official reporters of each House shall designate and distinctly mark the lead item among their extensions. When both Houses are in session and submit extensions, the lead item shall be changed from one House to the other in alternate issues, with the indicated lead item of the other House appearing in second place. When only one House is in session, the lead item shall be an extension submitted by a Member of the House in session. This rule shall not apply to Congressional Records printed after the sine die adjournment of the Congress.

12. *Official reporters.*—The official reporters of each House shall indicate on the manuscript and prepare headings for all matter to be printed in Extensions of Remarks and shall make suitable reference thereto at the proper place in the proceedings.

13. *Two-page rule—Cost estimate from Public Printer.*—(1) No extraneous matter in excess of two printed Record pages, whether printed in its entirety in one daily issue or in two or more parts in one or more issues, shall be printed in the Congressional Record unless the Member announces, coincident with the request for leave to print or extend, the estimate in writing from the Public Printer of the probable cost of publishing the same. (2) No extraneous matter shall be printed in the House proceedings or the Senate proceedings, with the following exceptions: (*a*) Excerpts from letters, telegrams, or articles presented in connection with a speech delivered in the course of debate; (*b*) communications from State legislatures; (*c*) addresses or articles by the President and the Members of his Cabinet, the Vice President, or a Member of Congress. (3) The official reporters of the House or Senate or the Public Printer shall return to the Member of the respective House any matter submitted for the Congressional Record which is in contravention of these provisions.

HOUSE SUPPLEMENT TO "LAWS AND RULES FOR PUBLICATION OF THE CONGRESSIONAL RECORD"—EFFECTIVE AUGUST 12, 1986

1. *Extensions of Remarks in the daily Congressional Record.*—When the House has granted leave to print (1) a newspaper or magazine article, or (2) any other matter not germane to the proceedings, it shall be published under Extensions of Remarks. This rule shall not apply to quotations which form part of a speech of a Member, or to an authorized extension of his own remarks: *Provided,* That no address, speech, or article delivered or released subsequently to the sine die adjournment of a session of Con-

gress may be printed in the Congressional Record. One-minute speeches delivered during the morning business of Congress shall not exceed 300 words. Statements exceeding this will be printed following the business of the day.

2. Any extraneous matter included in any statement by a Member, either under the 1-minute rule or permission granted to extend at this point, will be printed in the "Extensions of Remarks" section, and that such material will be duly noted in the Member's statement as appearing therein.

3. Under the general leave request by the floor manager of specific legislation only matter pertaining to such legislation will be included as per the request. This, of course, will include tables and charts pertinent to the same, but not newspaper clippings and editorials.

4. In the makeup of the portion of the Record entitled "Extensions of Remarks," the Public Printer shall withhold any Extensions of Remarks which exceed economical press fill or exceed production limitations. Extensions withheld for such reasons will be printed in succeeding issues, at the direction of the Public Printer, so that more uniform daily issues may be the end result and, in this way, when both Houses have a short session the makeup would be in a sense made easier so as to comply with daily proceedings, which might run extremely heavy at times.

5. The request for a Member to extend his or her remarks in the body of the Record must be granted to the individual whose remarks are to be inserted.

6. All statements for "Extensions of Remarks," as well as copy for the body of the Congressional Record must be submitted on the Floor of the House to the Official Reporters of Debates and must carry the *actual* signature of the Member. Extensions of Remarks will be accepted up to 15 minutes after adjournment of the House. To insure printing in that day's proceedings, debate transcripts still out for revision must be returned to the Office of Official Reporters of Debates, Room HT–60, the Capitol, (1) by 5 p.m., or 2 hours following adjournment, whichever occurs later; or (2) within 30 minutes following adjournment when the House adjourns at 11 p.m., or later.

7. Pursuant to clause 8 of rule XVII of the Rules of the House, the Congressional Record shall be a substantially verbatim account of remarks made during the proceedings of the House, subject only to technical, grammatical, and typographical corrections authorized by the Member making the remarks involved. Unparliamentary remarks may be deleted only by permission or order of the House. Consistent with rule 9 of the Joint Committee on Printing Rules, any revision shall consist only of technical, grammatical, or typographical corrections of the original copy and shall not include deletions of correct material, substitutions for correct material, or additions of new subject matter. By obtaining unanimous consent to revise and extend, a Member will be able to relax the otherwise strict prohibition contained in clause 8 of rule XVII only in two respects: (1) to revise by technical, grammatical, and typographical corrections; and (2) to extend

remarks in a distinctive type style to follow the remarks actually uttered. In no event would the actually uttered remarks be removable.

§ 687. Substantially verbatim account.

The requirement of rule 7 of the supplemental rules that the Congressional Record be a substantially verbatim account of remarks actually rendered was included in clause 8(a) of rule XVII (formerly clause 9 of rule XIV) in the 104th Congress, with the prescription that that rule constitute a standard of conduct under former clause 3(a)(2) of rule XI (formerly clause 4(e)(1)(B) of rule X) (sec. 213, H. Res. 6, Jan. 4, 1995, p. 468). Under that clause remarks actually delivered may not be deleted and remarks inserted must appear in distinctive type (Jan. 4, 1995, p. 541). The Speaker has instructed the Official Reporters of Debates to adhere strictly to the requirement of rule 7 of the supplemental rules (Mar. 2, 1988, p. 2963; Feb. 3, 1993, p. 1980).

Words spoken by a Member not under recognition are not included in the Congressional Record (V, 6975–6978; VIII, 3466, 3471). For example the Record does not include remarks uttered: (1) after a Member has been called to order (July 29, 1994, p. 18609); (2) when a Member fails to heed the gavel at the expiration of time for debate (May 22, 2003, p. ——; Oct. 2, 2003, p. ——); (3) when a Member interrupts another during debate without being yielded or otherwise recognized (as on a point of order) (Speaker O'Neill, Feb. 7, 1985, p. 2229). Remarks held irrelevant by the Chair may be removed from the Record by unanimous consent only (Mar. 20, 2002, p. ——).

In response to a parliamentary inquiry, the Chair advised that when the Pledge of Allegiance is delivered as the third element of the daily order of business, the Record reflects the pledge in its statutory form (Apr. 27, 2004, p. ——). The Chair announced the Record-printing policy regarding remarks in debate uttered in languages other than English, to deny transcription in the foreign language (unless a transcript is provided in a language that the Government Printing Office can print) and to require Members to submit translations for distinctive printing in the Record in English as a revision of remarks (Mar. 4, 1998, p. 2535; Feb. 25, 2003, p. ——).

Through the 103d Congress, under applicable precedents and guidelines, the Chair could refine a ruling on a point of order in the Record in order to clarify the ruling without changing its substance, including one sustained by the House on appeal (Feb. 19, 1992, p. 2461; see H. Res. 230, 99th Cong., July 31, 1985, p. 21783, and H. Rept. 99–228). In accordance with existing accepted practices, the Speaker customarily made such technical or parliamentary corrections or insertions in the transcript of a ruling or statement by the Chair as may have been necessary to conform to rule, custom, or precedent (see also H. Res. 330, 101st Cong., Feb. 7, 1990, p. 1515, and report of House Administration task force on Record inserted by Speaker Foley, Oct. 27, 1990, p. 37124). However, in the 104th Congress the Speaker ruled that the requirement of clause 8 of rule XVII (formerly clause 9 of rule XIV) that the Record be a substantially verbatim account

of remarks made during House proceedings extended to statements and rulings of the Chair (Jan. 20, 1995, p. 1866).

The Congressional Record is for the proceedings of the House and Senate only, and matters not connected therewith are rigidly excluded (V, 6962).It is not, however, the official record, that function being fulfilled by the Journal (IV, 2727). Because the Record is maintained as a substantially verbatim account of the proceedings of the House (44 U.S.C. 901), the Speaker will not entertain a unanimous-consent request to give a special-order speech "off the Record" (June 24, 1992, p. 16131). As a general principle the Speaker has no control over the Record (V, 6984, 7017).

The traditional practice to allow a Member, with the approval of the House and under conditions set forth by the Joint Committee on Printing, to revise his remarks before publication in the Congressional Record (V, 6971, 7024; VIII, 3500) should be interpreted in light of clause 8 of rule XVII and rule 7 of the supplemental rules of the Joint Committee on Printing, which require the Record to be a substantially verbatim account of remarks made during House proceedings (see § 686, *supra*, and §§ 967, 968, *infra*). In any event, a Member should not change the notes of his own speech in such a way as to affect the remarks of an opponent in controversy without bringing the correction to the attention of that Member (V, 6972; VIII, 3461), and alterations which place a different aspect on the remarks of a colleague require authorization by the House (VIII, 3463, 3497). Where a Member so revised his remarks as to affect the import of words uttered by another Member, the House corrected the Record (V, 6973). A Member is not entitled to inspect the reporter's notes of remarks which do not contain reflections on himself, delivered by another Member and withheld for revision (V, 6964).

§ 688. Relations of the Committee of the Whole to the Congressional Record.

As a general rule the Committee of the Whole has no control over the Congressional Record (V, 6986); but the Chairman in the preservation of order, may direct the exclusion of disorderly words spoken by a Member after he has been called to order (V, 6987). In a case wherein the Committee conceived that a letter read in Committee involved a breach of privilege, it reported the matter to the House for action, and the House struck the letter from the Record (V, 6986). The Chairman of the Committee of the Whole does not determine the privileges of a Member under a general leave to print in the Record, that being for the House alone (V, 6988). Neither may the Committee of the Whole grant a general leave to print, although for convenience it does permit individual Members to extend their remarks (V, 7009, 7010; VIII, 3488–3490; Aug. 31, 1965, p. 22385), nor may the Committee of the Whole permit the inclusion of extraneous material (Jan. 23, 1936, p. 950; Feb. 1, 1937, p. 656; Sept. 19, 1967, p. 26032).

§ 689. Correction of the Congressional Record.

While the House controls the Congressional Record, the Speaker with the assent of the House laid down the principle that words spoken by a Member in order might not be changed by the House, as this would be determining what a Member should utter on the floor (V, 6974; VI, 583; VIII, 3469, 3498). Neither should one House strike out matter placed in the Record by permission of the other House (V, 6966). But the House may correct the speech of one of its Members so that it may record faithfully what he actually said (V, 6972). Similarly, a motion to correct the Record has been entertained to allow a Member to print in subsequent edition of the daily Record the correct text of an amendment which he had offered on a previous day and which had been substantially misprinted in the daily Record for the day on which it was offered (Deschler, ch. 5, § 18.6). In addition, privileged motions have been permitted to correct the Record as follows: (1) striking unparliamentary words inserted in the Record (Deschler, ch. 5, § 17); (2) correcting the Record where the remarks of one Member have been attributed to another (Deschler, ch. 5, §§ 18.1, 18.2); (3) correcting the Record where a Member has improperly altered his remarks during an exchange of colloquy with another Member (Deschler, ch. 5, § 18.9). Mere typographical errors in the Record or ordinary revisions of a Member's remarks do not give rise to privileged motions for the correction of the Record (Apr. 25, 1985, p. 9419), since such changes for the permanent edition of the Record may be made without the permission of the House (Deschler, ch. 5, § 19) (subject to clause 8 of rule XVII). The House does not change the Record merely to show what a Member should have said during debate (Deschler, ch. 5, § 18).

Furthermore, the Speaker declines to entertain unanimous-consent requests to correct the Record on a vote taken by electronic device, based upon the presumed accuracy of the electronic system and the ability and responsibility of each Member to verify his vote (Feb. 6, 1973, p. 3558; Apr. 18, 1973, p. 13081; Dec. 3, 1974, p. 37897). It also has been held that a Member may not, in a controversy over a proposed correction of the Record as to a matter of business, demand as a matter of right the reading of the reporter's notes (V, 6967; VIII, 3460).

The accuracy and propriety of reports in the Congressional Record constitute questions of the privileges of the House (see, § 704, *infra*). Subject to the requirements of rule IX, a motion or resolution for the correction of the Congressional Record that involves a question of privilege may be made properly after the reading and approval of the Journal (V, 7013; VIII, 3496), is not in order pending the approval of the Journal (V, 6989), and may not be raised until the Record has appeared (V, 7020). A correction of the Record which involves a motion and a vote is recorded in the Journal (IV, 2877). Propositions to make corrections are sometimes considered by the Committee on House Administration.

§ 690. Unparliamentary remarks and the Congressional Record.

Where a Member had uttered disorderly words on the floor without objection, the House yet decided that it was not precluded from action when the words, after being withheld for revision, appeared in the Record, and struck them out (V, 6979, 6981; VI, 582; VIII, 2538, 3463, 3472). The House also has ordered stricken from the Record printed speeches condemned as unparliamentary for reflections on Members, committees of the House, the House itself (V, 7017), and the Senate (V, 5129). In the 101st Congress a resolution presented as a question of privilege was adopted which directed the Committee on House Administration to report with respect to certain unauthorized deletions from the Record. A task force of that committee recommended that deletion of unparliamentary remarks be permitted only by consent of the House and not by the Member uttering the words under authority to revise and extend (Oct. 27, 1990, p. 37124). That recommendation has been incorporated into the Rules of the House (clause 8(b) of rule XVII). In debating a resolution to strike from the Record disorderly language a Member may not read the language (V, 7004); but it was held that as part of a personal explanation relating to matter excluded as out of order a Member might read the matter, subject to a point of order if the reading should develop anything in violation of the rules of debate (V, 5079). A resolution to omit from the Congressional Record certain remarks merely declared by the Member offering the resolution to be out of order is not privileged (V, 7021). A motion to strike unparliamentary words from the Record is privileged (see § 961, *infra*), although a question of privilege may not subsequently arise therefrom (V, 7023; VI, 596).

§ 692. "Leave to print" in the Congressional Record.

The practice of inserting in the Congressional Record speeches not actually delivered on the floor has developed by consent of the House as the membership has increased and it has become difficult at times for every Member to express at length on the floor his reasons for his attitude on public questions (V, 6990–6996, 6998–7000). The House, in granting such leave to print, does not permit it to be exercised without unreasonable freedom (V, 7002, 7003). For example: (1) a Member with permission to insert one matter may not insert another (V, 7001; VIII, 3462, 3479, 3480); (2) a Member may not insert statements and letters of others unless the leave granted specifies such matter as extraneous (VIII, 3475, 3481), whether the extension be under general leave for all Members or individually; (3) a Member may not insert that which would not have been in order if uttered on the floor, and the House may exclude such insertion in whole or in part (V, 7004–7008; VIII, 3495; Oct. 2, 1992, p. 30709; Sept. 27, 1996, p. 25633); (4) a Member may not insert in the Record the individual votes of Members on a question of which the yeas and nays have not been entered on the Journal (V, 6982). The principle that a Member shall not be called to order for words spoken in debate if business has intervened does not apply to a case where leave to print has been violated

(V, 7005). Neither the House nor the Committee of the Whole may permit the insertion of an entire colloquy between two or more Members not actually delivered (Aug. 10, 1982, pp. 20266, 20267; Oct. 3, 1985, p. 26028; Dec. 15, 1995, p. 37133).

The House, and not the Speaker, determines what liberty shall be allowed to a Member who has leave to extend his remarks (V, 6997–7000; VIII, 3475), whether or not a copyrighted article shall be printed therein (V, 6985), as to an alleged abuse of the leave to print (V, 7012; VIII, 3474), or as to a proposed amendment (V, 6983). General leave to print may be granted only by the House, although in the Committee of the Whole a Member, by unanimous consent, may be given leave to extend his remarks (V, 7009, 7010; VIII, 3488–3490). In the Committee of the Whole leave for an extension of remarks should not be granted except in connection with remarks actually delivered and relevant to the bill; and the extension under such circumstances should be brief (Speaker Longworth, Mar. 18, 1926, p. 5854).

Where a Member abused a leave to print on the last day of the session, the House at the next session condemned the abuse and declared the matter not a legitimate part of the official debates (V, 7017). An abuse of the leave to print gives rise to a question of privilege (V, 7005–7008, 7011; VIII, 3163, 3491, 3495), and a resolution or motion to expunge from the Record in such a case is offered as a question of privilege (V, 7012; VIII, 3475, 3491). An inquiry by the House as to an alleged abuse of the leave to print does not necessarily entitle the Member implicated to the floor on a question of privilege (V, 7012). Clause 8 of rule XVII (formerly clause 9 of rule XIV) requires substantive remarks inserted under leave to revise and extend to be printed in distinctive type and precludes deletion under such permission of words actually uttered (Jan. 4, 1995, p. 541).

A motion that a Member be permitted to extend his remarks in the Record is not privileged (Feb. 8, 1950, p. 1661), and under the rules of the Joint Committee on Printing, one Member cannot obtain permission for other individual Members to extend their remarks (rule 5 of House Supplement, § 686, *supra*).

Where extraneous material proposed to be inserted in the body or in the Extension of Remarks portion of the Record exceeds two Record pages, the rules of the Joint Committee on Printing require that the Member state an estimate of printing cost when permission is requested to make the insertion (Feb. 12, 1962, p. 2207; May 24, 1972, p. 18653). It is the Member's responsibility and not that of the Chair to ascertain the cost of printing extraneous material and obtaining consent of the House when necessary (Feb. 11, 1994, p. 2245). As indicated in supplemental rule 3 of the Laws and Rules for Publication of the Congressional Record, the general leave request of the floor manager permits matter pertaining to specific legislation, including tables and charts but not newspaper clippings and editorials. The Clerk normally does not require a cost estimate for

charts and tables admitted under general leave that exceed two Record pages.

The Joint Committee on Printing amended the rules for publication of the Record, effective March 1, 1978, to require the identification in the Record by "bullet" symbols of statements or insertions no part of which were actually delivered in debate (Feb. 20, 1978, p. 3676). Where the House permitted all Members leave to revise and extend their remarks on a certain subject, those Members who actually spoke during the debate could revise their remarks to appear as if actually delivered, but Members' statements no part of which were spoken were preceded and followed by a "bullet" symbol (Nov. 15, 1983, p. 32729). Then in the 99th Congress, the House adopted a resolution requesting the Joint Committee on Printing to adopt temporary rules to require distinctive type styles rather than bulleting of remarks not actually spoken in debate (H. Res. 230, July 31, 1985, p. 21783), and also adopted a resolution requesting that those rules be made permanent (H. Res. 514, Aug. 12, 1986, p. 20980). Under regulations of the Joint Committee on Printing, remarks delivered or inserted under leave to revise and extend in connection with a "one-minute speech" made before legislative business are printed after legislative business if exceeding 300 words (Speaker O'Neill, Apr. 5, 1978, p. 8846). See § 686, *supra*.

Based upon several unauthorized insertions of extensions of remarks in the Record, the Speaker announced that henceforth all extensions of remarks must be signed by the Member submitting them (Aug. 15, 1974, p. 28385). The House by unanimous consent may grant permission for all Members to extend their remarks and to include extraneous material within the established limits in that section of the Congressional Record entitled "Extensions of Remarks" for a session of Congress (*e.g.*, Jan. 6, 1999, p. 247; Jan. 3, 2001, p. 38; Jan. 23, 2002, p. ——; Jan. 7, 2003, p. ——; Jan. 20, 2004, p. ——).

News media galleries

§ 693. Unofficial reporters in the press gallery and on the floor.

2. A portion of the gallery over the Speaker's chair as may be necessary to accommodate representatives of the press wishing to report debates and proceedings shall be set aside for their use. Reputable reporters and correspondents shall be admitted thereto under such regulations as the Speaker may prescribe from time to time. The Standing Committee of Correspondents for the Press Gallery, and the Executive Committee of Correspondents for the Periodical Press Gallery,

shall supervise such galleries, including the designation of its employees, subject to the direction and control of the Speaker. The Speaker may assign one seat on the floor to Associated Press reporters and one to United Press International reporters, and may regulate their occupation. The Speaker may admit to the floor, under such regulations as he may prescribe, one additional representative of each press association.

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2 of rule XXXIV. When it was transferred to this clause, it also was amended to reflect the existing practice of including the Periodical Press Gallery under the ambit of the rule (H. Res. 5, Jan. 6, 1999, p. 47). This provision was first adopted in 1857 and has been amended from time to time (V, 7304; VIII, 3642; Jan. 3, 1953, p. 24; Jan. 22, 1971, p. 144). See also Consumers Union *v.* Periodical Correspondents' Association, 1515 F.2d 1341 (D.C. Cir. 1975), *cert. den.* 423 U.S. 1051 (1976) (action in enforcing correspondents' association regulations is within legislative immunity granted by the Speech or Debate Clause).

§ 694. Unofficial reporters in the radio gallery and on the floor.

3. A portion of the gallery as may be necessary to accommodate reporters of news to be disseminated by radio, television, and similar means of transmission, wishing to report debates and proceedings, shall be set aside for their use. Reputable reporters and correspondents shall be admitted thereto under such regulations as the Speaker may prescribe. The Executive Committee of the Radio and Television Correspondents' Galleries shall supervise such gallery, including the designation of its employees, subject to the direction and control of the Speaker. The Speaker may admit to the floor, under such regulations as he may prescribe, one representative

of the National Broadcasting Company, one of the Columbia Broadcasting System, and one of the American Broadcasting Company.

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 3 of rule XXXIV (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially on April 20, 1939 (p. 4561), and was amended on May 30, 1940 (p. 7208) and on January 22, 1971 (p. 144).

RULE VII

RECORDS OF THE HOUSE

Archiving

§695. Duties of Clerk and committees as to custody of papers before committees.

1. (a) At the end of each Congress, the chairman of each committee shall transfer to the Clerk any noncurrent records of such committee, including the subcommittees thereof.

(b) At the end of each Congress, each officer of the House elected under rule II shall transfer to the Clerk any noncurrent records made or acquired in the course of the duties of such officer.

2. The Clerk shall deliver the records transferred under clause 1, together with any other noncurrent records of the House, to the Archivist of the United States for preservation at the National Archives and Records Administration. Records so delivered are the permanent property of the House and remain subject to this rule and any order of the House.

Public availability

3. (a) The Clerk shall authorize the Archivist to make records delivered under clause 2 avail-

able for public use, subject to clause 4(b) and any order of the House.

(b)(1) A record shall immediately be made available if it was previously made available for public use by the House or a committee or a subcommittee.

(2) An investigative record that contains personal data relating to a specific living person (the disclosure of which would be an unwarranted invasion of personal privacy), an administrative record relating to personnel, or a record relating to a hearing that was closed under clause 2(g)(2) of rule XI shall be made available if it has been in existence for 50 years.

(3) A record for which a time, schedule, or condition for availability is specified by order of the House shall be made available in accordance with that order. Except as otherwise provided by order of the House, a record of a committee for which a time, schedule, or condition for availability is specified by order of the committee (entered during the Congress in which the record is made or acquired by the committee) shall be made available in accordance with the order of the committee.

(4) A record (other than a record referred to in subparagraph (1), (2), or (3)) shall be made available if it has been in existence for 30 years.

4. (a) A record may not be made available for public use under clause 3 if the Clerk determines that such availability would be detrimental to the public interest or inconsistent with the rights and privileges of the House. The

Clerk shall notify in writing the chairman and ranking minority member of the Committee on House Administration of any such determination.

(b) A determination of the Clerk under paragraph (a) is subject to later orders of the House and, in the case of a record of a committee, later orders of the committee.

5. (a) This rule does not supersede rule VIII or clause 11 of rule X and does not authorize the public disclosure of any record if such disclosure is prohibited by law or executive order of the President.

(b) The Committee on House Administration may prescribe guidelines and regulations governing the applicability and implementation of this rule.

(c) A committee may withdraw from the National Archives and Records Administration any record of the committee delivered to the Archivist under this rule. Such a withdrawal shall be on a temporary basis and for official use of the committee.

Definition of record

6. In this rule the term "record" means any official, permanent record of the House (other than a record of an individual Member, Delegate, or Resident Commissioner), including—

(a) with respect to a committee, an official, permanent record of the committee (including any record of a legislative, oversight, or other

activity of such committee or a subcommittee thereof); and

(b) with respect to an officer of the House elected under rule II, an official, permanent record made or acquired in the course of the duties of such officer.

Before the House recodified its rules in the 106th Congress, clauses 1 through 6 were found in former rule XXXVI (H. Res. 5, Jan. 6, 1999, p. 47). That rule was adopted initially in 1880 (V, 7260). Clause 2 (which derived from section 140(a) of the Legislative Reorganization Act of 1946 (60 Stat. 812)) was added in the 83d Congress when the rule was also renumbered (H. Res. 5, Jan. 3, 1953, p. 24). It was amended on January 22, 1971 (p. 144). It was again amended in the 99th Congress to change the reference from the General Services Administration to the National Archives and Records Administration (H. Res. 114, Oct. 14, 1986, p. 30821). The rule was rewritten entirely in the 101st Congress (H. Res. 5, Jan. 3, 1989, p. 73) to incorporate the provisions of H. Res. 419 as reported from the Committee on Rules in the 100th Congress (H. Rept. 100–1054). Clerical corrections were effected to reflect changes in the name of the Committee on House Administration in the 104th and 106th Congresses (sec. 202(b), H. Res. 6, Jan. 4, 1995, p. 467; H. Res. 5, Jan. 6, 1999, p. 47). Clerical corrections were effected in the 107th Congress to correct cross references (sec. 2(x), H. Res. 5, Jan. 3, 2001, p. 24).

The Clerk has historically been authorized to permit the Administrator of General Services (now Archivist) to make available for use certain records of the House transferred to the National Archives (H. Res. 288, June 16, 1953, p. 6641). Under this rule, an order of the House is required for the release of noncurrent records of the House (Mar. 22, 1991, p. 7549).

Withdrawal of papers

§ 696. Custody of papers in the files of the House.

7. A memorial or other paper presented to the House may not be withdrawn from its files without its leave. If withdrawn certified copies thereof shall be left in the Office of the Clerk. When an act passes for the settlement of a claim, the Clerk may transmit to the officer charged with the settlement thereof the papers on file in his office relating to such claim. The Clerk may lend tem-

porarily to an officer or bureau of the executive departments any papers on file in his office relating to any matter pending before such officer or bureau, taking proper receipt therefor.

Before the House recodified its rules in the 106th Congress, this provision was found in former rule XXXVII (H. Res. 5, Jan. 6, 1999, p. 47). It was adopted initially in 1873 and amended in 1880 (V, 7256). It was renumbered January 3, 1953 (p. 24).

The House usually allows the withdrawal of papers only in cases where there has been no adverse report. As the rules for the order of business give no place to the motion to withdraw, it is made by unanimous consent (V, 7259). The House formerly adopted a privileged resolution at the beginning of each Congress authorizing the Clerk to furnish certified copies of certain types of House papers subpoenaed by courts upon determination of relevancy by the court, but not permitting production of executive session papers or transfer of original papers (Jan. 3, 1973, p. 30).

See rule VIII, *infra* for current procedure for response to subpoenas for papers of the House.

RULE VIII

RESPONSE TO SUBPOENAS

§ 697. Response to subpoenas.

1. When a Member, Delegate, Resident Commissioner, officer, or employee of the House is properly served with a judicial or administrative subpoena or judicial order directing appearance as a witness relating to the official functions of the House or for the production or disclosure of any document relating to the official functions of the House, such Member, Delegate, Resident Commissioner, officer, or employee shall comply, consistently with the privileges and rights of the House, with the judicial or administrative subpoena or judicial order as hereinafter provided, unless otherwise determined under this rule.

2. Upon receipt of a properly served judicial or administrative subpoena or judicial order described in clause 1, a Member, Delegate, Resident Commissioner, officer, or employee of the House shall promptly notify the Speaker of its receipt in writing. Such notification shall promptly be laid before the House by the Speaker. During a period of recess or adjournment of longer than three days, notification to the House is not required until the reconvening of the House, when the notification shall promptly be laid before the House by the Speaker.

3. Once notification has been laid before the House, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall determine whether the issuance of the judicial or administrative subpoena or judicial order described in clause 1 is a proper exercise of jurisdiction by the court, is material and relevant, and is consistent with the privileges and rights of the House. Such Member, Delegate, Resident Commissioner, officer, or employee shall notify the Speaker before seeking judicial determination of these matters.

4. Upon determination whether a judicial or administrative subpoena or judicial order described in clause 1 is a proper exercise of jurisdiction by the court, is material and relevant, and is consistent with the privileges and rights of the House, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall immediately notify the Speaker of the determination in writing.

5. The Speaker shall inform the House of a determination whether a judicial or administrative subpoena or judicial order described in clause 1 is a proper exercise of jurisdiction by the court, is material and relevant, and is consistent with the privileges and rights of the House. In so informing the House, the Speaker shall generally describe the records or information sought. During a period of recess or adjournment of longer than three days, such notification is not required until the reconvening of the House, when the notification shall promptly be laid before the House by the Speaker.

6. (a) Except as specified in paragraph (b) or otherwise ordered by the House, upon notification to the House that a judicial or administrative subpoena or judicial order described in clause 1 is a proper exercise of jurisdiction by the court, is material and relevant, and is consistent with the privileges and rights of the House, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall comply with the judicial or administrative subpoena or judicial order by supplying certified copies.

(b) Under no circumstances may minutes or transcripts of executive sessions, or evidence of witnesses in respect thereto, be disclosed or copied. During a period of recess or adjournment of longer than three days, the Speaker may authorize compliance or take such other action as he considers appropriate under the circumstances. Upon the reconvening of the House, all matters

that transpired under this clause shall promptly be laid before the House by the Speaker.

7. A copy of this rule shall be transmitted by the Clerk to the court when a judicial or administrative subpoena or judicial order described in clause 1 is issued and served on a Member, Delegate, Resident Commissioner, officer, or employee of the House.

8. Nothing in this rule shall be construed to deprive, condition, or waive the constitutional or legal privileges or rights applicable or available at any time to a Member, Delegate, Resident Commissioner, officer, or employee of the House, or of the House itself, or the right of such Member, Delegate, Resident Commissioner, officer, or employee, or of the House itself, to assert such privileges or rights before a court in the United States.

Before the House recodified its rules in the 106th Congress, this provision was found in former rule L (H. Res. 5, Jan. 6, 1999, p. 47). It was added initially in the 97th Congress (H. Res. 5, Jan. 5, 1981, p. 98). Until the 95th Congress, whenever a Member, officer, or employee received a subpoena, the House would authorize the person to respond by adopting a resolution. This case-by-case approach was changed in the 95th and 96th Congresses (H. Res. 10, Jan. 4, 1977, p. 73; H. Res. 10, Jan. 15, 1979, p. 19) when general authority was granted to respond to subpoenas and a procedure was established for automatic compliance without the necessity of a House vote. This standing authority was clarified and revised later in the 96th Congress (H. Res. 722, Sept. 17, 1980, pp. 25777–90) and forms the basis for the present rule. In the 107th Congress the rule was amended to broaden its application to administrative subpoenas (sec. 2(c), H. Res. 5, Jan. 3, 2001, p. 25).

In the 102d Congress the House considered as questions of the privileges of the House resolutions: responding to a subpoena for records of the "bank" in the Office of the Sergeant-at-Arms (Apr. 29, 1992, p. 9753); responding to a contemporaneous request for such records from a Special Counsel (Apr. 29, 1992, p. 9763); and authorizing an officer of the House to release certain documents in response to another such request from the Special Counsel (May 28, 1992, p. 12790). Under rule VIII as amended in the 107th Con-

gress, a Member or employee receiving such a subpoena informs the Speaker, as had been the practice under precedent (Deschler, ch. 11, § 14.8) before the rule was amended (July 30, 1998, p. 18298; May 3, 1999, p. 8040).

Under clause 2, the Speaker promptly lays before the House a communication notifying him of the receipt of a subpoena, but the rule does not require that the text of a subpoena be printed in the Record (July 31, 1992, p. 20602).

RULE IX

QUESTIONS OF PRIVILEGE

§ 698. Definition of questions of privilege.

1. Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; and second, those affecting the rights, reputation, and conduct of Members, Delegates, or the Resident Commissioner, individually, in their representative capacity only.

§ 699. Precedence of questions of privilege.

2. (a)(1) A resolution reported as a question of the privileges of the House, or offered from the floor by the Majority Leader or the Minority Leader as a question of the privileges of the House, or offered as privileged under clause 1, section 7, article I of the Constitution, shall have precedence of all other questions except motions to adjourn. A resolution offered from the floor by a Member, Delegate, or Resident Commissioner other than the Majority Leader or the Minority Leader as a question of the privileges of the House shall have precedence of all other questions except motions to adjourn only at a time or place, designated by the Speaker, in the legislative schedule within two legislative days after the day on

which the proponent announces to the House his intention to offer the resolution and the form of the resolution. Oral announcement of the form of the resolution may be dispensed with by unanimous consent.

(2) The time allotted for debate on a resolution offered from the floor as a question of the privileges of the House shall be equally divided between (A) the proponent of the resolution, and (B) the Majority Leader, the Minority Leader, or a designee, as determined by the Speaker.

(b) A question of personal privilege shall have precedence of all other questions except motions to adjourn.

This rule was adopted in 1880 (III, 2521). It merely defined what had been long established in the practice of the House but what the House had hitherto been unwilling to define (II, 1603). It was amended in the 103d Congress to authorize the Speaker to designate a time within a period of two legislative days for the consideration of a resolution to be offered from the floor by a Member other than the Majority Leader or the Minority Leader as a question of the privileges of the House after that Member has announced to the House his intention to do so and the content of the resolution, and to divide the time for debate on a resolution offered from the floor as a question of privilege (H. Res. 5, Jan. 5, 1993, p. 49). Clause 2 was amended in the 106th Congress to permit the announcement of the form of the resolution to be dispensed with by unanimous consent, and clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

§ 700. Questions of privileges of the House.

The body of precedent relating to questions of the privileges of the House includes rulings that span the adoption of standing rule IX in 1880. The rule was adopted "to prevent the large consumption of time which resulted from Members getting the floor for all kinds of speeches under the pretext of raising a question of privilege" (III, 2521). In a landmark decision on constitutional assertions of privilege, Speaker Gillett placed significant reliance on the history of rule IX by observing that it "was obviously adopted for the purpose of hindering the extension of constitutional or other privilege" (VI, 48). Under House practice, a resolution offered as a question of privilege is read in full by the Clerk (Oct. 10, 1998, p. 25420).

§ 701. Questions relating to organization.

The privileges of the House include questions relating to its organization (I, 22–24, 189, 212, 290), and the title of its Members to their seats (III, 2579–2587), which may be raised as questions of the privileges of the House even though the subject has been previously referred to committee (I, 742; III, 2584; VIII, 2307). Such resolutions include those: (1) to declare prima facie right to a seat, or to declare a vacancy, where the House has referred the questions of prima facie and final rights to an elections committee for investigation (H. Res. 1, Jan. 3, 1985, p. 381; H. Res. 52, Feb. 7, 1985, p. 2220; H. Res. 97, Mar. 4, 1985, p. 4277; H. Res. 121, Apr. 2, 1985, p. 7118; H. Res. 148, Apr. 30, 1985, p. 9801); (2) to raise various questions incidental to the right to a seat (I, 322, 328, 673, 742; II, 1207; III, 2588; VII, 2316), such as a resolution to declare a vacancy in the House because a Member-elect is unable to take the oath of office and to serve as a Member or to expressly resign the office due to an incapacitating illness (H. Res. 80, Feb. 24, 1981, p. 2916); (3) to declare neither of two claimants seated pending a committee report and decision of final right to the seat by the House (Jan. 3, 1961, pp. 23–25; Jan. 3, 1985, p. 381), including incidental provisions providing compensation for both claimants and office staffing by the Clerk (Jan. 3, 1985, p. 381) and to direct temporary seating of a certified Member-elect pending determination of final right notwithstanding prior House action declining to seat either claimant (Feb. 7, 1985, p. 2220; Mar. 4, 1985, p. 4277); and (4) to propose directly to dispose of a contest over the title to a seat in the House (Nov. 8, 1997, p. 25294; Nov. 9, 1997, p. 25721; Jan. 28, 1998, p. 175) or to dispose of such contest upon the expiration of a specified day (Oct. 23, 1997, p. 23231; Oct. 29, 1997, p. 23695; Oct. 30, 1997, p. 23959; Nov. 5, 1997, p. 24645).

A resolution electing a House officer is presented as a question of the privileges of the House (July 31, 1997, p. 17021). A resolution declaring vacant the Office of the Speaker is presented as a matter of high constitutional privilege (VI, 35). For further discussion with respect to the organization of the House and the title of its Members to seats, see §§ 18–30, 46–51, 56, and 58–60, *supra*.

§ 702. Questions relating to constitutional prerogatives.

The privileges of the House, as distinguished from that of the individual Member, include questions relating to its constitutional prerogatives in respect to revenue legislation and appropriations (see, *e.g.*, II, 1480–1501; VI, 315; Nov. 8, 1979, p. 31517; Oct. 1, 1985, p. 25418; June 16, 1988, p. 14780; June 21, 1988, p. 15425; Aug. 12, 1994, p. 21655). For a more thorough record of revenue bills returned to the Senate, see § 102, *supra*. Such a question of privilege may be raised at any time when the House is in possession of the papers (June 20, 1968, Deschler, ch. 13, § 14.2; Aug. 19, 1982, p. 22127), but not otherwise (Apr. 6, 1995, p. 10701). Such a question of privilege includes a resolution asserting that a conference report accompanying a House bill originated revenue provisions in derogation of the sole constitutional prerogative of the House and

resolving that such bill be recommitted to conference (July 27, 2000, p. 16565). The constitutional prerogatives of the House also include its function with respect to: (1) impeachment and matters incidental thereto (see § 604, *supra*); (2) bills "pocket vetoed" during an intersession adjournment (Nov. 21, 1989, p. 31156); (3) its power to punish for contempt, whether of its own Members (II, 1641–1665), of witnesses who are summoned to give information (II, 1608, 1612; III, 1666–1724), or of other persons (II, 1597–1640); and (4) questions relating to legal challenges involving the prerogatives of the House (Jan. 29, 1981, p. 1304; Mar. 30, 1982, p. 5890), including a resolution responding to a court challenge to the prerogative of the House to establish a Chaplain (Mar. 30, 1982, p. 5890). A resolution laying on the table a message from the President containing certain averments inveighing disrespect toward Members of Congress was considered as a question of the privileges of the House asserting a breach of privilege in a formal communication to the House (VI, 330).

For a discussion of the relationship of the House and its Members to the courts, see §§ 290–291b, *supra.* For examples of Senate messages requesting the return of Senate measures that intruded on the constitutional prerogative of the House to originate revenue measures, see § 565, *supra.* For a discussion of the prerogatives of the House with respect to treaties affecting revenue, see § 597, *supra*.

The ordinary rights and functions of the House under the Constitution are exercised in accordance with the rules without precedence as matters of privilege (III, 2567). Neither the enumeration of legislative powers in article I of the Constitution nor the prohibition in the seventh clause of section 9 of that article against any withdrawal from the Treasury except by enactment of an appropriation renders a measure purporting to exercise or limit the exercise of those powers a question of the privileges of the House, because rule IX is concerned not with the privileges of the Congress, as a legislative branch, but only with the privileges of the House, as a House (Feb. 7, 1995, p. 3905; Dec. 22, 1995, p. 38501; Jan. 3, 1996, p. 40; Jan. 24, 1996, p. 1248; Feb. 1, 1996, p. 2245; Oct. 10, 1998, p. 25420; Nov. 4, 1999, pp.28528–33; June 6, 2002, p. ——; Oct. 2, 2002, pp. ——, ——, ——, ——; Oct. 3, 2002, pp. ——, ——). For example, the following legislative propositions have been held not to involve a question of constitutional privileges of the House: (1) a resolution requiring a committee inquiry into the extent to which the right to vote was denied under the provisions of the 14th amendment (VI, 48); and (2) a resolution alleging an unconstitutional abrogation of a treaty by the President, and calling on the President to seek the approval of Congress before such abrogation (June 6, 2002, p. ——). On the other hand, an extraordinary question relating to the House vote required by the Constitution to pass a joint resolution extending the ratification period of a proposed constitutional amendment was raised as a question of privilege where the House had not otherwise made a separate determination on that procedural question and where

consideration of the joint resolution had been made in order (Speaker O'Neill, Aug. 15, 1978, p. 26203).

§ 703. Questions relating to official conduct.

The privileges of the House include certain questions relating to the conduct of Members, officers, and employees (see, *e.g.*, I, 284, 285; III, 2628, 2645–2647). Under that standard, the following resolutions have been held to constitute questions of the privileges of the House: (1) a resolution directing the Committee on Standards of Official Conduct to investigate illegal solicitation of political contributions in the House Office Buildings by unnamed sitting Members (July 10, 1985, p. 18397); (2) a resolution establishing an ad hoc committee to investigate allegations of "ghost" employment in the House (Apr. 9, 1992, p. 9029); (3) a resolution directing a committee to further investigate the conduct of a Member on which it has reported to the House (Aug. 5, 1987, p. 22458); (4) a resolution directing the Committee on Standards of Official Conduct to report to the House the status of an investigation pending before the committee (Nov. 17, 1995, p. 33846; Nov. 30, 1995, p. 35075); (5) a resolution appointing an outside counsel (Sept. 19, 1996, p. 23851; Sept. 24, 1996, p. 24525); (6) a resolution to commit other matters to an outside counsel already appointed by the committee (June 27, 1996, p. 15917); (7) a resolution directing the committee to release the report of an outside counsel (Sept. 19, 1996, p. 23852; Sept. 24, 1996, p. 24526); (8) a resolution making allegations concerning the propriety of responses by officers of the House to court subpoenas for papers of the House without notice to the House, and directions to a committee to investigate such allegations (Feb. 13, 1980, p. 2768); (9) a resolution making allegations of improper representation by counsel of the legal position of Members in a brief filed in the Court and directions for withdrawal of the brief (Mar. 22, 1990, p. 4996); (10) a resolution making allegations of unauthorized actions by a committee employee to intervene in judicial proceedings (Feb. 5, 1992, p. 1601); (11) a resolution directing the Clerk to notify interested parties that the House regretted the use of official resources to present to the Supreme Court of Florida a legal brief arguing the unconstitutionality of congressional term limits, and that the House had no position on that question (Nov. 4, 1991, p. 29968); (12) a resolution alleging a chronology of litigation relating to the immunity of a Member from civil liability for bona fide official acts and expressing the views of the House thereon (May 12, 1988, p. 10574); (13) a resolution directing the Committee on Standards of Official Conduct to establish an investigative subcommittee and appoint outside counsel to investigate certain allegations against a Member (Oct. 8, 2004, p. ——); (14) a resolution alleging, among other things, the improper and unilateral firing of nonpartisan staff of the Committee on Standards of Official Conduct and directing the Speaker to appoint a bipartisan task force to address the efficacy of that committee so as to restore public confidence in the ethics process (Mar. 15, 2005, p. ——; Apr. 14, 2005, p. ——) and directing the committee to appoint nonpartisan professional staff (June 9, 2005, p. ——). For a discussion

of disciplinary resolutions meting out punishment for violations of standards of official conduct, which constitute questions of the privileges of the House, see §§ 62–66, *supra*.

In the 102d and 103d Congresses, a large number of resolutions relating to the operation of the "bank" in the Office of the Sergeant-at-Arms and the management of the Office of the Postmaster were presented as questions of the privileges of the House. The former category included resolutions: (1) terminating all bank and check-cashing operations in the Office of the Sergeant-at-Arms and directing the Committee on Standards of Official Conduct to review GAO audits of such operations (Oct. 3, 1991, p. 25435); (2) instructing the Committee on Standards of Official Conduct to disclose the names and pertinent account information of Members and former Members found to have abused the privileges of the "bank" in the Office of the Sergeant-at-Arms (Mar. 12, 1992, p. 5519); (3) instructing the Committee on Standards of Official Conduct to disclose further account information respecting Members and former Members having checks held by that entity (Mar. 12, 1992, p. 5534); (4) mandating full and accurate disclosure of pertinent information concerning the operation of that entity (Mar. 12, 1992, p. 5551); (5) responding to a subpoena for records of that entity (Apr. 29, 1992, p. 9453); (6) responding to a contemporaneous request for such records from a Special Counsel (Apr. 29, 1992, p. 9763); and (7) authorizing an officer of the House to release certain documents in response to another such request from the Special Counsel (May 28, 1992, p. 12790). The latter category included resolutions: (1) directing the Committee on House Administration to conduct a thorough investigation of the operation and management of the Office of the Postmaster in light of recent press allegations of wrongdoing (Feb. 5, 1992, p. 1589); (2) creating a select committee to investigate the same matter (Feb. 5, 1992, p. 1599); (3) requiring an explanation of a reported interference with authorized access to a committee investigation of that matter (Apr. 9, 1992, p. 9024); (4) redressing a perception of obstruction of justice by recusing the General Counsel to the Clerk from matters relating to the investigation of that matter (Apr. 9, 1992, p. 9076); (5) directing the Speaker to explain the lapse of time before the House received notice that several Members and an officer of the House had received subpoenas to testify before a Federal grand jury investigating that matter (May 14, 1992, p. 11309); (6) directing the Committee on House Administration to transmit to the Committee on Standards of Official Conduct and to the Department of Justice all records obtained by its task force to investigate that matter (July 22, 1992, p. 18786); (7) directing the Committee on Standards of Official Conduct to investigate violations of confidentiality by staff engaged in the investigation of that matter (July 22, 1992, p. 18795); (8) directing the Committee on House Administration to release transcripts of the proceedings of its task force to investigate that matter, where the investigation was ordered as a question of privilege and its results had been ordered reported to the House (July 22, 1992, p. 18796; July 23, 1992, p. 19125); (9) directing the Com-

mittee on House Administration to redress the inaccurate naming of a Member in minority views accompanying a report on that matter (July 23, 1992, p. 19121); (10) directing the public release of official papers of the House relating to an investigation by the Committee on House Administration's task force to investigate the operation and management of the Office of the Postmaster (July 22, 1993, p. 16634); (11) directing the public release of transcripts and other relevant documents relating to an investigation by the Committee on House Administration's task force to investigate the operation and management of the Office of the Postmaster unless two designees of the bipartisan leadership agree to the contrary (June 9, 1994, p. 12437); and (12) directing the Committee on Standards of Official Conduct to defer any investigation relating to the operation of the former Post Office until assured that its inquiry would not interfere with an ongoing criminal investigation, as well as a resolution directing the Committee on Standards of Official Conduct to proceed with the investigation (Mar. 2, 1994, p. 3672).

In the 105th Congress a 12-member bipartisan task force appointed by the Majority and Minority Leaders conducted a comprehensive review of the House ethics process. During the deliberations of the task force, the House imposed a moratorium on raising certain questions of privilege under this rule with respect to official conduct and on the filing or processing of ethics complaints. The moratorium was imposed in the expectation that the recommendations of the task force would include rules changes relating to establishment and enforcement of standards of official conduct for Members, officers, and employees of the House (Feb. 12, 1997, p. 2058). The moratorium was extended through September 10, 1997 (July 30, 1997, p. 16958). The task force recommendations ultimately were reported from the Committee on Rules and were adopted with certain amendments (H. Res. 168, Sept. 18, 1997, p. 19340).

§ 704. Questions relating to integrity of proceedings.

The privileges of the House include questions relating to the integrity of its proceedings, including the processes by which bills are considered (III, 2597–2601, 2614; IV, 3383, 3388, 3478), such as the constitutional question of the vote required to pass a joint resolution extending the State ratification period of a proposed constitutional amendment (Speaker O'Neill, Aug. 15, 1978, p. 26203). Privileges of the House also include: (1) resignation of a Member from a select or standing committee (Speaker Albert, June 16, 1975, p. 19054; Speaker O'Neill, Mar. 8, 1977, pp. 6579–82); (2) newspaper charges affecting the honor and dignity of the House (VII, 911); and (3) the conduct of representatives of the press (II, 1630, 1631; III, 2627; VI, 553).

Admission to the floor of the House constitutes a question of privilege (III, 2624–2626), including a resolution alleging indecorous behavior of a former Member and instructing the Sergeant-at-Arms to ban the former Member from the floor, and rooms leading thereto, until the resolution

of a contested election to which he was party (H. Res. 233, Sept. 18, 1997, p. 19340).

The accuracy and propriety of reports in the Congressional Record also constitute a question of privileges of the House (V, 7005–7023; VIII, 3163, 3461, 3463, 3464, 3491, 3499; Apr. 20, 1936, p. 5704; May 11, 1936, p. 7019; May 7, 1979, p. 10099), including a resolution: (1) asserting that a Member's remarks spoken in debate were omitted from the printed Record, directing that the Record be corrected and requiring the Clerk to report on the circumstances and possible corrective action (July 29, 1983, p. 21685); (2) directing the Committee on Rules to investigate and report to the House within a time certain on alleged alterations of the Congressional Record (Jan. 24, 1984, p. 250); and (3) addressing whether the Record should constitute a verbatim transcript (May 8, 1985, p. 11072; Feb. 7, 1990, p. 1515). Although a motion to correct the Congressional Record based on improper alterations or insertions may constitute a question of privilege, mere typographical errors or ordinary revisions of a Member's remarks do not form the basis for privileged motions to correct the Record (Apr. 25, 1985, p. 9419; see § 690, *supra*). A resolution directing the placement of an asterisk in the Congressional Record to note alleged inaccuracies in the State of the Union address (but not alleging improper transcription of that address) was held not to constitute a question of privilege (Oct. 20, 2003, p. ——).

The protection of House records constitutes a question of the privileges of the House, especially when records are demanded by the courts (III, 2604, 2659, 2660–2664; VI, 587; Sept. 18, 1992, p. 25750; see also § 291, *supra*). Privileges of the House involving records also include resolutions: (1) furnishing certain requested information to an Independent Counsel investigating covert arms transactions with Iran (June 4, 1992, p. 13664); (2) responding to a request of a law enforcement official regarding the timing of the public release of official papers of the House (July 22, 1993, p. 16624); (3) directing a committee to investigate press publication of a report that the House had ordered not to be released (Speaker Albert, Feb. 19, 1976, p. 3914); (4) directing the public release of transcripts and other relevant documents relating to an investigation by the Committee on House Administration's task force to investigate the operation and management of the Office of the Postmaster unless two designees of the bipartisan leadership agreed to the contrary (June 9, 1994, p. 12437); and (5) alleging that a Member willfully abused his power as chairman of a committee by unilaterally releasing records of the committee in contravention of its rules (adopted "protocol"), and expressing disapproval of such conduct (May 14, 1998, p. 9279). However, a resolution directing a standing committee to release executive-session material referred to it as such by special rule of the House was held to propose a change in the rules and, therefore, not to constitute a question of the privileges of the House under rule IX (Sept. 23, 1998, p. 21562).

A question regarding the accuracy of House documents constitutes a question of privileges of the House (V, 7329), including resolutions: (1) asserting that a printed transcript of joint subcommittee hearings contained unauthorized alterations of the statements of subcommittee members in the prior Congress and that unauthorized alterations may have occurred in other committee hearing transcripts, and proposing the creation of a select committee to investigate and report back by a date certain (June 29, 1983, p. 18279); (2) alleging the unauthorized creation and falsification of documents distributed to the general public at a committee hearing and resolving that the Speaker take appropriate measures to ensure the integrity of the legislative process and report his actions and recommendations to the House (Oct. 25, 1995, p. 29373); (3) alleging that a committee report contained descriptions of recorded votes (as required by clause 3(b) of rule XIII) that deliberately mischaracterized certain amendments and directing the chairman of the committee to file a supplemental report to change those descriptions (May 3, 2005, p. ——). The privileges of the House also include: (1) the integrity of its Journal (II, 1363; III, 2620) and messages (III, 2613); (2) unreasonable delay in transmitting an enrolled bill to the President (Oct. 8, 1991, p. 25761); and (3) a concurrent resolution directing the Clerk of the House and the Secretary of the Senate to produce official duplicates of certain legislative papers (Oct. 5, 1992, p. 32064). For a discussion of the privileged status of a request of one House for the return of a measure messaged to the other, see § 565, *supra*.

A resolution alleging that the Chair had improperly ordered the interruption of audio broadcast coverage of certain House proceedings constitutes a question of privileges of the House (Mar. 17, 1988, p. 4180), as does a resolution providing for an experiment in the telecasting and broadcasting of House proceedings (Speaker O'Neill, Mar. 15, 1977, p. 7607). Similarly, a resolution authorizing and directing the Speaker to provide for the audio and visual broadcast coverage of the Chamber while Members are voting has been held to present a question of the privileges of the House, because rule V (formerly clause 9 of rule I), which requires complete and unedited audio and visual coverage of House proceedings and coverage of record votes, had not been implemented (Apr. 30, 1985, p. 9821).

A resolution alleging intentional abuse of House practices and customs in holding a vote open for approximately three hours for the sole purpose of circumventing the initial will of the House and directing the Speaker to take such steps as necessary to prevent further abuse constitutes a question of the privileges of the House (Dec. 8, 2003, p. ——).

Alleged improprieties in committee procedures, including charges of committee inaction (III, 2610), secret committee conferences (VI, 578), refusal to make staff study available to certain Members and to the public (Feb. 14, 1939, p. 1370), refusal to give hearings or allow petitions to be read (III, 2607), refusal to permit committee member to take photostatic copies of committee files (Aug. 14, 1957, p. 14739), and a determination whether

a committee violated House rules by voting to take allegedly defamatory testimony in open session (June 30, 1958, p. 12690), were all held not to give rise to a question of the privileges of the House. However, the following resolutions were held to give rise to questions of the privileges of the House: (1) alleging that the chairman of a committee directed his staff to request the Capitol Police to remove minority party members from a committee room where they were meeting during the reading of an amendment, alleging that the chairman deliberately and improperly refused to recognize a legitimate and timely objection by a member of the committee to dispense with the reading of that amendment, resolving that the House disapproves of the manner in which the chairman conducted the markup, and finding that the bill considered at that markup was not validly ordered reported (July 18, 2003, p. ——) and resolving that the House disapproves of the manner in which the chairman summoned the Capitol Police as well as the manner in which he conducted the markup, finding that the bill considered at that markup was not validly ordered reported, and calling for a police report to be placed in the Record (July 23, 2003 p. ——); (2) alleging, among other things, the improper and unilateral firing of nonpartisan staff of the Committee on Standards of Official Conduct and directing the Speaker to appoint a bipartisan task force to address the efficacy of that committee so as to restore public confidence in the ethics process (Mar. 15, 2005, p. ——; Apr. 14, 2005, p. ——) and directing the committee to appoint nonpartisan professional staff (June 9, 2005, p. ——); (3) alleging that the chairman of a committee intentionally violated House rules and abused his power as chairman during a minority day of hearings under clause 2(j) of rule XI and directing the chairman to schedule a further day of hearings (June 16, 2005, p. ——).

§ 705. Questions relating to comfort and convenience.

The privileges of the House include questions relating to the comfort and convenience of Members and employees (III, 2629–2636), such as resolutions concerning the proper attire for Members in the Chamber when the temperature is uncomfortably warm (July 17, 1979, p. 19008); as well as questions relating to safety, such as resolutions requiring an investigation into the safety of Members in view of alleged structural deficiencies in the West Front of the Capitol (July 25, 1980, pp. 19762–64); and directing the appointment of a select committee to inquire into alleged fire safety deficiencies in the environs of the House (May 10, 1988, p. 10286).

§ 706. May not effect change in rules.

A motion to amend the Rules of the House does not present a question of privilege (Speaker Cannon, sustained by the House, thereby overruling the decision of March 19, 1910 (VIII, 3376), which held such motion privileged (VIII, 3377)), and a question of the privileges of the House may not be invoked to effect a change in the rules or standing orders of the House or their interpretation (Speaker O'Neill, Dec. 6, 1977, pp. 38470–73; Sept. 9, 1988, p. 23298; July 30, 1992, p. 20339; Jan. 31, 1996, p. 1887), including directions to the Speaker infringing upon his discretionary power of recognition under

clause 2 of rule XVII (formerly clause 2 of rule XIV) (July 25, 1980, pp. 19762–64), for example, by requiring that he give priority in recognition to any Member seeking to call up a matter highly privileged pursuant to a statutory provision, over a member from the Committee on Rules seeking to call up a privileged report from that committee (Speaker Wright, Mar. 11, 1987, p. 5403), or by requiring that he state the question on overriding a veto before recognizing for a motion to refer (thereby overruling prior decisions of the Chair to change the order of precedence of motions) (Speaker Wright, Aug. 3, 1988, p. 20281). Similarly, a resolution alleging that, in light of an internationally objectionable French program of nuclear test detonations, for the House to receive the President of France in a joint meeting would be injurious to its dignity and to the integrity of its proceedings, and resolving that the Speaker withdraw the pending invitation and refrain from similar invitations, was held not to present a question of the privileges of the House because it proposed a collateral change in an order of the House previously adopted (that the House recess for the purpose of receiving the President of France) and a new rule for future cases (Jan. 31, 1996, p. 1887). A resolution collaterally challenging the validity or fairness of an adopted rule of the House by delaying its implementation was held not to give rise to a question of the privileges of the House (Feb. 3, 1993, p. 1974 (sustained by tabling of appeal)). A resolution directing that the party ratios of all standing committees, subcommittees, and staffs thereof be changed within a time certain to reflect overall party ratios in the House was held to constitute a change in the Rules of the House and not to constitute a proper question of the privileges of the House (the standing rules already providing mechanisms for selecting committee members and staff) (Jan. 23, 1984, p. 78). On the other hand, although the Rules of the House establish a procedure for fixing the ratio of majority to minority members on full committees and also provide that subcommittees are subject to the direction and control of the full committee (clause 1 of rule XI), a question of the privileges of the House is raised where it is alleged that subcommittee ratios should reflect full committee ratios established by the House and failure to do so denies representational rights at the subcommittee level (Oct. 4, 1984, p. 30042). A resolution alleging that a recitation of the Pledge of Allegiance at the start of each legislative day would enhance the dignity and integrity of the proceedings of the House and directing that the Speaker implement such a recitation as the practice of the House was held to propose a change in the rules and therefore not to give rise to a question of the privileges of the House (Sept. 9, 1988, p. 23298). A resolution directing that the reprogramming process established in law for legislative branch appropriations be subjected to third-party review for conformity with external standards of accounting but alleging no deviation from duly constituted procedure was held not to give rise to a question of the privileges of the House (May 20, 1992, p. 12005 (sustained by tabling of appeal)). A resolution to permit the Delegate of the District of Columbia to vote on articles of

impeachment of the President in contravention of statutory law and the Rules of the House was held to be tantamount to change in the rules and therefore not to constitute a question of the privileges of the House (Dec. 18, 1998, p. 27825). A resolution directing a standing committee to release executive-session material referred to it as such by special rule of the House was held to propose a change in the rules and, therefore, not to constitute a question of the privileges of the House (Sept. 23, 1998, p. 21562). A resolution expressing Congressional sentiment that the President should take specified action to achieve a desired public policy, even though involving executive action under a treaty (under which the Senate had exercised its prerogative to ratify), does not present a question of the privileges of the House, but rather is a legislative matter to be considered under ordinary rules relating to priority of business (June 6, 2002, p. ——).

A question of the privileges of the House may not be invoked to prescribe a special order of business for the House, because otherwise any Member would be able to attach privilege to a legislative measure merely by alleging impact on the dignity of the House based upon House action or inaction (June 27, 1974, p. 21596; Feb. 7, 1995, p. 3905; Dec. 22, 1995, p. 38501; Jan. 3, 1996, p. 40; Jan. 24, 1996, p. 1248; Feb. 1, 1996, p. 2245; Oct. 10, 1998, p. 25420; Nov. 4, 1999, pp.28528–33; June 6, 2002, p. ——; Oct. 2, 2002, pp. ——, ——, ——, ——; Oct. 3, 2002, pp. ——, ——). For example, the following resolutions have been held not to give rise to a question of the privileges of the House: (1) a resolution directing a committee to meet and conduct certain business (June 27, 1974, p. 21596; July 31, 1975, p. 26250); (2) a resolution alleging that the inability of the House to enact certain legislation constituted an impairment of the dignity of the House, the integrity of its proceedings, and its place in public esteem, and resolving that the House be considered to have passed such legislation (Jan. 3, 1996, p. 40; Jan. 24, 1996, p. 1248); and (3) a resolution precluding an adjournment of the House until a specified legislative measure is considered (Feb. 1, 1996, p. 2247). See also § 702, *supra*, for a discussion of legislative propositions purporting to present questions of the privileges of the House.

§ 707. As distinct from privileged questions.

The clause of the rule giving questions of privilege precedence over all other questions except a motion to adjourn is a recognition of a well-established principle in the House, for it is an axiom of the parliamentary law that such a question "supersedes the consideration of the original question, and must be first disposed of" (III, 2522, 2523; VI, 595). As the business of the House began to increase it was found necessary to give certain important matters a precedence by rule, and such matters are called "privileged questions." But as they relate merely to the order of business under the rules, they are to be distinguished from "questions of privilege" which relate to the safety or efficiency of the House itself as an organ for action (III, 2718). It is evident, therefore, that a question of privilege takes precedence over a matter merely privileged under the rules (III, 2526–2530; V, 6454; VIII, 3465). Certain matters of business, arising under provisions of the Con-

stitution mandatory in nature, have been held to have a privilege which superseded the rules establishing the order of business, as bills providing for census or apportionment (I, 305–308), bills returned with the objections of the President (IV, 3530–3536), propositions of impeachment (see § 604, *supra*), and questions incidental thereto (III, 2401, 2418; V, 7261; July 22, 1986, p. 17306; Dec. 2, 1987, p. 33720; Jan. 3, 1989, p. 84; Feb. 7, 1989, p. 1726), matters relating to the count of the electoral vote (III, 2573–2578), resolutions relating to adjournment and recess of Congress (V, 6698, 6701–6706; Nov. 13, 1997, p. 26538), and a resolution declaring the Office of the Speaker vacant (VI, 35); but under later decisions certain of these matters which have no other basis in the Constitution or in the rules for privileged status, such as bills relating to census and apportionment, have been held not to present questions of privilege, and the effect of such decisions is to require all questions of privilege to come within the specific provisions of this rule (VI, 48; VII, 889; Apr. 8, 1926, p. 7147) (see § 702, *supra*).

A resolution that presents a proper question of the privileges of the House (alteration of subcommittee hearing transcripts) may propose the creation of a select investigatory committee with subpoena authority to report back to the House by a date certain (June 29, 1983, p. 18104), but may not appropriate funds for the investigating committee from the contingent fund (now referred to as "applicable accounts of the House described in clause 1(j)(1) of rule X") (VI, 395).

§ 708. Questions of personal privilege.

The privilege of the Member rests primarily on the Constitution, which gives to him a conditional immunity from arrest (§ 90, *supra*) and an unconditional freedom of debate in the House (III, 2670, § 92, *supra*). A menace to the personal safety of Members from an insecure ceiling in the Hall was held to involve a question of the highest privilege (III, 2685); and an assault on a Member within the Capitol when the House was not in session, from a cause not connected with the Member's representative capacity, was also held to involve a question of privilege (II, 1624). But there has been doubt as to the right of the House to interfere for the protection of Members, who outside the Hall, get into difficulties not connected with their official duties (II, 1277; III, 2678; footnote). Charges against the conduct of a Member are held to involve privilege when they relate to his representative capacity (III, 1828–1830, 2716; VI, 604, 612; VIII, 2479); but when they relate to conduct at a time before he became a Member they have not been entertained as of privilege (II, 1287; III, 2691, 2723, 2725). While questions of personal privilege normally involve matters touching on a Member's reputation, a Member may be recognized for a question of personal privilege based on a violation of his rights as a Member, such as unauthorized printed alterations in his statements made during a subcommittee hearing in a prior Congress (since the second phrase of this clause speaks to the "rights, reputation, and conduct of Members, individually") (June 28, 1983, p. 17674). A printed characterization by an officer of the House of a Mem-

ber's proposed amendments as "dilatory and frivolous" may give rise to a question of personal privilege (Aug. 1, 1985, p. 22542) as may the fraudulent use of a Member's official stationery as a "Dear Colleague" letter (Sept. 17, 1986, p. 23605). While a Member may be recognized on a question of personal privilege to complain about an abuse of House rules as applied to debate in which he was properly participating, he may not raise a question of personal privilege merely to complain that microphones had been turned off during disorderly conduct following expiration of his recognition for debate (Mar. 16, 1988, p. 4085).

Speaker Wright rose to a question of personal privilege to respond to a "statement of alleged violations" pending in the Committee on Standards of Official Conduct; and, pending the committee's disposition of his motion to dismiss, announced his intention to resign as Speaker and as a Member (May 31, 1989, p. 10440). Speaker Gingrich rose to a question of personal privilege to discuss his own official conduct previously resolved by the House, which question was based upon press accounts (Apr. 17, 1997, p. 5834). Speaker Hastert rose to a question of personal privilege to discuss the process for selecting a Chaplain, which question was based on press accounts (Mar. 23, 2000, p. 3478).

A Member rose to a question of personal privilege to discuss: (1) his own official conduct relative to his account with the "bank" operated by the Sergeant-at-Arms, which question was based on press accounts (Mar. 19, 1992, p. 6074); (2) reflections on his character in pointed descriptions of recorded votes taken in committee on a Member's amendments, included in a committee report under clause 3(b) of rule XIII, which question was based on the report and on certain media coverage thereof (May 5, 2005, p. ——; May 10, 2005, p. ——).

A Member rose to a question of personal privilege based on press accounts concerning allegations by other Members that he, as a committee chairman, had been "buying votes" (Mar. 26, 1998, p. 4851). A committee chairman rose to a question of personal privilege based on press accounts containing statements impugning his character and motive by alleging intentional violation of rules as chairman of a committee conducting an investigation (May 12, 1998, p. 8838). A committee chairman rose to a question of personal privilege to discuss his own official conduct, which question was based on a letter of reproval reported by the Committee on Standards of Official Conduct (Oct. 5, 2000, p. 21048). A committee chairman rose to a question of personal privilege based on press accounts impugning his character to discuss his decision to direct his staff to request the Capitol Police to remove minority party members from a committee room where they were meeting during the reading of an amendment at a committee markup (July 23, 2003, p. ——).

A distinction has been drawn between charges made by one Member against another in a newspaper or in a press release (July 28, 1970, p. 26002) or in a "Dear Colleague" letter (Aug. 4, 1989, p. 19139; May 14, 1996, p. 11081), and the same when made on the floor (III, 1827, 2691,

2717). Charges made in newspapers against Members in their representative capacities involve privilege (III, 1832, 2694, 2696–2699, 2703, 2704; VI, 576, 621; VIII, 2479), even though the names of individual Members are not given (III, 1831, 2705, 2709; VI, 616, 617). But vague charges in newspaper articles (III, 2711; VI, 570), criticisms (III, 2712–2714; VIII, 2465), or even misrepresentations of the Member's speeches or acts or responses in an interview (III, 2707, 2708; Aug. 3, 1990, p. 22135), have not been entertained. A question of personal privilege may not ordinarily be based merely on words spoken in debate (July 23, 1987, p. 20861; Mar. 16, 1988, p. 4085; Nov. 16, 1989, p. 29569; Sept. 25, 1996, p. 24807; Sept. 21, 2001, p. ——; Mar. 31, 2004, p. ——) or conveyed by an exhibit in debate (June 28, 2000, p. 12723). However, a Member may raise a question of personal privilege based upon press accounts of another Member's remarks, in debate or off the floor, which impugn his character or motives (May 15, 1984, pp. 12207, 12211; May 31, 1984, p. 14620), or based upon newspaper accounts of televised press coverage of a committee hearing at which he was criticized derogatorily (Mar. 3, 1988, p. 3196).

§ 709. Precedence of questions of privileges of the House.

The body of precedent relating to the precedence of questions of privilege spans both the adoption of standing rule IX in 1880 and its amendment to require notice in certain cases in 1993.

A question of privilege may interrupt: (1) the reading of the Journal (II, 1630; VI, 637); (2) the consideration of a bill (or series of measures) that had been made in order by a special rule (III, 2524, 2525); (3) in an exceptional decision, where the rule thereon ordered the previous question to final passage without intervening motion, after consideration of the measure in the Committee of the Whole but before passage in the House (VI, 560); (4) under antiquated drafting conventions for special orders of business that ordered the previous question after debate, the consideration of certain matters on which the previous question has been ordered (III, 2532; VI, 561; VIII, 2688). A question of privilege takes precedence over (1) business in order on Calendar Wednesday (VI, 394; VII, 908–910), a "suspension day" (III, 2553; VI, 553), or over certain motions given precedence under a special rule (VI, 565); (2) reports from the Rules Committee before consideration has begun (VIII, 3491; Mar. 11, 1987, p. 5403); (3) call of the Consent Calendar on Monday (VI, 553), before that Calendar was repealed in the 104th Congress (H. Res. 168, June 20, 1995, p. 16574); (4) motions to resolve into the Committee of the Whole (VI, 554; VIII, 3461); (5) unfinished business, privileged under clauses 1 and 3 of rule XIV (formerly rule XXIV) (Speaker Albert, June 4, 1975, p. 16860). Because a resolution raising a question of the privileges of the House takes precedence over a motion to suspend the rules, it may be offered and voted on between motions to suspend the rules on which the Speaker has postponed record votes until after debate on all suspensions (May 17, 1983, p. 12486). In general, one question of privilege may not take precedence over another (III, 2534, 2552, 2581), and the Chair's power of recognition

determines which of two matters of equal privilege is considered first (July 24, 1990, p. 18916). While under rule IX a question of the privileges of the House takes precedence over all other questions except the motion to adjourn, the Speaker may, pursuant to his power of recognition under clause 2 of rule XVII (formerly clause 2 of rule XIV), entertain unanimous-consent requests for "one-minute speeches" pending recognition for a question of privilege, since such unanimous-consent requests, if granted, temporarily waive the standing Rules of the House relating to the order of business (Speaker O'Neill, July 10, 1985, p. 18394; Feb. 6, 1989, pp. 1676–82).

A Member's announcement of intent to offer a resolution as a question of privilege may take precedence over a special order reported from the Committee on Rules; but, where a special order is pending, such announcements are counted against debate on the resolution absent unanimous consent to the contrary (Oct. 28, 1997, pp. 23525, 23527).

While a question of privilege is pending, a message of the President is received (V, 6640–6642), but is read only by unanimous consent (V, 6639). A motion to reconsider may also be entered but may not be considered (V, 5673–5676). It has been held that only one question of privilege may be pending at a time (III, 2533), but having presented one question of privilege, a Member, before discussing it, may submit a second question of privilege related to the first and discuss both on one recognition (VI, 562). While a resolution raising a question of the privileges of the House has precedence over all other questions, it is nevertheless subject to disposition by the ordinary motions permitted under clause 4 of rule XVI, and by the motion to commit under clause 2 of rule XIX (formerly clause 1 of rule XVII) (Speaker Albert, Feb. 19, 1976, p. 3914; Apr. 28, 1983, p. 10423; Mar. 22, 1990, p. 4996).

§ 711. Precedence of questions of personal privilege.

When a Member proposes merely to address the House on a question of personal privilege, and does not bring up a resolution affecting the dignity or integrity of the House for action, the practice as to precedence is somewhat different. Thus, a Member rising to a question of personal privilege may not interrupt a call of the yeas and nays (V, 6051, 6052, 6058, 6059; VI, 554, 564), or take from the floor another Member who has been recognized for debate (V, 5002; VIII, 2459, 2528; Sept. 29, 1983, p. 26508; July 23, 1987, p. 20861), but he may interrupt the ordinary legislative business (III, 2531). A Member may address the House on a question of personal privilege even after the previous question has been ordered on a pending bill (VI, 561; VIII, 2688). Under modern practice, a question of personal privilege may not be raised in the Committee of the Whole (Sept. 4, 1969, p. 24372; Dec. 13, 1973, p. 41270), the proper remedy being that a demand that words uttered in the Committee of the Whole be taken down pursuant to clause 4 of rule XVII (formerly clause 5 of rule XIV); yet a breach of privilege occurring in the Committee of the Whole relates to the dignity of the House and is so treated (II, 1657). A question of per-

sonal privilege may not be raised while a question of the privileges of the House is pending (Apr. 30, 1985, p. 9808; May 1, 1985, p. 10003).

§ 712. Questions of privilege in relation to quorum.

During a call of the House in the absence of a quorum, only such questions of privilege as relate immediately to those proceedings may be presented (III, 2545). See also § 1024, *infra*.

§ 713. Consideration of questions of privilege.

Whenever it is asserted on the floor that the privileges of the House are invaded, the Speaker entertains the question (II, 1501), and may then refuse recognition if the resolution is not admissible as a question of privilege under the rule. A proper question of privilege may be renewed (Nov. 17, 1995, p. 33846). Although the early custom was for the Speaker to submit to the House the question whether a resolution involved the privileges of the House (III, 2718), the modern practice is for the Speaker to rule directly on the question (VI, 604; Speaker Wright, Mar. 11, 1987, p. 5404; Feb. 3, 1995, p. 3571; Feb. 7, 1995, p. 3905), subject to appeal where appropriate (Speaker Albert, June 27, 1974, p. 21596).

Under the form of the rule adopted in the 103d Congress, the Speaker may in his discretion recognize a Member other than the Majority or Minority Leader to proceed immediately on a resolution offered as a question of the privileges of the House without first designating a subsequent time or place in the legislative schedule within two legislative days (Speaker Foley, Feb. 3, 1993, p. 1974); and he is not required to announce the time designated to consider a resolution at the time the resolution is noticed but may announce his designation at a later time (Feb. 11, 1994, p. 2209). The Speaker does not rule on the privileged status of a resolution at the time that resolution is noticed, but only when the resolution is called up within two legislative days (Feb. 11, 1994, p. 2209; Sept. 13, 1994, p. 24389; Feb. 3, 1995, p. 3571).

Common fame has been held sufficient basis for raising a question (III, 2538, 2701); a telegraphic dispatch may also furnish a basis (III, 2539). A report relating to the contemptuous conduct of a witness before a committee gives rise to a question of the privileges of the House and may, under this rule, be considered on the same day reported notwithstanding the requirement of clause 4(a) of rule XIII (formerly clause 2(l)(6) of rule XI) that reports from committees be available to Members for at least three calendar days before their consideration (Speaker Albert, July 13, 1971, pp. 24720–23). But a Member may not, as matter of right, require the reading of a book or paper on suggesting that it contains matter infringing on the privileges of the House (V, 5258). In presenting a question of personal privilege the Member is not required in the first instance to offer a motion or resolution, but he must take this preliminary step in raising a question of general privileges (III, 2546, 2547; VI, 565–569; VII, 3464). A proposition of privilege may lose its precedence by association with a matter not of privilege (III, 2551; V, 5890; VI, 395). Debate on a question of privilege is under the hour rule (V, 4990; VIII, 2448), but the previous

question may be moved (II, 1256; V, 5459, 5460; VIII, 2672); since the 103d Congress, however, the rule has provided for divided control of the hour in the case of a resolution offered from the floor. Consideration of a resolution as a question of the privileges of the House has included an hour of debate on a motion to refer under clause 4 of rule XVI; a separate hour of debate on the resolution, itself, under clause 2 of rule XVII (formerly clause 2 of rule XIV); and a motion to commit (not debatable after the ordering of the previous question) under clause 2 of rule XIX (formerly clause 1 of rule XVII) (Mar. 12, 1992, p. 5557). Debate on a letter of resignation is controlled by the Member moving the acceptance of the resignation (Mar. 8, 1977, pp. 6579–82) if the resigning Member does not seek recognition (June 16, 1975, p. 19054). Debate on a question of personal privilege must be confined to the statements or issues which gave rise to the question of privilege (V, 5075–77; VI, 576, 608; VIII, 2448, 2481; May 31, 1984, p. 14623).

RULE X

ORGANIZATION OF COMMITTEES

Committees and their legislative jurisdictions

§ 714. Number and jurisdiction of standing committees.

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:

Under the Legislative Reorganization Act of 1946 (60 Stat. 812), the 44 committees of the 79th Congress were consolidated into 19, effective January 2, 1947. The total number of standing committees grew over time with the creation of the Committee on Science and Astronautics (now Science), established on July 21, 1958 (p. 14513); the Committee on Standards of Official Conduct, established on April 13, 1967 (p. 9425); the Committee on the Budget, established on July 12, 1974, by the Congressional Budget Act of 1974 (88 Stat. 297); and the Committee on Small Business, established as a standing committee effective January 3, 1975 (H. Res.

988, 93d Cong., Oct. 8, 1974, p. 34470). The Committee on Internal Security was abolished in the 94th Congress (H. Res. 5, Jan. 14, 1975, p. 20) thereby setting the total number of standing committees at 22.

The 104th Congress reduced the total number to 19 by abolishing the Committees on the District of Columbia, Merchant Marine and Fisheries, and Post Office and Civil Service (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). Matters formerly in the jurisdiction of the Committees on the District of Columbia and Post Office and Civil Service were transferred to the Committee on Government Reform (formerly Government Reform and Oversight); and matters formerly in the jurisdiction of the Committee on Merchant Marine and Fisheries were transferred to the Committees on Resources (formerly Natural Resources), Transportation and Infrastructure (formerly Public Works and Transportation), Armed Services (formerly National Security during the 104th and 105th Congresses), and Science (formerly Science, Space, and Technology) (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464).

A Permanent Select Committee on Intelligence was established in the 95th Congress (H. Res. 658, July 14, 1977, pp. 22932–49). Before the House recodified its rules in the 106th Congress, the Select Committee was found in former rule XLVIII (current clause 11 of rule X) (H. Res. 5, Jan. 6, 1999, p. 47). A permanent Select Committee on Aging was added to clause 6 of this rule effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470) until stricken in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. 49).

Although earlier forms of the rule specified the number of Members comprising each of the standing committees, those specifications were eliminated in the 93d Congress, leaving to the House the authority to establish the sizes of committees by the numbers elected to each standing committee pursuant to clause 5 of rule X. The rules still specify part of the composition of the Committee on the Budget (clause 5(a)(2) of rule X) as well as the overall size and preferred composition of the Permanent Select Committee on Intelligence (clause 11(a) of rule X; Jan. 6, 2001, p. 115).

The Speaker refers public bills in accordance with clause 1 of rule X, but when the House itself refers a bill it may send it to any committee without regard to the rules of jurisdiction (IV, 4375; V, 5527; VII, 2131) and jurisdiction is thereby conferred (IV, 4362–4364; VII, 2105). Motions for change of reference of public bills and resolutions must be authorized by the committee claiming jurisdiction (clause 7 of rule XII; VII, 2121; Feb. 13, 1918, p. 2070; Jan. 10, 1941, p. 100), must be made immediately following the reading of the Journal (VII, 1809, 2119, 2120), must apply to a single bill and not to a class of bills (VII, 2125), must apply to a bill erroneously referred (VII, 2125), may be amended (VII, 2127), may not be divided (VII, 2125), and may not be debated (VII, 2126, 2128), but are not in order on Calendar Wednesday (VII, 2117), and are not privileged if the original reference was not erroneous (VII, 2125). The rereferral of

most bills is accomplished by unanimous consent (see Procedure, ch. 17, §§ 17–38).

Before the 94th Congress, a bill could not be divided among two or more committees, even though it might contain matters properly within the jurisdiction of several committees (IV, 4372). The Committee Reform Amendments of 1974 added former clause 5 of rule X (current clause 2 of rule XII), permitting the Speaker to refer any matter to more than one committee (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). That provision was amended in the 104th Congress to require the Speaker to designate a primary committee among those to which a matter is initially referred (sec. 205, H. Res. 6, Jan. 4, 1995, p. 467). However, the provision was amended again in the 108th Congress to permit the Speaker to refrain from designating a primary committee in extraordinary circumstances (sec. 2(i), H. Res. 5, Jan. 7, 2003, p. ——; see § 816, *infra*).

A committee having jurisdiction of a subject by means of a petition (IV, 3365) properly referred (IV, 4361) can report on the subject thereof. It has generally been held that a committee may not report a bill whereof the subject matter has not been referred to it by the House (IV, 4355–4360, 4372; VII, 1029, 2101, 2102). Where a House bill is returned from the Senate with a substitute amendment relating to a new and different subject, the reference could nevertheless be to the committee having jurisdiction of the original bill (IV, 4373, 4374); normally, however such amended measures are held at the Speaker's table until disposed of by the House. The erroneous reference of a public bill under this rule, if it remains uncorrected, gives jurisdiction (IV, 4365–4371; VII, 2108), but such is not the case with a private bill or petition (IV, 3364, 4382–4389) unless the reference be made by action of the House itself (IV, 4390, 4391; VII 2131). A point of order as to the reference of a private bill is good when the bill comes up for consideration, either in the House or in the Committee of the Whole (IV, 4382–4389; VII, 2116, 2132; VIII, 2262) or at any time before passage (VII, 2116). The reference of a bill to a committee involving the same subject matter as a bill previously reported confers jurisdiction anew upon the committee to consider and report the bill subsequently introduced (VIII, 2311).

Clause 4 of rule XII prohibits the reception or consideration of certain private bills relating to claims, pensions, construction of bridges, and the correction of military or naval records. In the 104th Congress the House adopted a rule to prohibit introduction or consideration of any bill or resolution expressing a commemoration by designation of a specified period of time (current clause 5 of rule XII, former clause 2 of rule XXII) (sec. 216, H. Res. 6, Jan. 4, 1995, p. 468).

(a) **Committee on Agriculture.**

§ 715. Agriculture.

(1) Adulteration of seeds, insect pests, and protection of birds and animals in forest reserves.

(2) Agriculture generally.

(3) Agricultural and industrial chemistry.

(4) Agricultural colleges and experiment stations.

(5) Agricultural economics and research.

(6) Agricultural education extension services.

(7) Agricultural production and marketing and stabilization of prices of agricultural products, and commodities (not including distribution outside of the United States).

(8) Animal industry and diseases of animals.

(9) Commodity exchanges.

(10) Crop insurance and soil conservation.

(11) Dairy industry.

(12) Entomology and plant quarantine.

(13) Extension of farm credit and farm security.

(14) Inspection of livestock, poultry, meat products, and seafood and seafood products.

(15) Forestry in general and forest reserves other than those created from the public domain.

(16) Human nutrition and home economics.

(17) Plant industry, soils, and agricultural engineering.

(18) Rural electrification.

(19) Rural development.

(20) Water conservation related to activities of the Department of Agriculture.

This committee was established in 1820 (IV, 4149). In 1880 the subject of forestry was added to its jurisdiction, and the committee was conferred authority to receive estimates of and to report appropriations (IV, 4149). However, on July 1, 1920, authority to report appropriations for the Department of Agriculture was transferred to the Committee on Appropriations (VII, 1860).

The basic form of the present jurisdictional statement was made effective January 2, 1947, as a part of the Legislative Reorganization Act of 1946 (60 Stat. 812). Subparagraph (7) was altered by the 93d Congress, effective January 3, 1975, to include jurisdiction over agricultural commodities (including the Commodity Credit Corporation) while transferring jurisdiction over foreign distribution and nondomestic production of commodities to the Committee on International Relations (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). Nevertheless, the committee has retained a limited jurisdiction over measures to release CCC stocks for such foreign distribution (Sept. 14, 1989, p. 20428). Previously unstated jurisdictions over commodities exchanges and rural development were codified effective January 3, 1975.

The 104th Congress consolidated the committee's jurisdiction over inspection of livestock and meat products to include inspection of poultry, seafood, and seafood products, and added subparagraph (20) relating to water conservation (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

The Committee has had jurisdiction of bills for establishing and regulating the Department of Agriculture (IV, 4150), for inspection of livestock and meat products, regulation of animal industry, diseases of animals (IV, 4154; VII, 1862), adulteration of seeds, insect pests, protection of birds and animals in forest reserves (IV, 4157; VII, 1870), the improvement of the breed of horses, even with the cavalry service in view (IV, 4158; VII, 1865).

The Committee, having charge of the general subject of forestry, has reported bills relating to timber, and forest reserves other than those created from the public domain (IV, 4160). The Committee on Resources, and not this committee, has jurisdiction over a bill to convey land that is part of a National Forest created from the public domain (Mar. 23, 2004, p. ——). It also has exercised jurisdiction of bills: relating to agricultural colleges and experiment stations (IV, 4152), incorporation of agricultural societies (IV, 4159), and establishment of a highway commission (IV, 4153); to discourage fictitious and gambling transactions in farm products (IV, 4161; VII, 1861); to regulate the transportation, sale, and handling of dogs and cats intended for use in research and the licensing of animal research facilities (July 29, 1965, p. 18691); and to designate an agricultural re-

search center (May 14, 1996, p. 11070). The Committee shares with the committee on the Judiciary jurisdiction over a bill comprehensively amending the Immigration and Nationality Act and including food stamp eligibility requirements for aliens (Sept. 19, 1995, p. 25533).

The House referred the President's message dealing with the refinancing of farm-mortgage indebtedness to the committee, thus conferring jurisdiction (Apr. 4, 1933, p. 1209).

The Committee has jurisdiction over a bill relating solely to executive level positions in the Department of Agriculture (Mar. 2, 1976, p. 4958) and has jurisdiction over bills to develop land and water conservation programs on private and non-Federal lands (June 7, 1976, p. 16768).

(b) Committee on Appropriations.

§ 716. Appropriations.

(1) Appropriation of the revenue for the support of the Government.

(2) Rescissions of appropriations contained in appropriation Acts.

(3) Transfers of unexpended balances.

(4) Bills and joint resolutions reported by other committees that provide new entitlement authority as defined in section 3(9) of the Congressional Budget Act of 1974 and referred to the committee under clause 4(a)(2).

This committee was established in 1865, when all the general appropriation bills were confided to its care. In 1885 a portion of the bills were distributed to other committees. On July 1, 1920, the committee again was given jurisdiction over all appropriations by an amendment to the rules adopted June 1, 1920 (VII, 1741).

In the 95th Congress this paragraph was amended to correct a typographical error (H. Res. 5, Jan. 4, 1977, p. 53). Subparagraph (4) was amended in the 105th and 106th Congresses to conform to changes made by the Budget Enforcement Act of 1997 (sec. 10116, P.L. 105–33; H. Res. 5, Jan. 6, 1999, p. 47). When the House recodified its rules in the 106th Congress, it transferred an undesignated portion of this paragraph to clause 3(f)(2) of rule XIII (H. Res. 5, Jan. 6, 1999, p. 47).

The authority to conduct studies and examinations of the organization and operation of executive departments and agencies was first given to this committee on February 11, 1943 (p. 884); continued by resolution of January 9, 1945 (p. 135); and incorporated into permanent law in section 202(b) of the Legislative Reorganization Act of 1946 (60 Stat. 812). This authority was first made part of the standing rules on January 3, 1953 (pp. 17, 24), and is now listed as a special oversight responsibility of the

committee in clause 3 of rule X, effective January 3, 1975 (formerly clause 2(b)(3) of rule X) (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). The Committee is also authorized and directed to hold hearings on the budget as a whole in open session within 30 days of its submission (clause 4(a)(1)(A) of rule X), and to study on a continuing basis provisions of law providing spending authority or permanent budget authority and to report to the House recommendations for terminating or modifying such provisions (clause 4(a)(3) of rule X). The requirement of section 139 of the Legislative Reorganization Act of 1946 (60 Stat. 812) that the Committees on Appropriations of the House and Senate develop a standard appropriation classification schedule was superseded by section 202(a) of the Legislative Reorganization Act of 1970 (84 Stat. 1167), which now imposes that responsibility upon the Secretary of the Treasury and the Office of Management and Budget. The further requirement of section 139 of the 1946 Act that the Appropriations Committees study existing permanent appropriations and recommend which, if any, should be discontinued was made the responsibility of all standing committees of the House by clauses 4(e) of rule X, through enactment of section 253 of the 1970 Act (84 Stat. 1175).

Although this committee has authority to report appropriations, the power to report legislation relating thereto belongs to other committees (IV, 4033; clause 2 of rule XXI), and a general appropriation bill reported from this committee may not contain items of appropriation not authorized by law or provisions amending existing law (except retrenchments and rescissions of appropriations) (clause 2 of rule XXI), and may not contain reappropriations of unexpended balances except within agencies (clause 2 of rule XXI). General appropriation bills may not be considered in the House until hearings thereon have been available for three days (clause 4 of rule XIII).

§ 717. Responsibilities under Budget Act.

Effective July 12, 1974, special Presidential messages on rescissions and deferrals of budget authority submitted pursuant to sections 1012 and 1013 of the Impoundment Control Act of 1974 (2 U.S.C. 683, 684), as well as rescission bills and impoundment resolutions defined in section 1011 (2 U.S.C. 682) and required in section 1017 (2 U.S.C. 688) to be referred to the appropriate committee, are referred to the Committee on Appropriations if the proposed rescissions or deferrals involve funds already appropriated or obligated. Also effective July 12, 1974, the Congressional Budget Act of 1974 (sec. 404(a)) added to the committee's jurisdiction, and later perfected by the Committee Reform Amendments of 1974 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), subparagraphs (2), (3), and (4).

(c) Committee on Armed Services.

§ 718. Armed Services.

(1) Ammunition depots; forts; arsenals; and Army, Navy, and Air Force reservations and establishments.

(2) Common defense generally.

(3) Conservation, development, and use of naval petroleum and oil shale reserves.

(4) The Department of Defense generally, including the Departments of the Army, Navy, and Air Force, generally.

(5) Interoceanic canals generally, including measures relating to the maintenance, operation, and administration of interoceanic canals.

(6) Merchant Marine Academy and State Maritime Academies.

(7) Military applications of nuclear energy.

(8) Tactical intelligence and intelligence-related activities of the Department of Defense.

(9) National security aspects of merchant marine, including financial assistance for the construction and operation of vessels, maintenance of the U.S. shipbuilding and ship repair industrial base, cabotage, cargo preference, and merchant marine officers and seamen as these matters relate to the national security.

(10) Pay, promotion, retirement, and other benefits and privileges of members of the armed forces.

(11) Scientific research and development in support of the armed services.

(12) Selective service.

(13) Size and composition of the Army, Navy, Marine Corps, and Air Force.

(14) Soldiers' and sailors' homes.

(15) Strategic and critical materials necessary for the common defense.

This committee was established January 2, 1947, as a part of the Legislative Reorganization Act of 1946 (60 Stat. 812), combining the Committee on Military Affairs with the Committee on Naval Affairs, both of which had been created in 1822 (IV, 4179, 4189) and had had jurisdiction over appropriations from 1885 to 1920 (IV, 4179, 4189; VII, 1741). The Committee was redesignated the Committee on National Security in the 104th Congress (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464) and was redesignated again the Committee on Armed Services in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress, including the deletion of a redundant undesignated recitation of a special oversight function (H. Res. 5, Jan. 6, 1999, p. 47).

Much of the present legislative jurisdiction in this paragraph was adopted on January 3, 1953 (p. 17), to reflect jurisdiction over the Department of Defense, which was created in the National Security Act of 1947 (61 Stat. 495). In the 95th Congress, when the Joint Committee on Atomic Energy was abolished, this committee gained jurisdiction over military applications of nuclear energy (H. Res. 5, Jan. 4, 1977, p. 53). The special oversight function of the committee in clause 3(h) (formerly clause 3(a)) were assigned by the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). The 104th Congress added subparagraph (8) for clarification and subparagraphs (5), (6), and (9) to reflect the transfer of those matters from the former Committee on Merchant Marine and Fisheries (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464), and later amended subparagraph (8) to effect a technical correction (H. Res. 254, Nov. 30, 1995, p. 35077).

The Committee has jurisdiction over bills: relating to military housing construction (Feb. 21, 1962, p. 2684; Apr. 18, 1967, p. 9981); amending title 10 of the United States Code to permit suits against the United States for damage to reputation of members of Armed Forces acquitted of charges of crimes against civilians in combat zones (July 15, 1970, p. 24451); for construction of facilities at Walter Reed Medical Center (Oct. 3, 1966, p. 24859); to require military commissary, post exchange, and medical care privileges for veterans with sufficient service-connected disabilities (Feb. 3, 1976, p. 1972); of a private character to waive the statutory time limit on the award of the Congressional Medal of Honor on individuals (Feb. 22, 1982, p. 1812); including authorization of appropriations to the Department of Energy for resource applications for naval petroleum and oil shale reserves (May 1, 1978, p. 11946); and effecting the transfer of military property to a State to be designated by the State as a wilderness area (Nov. 15, 1995, p. 32627).

The Committee exercised jurisdiction with the Committee on Interior and Insular Affairs (now Resources) over a resolution expressing the sense of Congress regarding continued operation of the Hanford Nuclear Reactor to produce power for the Bonneville Power Administration (July 17, 1986, p. 16888).

(d) **Committee on the Budget.**

§ 719. Budget.

(1) Concurrent resolutions on the budget (as defined in section 3(4) of the Congressional Budget Act of 1974), other matters required to be referred to the committee under titles III and IV of that Act, and other measures setting forth appropriate levels of budget totals for the United States Government.

(2) Budget process generally.

(3) Establishment, extension, and enforcement of special controls over the Federal budget, including the budgetary treatment of off-budget Federal agencies and measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

This committee was established in the 93d Congress, effective July 12, 1974, by section 101 of the Congressional Budget Act of 1974 (88 Stat. 299). The separate subpoena authority conferred upon the committee by section 101(b) of that Act has been superseded by the general grant of subpoena authority to all committees in clause 2(m) of rule XI (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). The Committee is also charged with the special oversight functions as described in clause 3(b) and clause 4(b) of rule X.

Before the House recodified its rules in the 106th Congress, this paragraph consisted of the committee's legislative jurisdiction (current paragraph (d)), its oversight jurisdiction (current clause 4 of rule X), and its composition (current clause 5(a)(2) of rule X (H. Res. 5, Jan. 6, 1999, p. 47)).

In the 99th Congress this paragraph was again amended by section 232(h) of the Balanced Budget and Emergency Deficit Control Act of 1985, to confer jurisdiction over Senate joint or concurrent resolutions constituting congressional responses to a Presidential sequestration order issued pursuant to a report of the Comptroller General under section 252(b) of that Act (P.L. 99–177). It was again amended by the Budget Enforcement Act of 1990 to conform subparagraph (2) to changes in the congressional budget laws (tit. XIII, P.L. 101–508). The 104th Congress amended the

paragraph to expand the limited legislative jurisdiction of the committee by: (1) adding other measures setting forth appropriate levels of budget totals to subparagraph (2); (2) granting the committee jurisdiction over the congressional budget process generally in a new subparagraph (3); and (3) granting the committee jurisdiction over special controls over the Federal budget in a new subparagraph (4), including receiving from the former Committee on Government Operations (now Government Reform) jurisdiction over budgetary treatment of off-budget Federal agencies and measures providing exemption from sequestration orders issued under the Balanced Budget and Emergency Deficit Control Act (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). Three rereferrals from the Committee on Government Reform to the Committee on the Budget marked this migration of off-budget treatment jurisdiction: (1) the Committee on the Budget has primary jurisdiction over a bill excluding from the budget the Civil Service Retirement and Disability Fund (although the Committee on Government Reform retains programmatic jurisdiction over that Fund); (2) the Committee on the Budget has primary jurisdiction over a bill excluding from the budget the Highway Trust Fund, the Airport and Airway Trust Fund, the Inland Waterways Trust Fund, and the Harbor Maintenance Trust Fund (although the Committee on Transportation and Infrastructure retains programmatic jurisdiction); and (3) the Committee on the Budget has secondary jurisdiction over a bill amending title 49 of the United States Code and providing off-budget treatment for the Highway Trust Fund, the Airport and Airway Trust Fund, the Inland Waterways Trust Fund, and the Harbor Maintenance Trust Fund (Dec. 6, 1995, p. 35572). The chairman of the Committee on the Budget inserted in the Congressional Record a Memorandum of Understanding between this committee and the Committee on Rules to clarify each Committee's jurisdiction over the congressional budget process (Jan. 4, 1995, p. 617). In the 105th Congress the jurisdictional statement in subparagraph (2), previously confined to the congressional budget process, was broadened to encompass also the executive budget process formerly included in the jurisdiction of the Committee on Government Reform and Oversight (now Government Reform) (H. Res. 5, Jan. 7, 1997, p. 121). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). This committee, and not the Committee on Ways and Means, has jurisdiction over a bill establishing a rule of sequestration under the Balanced Budget and Emergency Deficit Control Act (Dec. 15, 2000, p. 27085). This committee has primary jurisdiction, and the Committee on Ways and Means has additional jurisdiction, over a bill taking Social Security trust funds off budget (Dec. 15, 2000, p. 27085). This committee has primary jurisdiction, and the Committee on Rules has additional jurisdiction, over a bill amending the Budget Act to establish new legislative points of order and directing that the President include a specified matter with his budget (Feb. 13, 2001, p. 1817).

(e) **Committee on Education and the Workforce.**

(1) Child labor.

(2) Gallaudet University and Howard University and Hospital.

§ 720. Education and the Workforce.

(3) Convict labor and the entry of goods made by convicts into interstate commerce.

(4) Food programs for children in schools.

(5) Labor standards and statistics.

(6) Education or labor generally.

(7) Mediation and arbitration of labor disputes.

(8) Regulation or prevention of importation of foreign laborers under contract.

(9) Workers' compensation.

(10) Vocational rehabilitation.

(11) Wages and hours of labor.

(12) Welfare of miners.

(13) Work incentive programs.

This committee was established as the Committee on Education and Labor on January 2, 1947, as part of the Legislative Reorganization Act of 1946 (60 Stat. 812), combining the Committee on Education (created in 1867) (IV, 4242) and the Committee on Labor (created in 1883) (IV, 4244). When it was redesignated as the Committee on Economic and Educational Opportunities in the 104th Congress, the jurisdictional statement remained unchanged except by the combination of labor standards and labor statistics in a single subparagraph (5) (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). In the 105th Congress the committee was redesignated again the Committee on Education and the Workforce (H. Res. 5, Jan. 7, 1997, p. 121).

By the Committee Reform Amendments of 1974, effective January 3, 1975, the committee gained jurisdiction over food programs for children in schools, an expansion of earlier jurisdiction over school-lunch programs (subpara. (4)), work incentive programs (subpara. (13)), and Indian education, a matter formerly within the specific jurisdiction of the Committee on Interior and Insular Affairs (now Resources); jurisdiction of the committee over international education matters was specifically transferred

to the Committee on Foreign Affairs (now International Relations); and its special oversight function was inserted in clause 3(c) of rule X (current clause 3(d) of rule X) (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress, including the deletion of obsolete references to the Columbia Institution for the Deaf, Dumb, and Blind, Freedmen's Hospital, and the United States Employees' Compensation Commission and the deletion of a redundant undesignated recitation of general and special oversight functions (H. Res. 5, Jan. 6, 1999, p. 47).

The Committee has jurisdiction over bills dealing with juvenile delinquency (Jan. 22, 1959, p. 1027), runaway youth (July 12, 1973, p. 23633; Sept. 10, 1973, p. 28970), human services programs administered by HEW (June 21, 1972, p. 21733), education of Indians (Apr. 15, 1975, p. 10247; June 10, 1991, p. 14049), including the Native American Programs Act (Oct. 30, 1997, p. 23967), and compensation for work injuries to Federal employees (Apr. 16, 1975, p. 10339); over bills amending the Community Services Block Grant Act to continue antipoverty programs originally authorized by the Economic Opportunity Act of 1964 (Nov. 4, 1993, p. 27359); and over an executive communication proposing draft legislation to amend the Labor Management Relations Act and the Employee Retirement Income Security Act (Mar. 24, 1983, p. 7402). The Committee shares with the Committee on the Judiciary original jurisdiction over a bill comprehensively amending the Immigration and Nationality Act and including provisions addressing the enforcement of labor laws (Sept. 19, 1995, p. 25533). The Committee has additional jurisdiction (Commerce, now Energy and Commerce, has primary jurisdiction) over a developmental disabilities assistance and family support bill (Feb. 10, 2000, p. 1023). The jurisdiction of this committee over education and vocational rehabilitation does not include those subjects as they relate to veterans, which fall under the jurisdiction of the Committee on Veterans' Affairs.

(f) **Committee on Energy and Commerce.**

§ 721. Energy and Commerce.

(1) Biomedical research and development.

(2) Consumer affairs and consumer protection.

(3) Health and health facilities (except health care supported by payroll deductions).

(4) Interstate energy compacts.

(5) Interstate and foreign commerce generally.

(6) Exploration, production, storage, supply, marketing, pricing, and regulation of energy

resources, including all fossil fuels, solar energy, and other unconventional or renewable energy resources.

(7) Conservation of energy resources.

(8) Energy information generally.

(9) The generation and marketing of power (except by federally chartered or Federal regional power marketing authorities); reliability and interstate transmission of, and ratemaking for, all power; and siting of generation facilities (except the installation of interconnections between Government waterpower projects).

(10) General management of the Department of Energy and management and all functions of the Federal Energy Regulatory Commission.

(11) National energy policy generally.

(12) Public health and quarantine.

(13) Regulation of the domestic nuclear energy industry, including regulation of research and development reactors and nuclear regulatory research.

(14) Regulation of interstate and foreign communications.

(15) Travel and tourism.

The committee shall have the same jurisdiction with respect to regulation of nuclear facilities and of use of nuclear energy as it has with respect to regulation of nonnuclear facilities and of use of nonnuclear energy.

The Committee dates from 1795 (IV, 4096). Effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), the name of the committee

was changed from Interstate and Foreign Commerce to Commerce and Health. Effective January 14, 1975, it was redesignated as Interstate and Foreign Commerce (H. Res. 5, 94th Cong., p. 20). In the 96th Congress it was redesignated again as Energy and Commerce and given much of its present jurisdiction, effective January 3, 1981 (H. Res. 549, Mar. 25, 1980, pp. 6405–10; *note* publication of intercommittee memoranda of understanding). In the 104th Congress it was redesignated again as the Committee on Commerce (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). In the 107th Congress it was redesignated again as the Committee on Energy and Commerce and its jurisdiction over securities and exchanges was transferred to the Committee on Financial Services (sec. 2(d), H. Res. 5, Jan. 3, 2001, p. 25).

In the 74th Congress the jurisdictional statement of the committee was amended to include jurisdiction over bills relating to radio; to deprive the committee jurisdiction over bills relating to water transportation, Coast Guard, lifesaving service, lighthouses, lightships, ocean derelicts, Coast and Geodetic Survey, and the Panama Canal; and to vest jurisdiction over those subjects in the former Committee on Merchant Marine and Fisheries (VII, 1814, 1847), but with the demise of the latter Committee in the 104th Congress, the latter subjects now reside in the jurisdiction of the Committee on Transportation and Infrastructure, except that the Committee on National Security (now Armed Services) has jurisdiction over the Panama Canal (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). In the 85th Congress matters relating to the Bureau of Standards, standardization of weights and measures, and the metric system (conferred on the committee by the Legislative Reorganization Act of 1946, 60 Stat. 812), were transferred to the Committee on Science and Astronautics (now Science) (July 21, 1958, p. 14513). In the Committee Reform Amendments of 1974, effective January 3, 1975, the committee obtained specific jurisdiction over consumer affairs and consumer protection (subpara. (2)), travel and tourism (subpara. (16)), health and health facilities, except health care supported by payroll deductions (subpara. (3)) (a matter formerly within the jurisdiction of the Committee on Ways and Means), and biomedical research and development (subpara. (1)), and was released of jurisdiction over civil aeronautics to the Committee on Public Works and Transportation (now Transportation and Infrastructure), jurisdiction over civil aviation research and development, energy and environmental research and development, and the National Weather Service to the Committee on Science and Technology (now Science), and jurisdiction over trading with the enemy to the Committee on Foreign Affairs (now International Relations) (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). In the 95th Congress, when the legislative jurisdiction of the Joint Committee on Atomic Energy in the House was transferred to various standing committees, this committee was given the same jurisdiction over nuclear energy as it had over nonnuclear energy and facilities (H. Res. 5, Jan. 4, 1977, pp. 53–70). In the 96th Congress the committee obtained specific jurisdiction over national energy policy

generally (subpara. (11)), measures relating to exploration, production, storage, supply, marketing, pricing, and regulation of energy resources (subpara. (6)), measures relating to conservation of energy resources (subpara. (7)), measures relating to energy information generally (subpara. (8)), measures relating to the generation, marketing, interstate transmission of, and ratemaking for power as well as the siting of generation facilities, with certain exceptions (subpara. (9)), interstate energy compacts (subpara. (4)), and measures relating to general management of the Department of Energy and all functions of the Federal Energy Regulatory Commission (subpara. (10)) (H. Res. 549, Mar. 25, 1980, pp. 6405–10). In the 104th Congress the committee's jurisdiction over inland waterways and railroads (including railroad labor, retirement, and unemployment) was transferred to the Committee on Transportation and Infrastructure, and jurisdiction over measures relating to the commercial application of energy technology was transferred to the Committee on Science, while the Committee on Energy and Commerce obtained exclusive jurisdiction over regulation of the domestic nuclear energy industry (subpara. (13)) from the former Committee on Natural Resources (now Resources) (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). In the 107th Congress the committee's jurisdiction over securities and exchanges was transferred to the Committee on Financial Services (sec. 2(d), H. Res. 5, Jan. 3, 2001, p. 25). The Speaker inserted in the Congressional Record a Memorandum of Understanding between this committee and the Committee on Financial Services to clarify the nature of this transfer (Jan. 30, 2001, p. 995), the final two paragraphs of which no longer provide jurisdictional guidance (Jan. 4, 2005, p. ——).

The Committee has the special oversight responsibility under clause 3(c) of rule X as well as the general oversight responsibility required by clause 2 of rule X. This special oversight responsibility was expanded in the 96th Congress to include all energy, effective January 3, 1981 (H. Res. 549, Mar. 25, 1980, pp. 6405–10). In the 104th Congress it was again expanded to include nonmilitary nuclear energy and research and development including the disposal of nuclear waste (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464), though a conforming change in clause 3(c) was inadvertently omitted.

The Committee formerly reported the river and harbor appropriation bill, but in 1883 the Committee on Rivers and Harbors was created for that role (IV, 4096), and since the 66th Congress such appropriations have been reported by the Committee on Appropriations.

The Committee has general jurisdiction of bills affecting domestic and foreign commerce, except such as may affect the revenue (IV, 4097). It also has jurisdiction of bills authorizing the construction of marine hospitals and the acquisition of sites therefor (IV, 4110; VII, 1816), the general subjects of quarantine and the establishment of quarantine stations (IV, 4109), health, spread of leprosy and other contagious diseases, inter-

national congress of hygiene, etc. (IV, 4111), bills declaring as to whether or not streams are navigable and for preventing or regulating hindrances to navigation (IV, 4101; VII, 1810), such as bridges (IV, 4099; VII, 1812) and dams, except such bridges and dams as are a part of river improvements (IV, 4100; VII, 1810). This committee formerly had jurisdiction of bills proposing construction of bridges across navigable streams which are now banned under clause 4 of rule XII (see § 822, *infra*; see also General Bridge Act, 33 U.S.C. 525, 533).

Before the 104th Congress the committee considered bills regulating railroads in their interstate commerce relations (IV, 414) and exercised jurisdiction with the Committees on Education and Labor (now Education and the Workforce) and Public Works and Transportation (now Transportation and Infrastructure) over bills providing labor protections to workers in the transportation industry, including railroad employees (Feb. 24, 1993, p. 3577). The Committee considers bills relating to commercial travelers as agents of interstate commerce and the branding of articles going into such commerce (IV, 4115), the prevention of the carriage of indecent and harmful pictures or literature (IV, 4116), the adulteration and misbranding of foods and drugs (IV, 4112), and protection of game through prohibition of interstate transportation (IV, 4117). The Committee has jurisdiction over bills imposing safety standards on motor vehicles purchased by the U.S. Government (Feb. 16, 1959, p. 2420), bills creating civil remedies for false advertising or other violations of commercial ethics (June 4, 1962, p. 9601), and bills to assist financing of the Arctic Winter Games in Alaska (June 7, 1972, p. 19935). The Committee had jurisdiction over a bill to reauthorize the Developmental Disabilities Assistance and Bill of Rights Act (ultimately repealed), which was focused on health matters rather than job training (June 1, 1981, p. 11028; Nov. 3, 1993, p. 27274). This committee and, in addition, the Committee on Education and the Workforce have jurisdiction over the Developmental Disabilities Assistance and Bill of Rights Act of 1999 (which replaced the above-mentioned Act) as it contained a family support program within the jurisdiction of the Committee on the Education and the Workforce (Feb. 10, 2000, p. 1023). In the 94th Congress, the committee gained jurisdiction over bills amending the Lead-Based Paint Poisoning Prevention Act and bills dealing with nursing home construction as public health matters (June 10, 1975, p. 18009).

(g) Committee on Financial Services.

(1) Banks and banking, including deposit insurance and Federal monetary policy.

(2) Economic stabilization, defense production, renegotiation, and control of the price of commodities, rents, and services.

§ 722. Financial Services.

(3) Financial aid to commerce and industry (other than transportation).

(4) Insurance generally.

(5) International finance.

(6) International financial and monetary organizations.

(7) Money and credit, including currency and the issuance of notes and redemption thereof; gold and silver, including the coinage thereof; valuation and revaluation of the dollar.

(8) Public and private housing.

(9) Securities and exchanges.

(10) Urban development.

This committee was established in 1865 as the Committee on Banking and Currency (IV, 4082). In the Committee Reform Amendments of 1974, effective January 3, 1975, its name was changed to Banking, Currency and Housing (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). In the 95th Congress its name was changed to Banking, Finance and Urban Affairs (H. Res. 5, Jan. 4, 1977, pp. 53–70). In the 104th Congress its name was changed to Banking and Financial Services (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). In the 107th Congress its name was changed to Financial Services in conjunction with its receipt of jurisdiction over securities and exchanges (formerly within the jurisdiction of the Committee on Energy and Commerce) (sec. 2(d), H. Res. 5, Jan. 3, 2001, p. 25).

The Committee was given much of its present jurisdiction in the Legislative Reorganization Act of 1946 (60 Stat. 812), by which it absorbed the jurisdiction of the former Committee on Coinage, Weights, and Measures (created in 1864) (IV, 4090), except jurisdiction over matters relating to the standardization of weights and measures and the metric system was given to the Committee on Interstate and Foreign Commerce and was later transferred to the Committee on Science and Astronautics (now Science) in the 85th Congress (H. Res. 580, July 21, 1958, p. 14513). In the 92d Congress jurisdiction over the impact on the economy of tax-exempt foundations and charitable trusts was transferred from the Subcommittee on Foundations of the Select Committee on Small Business, along with all that subcommittee's files, to this committee (H. Res. 320, Apr. 27, 1971, p. 12081). Before the end of the 93d Congress, the committee had legislative jurisdiction over the problems of small business under its general jurisdiction over financial aid to commerce and industry; but with the adoption

of the Committee Reform Amendments of 1974, effective January 3, 1975, that jurisdiction was transferred to the standing Committee on Small Business, the permanent Select Committee on Small Business was abolished, and this committee was specifically given jurisdiction over Federal monetary policy, money and credit, urban development, economic stabilization, defense production, and renegotiation (the latter matter formerly within the jurisdiction of the Committee on Ways and Means), international finance, and international financial and monetary organizations (formerly within the jurisdiction of the Committee on International Relations), while jurisdiction over the Commodity Credit Corporation was transferred to the Committee on Agriculture, jurisdiction over export controls and international economic policy to the Committee on International Relations, jurisdiction over construction of nursing home facilities to what is now the Committee on Energy and Commerce, and jurisdiction over urban mass transportation to what is now the Committee on Transportation and Infrastructure (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). In the 104th Congress subparagraphs (2) and (3) were added (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). In the 107th Congress jurisdiction over securities and exchanges was transferred from the Committee on Energy and Commerce to the Committee on Financial Services (sec. 2(d), H. Res. 5, Jan. 3, 2001, p. 25). As a result of the new jurisdiction of the Committee on Financial Services over securities and exchanges, its former jurisdiction over matters relating to bank capital markets activities and depository institutions securities activities were deleted as redundant (sec. 2(d), H. Res. 5, Jan. 3, 2001, p. 25). In the 107th Congress the Committee on Financial Services also received jurisdiction over insurance generally (sec. 2(d), H. Res. 5, Jan. 3, 2001, p. 25). The Speaker inserted in the Congressional Record a Memorandum of Understanding between this committee and the Committee on Energy and Commerce to clarify these jurisdictional changes (Jan. 30, 2001, p. 995), the final two paragraphs of which no longer provide jurisdictional guidance (Jan. 4, 2005, p. ——). A technical change to subparagraph (6) was effected in the 108th Congress (sec. 2(u), H. Res. 5, Jan. 7, 2003, p. ——).

The Committee has reported on subjects relating to the strengthening of public credit, issues of notes, and State taxation and redemption thereof (IV, 4084), propositions to maintain the parity of the money of the United States (IV, 4089; VII, 1792), the issue of silver certificates as currency (IV, 4087, 4088), national banks and current deposits of public money (IV, 4083; VII, 1790), the incorporation of an international bank (IV, 4086), subjects relating to the Freedman's Bank (IV, 4085), and Federal Reserve System, farm loan act, home loan bills, stabilization of the dollar, War Finance Corporation, Federal Reserve bank buildings (VII, 1793, 1795). The Committee has jurisdiction of bills providing consolidation of grant-in-aid programs for urban development (Mar. 18, 1970, p. 7887), bills pro-

viding for U.S. participation in the International Development Association (Mar. 9, 1960, p. 5046), bills to authorize GSA to acquire land in D.C. for transfer to the International Monetary Fund (May 1, 1962, p. 7428), bills relating to flood insurance (Dec. 4, 1975, p. 38701), and over an executive communication proposing regulations for college housing programs (notwithstanding that the requirement for such regulations was contained in higher education legislation reported from the Committee on Education and Labor) (June 15, 1982, p. 13638).

(h) **Committee on Government Reform.**

§ 723. Government Reform.

(1) Federal civil service, including intergovernmental personnel; and the status of officers and employees of the United States, including their compensation, classification, and retirement.

(2) Municipal affairs of the District of Columbia in general (other than appropriations).

(3) Federal paperwork reduction.

(4) Government management and accounting measures generally.

(5) Holidays and celebrations.

(6) Overall economy, efficiency, and management of government operations and activities, including Federal procurement.

(7) National archives.

(8) Population and demography generally, including the Census.

(9) Postal service generally, including transportation of the mails.

(10) Public information and records.

(11) Relationship of the Federal Government to the States and municipalities generally.

(12) Reorganizations in the executive branch of the Government.

In the 82d Congress the name of this committee was changed from Expenditures in the Executive Departments to Government Operations (July

3, 1952, p. 9217). In the 104th Congress it was changed to Government Reform and Oversight (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464), and in the 106th Congress it was changed to Government Reform (H. Res. 5, Jan. 6, 1999, p. 47). The former Committee on Expenditures in the Executive Departments was established December 5, 1927 (VII, 2041), and took the place of 11 separate committees on expenditures in the several executive departments. The first of these committees was established in 1816, and others were added as new departments were created (IV, 4315). They reported bills relating to the efficiency and integrity of the public service (IV, 4320), and creation and abolition of offices (IV, 4318).

In addition to the jurisdiction vested in the Committee by the Legislative Reorganization Act of 1946 (60 Stat. 812), the Committee Reform Amendments of 1974, effective January 3, 1975, assigned the committee jurisdiction over measures relating to the overall economy and efficiency of Government operations and activities, including Federal procurement, intergovernmental relationships, and general revenue sharing (the latter from the Committee on Ways and Means was stricken from the jurisdictional statement of this committee in the 104th Congress (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464)), and the National Archives (from the former Committee on Post Office and Civil Service) (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). In the 104th Congress (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464), the committee assumed the jurisdictions of the former Committee on the District of Columbia (subparas. (2)) and the former Committee on Post Office and Civil Service except that relating to the Franking Commission (subparas. (1), (5), (8), and (9)); and subparagraphs (3) and (10) were added to clarify existing jurisdiction. At the same time the committee's jurisdiction over measures relating to off-budget treatment of agencies or programs, which had been added by the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177), was transferred to the Committee on the Budget. Three rereferrals from the Committee on Government Reform and Oversight (now Government Reform) to the Committee on the Budget marked this migration of off-budget treatment jurisdiction: (1) the Committee on the Budget has primary jurisdiction over a bill excluding from the budget the Civil Service Retirement and Disability Fund (although the Committee on Government Reform and Oversight (now Government Reform) retains programmatic jurisdiction over that Fund); (2) the Committee on the Budget has primary jurisdiction over a bill excluding from the budget the Highway Trust Fund, the Airport and Airway Trust Fund, the Inland Waterways Trust Fund, and the Harbor Maintenance Trust Fund (although the Committee on Transportation and Infrastructure retains programmatic jurisdiction); and (3) the Committee on the Budget has secondary jurisdiction over a bill amending title 49 of the United States Code and providing off-budget treatment for the Highway Trust Fund, the Airport and Airway Trust Fund, the Inland Waterways Trust Fund, and the Harbor Maintenance Trust Fund (Dec. 6, 1995, p. 35572). The Committee was also released from jurisdiction over measures relating to exemp-

tions from executive orders sequestering budget authority, which had been added by the Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508). In the 105th Congress any residual jurisdiction over budget process was transferred to the Committee on the Budget (H. Res. 5, Jan. 7, 1997, p. 121). The 104th Congress assigned the committee its responsibilities to coordinate committee oversight plans under clause 2(d) (sec. 203(a), H. Res. 6, Jan. 4, 1995, p. 467). In the 104th Congress the committee was also given the responsibility to consider and report recommendations concerning alternatives to commemorative legislation, although no such report was made to the House (sec. 216(b), H. Res. 6, Jan. 4, 1995, p. 468). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress, including the deletion of a redundant undesignated recitation of general and special oversight functions (H. Res. 5, Jan. 6, 1999, p. 47).

The Committee has exercised jurisdiction of bills: waiving Reorganization Plans to establish the Rural Electrification Administration as an independent agency and transferring certain functions thereto (Mar. 19, 1959, p. 4692); establishing a Commission on Population Growth (Sept. 23, 1969, p. 26568); establishing a Cabinet Committee on Opportunities for Spanish-Speaking Americans (Nov. 24, 1969, p. 35509); providing payment of travel costs for Federal employment applicants (Feb. 15, 1967, p. 3466); and a bill to rename an existing post office building (Aug. 4, 1995, p. 22085; Oct. 1, 1998, p. 22933), even if the post office building also houses a courthouse (Sept. 14, 2000, p. 18054). The Committee on Transportation and Infrastructure, and not this committee, has jurisdiction over a measure redesignating a general-purpose Federal building as a post office (Apr. 24, 1997, p. 22085). The Committee has exercised jurisdiction over countercyclical programs of revenue-sharing grants to State and local governments, such as that contained in Title II of the Public Works Employment Act of 1976 (Feb. 1, 1977, p. 3057). The Committee shares jurisdiction over a bill to facilitate the reorganization of an agency by instituting a separation pay program to encourage eligible employees to voluntarily resign or retire (Aug. 2, 1993, p. 18161). The Committee has jurisdiction over a bill explicitly waiving the Federal Property and Administrative Services Act and directing the Administrator of General Services to convey excess real property (Oct. 2, 1998, p. 23186). This committee, and not the Committee on the Judiciary, has jurisdiction over a bill authorizing a pay adjustment for administrative law judges (July 31, 1991, p. 20677; June 10, 1999, p. 12435).

The specific subpoena authority conferred upon the committee in the standing rules on February 10, 1947 (p. 942) was superseded by the general conferral of subpoena authority on all committees in clause 2(m) of rule XI. By the Committee Reform Amendments of 1974, effective January 3, 1975, the committee was given the general function under clause 4(c)(1) of examining and reporting upon reports of the Comptroller General, evaluating laws reorganizing the legislative and executive branches, and study-

ing intergovernmental relationships domestically and with international organizations to which the United States belongs (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). Under section 2954 of title 5, United States Code, an executive agency, if so requested by this committee or any seven members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee.

(i) Committee on Homeland Security.

(1) Overall homeland security policy.

§ 723a. Homeland Security.

(2) Organization and administration of the Department of Homeland Security.

(3) Functions of the Department of Homeland Security relating to the following:

(A) Border and port security (except immigration policy and non-border enforcement).

(B) Customs (except customs revenue).

(C) Integration, analysis, and dissemination of homeland security information.

(D) Domestic preparedness for and collective response to terrorism.

(E) Research and development.

(F) Transportation security.

This committee was established in the 109th Congress (sec. 2(a), H. Res. 5, Jan. 4, 2005, p. ——). For debate (and material submitted during debate) that may edify the reader on the jurisdictional issues surrounding the new committee, see January 4, 2005, p. ——. The Speaker announced that his referral of measures in the 108th Congress to the Select Committee on Homeland Security would not constitute precedent for referral to this committee (Jan. 4, 2005, p. ——).

§ 723b. Former Select Committees on Homeland Security.

In the 107th Congress the House established a Select Committee on Homeland Security (H. Res. 449, June 19, 2002, p. ——). Its mission was to develop recommendations on such matters that relate to the establishment of a department of homeland security as may be referred to it by the Speaker and on recommendations submitted to it by standing committees to which the Speaker referred a bill establishing the department and to report its recommendation to the House on such bill. It was terminated after final disposition of the specified bill (Nov. 25, 2002, p.

——). In the 108th Congress the House reestablished a Select Committee on Homeland Security (sec. 4, H. Res. 5, Jan. 7, 2003, p. ——). Its mission was to develop recommendations on such matters that relate to the Homeland Security Act of 2002 (P.L. 107–296) as may be referred to it by the Speaker; to conduct oversight of laws, programs, and Government activities relating to homeland security; to conduct a study of the operation and implementation of the Rules of the House, including rule X, with respect to homeland security; and to report its recommendations to the House by bill or otherwise on matters referred to it by the Speaker and to report its recommendations on changes to House rules to the Committee on Rules by September 30, 2004.

(j) Committee on House Administration.

§ 724. House Administration.

(1) Appropriations from accounts for committee salaries and expenses (except for the Committee on Appropriations); House Information Resources; and allowance and expenses of Members, Delegates, the Resident Commissioner, officers, and administrative offices of the House.

(2) Auditing and settling of all accounts described in subparagraph (1).

(3) Employment of persons by the House, including staff for Members, Delegates, the Resident Commissioner, and committees; and reporters of debates, subject to rule VI.

(4) Except as provided in paragraph (r)(11), the Library of Congress, including management thereof; the House Library; statuary and pictures; acceptance or purchase of works of art for the Capitol; the Botanic Garden; and purchase of books and manuscripts.

(5) The Smithsonian Institution and the incorporation of similar institutions (except as provided in paragraph (r)(11)).

(6) Expenditure of accounts described in subparagraph (1).

(7) Franking Commission.

(8) Printing and correction of the Congressional Record.

(9) Accounts of the House generally.

(10) Assignment of office space for Members, Delegates, the Resident Commissioner, and committees.

(11) Disposition of useless executive papers.

(12) Election of the President, Vice President, Members, Senators, Delegates, or the Resident Commissioner; corrupt practices; contested elections; credentials and qualifications; and Federal elections generally.

(13) Services to the House, including the House Restaurant, parking facilities, and administration of the House Office Buildings and of the House wing of the Capitol.

(14) Travel of Members, Delegates, and the Resident Commissioner.

(15) Raising, reporting, and use of campaign contributions for candidates for office of Representative, of Delegate, and of Resident Commissioner.

(16) Compensation, retirement, and other benefits of the Members, Delegates, the Resident Commissioner, officers, and employees of Congress.

This committee was created as the Committee on House Administration on January 2, 1947, as a part of the Legislative Reorganization Act of 1946 (60 Stat. 812), combining the Committees on Accounts (created in 1803) (IV, 4328), Enrolled Bills (created in 1789) (IV, 4350), Disposition of Executive Papers (created in 1889) (IV, 4419), Printing (created in 1846), Elections (created in 1794 and divided into three committees in 1895) (IV, 4019), Election of President, Vice President, and Representatives in Con-

gress (created in 1893) (IV, 4299), and Memorials (created January 3, 1929, VII, 2080).

The Committee was redesignated as the Committee on House Oversight in the 104th Congress, obtaining from the former Committee on Post Office and Civil Service jurisdiction over the Franking Commission (also known as the House Commission on Congressional Mailing Standards) in subparagraph (7), while transferring to the Committee on Resources jurisdiction over erection of monuments to the memory of individuals (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). References in subparagraphs (1) and (2) to the "contingent fund" were eliminated without changing the committee's jurisdiction over the accounts that the fund comprised. In the 105th Congress subparagraph (1) was amended to effect a technical correction (H. Res. 5, Jan. 7, 1997, p. 121). In the 106th Congress the committee was redesignated House Administration, and the House recodified its rules to effect clerical and stylistic changes, including the deletion of a redundant undesignated recitation of general and special oversight functions (H. Res. 5, Jan. 6, 1999, p. 47). In the 107th Congress the committee's responsibilities with respect to enrolled bills (which were set forth in former clause 4(d)(1)(A) of rule X) were transferred to the Clerk (see clause 2(d)(2) of rule II) (sec. 2(b), H. Res. 5, Jan. 3, 2001, p. 25).

§ 725. House facilities.

The Committee has jurisdiction over measures relating to the House Restaurant (2 U.S.C. 2041), which was first under the jurisdiction of the former Committee on Accounts, then under the supervision of the Architect of the Capitol (H. Res. 590, 76th Cong., Sept. 5, 1940, p. 11552, as made permanent law by P.L. 76–812), and then under the supervision of the Select Committee on the House Restaurant (H. Res. 472, 91st Cong., July 10, 1969, p. 19080; H. Res. 111, 93d Cong., Feb. 7, 1973, p. 3680), which was not reestablished after the 93d Congress.

By the Committee Reform Amendments of 1974, effective January 3, 1975, the committee obtained jurisdiction over parking facilities of the House, a matter formerly assigned to a select committee (subpara. (13)) (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). In the 94th Congress the committee was given jurisdiction over campaign contributions to candidates for the House, a matter formerly within the jurisdiction of the Committee on Standards of Official Conduct (subpara. (15)), and over compensation, retirement, and other benefits of Members, officers, and employees of Congress (subpara. (16)) (H. Res. 5, Jan. 14, 1975, p. 20).

The Committee has jurisdiction over resolutions authorizing committees to employ additional professional and clerical personnel (Feb. 7, 1966, p. 2373). The Committee has supervisory authority over the House barber shops, beauty shops, House Information Resources, and the Office of Placement and Management (the latter formerly within the jurisdiction of the former Joint Committee on Congressional Operations and of the former Select Committee on Congressional Operations).

§ 727. Library.

Under the Reorganization Act the committee has jurisdiction of some of the subjects formerly within the jurisdiction of the Joint Committee on the Library, such as matters relating to the Library of Congress and the House Library, statuary and pictures, acceptance or purchase of works of art for the Capitol, the Botanic Gardens, management of the Library of Congress, purchase of books and manuscripts, matters relating to the Smithsonian Institution, and the incorporation of similar institutions. Excepted are measures relating to the construction or reconstruction, maintenance, and care of the buildings and grounds of the Botanic Gardens, the Library of Congress, and the Smithsonian Institution, which fall under the jurisdiction of the Committee on Transportation (now Transportation and Infrastructure). The House Members of the Joint Committee on the Library, provided for by law (2 U.S.C. 132b), are elected by resolution each Congress.

§ 728. Congressional Record.

The Committee has jurisdiction of matters relating to printing and correction of the Congressional Record, formerly within the jurisdiction of the Committee on Printing. The House Members of the Joint Committee on Printing, provided for by law (44 U.S.C. 1), are elected by resolution each Congress.

The Committee has jurisdiction of measures relating to the election of the President, Vice President, or Members of Congress; corrupt practices; contested elections; credentials and qualifications; Federal elections generally, and the electoral count, which formerly was within the jurisdiction of the Committee on Election of the President, Vice President, and Representatives in Congress (IV, 4303).

The Committee's former responsibility to report on Members' travel was supplanted by the function of providing policy direction to and oversight of the Clerk, Sergeant-at-Arms, Chief Administrative Officer, and Inspector General (sec. 10, H. Res. 423, Apr. 9, 1992, p. 9040; sec. 201(e), H. Res. 6, Jan. 4, 1995, p. 463; see rule II and § 752, *infra*). In the 107th Congress the committee retained the responsibility to provide policy direction to and oversight of the Inspector General but retained only oversight of the remaining officers (sec. 2(g), H. Res. 5, Jan. 3, 2001, p. 25).

(k) **Committee on International Relations.**

§ 729. International Relations.

(1) Relations of the United States with foreign nations generally.

(2) Acquisition of land and buildings for embassies and legations in foreign countries.

(3) Establishment of boundary lines between the United States and foreign nations.

(4) Export controls, including nonproliferation of nuclear technology and nuclear hardware.

(5) Foreign loans.

(6) International commodity agreements (other than those involving sugar), including all agreements for cooperation in the export of nuclear technology and nuclear hardware.

(7) International conferences and congresses.

(8) International education.

(9) Intervention abroad and declarations of war.

(10) Diplomatic service.

(11) Measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad.

(12) International economic policy.

(13) Neutrality.

(14) Protection of American citizens abroad and expatriation.

(15) The American National Red Cross.

(16) Trading with the enemy.

(17) United Nations organizations.

This committee was established in 1822 (IV, 4162), and from 1885 to 1920 had authority to report appropriations. In the 94th Congress the name of the committee was changed from Foreign Affairs to International Relations (H. Res. 163, Mar. 19, 1975, p. 7343). In the 96th Congress it was changed back to Foreign Affairs (H. Res. 89, Feb. 5, 1979, p. 1848). In the 104th Congress the name was again changed to International Relations (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464).

In addition to the jurisdiction vested in the committee by the Legislative Reorganization Act of 1946 (60 Stat. 812), the Committee Reform Amendments of 1974, effective January 3, 1975, gave the committee jurisdiction over measures relating to: international economic policy (subpara. (12)) and export controls (subpara. (4)), matters formerly within the jurisdiction

of the Committee on Banking and Currency (now Financial Services); international commodity agreements other than sugar (subpara. (6)), formerly within the jurisdiction of the Committee on Agriculture; trading with the enemy (subpara. (16)), formerly within the jurisdiction of the Committee on Interstate and Foreign Commerce (now Energy and Commerce); and international education (subpara. (8)); while transferring jurisdiction over international financial and monetary organizations to the Committee on Banking and Currency (now Financial Services), and jurisdiction over international fishing agreements to the Committee on Merchant Marine and Fisheries (now Resources) (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). When the legislative jurisdiction in the House of the Joint Committee on Atomic Energy was abolished in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70), the committee was given jurisdiction over nonproliferation of nuclear technology and hardware (subpara. (4)), and over international agreements on nuclear exports (subpara. (6)). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress, including the deletion of a redundant undesignated recitation of general and special oversight functions (H. Res. 5, Jan. 6, 1999, p. 47).

It has a broad jurisdiction over foreign relations, including bills to establish boundary lines between the United States and foreign nations, to determine naval strengths, and to regulate bridges and dams on international waters (IV, 4166; see also the "General Bridge Act," 33 U.S.C. 525, 533), for the protection of American citizens abroad and expatriation (IV, 4169; VII, 1883), for extradition with foreign nations, for international arbitration, relating to violations of neutrality (IV, 4178a), international conferences and congresses (IV, 4177; VII, 1884), the incorporation of the American National Red Cross and protection of its insignia (IV, 4173), intervention abroad and declarations of war (IV, 4164; VII 1880), affairs of the consular service, including acquisition of land and buildings for legations in foreign capitals (IV, 4163; VII, 1879), creation of courts of the United States in foreign countries (IV, 4167), treaty regulations as to protection of fur seals (IV, 4170), matters relating to the Philippines (see 60 Stat. 315), and measures establishing a District of Columbia corporation to support private American organizations engaged in communications with foreign nations (June 21, 1971, p. 21062).

The Committee also has considered measures for fostering commercial intercourse with foreign nations and for safeguarding American business interests abroad (IV, 4175), and even the subjects of commercial treaties and reciprocal arrangements (IV, 4174), although in later practice the Committee on Ways and Means has considered such matters (IV, 4021). The Committee has exercised a general but not exclusive jurisdiction over legislation relating to claims having international relations (IV, 4168; VII, 1882). Pursuant to its jurisdiction over international education, the committee (and not former Committee on Education and Labor) has exercised jurisdiction over bills establishing scholarship programs for foreign stu-

dents (May 10, 1988, p. 10305). The Committee has jurisdiction over a communication from the President notifying the House, consistent with the War Powers Resolution, of the deployment abroad of U.S. armed forces to participate in an embargo against another nation (Nov. 4, 1993, p. 27393).

The special oversight function of the committee set forth in clause 3(d) of rule X (current clause 3(g) of rule X) was made effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470).

(l) **Committee on the Judiciary.**

§ 730. Judiciary.

(1) The judiciary and judicial proceedings, civil and criminal.

(2) Administrative practice and procedure.

(3) Apportionment of Representatives.

(4) Bankruptcy, mutiny, espionage, and counterfeiting.

(5) Civil liberties.

(6) Constitutional amendments.

(7) Criminal law enforcement.

(8) Federal courts and judges, and local courts in the Territories and possessions.

(9) Immigration policy and non-border enforcement.

(10) Interstate compacts generally.

(11) Claims against the United States.

(12) Meetings of Congress; attendance of Members, Delegates, and the Resident Commissioner; and their acceptance of incompatible offices.

(13) National penitentiaries.

(14) Patents, the Patent and Trademark Office, copyrights, and trademarks.

(15) Presidential succession.

(16) Protection of trade and commerce against unlawful restraints and monopolies.

(17) Revision and codification of the Statutes of the United States.

(18) State and territorial boundary lines.

(19) Subversive activities affecting the internal security of the United States.

§ 731. Internal Security.

This committee dates from 1813 (IV, 4054). The essential jurisdiction defined in the rule was made effective January 2, 1947, as a part of the Legislative Reorganization Act of 1946 (60 Stat. 812), and combined the Committees on Revision of Laws (created 1868, IV, 4293), Patents (created in 1837) (IV, 4254), Immigration and Naturalization (created in 1893) (IV, 4309), Claims (created in 1794) (IV, 4262), and War Claims (created in 1883) (IV, 4269). By the Committee Reform Amendments of 1974, effective January 3, 1975, the committee's jurisdiction over holidays and celebrations was transferred to the former Committee on Post Office and Civil Service (now under Government Reform) (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). In the 94th Congress the Committee on Internal Security was abolished and jurisdiction over communist and other subversive activities affecting the internal security of the United States was transferred to this committee (subpara. (18), now (19)) (H. Res. 5, Jan. 14, 1975, p. 20), though an accompanying provision for the transfer of records and staff of the Internal Security Committee to the Judiciary Committee was deleted as obsolete in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70), and the specific reference to communism was deleted as unnecessary in the 104th Congress (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). The 104th Congress also inserted "the judiciary" in subparagraph (1); added subparagraph (2) for clarification; combined former subparagraphs (6) and (9) in a new subparagraph (7) (now (8)); and combined former subparagraphs (13) and (14) in a new subparagraph (13) (now (14)) (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress, including an update of a reference to the Patent and Trademark Office (H. Res. 5, Jan. 6, 1999, p. 47). In the 109th Congress the House established the Committee on Homeland Security with jurisdiction over certain functions of the Department of Homeland Security that resulted in a conforming change to subparagraph (9) (sec. 2(a)(1), H. Res. 5, Jan. 4, 2005, p. ——). In the 109th Congress the House also added subparagraph (7) (sec. 2(a)(2), H. Res. 5, Jan. 4, 2005, p. ——). For debate (and material submitted during debate) that may edify the reader on the jurisdictional issues surrounding the new Committee on Homeland Security, see January 4, 2005, p. ——.

Under subparagraph (15) the committee has jurisdiction over Presidential nominations to fill vacancies in the Office of Vice President, submitted pursuant to the 25th amendment to the Constitution (Oct. 13, 1973, p. 34032; Aug. 20, 1974, p. 29366). The Committee has reported Articles

of Impeachment of the President (Aug. 20, 1974, pp. 29219–81; Dec. 17, 1998, p. 27819). Where the House has voted impeachment, members of the committee have been appointed as managers on the part of the House in presenting the charges to the Senate for trial (H. Res. 501, 99th Cong., July 22, 1986, p. 17306; H. Res. 511, 100th Cong., Aug. 3, 1988, p. 20223; H. Res. 12, 101st Cong., Jan. 3, 1989, p. 84; Dec. 19, 1998, p. 28112; Jan. 6, 1999, p. 15).

The Committee on the Judiciary considers charges against judges of the Federal courts (IV, 4062), legislative propositions relating to the service of the Department of Justice (IV, 4067), bills relating to local courts in the District of Columbia, Alaska, and the territories (IV, 4068), the establishment of a court of patent appeals (IV, 4075), relations of labor to courts and corporations (IV, 4072), crimes, penalties, extradition (IV, 4069; VII, 1747), construction and management of national penitentiaries (IV, 4070), matters relating to trusts and corporations (IV, 4057, 4059, 4060; VII, 1764), claims of States against the United States (IV, 4080), general legislation relating to international and other claims (IV, 4078, 4079, 4081), including measures extending the terms of members of the Foreign Claims Settlement Commission (Nov. 14, 1991, p. 32130), bills relating to the Office of President (IV, 4077), to the flag (IV, 4055), bankruptcy (IV, 4065), removal of political disabilities (IV, 4058), prohibition of traffic in intoxicating liquors (IV, 4061; VII, 1773), mutiny and willful destruction of vessels (IV, 4145), counterfeiting (IV, 4071; VII, 1753), settlement of State and territorial boundary lines (IV, 4060; VII, 1768), meeting of Congress and attendance of Members and their acceptance of incompatible offices (IV, 4077, VI, 65).

The Committee also has jurisdiction over joint resolutions proposing amendments to the Constitution (IV, 4056; VII, 1779). It also reports on important questions of law relating to subjects naturally within the jurisdiction of other committees (IV, 4063). Although the committee has historically exercised jurisdiction over lobbying activities, the Committee on Standards of Official Conduct was assigned such jurisdiction during a brief period (H. Res. 1031, 91st Cong., July 8, 1970, p. 23141; H. Res. 5, 94th Cong., Jan. 14, 1975, p. 20).

The Committee also has jurisdiction over bills regulating the authority of States to impose taxes on interstate commerce (June 18, 1959, p. 11317), imposing conflict of interest standards and civil and criminal penalties relating thereto on government employees (Feb. 25, 1960, p. 3484), establishing an Academy of Criminal Justice (Apr. 5, 1965, p. 6822), to eliminate racketeering in the interstate sale of cigarettes (Feb. 9, 1972, p. 3429), providing workmen's compensation for non-Federal firemen killed during civil disorder (May 6, 1968, p. 11798), authorizing the Attorney General to consent to a modification of a certain trust on behalf of the Library of Congress (Aug. 17, 1959, p. 16051), amending an omnibus pension act to increase the amount of pension granted a certain class of persons (Feb. 15, 1960, p. 2523), and imposing criminal sanctions under the Controlled

Substances Act (Nov. 14, 1983, p. 32457). The Committee has exclusive jurisdiction over the Legal Services Corporation (Nov. 19, 1975, p. 37288) and over the extension of workmen's benefits to non-Federal policemen and firemen (Dec. 12, 1975, p. 40204). The Committee has exercised jurisdiction, with the Committee on Education and Labor (now Education and the Workforce), over bills to amend the Walsh-Healey Act regarding hours of work under government contracts (May 15, 1985, p. 11946). This committee, and not the Committee on Public Works and Transportation (now Transportation and Infrastructure), exercised jurisdiction over a bill extending the authority for the Marshal of the Supreme Court and the Supreme Court Police to protect the Chief Justice, Associate Justices, officers, and employees of the Supreme Court beyond its building and grounds (Nov. 22, 1993, p. 32074). The Committee on Government Reform, and not this committee, has jurisdiction over pay adjustments for administrative law judges (July 31, 1991, p. 20677; June 10, 1999, p. 12435). The Committee on Resources, and not this committee, has jurisdiction over a bill to designate an immigration museum within a facility of the National Park Service (July 8, 2004, p. ——).

The Committee has the general oversight responsibility set forth in clause 2(b).

(m) Committee on Resources.

§ 732. Resources.

(1) Fisheries and wildlife, including research, restoration, refuges, and conservation.

(2) Forest reserves and national parks created from the public domain.

(3) Forfeiture of land grants and alien ownership, including alien ownership of mineral lands.

(4) Geological Survey.

(5) International fishing agreements.

(6) Interstate compacts relating to apportionment of waters for irrigation purposes.

(7) Irrigation and reclamation, including water supply for reclamation projects and easements of public lands for irrigation projects; and acquisition of private lands when necessary to complete irrigation projects.

(8) Native Americans generally, including the care and allotment of Native American lands and general and special measures relating to claims that are paid out of Native American funds.

(9) Insular possessions of the United States generally (except those affecting the revenue and appropriations).

(10) Military parks and battlefields, national cemeteries administered by the Secretary of the Interior, parks within the District of Columbia, and the erection of monuments to the memory of individuals.

(11) Mineral land laws and claims and entries thereunder.

(12) Mineral resources of public lands.

(13) Mining interests generally.

(14) Mining schools and experimental stations.

(15) Marine affairs, including coastal zone management (except for measures relating to oil and other pollution of navigable waters).

(16) Oceanography.

(17) Petroleum conservation on public lands and conservation of the radium supply in the United States.

(18) Preservation of prehistoric ruins and objects of interest on the public domain.

(19) Public lands generally, including entry, easements, and grazing thereon.

(20) Relations of the United States with Native Americans and Native American tribes.

(21) Trans-Alaska Oil Pipeline (except rate-making).

The Committee on Public Lands was created in 1805 (IV, 4194). Its name has since been changed to Interior and Insular Affairs (Feb. 2, 1951, p. 883); to Natural Resources (H. Res. 5, Jan. 5, 1993, p. 49); and to Resources (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464).

The core of the jurisdiction reflected in this paragraph was assigned to the committee effective January 2, 1947, as a part of the Legislative Reorganization Act of 1946 (60 Stat. 812), which consolidated in this committee the jurisdictions of the former Committees on Mines and Mining (created in 1865) (IV, 4223), Insular Affairs (created in 1899) (IV, 4213), Irrigation and Reclamation (created in 1893) (IV, 4307), Indian Affairs (created in 1821) (IV, 4204), and territories (created in 1825) (IV, 4208), though vesting the subject of welfare of men working in mines, formerly under the jurisdiction of the Committee on Mines and Mining, in the Committee on Education and Labor (now Education and the Workforce). Until the Reorganization Act, military parks, battlefields, and national cemeteries were under jurisdiction of the Committee on Military Affairs. Jurisdiction over cemeteries of the United States in which veterans may be buried, except those administered by the Secretary of the Interior, was transferred to the Committee on Veterans' Affairs in the 90th Congress (H. Res. 241, Oct. 20, 1967).

In the Committee Reform Amendments of 1974, effective January 3, 1975, the committee gained jurisdiction over parks within the District of Columbia, formerly within the jurisdiction of the Committee on Public Works and Transportation (now Transportation and Infrastructure) (subpara. (10)), and lost specific jurisdiction over Indian education and over Hawaii and Alaska, generally (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). By that same resolution, the committee was given special oversight functions in clause 3.

The 104th Congress expanded the jurisdiction of the committee by: adding subparagraphs (1), (5), (15), and (16) to reflect the transfer of those matters from the former Committee on Merchant Marine and Fisheries; inserting the subject of monuments in memory of individuals in subparagraph (10) to reflect the transfer of that matter from the Committee on House Administration; adding subparagraph (21), an exceptional treatment of pipeline jurisdiction otherwise vested in the Committee on Transportation and Infrastructure; and deleting the subject of regulation of the domestic nuclear energy industry to reflect the transfer of that jurisdiction, which this committee had acquired when the 95th Congress abolished the Joint Committee on Atomic Energy (H. Res. 5, Jan. 4, 1977, pp. 53–70) and which it shared with the Committee on Energy and Commerce, to the Committee on Energy and Commerce (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). At the same time, the statements of special oversight functions formerly found in this paragraph and in former paragraph (e) of this

clause were adjusted to reflect the transfer of nonmilitary nuclear energy and research and development including disposal of nuclear waste from this committee to the Committee on Energy and Commerce, though conforming changes in former paragraphs (e) and (h) of clause 3 were inadvertently omitted. Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress, (H. Res. 5, Jan. 6, 1999, p. 47).

The Committee reports on subjects relating to the mineral resources of the public lands (IV, 4202), forfeiture of land grants and alien ownership (IV, 4201), validation of certain conveyances of erstwhile public lands by a railway company (July 11, 1995, p. 18397), public lands of Alaska (IV, 4196), forest reserves (IV, 4197), and national parks created out of the public domain (IV, 4199; VII, 1925), including measures relating to criminal trespass provisions applying only within national forests created from the public domain (July 18, 1977, p. 23434); to admission of States (IV, 4208); to preservation of prehistoric ruins and objects of interest on the public domain (IV, 4199); and sometimes to projects of general legislation relating to various classes of land claims (IV, 4203). The Committee also has jurisdiction over the following bills: to dispose of proceeds from oil shale on public lands (other than naval oil shale reserves) (Aug. 3, 1967, p. 21179); to exclude certain lands in the Outer Continental Shelf from mineral leasing provisions of the Outer Continental Shelf Lands Act (May 16, 1963, p. 8777); to reinstate a U.S. oil and gas lease (Aug. 5, 1959, p. 15190); to address U.S. claims to lands along the Colorado River forming State boundaries (June 28, 1967, p. 17738); to designate national forest lands created from the public domain as wilderness (May 6, 1969, p. 11459); to include additional units in the Missouri River Basin project (Sept. 8, 1959, p. 18587); to establish a commission on development of Pennsylvania Avenue in D.C. as a national historic site (Oct. 21, 1965, p. 27803); to authorize the Secretary of the Interior to conduct a feasibility investigation of potential water resource development (May 1, 1975, p. 12764); to establish a commission to consider the creation of a (Hudson) River compact (July 21, 1975, p. 23653); to name a building constructed as part of a Federal recreation area (June 8, 1988, p. 13803); to address the siting on Federal parkland of an established national memorial (Sept. 24, 1991, p. 23731); (with the Committee on Agriculture) to exchange a Federal tree nursery for certain State mining patents touching a public domain (western) forest (Sept. 17, 1991, p. 23193); and to transfer interest in a National Oceanic and Atmospheric Administration fisheries research laboratory (Oct. 1, 2002, p. ——). The Committee on National Security (now Armed Services), and not this committee, has jurisdiction over the transfer of military property to a State to be designated by the State as a wilderness area (Nov. 15, 1995, p. 32627). The Committee on Agriculture, and not this committee, has jurisdiction over the designation of an agricultural research center (May 14, 1996, p. 11070). The Committee on Education and the Workforce, and not this committee, has jurisdiction over a bill amending the Native American Programs Act of 1974 (an Indian education

matter) (Oct. 30, 1997, p. 23967). This committee, and not the Committee on Agriculture, has jurisdiction over a bill to convey land that is part of a National Forest created from the public domain (Mar. 23, 2004, p. ——). This committee, and not the Committee on the Judiciary, has jurisdiction over a bill to designate an immigration museum within a facility of the National Park Service (July 8, 2004, p. ——).

The authority of the committee to report as privileged bills for the forfeiture of land grants to railroad and other corporations, bills preventing speculation in the public lands, bills for the preservation of the public lands for the benefit of actual and bona fide settlers, and bills for the admission of new States was eliminated in the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470).

(n) Committee on Rules.

§ 733. Rules.

(1) Rules and joint rules (other than those relating to the Code of Official Conduct) and the order of business of the House.

(2) Recesses and final adjournments of Congress.

This committee, which had existed as a select committee from 1789, became a standing committee in 1880 (IV, 4321; VII, 2047). The jurisdiction defined in this paragraph became effective January 2, 1947, as a part of the Legislative Reorganization Act of 1946 (60 Stat. 812). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress, including the deletion of a redundant undesignated pararaph permitting the committee to sit during sessions of the House (H. Res. 5, Jan. 6, 1999, p. 47). That undesignated paragraph, originally designated as subparagraph (3) (H. Res. 5, Jan. 5, 1993, p. 49), was derived from section 134(c) of the Legislative Reorganization Act of 1946, even though the committee had authority to sit during sessions of the House since 1893 (IV, 4546). Effective January 3, 1975, however, the authority for all committees to sit and act whether the House is in session or has adjourned rendered this provision obsolete (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470).

The Speaker was first made a member of the committee in 1858 (IV, 4321), and ceased to be a member on March 19, 1910 (VII, 2047). However, the Legislative Reorganization Act of 1946 deleted from the former rule the prohibition against the Speaker serving on the committee. The size of the committee was increased from 12 to 15 members for the 87th Congress (Jan. 31, 1961, p. 1589), and the increase in the committee's size was incorporated as a part of the rules in the 88th Congress (Jan. 9, 1963, p. 14). Effective January 3, 1975, however, the rules were amended to

eliminate prescriptions of committee sizes (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), and in the 94th through the 98th Congresses 16 Members were named to the Committee on Nominations from the respective party caucuses (see, *e.g.*, H. Res. 76, Jan. 20, 1975, p. 803; H. Res. 101, Jan. 28, 1975, p. 1611), and in the 99th through 101st Congresses, 13 Members were named to the Committee on Nominations from the respective party caucuses (see, *e.g.*, H. Res. 34, 35, Jan. 30, 1985, pp. 1271, 1273).

The subject of recesses and adjournments was formerly under the jurisdiction of the Committee on Ways and Means. In section 402(b) of the Congressional Budget Act of 1974 (P.L. 93–344, July 12, 1974), the committee was given specific authority to report emergency waivers of the required reporting date for bills and resolutions authorizing new budget authority. That authority was incorporated into this rule, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), but was repealed as obsolete in the 102d Congress (H. Res. 5, Jan. 3, 1991, p. 39). Jurisdiction over rules relating to official conduct and financial disclosure was transferred to the Committee on Standards of Official Conduct on April 3, 1968 (H. Res. 1099, 90th Cong.), but in the 95th Congress, jurisdiction over rules relating to financial disclosure by Members, officers, and employees of the House was returned to this committee (H. Res. 5, Jan. 4, 1977, pp. 53–70).

The jurisdiction of this committee is primarily over propositions to make or change the rules (V, 6770, 6776; VII, 2047), for the creation of committees (IV, 4322; VII, 2048), and directing them to make investigations (IV, 4322–4324; VII, 2048). Effective January 3, 1975, however, the authority for all committees to conduct investigations and studies was made a part of the standing rules (clause 1(b) of rule XI), as was the authority to issue subpoenas (clause 2(m) of rule XI) (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). The Committee also reports resolutions relating to the hour of daily meeting and the days on which the House shall sit (IV, 4325), and orders relating to the use of the galleries during the electoral count (IV, 4327). The chairman of the Committee on the Budget inserted in the Congressional Record a Memorandum of Understanding between this committee and the Committee on the Budget to clarify each Committee's jurisdiction over the congressional budget process (Jan. 4, 1995, p. 617). The Committee on the Budget has primary jurisdiction, and this committee has additional jurisdiction, over a bill amending the Budget Act to establish new legislative points of order and directing that the President include a specified matter with his budget (Feb. 13, 2001, p. 1817).

§ 734. Special orders of business.

Since 1883 the Committee on Rules has reported special orders providing times and methods for consideration of individual bills or classes of bills, thereby enabling the House by majority vote to forward particular legislation, instead of being forced to use for the purpose the motion to suspend the rules, which requires a two-thirds vote (IV, 3152; V, 6870; for forms of, IV, 3238–3263).

Special orders may still be made by suspension of the rules (IV, 3154) or by unanimous consent (IV, 3165, 3166; VII, 758); but it is not in order, by motion in the House, to provide that a subject be made a special order by a motion to postpone to a day certain (IV, 3164). Before the adoption of rules, and consequently before there is a rule as to the order of business, the Speaker may recognize a Member to offer by direction of the caucus of the majority party for immediate consideration a special order providing for the consideration in the House of a subsequent resolution to adopt rules for the new Congress (H. Res. 5, Jan. 4, 1995, p. 447). A special order reported by the Committee on Rules must be agreed to by a majority vote of the House (IV, 3169).

It is not in order to move to postpone a special order providing for the consideration of a class of bills (V, 4958), but a bill which comes before the House by the terms of a special order merely assigning the day for its consideration may be postponed by a majority vote (IV, 3177–3182). A motion to rescind a special order is not privileged under the rules regulating the order of business (IV, 3173, 3174; V, 5323).

A motion to amend the Rules of the House does not present a question of privilege (VIII, 3377, overruling VIII, 3376; see also rule IX and § 706, *supra*), and it is not in order by raising a question of the privileges of the House under rule IX to move to direct the Committee on Rules to consider a request to report a special order of business (Speaker Albert, June 27, 1974, p. 21599), or to direct the Committee on Rules to meet, to elect a temporary chairman (in the temporary absence of the chairman) and consider special orders of business (Speaker Albert, July 31, 1975, p. 26250).

For further discussion of the Committee on Rules, see §§ 857–859, *infra*.

(o) Committee on Science.

§ 735. Science.

(1) All energy research, development, and demonstration, and projects therefor, and all federally owned or operated nonmilitary energy laboratories.

(2) Astronautical research and development, including resources, personnel, equipment, and facilities.

(3) Civil aviation research and development.

(4) Environmental research and development.

(5) Marine research.

(6) Commercial application of energy technology.

(7) National Institute of Standards and Technology, standardization of weights and measures, and the metric system.

(8) National Aeronautics and Space Administration.

(9) National Space Council.

(10) National Science Foundation.

(11) National Weather Service.

(12) Outer space, including exploration and control thereof.

(13) Science scholarships.

(14) Scientific research, development, and demonstration, and projects therefor.

The standing Committee on Science and Astronautics was established in the 85th Congress and given jurisdiction formerly vested in a Select Committee on Astronautics and Space Exploration established a few months earlier (Mar. 5, 1958, p. 3443), as well as the former jurisdiction of the Committee on Interstate and Foreign Commerce (now Energy and Commerce) over the Bureau of Standards (now the National Institute of Standards and Technology) and science scholarships (July 21, 1958, p. 14513). By the Committee Reform Amendments of 1974, effective January 3, 1975, the committee was redesignated as the Committee on Science and Technology and given additional jurisdiction over civil aviation research and development, environmental research and development, nonnuclear energy research and development, and the National Weather Service (now part of the National Oceanic and Atmospheric Administration) (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). At the same time the committee was given the general and special oversight functions set forth in clause 2(b) and former clause 3(f) (current clause 3(k)). When the House abolished the Joint Committee on Atomic Energy in the 95th Congress, this committee was given jurisdiction over nuclear research and development, as well (H. Res. 5, Jan. 4, 1977, pp. 53–70). Its jurisdiction over energy research and development (now subpara. (1)) was amended in the 96th Congress, effective January 3, 1981, to specifically include energy demonstration projects and federally owned nonmilitary energy laboratories (H. Res. 549, Mar. 25, 1980, pp. 6405–10). In the 100th Congress, the committee was redesignated as the Committee on Science, Space, and Technology (H. Res. 5, Jan. 6, 1987, p. 6). In the 103d Congress the jurisdic-

tional statement of the committee was updated to reflect the renaming of executive branch entities (H. Res. 5, Jan. 5, 1993, p. 49). The 104th Congress again renamed the committee as the Committee on Science and expanded its jurisdiction by adding subparagraph (5), from the former Committee on Merchant Marine and Fisheries, and subparagraph (6), from the Committee on Energy and Commerce (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress, including the deletion of a redundant undesignated recitation of general and special oversight functions (H. Res. 5, Jan. 6, 1999, p. 47).

The Committee has jurisdiction over proposals dealing with U.S. participation in the World Science Pan-Pacific Exposition (June 24, 1959, p. 11810); over a resolution condemning Soviet Union internal exile of an individual, and recommending that Government agencies including NASA, the National Bureau of Standards and the National Science Foundation defer official travel to that country (Jan. 30, 1980, p. 1320); with the Committees on Armed Services and Interior and Insular Affairs (now Resources), over bills to test the commercial viability of oil shale technologies within the naval oil shale reserves or on other public lands (Sept. 26, 1978, p. 31623); and with four other committees over a bill coordinating Federal agencies' research into ground water contamination, including that done by the Environmental Protection Agency (Mar. 15, 1989, p. 4163). The Committee on Resources, and not this committee, has jurisdiction over a bill transferring interest in a National Oceanic and Atmospheric Administration fisheries research laboratory (Oct. 1, 2002, p. ——).

(p) Committee on Small Business.

§ 736. Small Business.

(1) Assistance to and protection of small business, including financial aid, regulatory flexibility, and paperwork reduction.

(2) Participation of small-business enterprises in Federal procurement and Government contracts.

A Select Committee on Small Business was first established in the 77th Congress (H. Res. 294, pp. 9418–28) and was reconstituted each Congress thereafter by resolution reported from the Committee on Rules until made permanent in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144).

The Committee Reform Amendments of 1974 established a standing Committee on Small Business, effective January 3, 1975, and vested it with legislative jurisdiction formerly held by the Committee on Banking and Currency (now Financial Services) (subpara. (1)) and the Committee on the Judiciary (subpara. (2)) (H. Res. 988, 93d Cong., Oct. 8, 1974, p.

34470). At the same time the general and special oversight functions were set forth in clause 2(b) and in former clause 3(g) (current clause 3(l)). The 104th Congress expanded the jurisdiction of the committee over assistance to and protection of small business by inserting the references to regulatory flexibility and paperwork reduction in subparagraph (1) (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464; see also Feb. 9, 1995, p. 4328) and later effected a technical correction (H. Res. 254, Nov. 30, 1995, p. 35077). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress, including the deletion of a redundant undesignated recitation of general and special oversight functions (H. Res. 5, Jan. 6, 1999, p. 47).

(q) Committee on Standards of Official Conduct.

The Code of Official Conduct.

§ 737. Standards of Official Conduct.

In the 90th Congress the Committee on Standards of Official Conduct was established as a standing committee (H. Res. 418, Apr. 13, 1967, p. 9425). Its precursor was the Select Committee on Standards and Conduct, created in the 89th Congress (H. Res. 1013, Oct. 19, 1966, pp. 27713–30). At various times in its history, the legislative jurisdiction of the committee has included jurisdiction over measures relating to (1) financial disclosure by Members, officers, and employees of the House (H. Res. 1099, 90th Cong., Apr. 3, 1968, p. 8776); (2) the raising, reporting, and use of campaign contributions for candidates for the House (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470); and (3) lobbying activities (H. Res. 1031, 91st Cong., July 8, 1970, p. 23141). However, legislative jurisdiction over measures relating to financial disclosure was transferred to the Committee on Rules in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70); legislative jurisdiction over measures relating to campaign contributions for candidates for the House was transferred to House Administration, and legislative jurisdiction over measures relating to lobbying activities was removed from the committee (thereby devolving on the Committee on the Judiciary) in the 94th Congress (H. Res. 5, Jan. 14, 1975, p. 20). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress, including the deletion of a redundant undesignated recitation of general and special functions (H. Res. 5, Jan. 6, 1999, p. 47).

Two rules relating to the official conduct of Members outside the confines of rule XXIII, the "Code of Official Conduct," are as follows: rule XXIV, limitations on use of official funds, and rule XXV, limitations on outside earned income and acceptance of gifts.

Under clause 5(a) of rule XIII, the committee is empowered to report as privileged resolutions recommending action by the House of Representatives with respect to the official conduct of an individual Member, officer, or employee of the House.

In addition to its legislative jurisdiction, the committee has the general oversight responsibility set forth in clause 2(b) and the additional functions of conducting the investigations and making the reports and recommendations required by clause 5 of rule XIII or by resolution of the House (see, *e.g.*, H. Res. 252, 95th Cong., Feb. 9, 1977, pp. 3966–75, directing investigation of gifts from Korean Government; H. Res. 1042, 94th Cong., Feb. 16, 1976, pp. 3158–61, directing investigation of unauthorized publication of report of Select Committee on Intelligence; and H. Res. 608, 96th Cong., Mar. 27, 1980, pp. 6995–98, relating to "Abscam").

The Committee has investigated roll call procedures in the House and recommended installation of a modernized voting system (June 19, 1969, p. 16629). In the 95th Congress the committee was authorized by section 515 of Public Law 95–105 to act as the "employing agency" for the House of Representatives under the Foreign Gifts and Decorations Act, and the committee promulgated regulations under that statute concerning acceptance of foreign gifts and decorations by Members and employees (Jan. 23, 1978, p. 452). In the 96th Congress the committee was assigned as additional responsibilities the functions designated in title I of the Ethics in Government Act of 1978 (P.L. 95–521) relating to the administration of government ethics laws as they apply to Members, officers, and employees of the House (H. Res. 5, Jan. 15, 1979, p. 7). In the 102d Congress those responsibilities were enlarged to include also the functions designated in title V of the Act and the specified sections of title 5, United States Code (H. Res. 5, Jan. 3, 1991, p. 39).

The Committee has compiled statutory and rule-based ethical standards in the *House Ethics Manual* (102d Cong., 2d Sess.). In the *Manual*, the committee incorporates its advisory opinions issued under clause 3(a)(4) of rule XI, together with advisory opinions issued by the former Select Committee on Ethics, in its discussions of various ethical issues, including gifts, outside income, financial disclosure, staff rights and duties, official allowances and franking, casework considerations, campaign financing and practices, and involvement with official and unofficial organizations. The committee also has compiled a complete statement of the rules on gifts and travel, which supersedes Chapter 2 of the 1992 *House Ethics Manual* (*Gifts and Travel,* 106th Cong., 2d Sess.).

§ 738. Former Select Committees on Ethics.

In the 95th Congress, the House established a Select Committee on Ethics and granted it exclusive legislative jurisdiction over bills that incorporated into permanent law provisions of House rules addressing financial ethics of Members, officers, and employees (H. Res. 383, Mar. 9, 1977, pp. 6811–16). The Select Committee was also granted jurisdiction to promulgate implementing regulations and to issue advisory opinions. The resolution creating the Select Committee provided that it would expire on December 31, 1977, but the committee and its functions ultimately were extended through the completion of its official business (H. Res. 871, Oct. 31, 1977, p. 35957). The advi-

sory opinions compiled by the former Select Committee on Ethics have been incorporated in the *House Ethics Manual* (102d Cong., 2d Sess.).

In the 105th Congress a new subparagraph (3) was added at the end of former clause 4(e) of rule X to establish a Select Committee on Ethics only to resolve an inquiry originally undertaken by the standing Committee on Standards of Official Conduct in the 104th Congress (H. Res. 5, Jan. 7, 1997, p. 121). The Select Committee filed one report to the House (H. Rept. 105–1, H. Res. 31, Jan. 21, 1997, p. 393).

(r) Committee on Transportation and Infrastructure.

§ 739. Transportation and Infrastructure.

(1) Coast Guard, including lifesaving service, lighthouses, lightships, ocean derelicts, and the Coast Guard Academy.

(2) Federal management of emergencies and natural disasters.

(3) Flood control and improvement of rivers and harbors.

(4) Inland waterways.

(5) Inspection of merchant marine vessels, lights and signals, lifesaving equipment, and fire protection on such vessels.

(6) Navigation and laws relating thereto, including pilotage.

(7) Registering and licensing of vessels and small boats.

(8) Rules and international arrangements to prevent collisions at sea.

(9) The Capitol Building and the Senate and House Office Buildings.

(10) Construction or maintenance of roads and post roads (other than appropriations therefor).

(11) Construction or reconstruction, maintenance, and care of buildings and grounds of

the Botanic Garden, the Library of Congress, and the Smithsonian Institution.

(12) Merchant marine (except for national security aspects thereof).

(13) Purchase of sites and construction of post offices, customhouses, Federal courthouses, and Government buildings within the District of Columbia.

(14) Oil and other pollution of navigable waters, including inland, coastal, and ocean waters.

(15) Marine affairs, including coastal zone management, as they relate to oil and other pollution of navigable waters.

(16) Public buildings and occupied or improved grounds of the United States generally.

(17) Public works for the benefit of navigation, including bridges and dams (other than international bridges and dams).

(18) Related transportation regulatory agencies (except the Transportation Security Administration).

(19) Roads and the safety thereof.

(20) Transportation, including civil aviation, railroads, water transportation, transportation safety (except automobile safety and transportation security functions of the Department of Homeland Security), transportation infrastructure, transportation labor, and railroad retirement and unemployment (except revenue measures related thereto).

(21) Water power.

The Committee was created effective January 2, 1947, as a part of the Legislative Reorganization Act of 1946 (60 Stat. 812), combining the Committees on Flood Control (created in 1916) (VII, 2069), Public Buildings and Grounds (created in 1837) (IV, 4231), Rivers and Harbors (created in 1883) (IV, 4118)), and Roads (created in 1913) (VII, 2065). The authority of the committee to report as privileged bills authorizing the improvement of rivers and harbors was eliminated by the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). At the same time the committee's jurisdiction over parks in the District of Columbia was transferred to the Committee on Interior and Insular Affairs (now Resources); and it gained jurisdiction over transportation, including civil aviation (except railroads, railroad labor, and railroad pensions), over roads and the safety thereof, over water transportation subject to the jurisdiction of the Interstate Commerce Commission, and over related transportation regulatory agencies with certain exceptions. The 104th Congress changed the name of the Committee from Public Works and Transportation to Transportation and Infrastructure and expanded its jurisdiction by: adding subparagraphs (1), (6)–(8), (12), and (15) to reflect the transfer of those matters from the former Committee on Merchant Marine and Fisheries; adding subparagraph (4) and enlarging subparagraph (20) to reflect the transfer of those matters from the Committee on Energy and Commerce; and adding subparagraph (2) and inserting the reference to inland, coastal, and ocean waters in subparagraph (14), as clarifying consolidations of formerly fractionalized subjects (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress. The 106th Congress also adopted a substantive amendment to this provision deleting the prohibition against including a provision for a specific road in a bill providing for another specific road or in a general road bill (H. Res. 5, Jan. 6, 1999, p. 47). In the 109th Congress the House established the Committee on Homeland Security (sec. 2(a), H. Res. 5, Jan. 4, 2005, p. ——). The new committee was given jurisdiction over certain functions of the Department of Homeland Security that resulted in two conforming changes to this paragraph. For debate (and material submitted during debate) that may edify the reader on the jurisdictional issues surrounding the new committee, see January 4, 2005, p. ——.

The Committee has jurisdiction over proposals establishing Treasury revolving funds for the Southeastern and Southwestern Power Administrations (July 2, 1959, p. 12629); directing the Secretary of the Army to provide school facilities for dependents of Corps of Engineers construction workers (June 17, 1968, p. 17429); conveying Corps of Engineers flood-control project lands (July 15, 1965, p. 17002) or naming reservoirs within such projects (Oct. 3, 1989, p. 22770) or allocating or limiting water use therefrom (Feb. 28, 1990, p. 2893); directing the Secretary of the Army to renew the license of an American Legion Post to use a parcel of land on a Corps of Engineer project (May 10, 1988, p. 10282); authorizing construction of

an annex to the National Gallery of Art by the Smithsonian Institution (Apr. 10, 1968, p. 9553); addressing the location and development of the J. F. Kennedy Center for the Performing Arts (Sept. 15, 1965, p. 23927; Oct. 21, 1965, p. 27803); transferring land under the control of the Corps of Engineers to Indian tribes (Jan. 29, 1976, p. 1577); amending the Interstate Commerce Act to regulate truck transportation (Feb. 24, 1976, p. 4109; Mar. 1, 1979, p. 3754); concerning the treatment of a U.S. air freight carrier by the Japanese Ministry of Transport pursuant to an understanding negotiated under the International Air Transportation Competition Act of 1979 (not a Trade Act matter) (July 28, 1988, p. 19536); and over an executive communication amending Public Law 90–553, reported by the committee, to authorize the transfer, conveyance, lease and improvement of, and construction on, certain property in the District of Columbia, for use as a headquarters site for an international organization, as sites for governments of foreign countries (Sept. 10, 1981, p. 20598). The Committee on Government Reform and Oversight (now Government Reform), and not this committee, has jurisdiction over a bill renaming an existing post office building (Aug. 4, 1995, p. 22085; Oct. 1, 1998, p. 22933) and renaming an existing post office building that also housed a courthouse (Sept. 14, 2000, p. 18054). However, this committee, and not the Committee on Government Reform and Oversight (now Government Reform), has jurisdiction over a bill redesignating a general-purpose Federal building as a post office (Apr. 24, 1997, p. 6291). This committee, and not the Committee on Ways and Means, has jurisdiction over a bill designating a customs building (Dec. 12, 1995, p. 36165). The Committee on Resources, and not this committee, has jurisdiction over a bill to validate certain conveyances of erstwhile public lands by a railway company (July 11, 1995, p. 18397). The Committee on Government Reform, and not this committee, has jurisdiction over a bill transferring real property administered by the Coast Guard where the bill explicitly waives the Federal Property and Administrative Services Act and directs the Administrator of General Services to convey the property (Oct. 2, 1998, p. 23186).

The Committee has shared jurisdiction: with the Committee on Energy and Commerce over a bill amending the Solid Waste Disposal Act to provide for the cleanup of hazardous waste sites or discharges presenting a threat to human health and the environment, including navigable waters (Mar. 21, 1984, p. 6186); with the Committee on Government Operations (now Government Reform) over a bill to require the Administrator of General Services to convey certain real property (a Federal building) to the Museum for the American Indian and providing for renovation and alteration of the property (Oct. 28, 1987, p. 29685); with the Committee on House Administration over a bill authorizing the Smithsonian Institution to construct, expand, and renovate facilities at the Cooper-Hewitt Museum in New York (July 21, 1987, p. 20309), and over a bill authorizing appropriations to plan, design, construct, and equip museum space for the Smithsonian (July 18, 1991, p. 18830); with several other committees over bills

to convert from a defense economy by, *inter alia*, authorizing economic assistance for public works and economic development (June 24, 1991, p. 16021; June 11, 1992, p. 14470); and with the Committee on Education and Labor (now Education and the Workforce) over bills providing labor protections to workers, including airline employees, in the transportation industry (June 24, 1991, p. 16020; Feb. 24, 1993, p. 3577).

In the 101st Congress, the committee reported a bill requiring a cooling-off period in a labor-management dispute between an airline and its unions under the Railway Labor Act (H.R. 1231, Mar. 13, 1989, p. 4032).

(s) Committee on Veterans' Affairs.

(1) Veterans' measures generally.

(2) Cemeteries of the United States in which veterans of any war or conflict are or may be buried, whether in the United States or abroad (except cemeteries administered by the Secretary of the Interior).

§ 740. Veterans' Affairs.

(3) Compensation, vocational rehabilitation, and education of veterans.

(4) Life insurance issued by the Government on account of service in the Armed Forces.

(5) Pensions of all the wars of the United States, general and special.

(6) Readjustment of servicemembers to civil life.

(7) Servicemembers' civil relief.

(8) Veterans' hospitals, medical care, and treatment of veterans.

This committee was established January 2, 1947, as a part of the Legislative Reorganization Act of 1946 (60 Stat. 812), and was vested with jurisdiction formerly exercised by the Committees on World War Veterans' Legislation (VII, 2077); Invalid Pensions (IV, 4258); and Pensions (IV, 4260). Jurisdiction over veterans' cemeteries administered by the Department of Defense was transferred from the Committee on Interior and Insular Affairs (now Resources) in the 90th Congress (H. Res. 241, Oct. 20, 1967, p. 29560). Vocational rehabilitation, except that pertaining to veterans, is under the jurisdiction of the Committee on Education and the Workforce. The Committee has jurisdiction over bills to amend the Soldiers and Sailors Civil Relief Act of 1940 to permit certain declarations of fact in lieu of affidavits

(Feb. 4, 1959, p. 1812), and over bills to amend the Servicemen's and Veterans' Survivor Benefits Act relating to service-connected deaths of retired members of the uniformed services (May 18, 1959, p. 8273). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). Technical changes to subparagraphs (6) and (7) were effected in the 109th Congress (sec. 2(l), H. Res. 5, Jan. 4, 2005, p. ——).

(t) Committee on Ways and Means.

§ 741. Ways and Means.

(1) Customs revenue, collection districts, and ports of entry and delivery.

(2) Reciprocal trade agreements.

(3) Revenue measures generally.

(4) Revenue measures relating to insular possessions.

(5) Bonded debt of the United States, subject to the last sentence of clause 4(f).

(6) Deposit of public monies.

(7) Transportation of dutiable goods.

(8) Tax exempt foundations and charitable trusts.

(9) National social security (except health care and facilities programs that are supported from general revenues as opposed to payroll deductions and except work incentive programs).

A select Committee on Ways and Means dates from 1789. It was made a standing committee in 1802. Originally it considered both revenue and appropriations, but in 1865 the appropriation bills were given to the Committee on Appropriations and certain other bills to the Committee on Banking and Currency (now Financial Services) (IV, 4020). Its jurisdiction was also amended on April 5, 1911 (p. 58), and further defined in the Legislative Reorganization Act of 1946 (60 Stat. 812), which transferred the subject of recesses and final adjournments from this committee to the Committee on Rules.

By the Committee Reform Amendments of 1974, effective January 3, 1975, the committee gained legislative jurisdiction over tax exempt foundations and charitable trusts (subpara. (8)), formerly within the jurisdiction

of the Committee on Banking and Currency (now Financial Services) because of their impact on the economy, while it was released from: jurisdiction over health care and facilities programs supported from general revenues to the Committee on Energy and Commerce; jurisdiction over work incentive programs to the Committee on Education and Labor (now Education and the Workforce); and jurisdiction over renegotiation to the Committee on Banking, Finance and Urban Affairs (now Financial Services) (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). The Committee Reform Amendments also transferred jurisdiction over general revenue sharing from this committee to the Committee on Government Operations (now Government Reform); however, revenue sharing was stricken from the jurisdictional statement of the Committee on Government Reform in the 104th Congress (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464).

The Committee's jurisdiction over the bonded debt of the United States (subpara. (5)) was made subject to the last sentence of clause 4(f) (formerly clause 4(g)) of rule X in the 96th Congress by Public Law 96–78 (93 Stat. 589). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). In the 109th Congress the House established the Committee on Homeland Security (sec. 2(a), H. Res. 5, Jan. 4, 2005, p. ——). The new committee was given jurisdiction over certain functions of the Department of Homeland Security that resulted in a conforming change to this paragraph. For debate (and material submitted during debate) that may edify the reader on the jurisdictional issues surrounding the new committee, see January 4, 2005, p. ——.

The revenue jurisdiction of the committee extends to such subjects as transportation of dutiable goods, collection districts, ports of entry and delivery (IV, 4026), customs unions, reciprocity treaties (IV, 4021), revenue relations of the United States with Puerto Rico (IV, 4025), the revenue bills relating to agricultural products generally, excepting oleomargarine (IV, 4022), and tax on cotton and grain futures. The Committee formerly had jurisdiction as to seal herds and other revenue-producing animals in Alaska but this jurisdiction was changed in the 68th Congress to the former Committee on Merchant Marine and Fisheries (VII, 1725, 1851). As exemplified by sequential referrals in the 96th Congress, the committee has jurisdiction of reported bills creating major oilspill and hazardous waste trust funds in the Treasury, funded by assessments on all quantities of oil, petrochemical feedstocks, and other hazardous substances sold for sale, where the scope and size of the funds and the method of assessment (similar to an excise tax) represented the collection of general revenue to fund particular Federal activities, a type of financing mechanism over which the Ways and Means Committee has traditionally exercised jurisdiction (May 20, 1980, p. 11862).

The Committee has jurisdiction over subjects relating to the Treasury of the United States and the deposit of the public moneys (IV, 4028), but it failed to make good a claim to the subjects of "national finances" and

"preservation of the Government credit" (IV, 4023). The Committee has jurisdiction over bills providing tax incentives for persons investing in Indian property (Feb. 1, 1964, p. 1582), providing unemployment compensation to individuals with military or Federal service (Apr. 28, 1976, p. 11590), providing extended and increased unemployment compensation (Apr. 16, 1975, p. 10346), and over private bills waiving provisions of the Tariff Act to require reliquidation of certain imported materials as duty-free (July 13, 1982, p. 16014). The Committee on Transportation and Infrastructure, and not this committee, has jurisdiction over a bill to designate a customs administrative building (Dec. 12, 1995, p. 36165). The Committee on the Budget, and not this committee, has jurisdiction over a bill establishing a rule of sequestration under the Balanced Budget and Emergency Deficit Control Act (Dec. 15, 2000, p. 27085). The Committee on the Budget has primary jurisdiction, and this committee has additional jurisdiction, over a bill taking Social Security trust funds off budget (Dec. 15, 2000, p. 27085).

The Committee has exercised jurisdiction, with the Committee on Energy and Commerce, over executive communications reporting on inpatient hospital services under title XVIII (medicare) and under title XIX (medicaid) of the Social Security Act (Dec. 21, 1982, p. 33261); with the Committee on Public Works and Transportation (now Transportation and Infrastructure) over executive communications proposing draft legislation reauthorizing the Surface Transportation Act but also containing a revenue title raising taxes to fund surface transportation programs (Mar. 20, 1986, p. 5804); with the former Committee on Merchant Marine and Fisheries (succeeded by the Committee on Resources) over a bill amending the Fishermen's Protective Act to authorize the President to prohibit the importation of any product from a country violating an international fishery conservation program (Mar. 21, 1989, p. 5077); and with three other committees over a bill imposing certain international economic sanctions including tariffs (May 27, 1992, p. 12658).

The Committee in the earlier practice reported resolutions distributing the President's annual message (IV, 4030), but since the first session of the 64th Congress this practice has been discontinued (VIII, 3350).

General oversight responsibilities

§ 742. General oversight.

2. (a) The various standing committees shall have general oversight responsibilities as provided in paragraph (b) in order to assist the House in—

(1) its analysis, appraisal, and evaluation of—

(A) the application, administration, execution, and effectiveness of Federal laws; and

(B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and

(2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.

(b)(1) In order to determine whether laws and programs addressing subjects within the jurisdiction of a committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (other than the Committee on Appropriations) shall review and study on a continuing basis—

(A) the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;

(B) the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;

(C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto); and

(D) future research and forecasting on subjects within its jurisdiction.

(2) Each committee to which subparagraph (1) applies having more than 20 members shall establish an oversight subcommittee, or require its subcommittees to conduct oversight in their respective jurisdictions, to assist in carrying out its responsibilities under this clause. The establishment of an oversight subcommittee does not limit the responsibility of a subcommittee with legislative jurisdiction in carrying out its oversight responsibilities.

§ 743. Oversight subcommittees.

(c) Each standing committee shall review and study on a continuing basis the impact or probable impact of tax policies affecting subjects within its jurisdiction as described in clauses 1 and 3.

(d)(1) Not later than February 15 of the first session of a Congress, each standing committee shall, in a meeting that is open to the public and with a quorum present, adopt its oversight plan for that Congress. Such plan shall be submitted simultaneously to the Committee on Government Reform and to the Committee on House Administration. In developing its plan each committee shall, to the maximum extent feasible—

(A) consult with other committees that have jurisdiction over the same or related laws, programs, or agencies within its jurisdiction with the objective of ensuring maximum coordination and cooperation among committees when conducting reviews of such laws, programs, or agencies and include in its plan an expla-

nation of steps that have been or will be taken to ensure such coordination and cooperation;

(B) review specific problems with Federal rules, regulations, statutes, and court decisions that are ambiguous, arbitrary, or nonsensical, or that impose severe financial burdens on individuals;

(C) give priority consideration to including in its plan the review of those laws, programs, or agencies operating under permanent budget authority or permanent statutory authority;

(D) have a view toward ensuring that all significant laws, programs, or agencies within its jurisdiction are subject to review every 10 years; and

(E) have a view toward insuring against duplication of Federal programs.

(2) Not later than March 31 in the first session of a Congress, after consultation with the Speaker, the Majority Leader, and the Minority Leader, the Committee on Government Reform shall report to the House the oversight plans submitted by committees together with any recommendations that it, or the House leadership group described above, may make to ensure the most effective coordination of oversight plans and otherwise to achieve the objectives of this clause.

(e) The Speaker, with the approval of the House, may appoint special ad hoc oversight committees for the purpose of reviewing specific matters within the jurisdiction of two or more standing committees.

Clause 2(a), and the first requirement of clause 2(b)(1) that each standing committee shall review the application, etc. of all laws within its jurisdiction, was originally contained in section 118(b) of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and was made part of the standing rules on January 22, 1971 (H. Res. 5, p. 144). Effective January 3, 1975, general oversight responsibilities set forth in the remainder of the clause were incorporated into the rule (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). On January 14, 1975, the size of those standing committees required by clause 2(b)(2) (formerly clause 2(b)(1)) to establish an oversight subcommittee or to require its subcommittees to conduct oversight was increased from 15 to more than 20 (H. Res. 5, 94th Cong., p. 20). In the 100th Congress the requirement that representatives from the Committee on Government Operations (now Government Reform) meet with other committees at the beginning of each Congress to discuss oversight plans and that that Committee report to the House its oversight coordination recommendations within 60 days after convening of the first session was deleted (H. Res. 5, Jan. 6, 1987, p. 6). The 104th Congress added the requirement that each standing committee adopt by February 15 of the first session of a Congress its oversight plans for that Congress, such plans to be submitted to the Committees on Government Reform and Oversight (now Government Reform) and House Oversight (now House Administration). The Committee on Government Reform is required to report such plans to the House by March 31, with recommendations to ensure coordination among committees. The 104th Congress also added paragraph (e) to authorize the Speaker to appoint special ad hoc oversight committees to review matters within the jurisdiction of more than one standing committee (sec. 203(a), H. Res. 6, Jan. 4, 1995, p. 467). The 106th Congress deleted a provision added in the 104th Congress making consideration of resolutions funding each committee contingent on submission of its oversight plans to the committees specified; deleted the exception for the Budget Committee from the general oversight responsibilities listed in clause 2(b); effected clerical corrections to conform references to a renamed committee; and effected clerical and stylistic changes when the House recodified its rules (H. Res. 5, Jan. 6, 1999, p. 47). Clause 2(d)(1)(B) was added in the 107th Congress (sec. 2(e), H. Res. 5, Jan. 3, 2001, p. 25). Clause 2(d)(1)(E) was added in the 109th Congress (sec. 2(b), H. Res. 5, Jan. 4, 2005, p. ——).

Special oversight functions

§ 744. Special oversight.

3. (a) The Committee on Appropriations shall conduct such studies and examinations of the organization and operation of executive departments and other executive agencies (including an agency the majority

of the stock of which is owned by the United States) as it considers necessary to assist it in the determination of matters within its jurisdiction.

(b) The Committee on the Budget shall study on a continuing basis the effect on budget outlays of relevant existing and proposed legislation and report the results of such studies to the House on a recurring basis.

(c) The Committee on Energy and Commerce shall review and study on a continuing basis laws, programs, and Government activities relating to nuclear and other energy and nonmilitary nuclear energy research and development including the disposal of nuclear waste.

(d) The Committee on Education and the Workforce shall review, study, and coordinate on a continuing basis laws, programs, and Government activities relating to domestic educational programs and institutions and programs of student assistance within the jurisdiction of other committees.

(e) The Committee on Government Reform shall review and study on a continuing basis the operation of Government activities at all levels with a view to determining their economy and efficiency.

(f) The Committee on Homeland Security shall review and study on a continuing basis all Government activities relating to homeland security, including the interaction of all departments and agencies with the Department of Homeland Security.

(g) The Committee on International Relations shall review and study on a continuing basis laws, programs, and Government activities relating to customs administration, intelligence activities relating to foreign policy, international financial and monetary organizations, and international fishing agreements.

(h) The Committee on Armed Services shall review and study on a continuing basis laws, programs, and Government activities relating to international arms control and disarmament and the education of military dependents in schools.

(i) The Committee on Resources shall review and study on a continuing basis laws, programs, and Government activities relating to Native Americans.

(j) The Committee on Rules shall review and study on a continuing basis the congressional budget process, and the committee shall report its findings and recommendations to the House from time to time.

(k) The Committee on Science shall review and study on a continuing basis laws, programs, and Government activities relating to nonmilitary research and development.

(l) The Committee on Small Business shall study and investigate on a continuing basis the problems of all types of small business.

(m) The Permanent Select Committee on Intelligence shall review and study on a continuing basis laws, programs, and activities of the intelligence community and shall review and study

on an exclusive basis the sources and methods of entities described in clause 11(b)(1)(A).

The oversight authority conferred on the Committee on Appropriations in paragraph (a) (formerly clause 2(b)(3)) was first given that committee on February 11, 1943 (p. 884), continued by resolution of January 9, 1945 (p. 135), and incorporated into permanent law in section 202(b) of the Legislative Reorganization Act of 1946, and made a part of the standing rules on January 3, 1953 (pp. 17, 24). The special oversight responsibilities of the Committee on the Budget set forth in paragraph (b) were made part of the rules effective July 12, 1974 by section 101(c) of the Congressional Budget Act of 1974 (88 Stat. 300). Paragraph (c) (formerly paragraph (h)) was added on January 4, 1977, upon the abolition of the legislative jurisdiction in the House of the Joint Committee on Atomic Energy (H. Res. 5, 95th Cong., pp. 53–70). The special oversight responsibilities of the Committee on Energy and Commerce over nuclear energy to all energy programs became effective January 3, 1981 (H. Res. 549, Mar. 25, 1980, pp. 6405–10). The oversight authority conferred on the Committee on Government Operations (now Government Reform) in paragraph (e) (formerly clause 2(b)(2)) was first made effective as part of the Legislative Reorganization Act of 1946 (60 Stat. 812). In the 104th Congress conforming amendments to the special oversight functions of the Committees on Resources and Energy and Commerce were adopted to reflect the transfer of jurisdiction over nonmilitary nuclear energy from the Committee on Resources to the Committee on Commerce Energy and Commerce (H. Res. 254, Nov. 30, 1995, p. 35077). Paragraph (j) was added by section 226 of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177). The remainder of the clause became effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). This clause has been amended several times to conform references to renamed committees (H. Res. 89, Feb. 5, 1979, p. 1848; H. Res. 549, Mar. 25, 1980, pp. 6405–10; H. Res. 5, Jan. 5, 1993, p. 49; sec. 202(b), H. Res. 6, Jan. 4, 1995, p. 464; H. Res. 5, Jan. 7, 1997, p. 121; H. Res. 5, Jan. 6, 1999, p. 47). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress, including the transfer to this clause of oversight functions of the Committees on Government Reform and Appropriations found in clause 2 (H. Res. 5, Jan. 6, 1999, p. 47). The oversight authority of the Permanent Select Committee on Intelligence in paragraph (m) was added in the 107th Congress (sec. 2(f), H. Res. 5, Jan. 3, 2001, p. 25). The Committee on Homeland Security was established in the 109th Congress and given the oversight authority set forth in paragraph (f) (sec. 2(a), H. Res. 5, Jan. 4, 2005, p. ——).

Section 9 of the House Administrative Reform Resolution of 1992 (H. Res. 423, Apr. 9, 1992, p. 9040) added a paragraph in this clause creating a bipartisan Subcommittee on Administrative Oversight of the Committee on House Administration, to be chaired by the chairman of the Committee

on House Administration and to be composed of members of the Committee on House Administration, one-half from the majority party and one-half from the minority party. The paragraph was rewritten in the 103d Congress to provide that the Speaker, the Majority and Minority Leaders, and the chairman and ranking minority member of the Committee on House Administration be informed of tie votes in that subcommittee (H. Res. 5, Jan. 5, 1993, p. 49), but the paragraph was deleted entirely in the 104th Congress (sec. 201(d), H. Res. 6, Jan. 4, 1995, p. 463).

Additional functions of committees

4. (a)(1)(A) The Committee on Appropriations shall, within 30 days after the transmittal of the Budget to Congress each year, hold hearings on the Budget as a whole with particular reference to—

§ 745. Committee on Appropriations; budget hearings.

(i) the basic recommendations and budgetary policies of the President in the presentation of the Budget; and

(ii) the fiscal, financial, and economic assumptions used as bases in arriving at total estimated expenditures and receipts.

(B) In holding hearings under subdivision (A), the committee shall receive testimony from the Secretary of the Treasury, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and such other persons as the committee may desire.

(C) A hearing under subdivision (A), or any part thereof, shall be held in open session, except when the committee, in open session and with a quorum present, determines by record vote that the testimony to be taken at that hearing on that day may be related to a matter of national security. The committee may by the same procedure close one sub-

§ 746. Procedure for budget hearings.

sequent day of hearing. A transcript of all such hearings shall be printed and a copy thereof furnished to each Member, Delegate, and the Resident Commissioner.

(D) A hearing under subdivision (A), or any part thereof, may be held before a joint meeting of the committee and the Committee on Appropriations of the Senate in accordance with such procedures as the two committees jointly may determine.

This part of clause 4 was originally contained in section 242(c)(1) of the Legislative Reorganization Act of 1970 and was made part of the standing rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). Paragraph (a)(1)(C), requiring open hearings, was first adopted in the 93d Congress (H. Res. 259, Mar. 7, 1973, pp. 6713–20) and was amended in the 94th Congress to limit the effect of a vote to close a hearing to that day and one subsequent day (H. Res. 5, Jan. 14, 1975, p. 20). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

§ 747. Budget Act; 15-day referral to Appropriations.

(2) Pursuant to section 401(b)(2) of the Congressional Budget Act of 1974, when a committee reports a bill or joint resolution that provides new entitlement authority as defined in section 3(9) of that Act, and enactment of the bill or joint resolution, as reported, would cause a breach of the committee's pertinent allocation of new budget authority under section 302(a) of that Act, the bill or joint resolution may be referred to the Committee on Appropriations with instructions to report it with recommendations (which may include an amendment limiting the total amount of new entitlement authority provided in the bill or joint resolution). If the Committee on Appropriations fails to report a bill or

joint resolution so referred within 15 calendar days (not counting any day on which the House is not in session), the committee automatically shall be discharged from consideration of the bill or joint resolution, and the bill or joint resolution shall be placed on the appropriate calendar.

(3) In addition, the Committee on Appropriations shall study on a continuing basis those provisions of law that (on the first day of the first fiscal year for which the congressional budget process is effective) provide spending authority or permanent budget authority and shall report to the House from time to time its recommendations for terminating or modifying such provisions.

(4) In the manner provided by section 302 of the Congressional Budget Act of 1974, the Committee on Appropriations (after consulting with the Committee on Appropriations of the Senate) shall subdivide any allocations made to it in the joint explanatory statement accompanying the conference report on such concurrent resolution, and promptly report the subdivisions to the House as soon as practicable after a concurrent resolution on the budget for a fiscal year is agreed to.

Subparagraph (2) first became effective on July 12, 1974, by inclusion in section 401(b)(2) of the Congressional Budget Act of 1974 (88 Stat. 317), was incorporated into the rules effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), was amended in the 95th Congress to correct an error in cross-reference (H. Res. 5, Jan. 4, 1977, pp. 53–70), and was again amended in the 105th Congress to reflect the repeal of the collective definition of "new spending authority" and the revision of various remaining parts (Budget Enforcement Act of 1997 (sec. 10116, P.L. 105–33). Subparagraph (3) was also contained in the Congressional Budget

Act of 1974 in section 402(f), and was likewise incorporated into the rules effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). The requirements of subparagraph (4) (formerly paragraph (h)) was originally contained in section 302(b) of the Congressional Budget Act of 1974 (P.L. 93–344, July 12, 1974) and was incorporated into this rule effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). It was amended by the Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) to conform to the enactment of title VI of the Budget Act. It was again amended by the Budget Enforcement Act of 1997 (sec. 10118, P.L. 105–33) to conform to the subsequent repeal of title VI. Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress, including the transfer of former paragraph (h) to this paragraph as new subparagraph (4) (H. Res. 5, Jan. 6, 1999, p. 47).

§ 748. Budget.

(b) The Committee on the Budget shall—

(1) review on a continuing basis the conduct by the Congressional Budget Office of its functions and duties;

(2) hold hearings and receive testimony from Members, Senators, Delegates, the Resident Commissioner, and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as it considers desirable in developing concurrent resolutions on the budget for each fiscal year;

(3) make all reports required of it by the Congressional Budget Act of 1974;

(4) study on a continuing basis those provisions of law that exempt Federal agencies or any of their activities or outlays from inclusion in the Budget of the United States Government, and report to the House from time to time its recommendations for terminating or modifying such provisions;

(5) study on a continuing basis proposals designed to improve and facilitate the congres-

sional budget process, and report to the House from time to time the results of such studies, together with its recommendations; and

(6) request and evaluate continuing studies of tax expenditures, devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and report the results of such studies to the House on a recurring basis.

Paragraph (b)(1) became a part of the rules on July 12, 1974 by enactment of section 101(c) of the Congressional Budget Act of 1974 (88 Stat. 300). Subparagraph (2), contained in section 301(d) of that Act, subparagraph (3), subparagraph (4), contained in section 606 of that Act, and subparagraph (5), contained in section 703 of that Act, all were made part of the rules effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). Paragraph (b)(2) was amended in the 99th Congress by section 232 of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177) to remove reference to the first concurrent resolution on the budget. Before the House recodified its rules in the 106th Congress, subparagraph (6) was found in former clause 1(d)(5)(C) of rule X (H. Res. 5, Jan. 6, 1999, p. 47).

§ 749. Government Reform.

(c)(1) The Committee on Government Reform shall—

(A) receive and examine reports of the Comptroller General of the United States and submit to the House such recommendations as it considers necessary or desirable in connection with the subject matter of the reports;

(B) evaluate the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

(C) study intergovernmental relationships between the United States and the States and municipalities and between the United States

and international organizations of which the United States is a member.

(2) In addition to its duties under subparagraph (1), the Committee on Government Reform may at any time conduct investigations of any matter without regard to clause 1, 2, 3, or this clause conferring jurisdiction over the matter to another standing committee. The findings and recommendations of the committee in such an investigation shall be made available to any other standing committee having jurisdiction over the matter involved.

Paragraph (c)(1) became effective January 2, 1947, as part of the Legislative Reorganization Act of 1946 (60 Stat. 812). Paragraph (c)(2) was made a function of the Committee on Government Operations (now Government Reform) effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). Paragraph (c)(2) was amended in the 107th Congress to delete the requirement that committees include oversight findings and recommendations by the Committee on Government Reform in their reports as was required under the former clause 3(c)(4) of rule XIII (sec. 2(l), H. Res. 5, Jan. 3, 2001, p. 24). The Committee was renamed in the 104th and 106th Congresses (sec. 202(b), H. Res. 6, Jan. 4, 1995, p. 464; H. Res. 5, Jan. 6, 1999, p. 47). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). Under section 2954 of title 5, United States Code, an executive agency, if so requested by this committee or any seven members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee.

§ 750. House Administration.

(d)(1) The Committee on House Administration shall—

§ 752. Direction of officers.

(A) provide policy direction for the Inspector General and oversight of the Clerk, Sergeant-at-Arms, Chief Administrative Officer, and Inspector General;

§ 753. Acceptance of gifts.

(B) have the function of accepting on behalf of the House a gift, except as otherwise provided by law, if the gift does not involve a duty, burden, or condition, or is not made dependent on some future performance by the House; and

(C) promulgate regulations to carry out subdivision (B).

§ 754. Approval of certain settlements.

(2) An employing office of the House may enter into a settlement of a complaint under the Congressional Accountability Act of 1995 that provides for the payment of funds only after receiving the joint approval of the chairman and ranking minority member of the Committee on House Administration concerning the amount of such payment.

The Committee's duty to arrange for memorial services of Members was eliminated from the rules effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). Former paragraph (d)(3) required the committee to provide a committee scheduling service, which was provided through House Information Resources and was made mandatory on all committees and subcommittees in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113). The requirement was stricken altogether when two provisions were added by section 10 of the House Administrative Reform Resolution of 1992 (H. Res. 423, 102d Cong., Apr. 9, 1992, p. 9040) to ensure the orderly transfer of functions and entities from elected officers to the Director of Non-legislative and Financial Services and to provide for policy direction and oversight of certain administrative officials and elected officers. However, the 107th Congress amended clause 4(d)(1) of rule X to remove the requirement that the committee provide policy direction to such officials and officers except the Inspector General (sec. 2(g), H. Res. 5, Jan. 3, 2001, p. 24). In the 104th Congress the rule was amended (1) to reflect the change in the name of the Committee on House Administration to the Committee on House Oversight and (2) to reflect the abolishment of the Director of Non-legislative and Financial Services (sec. 201, H. Res. 6, Jan. 4, 1995, p. 463). Later in the 104th Congress the provision for the acceptance of gifts was added as paragraph (d)(3) (H. Res. 250, Nov. 16, 1995, p. 33434). In the 105th Congress paragraph (d) was redesignated as (d)(1), its former subparagraphs (1) through (3) were redesignated as (1)(A) through (1)(C),

and a new paragraph (d)(2) was added to require approval by the committee for monetary settlements of certain employment claims (H. Res. 5, Jan. 7, 1997, p. 121). The 104th Congress also prohibited the establishment or continuation of any legislative service organization (as that term had been understood in the 103d Congress) and directed the Committee on House Oversight (now House Administration) to take such steps as were necessary to ensure an orderly termination and accounting for funds of any legislative service organization in existence on January 3, 1995 (sec. 222, H. Res. 6, Jan. 4, 1995, p. 469). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). The 107th Congress transferred the committee's responsibilities with respect to enrolled bills (formerly paragraph (d)(1)(A)) to the Clerk (clause 2(d)(2) of rule II) (sec. 2(b), H. Res. 5, Jan. 3, 2001, p. 25).

§ 755. Annual appropriations.

(e)(1) Each standing committee shall, in its consideration of all public bills and public joint resolutions within its jurisdiction, ensure that appropriations for continuing programs and activities of the Federal Government and the government of the District of Columbia will be made annually to the maximum extent feasible and consistent with the nature, requirement, and objective of the programs and activities involved. In this subparagraph programs and activities of the Federal Government and the government of the District of Columbia includes programs and activities of any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or of the government of the District of Columbia.

(2) Each standing committee shall review from time to time each continuing program within its jurisdiction for which appropriations are not made annually to ascertain whether the program should be modified to provide for annual appropriations.

The provisions of this paragraph derive from section 253(c) of the Legislative Reorganization Act of 1970 (84 Stat. 1140), and were made part of the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

Budget Act responsibilities

§ 756. Concurrent resolution on Budget.

(f)(1) Each standing committee shall submit to the Committee on the Budget not later than six weeks after the President submits his budget, or at such time as the Committee on the Budget may request—

(A) its views and estimates with respect to all matters to be set forth in the concurrent resolution on the budget for the ensuing fiscal year that are within its jurisdiction or functions; and

(B) an estimate of the total amounts of new budget authority, and budget outlays resulting therefrom, to be provided or authorized in all bills and resolutions within its jurisdiction that it intends to be effective during that fiscal year.

(2) The views and estimates submitted by the Committee on Ways and Means under subparagraph (1) shall include a specific recommendation, made after holding public hearings, as to the appropriate level of the public debt that should be set forth in the concurrent resolution on the budget.

The requirements of paragraph (f)(1) were originally contained in section 301(c) of the Congressional Budget Act of 1974 (P.L. 93–344, July 12, 1974), and was incorporated into this rule effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). The requirement of paragraph (f)(2) that the Committee on Ways and Means include a specific recommendation as to the appropriate level of the public debt in its views and estimates

submitted to the Committee on the Budget was added in the 96th Congress by Public Law 96–78 (93 Stat. 589) and was originally intended to apply to concurrent resolutions on the budget for fiscal years beginning on or after October 1, 1980. However, in the 96th Congress the provisions of that public law amending the Rules of the House were made applicable to the third concurrent resolution on the budget for fiscal year 1980 as well as the first concurrent resolution on the budget for fiscal 1981 (H. Res. 642, Apr. 23, 1980, pp. 8789–90). The deadline for submitting views and estimates to the Budget Committee has changed several times (Balanced Budget and Emergency Deficit Control Act of 1985, sec. 232(c), P.L. 99–177; Budget Enforcement Act of 1997, sec. 10104, P.L. 105–33; H. Res. 5, 106th Cong., Jan. 6, 1999, p. 47). A former paragraph directing standing committees to submit reconciliation recommendations to the Budget Committee was deleted in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47), but committees are still required to submit such recommendations under section 310 of the Congressional Budget Act of 1974. Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). Paragraph (f)(2) was amended in the 107th Congress to reflect the repeal of former rule XXIII ("Statutory Limit on Public Debt") (sec. 2(s), H. Res. 5, Jan. 3, 2001, p. 24), which was reinstated in the 108th Congress as rule XXVII (sec. 2(t), H. Res. 5, Jan. 7, 2003, p. ——).

Election and membership of standing committees

§ 757. Electing committees.

5. (a)(1) The standing committees specified in clause 1 shall be elected by the House within seven calendar days after the commencement of each Congress, from nominations submitted by the respective party caucus or conference. A resolution proposing to change the composition of a standing committee shall be privileged if offered by direction of the party caucus or conference concerned.

The old rule entrusting the appointment of committees to the Speaker was adopted in 1789 and amended in 1790 and in 1860 (IV, 4448–4476). Committees are now elected on resolution offered from the floor (VIII, 2171) and it is in order to move the previous question on each resolution (VIII, 2174). The resolution is not divisible (clause 5 of rule XVI), and is privileged (VIII, 2179) if offered by direction of the respective party caucus (a requirement that was made part of the rules effective January 3, 1975, by the Committee Reform Amendments of 1974 (H. Res. 988, 93d Cong., Oct. 8,

1974, p. 34470)). That same resolution also eliminated the designations in the rules of the numbers of Members comprising the standing committees, thereby permitting the House to establish committee size by the numbers of Members elected to each committee pursuant to this paragraph. The role of the party caucuses in presenting privileged resolutions to the House electing Members to committees is discussed in detail in Deschler, ch. 17, § 9. In the 99th Congress the requirement for early election of standing committees within the first seven calendar days and the conferral of privileged status on resolutions from the party caucuses to change the composition of standing committees were added by section 227 of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6 of rule X (H. Res. 5, Jan. 6, 1999, p. 47).

§ 758. Budget, composition of.

(2)(A) The Committee on the Budget shall be composed of members as follows:

(i) Members, Delegates, or the Resident Commissioner who are members of other standing committees, including five from the Committee on Appropriations, five from the Committee on Ways and Means, and one from the Committee on Rules;

(ii) one Member designated by the elected leadership of the majority party; and

(iii) one Member designated by the elected leadership of the minority party.

(B) Except as permitted by subdivision (C), a member of the Committee on the Budget other than one described in subdivision (A)(ii) or (A)(iii) may not serve on the committee during more than four Congresses in a period of six successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(C) In the case of a Member, Delegate, or Resident Commissioner elected to serve as the chairman or the ranking minority member of the

committee, tenure on the committee shall be limited only by paragraph (c)(2) of this clause.

This paragraph (formerly clause 1(d) of rule X) was amended in the 96th Congress to relax the limitation on Members' service on the Budget Committee to three Congresses (from two) in any period of five successive Congresses, to exempt representatives from the party leaderships from the limitation, and to permit an incumbent chairman who had served on the committee for three Congresses and as chairman for not more than one Congress to be eligible for reelection as chairman for one additional Congress (H. Res. 5, Jan. 15, 1979, p. 8). It was again amended in the 100th Congress to eliminate as obsolete the words "beginning after 1974" following "any period of five successive Congresses" as a measure of permissible terms of service on the committee (H. Res. 5, Jan. 6, 1987, p. 6). It was further amended in the 101st Congress to permit, in that Congress only, a minority Member who had served on the committee for three terms to run within his party's caucus for the position of ranking minority member and thus be able to serve on the committee for one additional Congress, and to permit a Member elected as ranking minority member during his third term on the committee to serve one additional term on the committee should he be reelected as the ranking minority member (H. Res. 5, Jan. 3, 1989, p. 72). It was again amended in the 102d Congress to extend the waiver of the tenure restriction for the ranking minority member of the committee (H. Res. 5, Jan. 3, 1991, p. 39), but in the 103d Congress that provision was stricken as obsolete (H. Res. 5, Jan. 5, 1993, p. 49). In the 104th Congress the limitation on a Member's service on the committee was relaxed to four Congresses (from three) in any period of six successive Congresses, with the exception that a Member who has served as chairman or as ranking minority member during a fourth such Congress may serve in either capacity during a fifth, so long as he would not thereby exceed two consecutive terms as chairman or as ranking minority member (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 464). The tenure limitation of clause 5(a)(2)(B) was suspended during the 106th Congress (sec. 2(b), H. Res. 5, Jan. 6, 1999, p. 47). The special tenure limitation for the chairman and ranking minority member was replaced in the 108th Congress with a provision subjecting the chairman only to the overall tenure limitation that applies to all standing committee chairmen (sec. 2(e–1), H. Res. 5, Jan. 7, 2003, p. ——). In the 109th Congress subdivisions (A)(ii) and (A)(iii) were amended to address a member designated by the elected leadership as opposed to a member of the elected leadership of each party, and a conforming change was made to subdivision (B) (sec. 2(c), H. Res. 5, Jan. 4, 2005, p. ——).

In the 94th Congress the membership of the committee was increased to 25 (from 23), with 13 (rather than 11) members elected from committees other than Appropriations and Ways and Means (H. Res. 5, Jan. 14, 1975, p. 20). The membership was increased again in the 97th Congress to 30,

with 28 from other standing committees and two from the respective leaderships (H. Res. 5, Jan. 5, 1981, pp. 98–113), and again in the 98th Congress to 31 (unanimous-consent order, Feb. 7, 1983, p. 1791). The 99th Congress amended this paragraph to remove any numerical limitation on the membership of the committee (H. Res. 7, Jan. 3, 1985, p. 393). In the 108th Congress the composition of the committee was changed to require inclusion of one member from the Committee on Rules (sec. 2(e), H. Res. 5, Jan. 7, 2003, p. ——).

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1(d) of rule X (H. Res. 5, Jan. 6, 1999, p. 47).

§ 759. Committee on Standards of Official Conduct.

(3)(A) The Committee on Standards of Official Conduct shall be composed of 10 members, five from the majority party and five from the minority party.

(B) Except as permitted by subdivision (C), a member of the Committee on Standards of Official Conduct may not serve on the committee during more than three Congresses in a period of five successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(C) A member of the Committee on Standards of Official Conduct may serve on the committee during a fourth Congress in a period of five successive Congresses only as either the chairman or the ranking minority member of the committee.

(4)(A) At the beginning of a Congress, the Speaker or his designee and the Minority Leader or his designee each shall name 10 Members, Delegates, or the Resident Commissioner from his respective party who are not members of the Committee on Standards of Official Conduct to be available to serve on investigative sub-

committees of that committee during that Congress. The lists of Members, Delegates, or the Resident Commissioner so named shall be announced to the House.

(B) Whenever the chairman and the ranking minority member of the Committee on Standards of Official Conduct jointly determine that Members, Delegates, or the Resident Commissioner named under subdivision (A) should be assigned to serve on an investigative subcommittee of that committee, each of them shall select an equal number of such Members, Delegates, or Resident Commissioner from his respective party to serve on that subcommittee.

Before the 93d Congress, the rule that established the size of the Committee on Standards of Official Conduct at 12 members also required that six members be elected from the majority and six from the minority party. Effective in the 93d Congress, the ratio of the committee was codified in the first sentence of subparagraph (3)(A) (formerly clause 6(a)(2)) (H. Res. 988, Oct. 8, 1974, p. 34470). The Ethics Reform Act of 1989 added a sentence to limit service on the committee (P.L. 101–194, Nov. 30, 1989), which was amended in the 105th and 106th Congresses (sec. 2, H. Res. 168, Sept. 18, 1997, p. 19336; H. Res. 5, Jan. 6, 1999, p. 47). A requirement that two members from each party rotate off the committee was adopted in the 105th Congress (sec. 2, H. Res. 168, Sept. 18, 1997, p. 19336), but was deleted in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). Subparagraph (4) (formerly clause 6(a)(3)) was adopted in the 105th Congress (sec. 1, H. Res. 168, Sept. 18, 1997, p. 19335). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6(a) of rule X (H. Res. 5, Jan. 6, 1999, p. 47). The 106th Congress also formally reduced the size of the committee to 10 members, which was the de facto size of the committee in the 105th Congress even though the Ethics Reform Act of 1989 required each party caucus to nominate seven Members (sec. 803(b), P.L. 101–194, Nov. 30, 1989; H. Res. 5, Jan. 6, 1999, p. 47).

§ 760. Party membership as basis for election.

(b)(1) Membership on a standing committee during the course of a Congress shall be contingent on continuing membership in the party caucus or conference that nominated the Member, Delegate, or Resident Commissioner concerned for election to such committee. Should a Member, Delegate, or Resident Commissioner cease to be a member of a particular party caucus or conference, that Member, Delegate, or Resident Commissioner shall automatically cease to be a member of each standing committee to which he was elected on the basis of nomination by that caucus or conference. The chairman of the relevant party caucus or conference shall notify the Speaker whenever a Member, Delegate, or Resident Commissioner ceases to be a member of that caucus or conference. The Speaker shall notify the chairman of each affected committee that the election of such Member, Delegate, or Resident Commissioner to the committee is automatically vacated under this subparagraph.

(2)(A) Except as specified in subdivision (B), a Member, Delegate, or Resident Commissioner may not serve simultaneously as a member of more than two standing committees or more than four subcommittees of the standing committees.

(B)(i) Ex officio service by a chairman or ranking minority member of a committee on each of its subcommittees under a committee rule does not count against the limitation on subcommittee service.

(ii) Service on an investigative subcommittee of the Committee on Standards of Official Conduct under paragraph (a)(4) does not count against the limitation on subcommittee service.

(iii) Any other exception to the limitations in subdivision (A) may be approved by the House on the recommendation of the relevant party caucus or conference.

(C) In this subparagraph the term "subcommittee" includes a panel (other than a special oversight panel of the Committee on Armed Services), task force, special subcommittee, or other subunit of a standing committee that is established for a cumulative period longer than six months in a Congress.

The requirement that membership on standing committees be contingent on continuing membership in a party caucus or conference, along with the mechanism for the automatic vacating of a Member's election to committee should his party relationship cease, was added to the rules in the 98th Congress (H. Res. 5, Jan. 3, 1983, p. 34). The limitation on full committee and subcommittee assignments was added in the 104th Congress (sec. 204, H. Res. 6, Jan. 4, 1995, p. 467; see H. Res. 11, Jan. 4, 1995, p. 549). The exception for special service on an investigative subcommittee of the Committee on Standards of Official Conduct from the limitation on subcommittee service was added in the 105th Congress (sec. 1, H. Res. 168, Sept. 18, 1997, p. 19335). A technical correction was effected in the 106th Congress to conform references to a renamed committee (H. Res. 5, Jan. 6, 1999, p. 47). A technical correction to paragraph (b)(2)(B)(iii) was effected in the 109th Congress (sec. 2(l), H. Res. 5, Jan. 4, 2005, p. ——).

The Speaker lays before the House communications relative to the removal of a Member from committee pursuant to this clause (see, *e.g.*, Sept. 11, 1984, p. 24790; Feb. 22, 1989, p. 2500; May 10, 1995, p. 12396; July 19, 1999, p. 16586; Feb. 1, 2000, p. 401; Sept. 13, 2000, p. 17832). The Speaker also lays before the House a communication from a Member announcing a change in his party affiliation (Sept. 13, 2000, p. 17832). On one occasion there was a delay in laying the latter communication before the House, and the House by unanimous consent retroactively changed informational voting records from the date on the communication (Sept. 13, 2000, p. 17832). The earlier practice was, and the most recent practice

is, for the minority party to handle committee assignments for third-party Members (VIII, 2184–2185; H. Res. 11, Jan. 4, 1995, p. 549). During the 102d and 103d Congresses, the majority leadership took that responsibility by separate resolution for one Member who had joined neither major party caucus (see H. Res. 45, Jan. 24, 1991, p. 2171); and, beginning with the 104th Congress, when control of the House shifted, the minority leadership has retained responsibility for the committee assignments of that Member.

§ 761. Committee chairmen.

(c)(1) One of the members of each standing committee shall be elected by the House, on the nomination of the majority party caucus or conference, as chairman thereof. In the temporary absence of the chairman, the member next in rank (and so on, as often as the case shall happen) shall act as chairman. Rank shall be determined by the order members are named in resolutions electing them to the committee. In the case of a permanent vacancy in the elected chairmanship of a committee, the House shall elect another chairman.

(2) Except in the case of the Committee on Rules, a member of a standing committee may not serve as chairman of the same standing committee, or of the same subcommittee of a standing committee, during more than three consecutive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

The requirement that nominations for chairmen be submitted by the majority party caucus was made part of the rules effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). The sentence addressing temporary and permanent vacancies in chairmanships was first adopted on April 5, 1911 (VIII, 2201), and was continued in the Legislative Reorganization Act of 1946 (60 Stat. 812). The 104th Congress adopted a limitation on terms for committee and subcommittee chairmen (sec. 103(b), H. Res. 6, Jan. 4, 1995, p. 462), and the 109th Congress excepted the Committee on Rules from that limitation (sec. 2(c), H. Res. 5, Jan. 4, 2005, p. ——).

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6(c) of rule X (H. Res. 5, Jan. 6, 1999, p. 47).

In the 102d Congress a resolution included as a matter properly incidental to its election of the chairman of a standing committee a proviso that his powers and duties be exercised by the vice chairman until otherwise ordered by the House (H. Res. 43, Jan. 24, 1991, p. 2169; Feb. 6, 1991, p. 3198). In the 103d Congress a privileged resolution, offered at the direction of the Democratic Caucus, authorized a named acting chairman to exercise the powers and duties of a chairman of a standing committee until otherwise ordered by the House (H. Res. 396, Mar. 23, 1994, p. 6093).

§ 762. Requirement for subcommittees.

(d)(1) Except as permitted by subparagraph (2), a committee may have not more than five subcommittees.

(2) A committee that maintains a subcommittee on oversight may have not more than six subcommittees. The Committee on Appropriations may have not more than 13 subcommittees. The Committee on Government Reform may have not more than seven subcommittees.

This paragraph was adopted in the 104th Congress (sec. 101(b), H. Res. 6, Jan. 4, 1995, p. 462), replacing a requirement that all standing committees having more than 20 members (except the Committee on the Budget) establish at least four subcommittees (H. Res. 5, Jan. 14, 1975, p. 20). In the 106th Congress the paragraph was amended to delete the Committee on Transportation and Infrastructure from the list of exceptions to the general rule and to add a new exception for committees that maintain a subcommittee on oversight (H. Res. 5, Jan. 6, 1999, p. 47). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6(d) of rule X (H. Res. 5, Jan. 6, 1999, p. 47).

Notwithstanding clause 5(d), the Committee on Government Reform was permitted to have not more than eight subcommittees during the 106th and 107th Congresses (sec. 2(d), H. Res. 5, Jan. 6, 1999, p. 47; sec. 3(c), H. Res. 5, Jan. 3, 2001, p. 26); the Committee on International Relations was permitted to have not more than six during the 107th and 108th Congresses and not more than seven during the 109th Congress (sec. 3(c), H. Res. 5, Jan. 3, 2001, p. 26; sec. 3(b), H. Res. 5, Jan. 7, 2003, p. ——; sec. 3(b), H. Res. 5, Jan. 4, 2005, p. ——); Transportation and Infrastructure was permitted to have not more than six during the 107th, 108th, and 109th Congresses (sec. 3(c), H. Res. 5, Jan. 3, 2001, p. 26; sec. 3(b), H. Res. 5, Jan. 7, 2003, p. ——; sec. 3(b), H. Res. 5, Jan. 4, 2005, p. ——);

and the Committee on Armed Services was permitted to have not more than six during the 108th and 109th Congresses (sec. 3(b), H. Res. 5, Jan. 7, 2003, p. ——; sec. 3(b), H. Res. 5, Jan. 4, 2005, p. ——). In the 108th Congress the Committee on Appropriations reorganized its subcommittees to reflect the creation of the new Department on Homeland Security (P.L 107–296) by creating a new subcommittee on Homeland Security and combining the subcommittees on Transportation and Treasury, Postal Service and General Government. In the 109th Congress the Committee on Appropriations again reorganized its subcommittees, reducing the number of subcommittees to 10. In each case, the committee's reorganization was in compliance with this clause.

(e) The House shall fill a vacancy on a standing committee by election on the nomination of the respective party caucus or conference.

This paragraph was first adopted in the 62d Congress (VIII, 2178). At the beginning of the 80th Congress it was amended to prevent a Member from serving on more than one standing committee, except that Members elected to serve on the Committees on District of Columbia or Un-American Activities (renamed the Committee on Internal Security and jurisdiction redefined on Feb. 19, 1969, p. 3723) could be elected to serve on not more than two standing committees, and that Members of the majority party, serving on the Committee on Expenditures in the Executive Departments (changed to Committee on Government Operations July 3, 1952, p. 9217) or House Administration could be elected to serve on not more than two standing committees. This limitation was continued through the 80th, 81st, and part of the 82d Congresses until July 3, 1952 (p. 9217) when it was modified so that Members elected to serve on the Committees on the District of Columbia, Government Operations, Un-American Activities, or House Administration could be elected to serve on not more than two standing committees. It was restored to its original form by amendment on January 13, 1953 (p. 368) so that there was no limitation in House rules on the number of committees to which a Member may be elected until the 104th Congress added paragraph (b)(2) (see § 760, *supra*). Party caucuses or conferences have also placed restrictions on committee assignments. The role of the respective party caucus or conference in making nominations to fill vacancies in standing committees was made part of the rule in the 98th Congress (H. Res. 5, Jan. 3, 1983, p. 34). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6(e) of rule X (H. Res. 5, Jan. 6, 1999, p. 47).

Form of resolution electing a Member to a committee and fixing his rank thereon (Jan. 23, 1947, p. 536; H. Res. 157, May 25, 1995, p. 14424). The House by unanimous consent fixed the relative rank of two Members on a committee where an error had been made on the original appointment (Jan. 20, 1947, p. 481). The House has filled a vacancy on a standing com-

mittee (H. Res. 43, Jan. 24, 1991, p. 2169) with a Member subsequently designated by his party caucus as "temporary" (in order to avoid caucus limitations on committee assignments) (Feb. 5, 1991, p. 2814).

Expense resolutions

§ 763. Primary expense resolution.

6. (a) Whenever a committee, commission, or other entity (other than the Committee on Appropriations) is granted authorization for the payment of its expenses (including staff salaries) for a Congress, such authorization initially shall be procured by one primary expense resolution reported by the Committee on House Administration. A primary expense resolution may include a reserve fund for unanticipated expenses of committees. An amount from such a reserve fund may be allocated to a committee only by the approval of the Committee on House Administration. A primary expense resolution reported to the House may not be considered in the House unless a printed report thereon was available on the previous calendar day. For the information of the House, such report shall—

§ 764. Availability of report.

(1) state the total amount of the funds to be provided to the committee, commission, or other entity under the primary expense resolution for all anticipated activities and programs of the committee, commission, or other entity; and

(2) to the extent practicable, contain such general statements regarding the estimated foreseeable expenditures for the respective anticipated activities and programs of the committee, commission, or other entity as may be

appropriate to provide the House with basic estimates of the expenditures contemplated by the primary expense resolution.

§ 765. Additional expense resolution.

(b) After the date of adoption by the House of a primary expense resolution for a committee, commission, or other entity for a Congress, authorization for the payment of additional expenses (including staff salaries) in that Congress may be procured by one or more supplemental expense resolutions reported by the Committee on House Administration, as necessary. A supplemental expense resolution reported to the House may not be considered in the House unless a printed report thereon was available on the previous calendar day. For the information of the House, such report shall—

(1) state the total amount of additional funds to be provided to the committee, commission, or other entity under the supplemental expense resolution and the purposes for which those additional funds are available; and

(2) state the reasons for the failure to procure the additional funds for the committee, commission, or other entity by means of the primary expense resolution.

(c) The preceding provisions of this clause do not apply to—

§ 766. Exception for certain initial funding.

(1) a resolution providing for the payment from committee salary and expense accounts of the House of sums necessary to pay compensa-

tion for staff services performed for, or to pay other expenses of, a committee, commission, or other entity at any time after the beginning of an odd-numbered year and before the date of adoption by the House of the primary expense resolution described in paragraph (a) for that year; or

(2) a resolution providing each of the standing committees in a Congress additional office equipment, airmail and special-delivery postage stamps, supplies, staff personnel, or any other specific item for the operation of the standing committees, and containing an authorization for the payment from committee salary and expense accounts of the House of the expenses of any of the foregoing items provided by that resolution, subject to and until enactment of the provisions of the resolution as permanent law.

Paragraphs (a)–(c) of this clause were contained originally in section 110(b) of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and were added to the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). Effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), the authority of all committees to incur expenses, including travel expenses, was made contingent upon adoption by the House of resolutions reported pursuant to this clause (clause 1(b) of rule XI). The clause was amended in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70) to extend its applicability to all committees, commissions, and entities rather than just to standing committees. Paragraphs (a)–(c) were amended in the 104th Congress to institute biennial funding of committee expenses and to require that all committee staff salaries and expenses (including statutory staff) be authorized by expense resolution (sec. 101(c), H. Res. 6, Jan. 4, 1995, p. 462). In the 105th Congress paragraph (a) was amended to permit a primary expense resolution to include a reserve fund for unanticipated expenses of committees (H. Res. 5, Jan. 7, 1997, p. 121). A technical correction to paragraphs (a) and (b) was effected in the 106th Congress to conform references to a renamed committee (H. Res. 5, Jan. 6, 1999, p. 47). Before the House recodified its rules in the 106th Congress,

this provision was found in former clause 5 of rule XI (H. Res. 5, Jan. 6, 1999, p. 47).

The Committee on Appropriations is not covered by this clause, but is reimbursed by funds in appropriation acts for expenses of examinations of estimates of appropriations in the field (31 U.S.C. 22a). An exemption from this clause for the Committee on the Budget was effective from the enactment of the Congressional Budget Act of 1974 through the 103d Congress.

Based on the exception stated in paragraph (c), a resolution establishing a task force of members of a standing committee and providing for the payment of its expenses from the contingent fund of the House (now referred to as "applicable accounts of the House described in clause 1(j)(1) of rule X") was held not to be subject to a point of order under clause 5(a) for lack of report language detailing the funding provided, since the resolution was called up at the beginning of the session before consideration of a primary expense resolution for all committees for that calendar year (Feb. 5, 1992, p. 1621).

§ 767. Funds for committee staffs; expense resolutions.

(d) From the funds made available for the appointment of committee staff by a primary or additional expense resolution, the chairman of each committee shall ensure that sufficient staff is made available to each subcommittee to carry out its responsibilities under the rules of the committee and that the minority party is treated fairly in the appointment of such staff.

Paragraph (d) was adopted in the 104th Congress (sec. 101(c)(4), H. Res. 6, Jan. 4, 1995, p. 462). A preceding form of the paragraph, first adopted in the 94th Congress, authorized the chairman and ranking minority member of a subcommittee each to appoint one staff member to the subcommittee (H. Res. 5, Jan. 14, 1975, p. 20). As adopted in the 93d Congress to take effect on the first day of the 94th Congress, the paragraph had required that each standing committee, upon request of a majority of its minority members, devote one-third of its staffing funds to the needs of the minority (H. Res. 988, Oct. 8, 1974, p. 34470). As originally adopted in the 92d Congress, the paragraph had required that the minority be accorded fair consideration in the appointment of committee staff (H. Res. 5, Jan. 22, 1971, p. 144). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5(d) of rule X (H. Res. 5, Jan. 6, 1999, p. 47).

(e) Funds authorized for a committee under this clause and clauses 7 and 8 are for expenses incurred in the activities of the committee.

Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(n)(1) of rule XI (H. Res. 5, Jan. 6, 1999, p. 47).

Interim funding

§ 768. Interim funding.

7. (a) For the period beginning at noon on January 3 and ending at midnight on March 31 in each odd-numbered year, such sums as may be necessary shall be paid out of the committee salary and expense accounts of the House for continuance of necessary investigations and studies by—

(1) each standing and select committee established by these rules; and

(2) except as specified in paragraph (b), each select committee established by resolution.

(b) In the case of the first session of a Congress, amounts shall be made available for a select committee established by resolution in the preceding Congress only if—

(1) a resolution proposing to reestablish such select committee is introduced in the present Congress; and

(2) the House has not adopted a resolution of the preceding Congress providing for termination of funding for investigations and studies by such select committee.

(c) Each committee described in paragraph (a) shall be entitled for each month during the period specified in paragraph (a) to 9 percent (or such lesser percentage as may be determined by

the Committee on House Administration) of the total annualized amount made available under expense resolutions for such committee in the preceding session of Congress.

(d) Payments under this clause shall be made on vouchers authorized by the committee involved, signed by the chairman of the committee, except as provided in paragraph (e), and approved by the Committee on House Administration.

(e) Notwithstanding any provision of law, rule of the House, or other authority, from noon on January 3 of the first session of a Congress until the election by the House of the committee concerned in that Congress, payments under this clause shall be made on vouchers signed by—

(1) the member of the committee who served as chairman of the committee at the expiration of the preceding Congress; or

(2) if the chairman is not a Member, Delegate, or Resident Commissioner in the present Congress, then the ranking member of the committee as it was constituted at the expiration of the preceding Congress who is a member of the majority party in the present Congress.

(f)(1) The authority of a committee to incur expenses under this clause shall expire upon adoption by the House of a primary expense resolution for the committee.

(2) Amounts made available under this clause shall be expended in accordance with regulations

prescribed by the Committee on House Administration.

(3) This clause shall be effective only insofar as it is not inconsistent with a resolution reported by the Committee on House Administration and adopted by the House after the adoption of these rules.

This clause (formerly clause 5(f) of rule XI) was originally adopted in the 99th Congress to provide automatic interim funding for committees at the beginning of a Congress (H. Res. 7, Jan. 3, 1985, p. 393). Resolutions providing such interim funding had been routinely adopted at the convening of Congress before the adoption of this standing authority. In the 100th Congress, the provision was amended to make the automatic committee funding mechanism applicable to the first three months of the second session of a Congress, as well as the first session, and to authorize the Committee on House Administration to establish interim funding for any committee at a percentage lower than 9 percent of the total annualized amount (H. Res. 5, Jan. 6, 1987, p. 6). In the 104th and 106th Congresses technical corrections were effected to conform references to a renamed committee (sec. 202(b), H. Res. 6, Jan. 4, 1995, p. 464; H. Res. 5, Jan. 6, 1999, p. 47). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5(f) of rule XI (H. Res. 5, Jan. 6, 1999, p. 47). Clerical corrections were effected in the 107th Congress (sec. 2(x), H. Res. 5, Jan. 3, 2001, p. 24).

At its organization the 104th Congress suspended the operation of paragraph (f) in favor of special provisions for interim funding in light of its abolishment of three standing committees, its reduction in the overall number of committee staff, and its institution of biennial primary expense resolutions (sec. 101(c)(3), H. Res. 6, Jan. 4, 1995, p. 462). The House by unanimous consent has agreed to a resolution providing funding for interim expenses of a new select committee (Feb. 13, 2003, p. ——) and a new standing committee (Jan. 4, 2005, p. ——).

Travel

§ 769. Committee travel.

8. (a) Local currencies owned by the United States shall be made available to the committee and its employees engaged in carrying out their official duties outside the United States or its territories or possessions. Appropriated funds, including those

authorized under this clause and clauses 6 and 8, may not be expended for the purpose of defraying expenses of members of a committee or its employees in a country where local currencies are available for this purpose.

(b) The following conditions shall apply with respect to travel outside the United States or its territories or possessions:

(1) A member or employee of a committee may not receive or expend local currencies for subsistence in a country for a day at a rate in excess of the maximum per diem set forth in applicable Federal law.

(2) A member or employee shall be reimbursed for his expenses for a day at the lesser of—

(A) the per diem set forth in applicable Federal law; or

(B) the actual, unreimbursed expenses (other than for transportation) he incurred during that day.

§ 770. Travel reports.

(3) Each member or employee of a committee shall make to the chairman of the committee an itemized report showing the dates each country was visited, the amount of per diem furnished, the cost of transportation furnished, and funds expended for any other official purpose and shall summarize in these categories the total foreign currencies or appropriated funds expended. Each report shall be filed with the chairman of the committee not later than 60 days following the completion of travel for use

in complying with reporting requirements in applicable Federal law and shall be open for public inspection.

(c)(1) In carrying out the activities of a committee outside the United States in a country where local currencies are unavailable, a member or employee of a committee may not receive reimbursement for expenses (other than for transportation) in excess of the maximum per diem set forth in applicable Federal law.

(2) A member or employee shall be reimbursed for his expenses for a day, at the lesser of—

(A) the per diem set forth in applicable Federal law; or

(B) the actual unreimbursed expenses (other than for transportation) he incurred during that day.

(3) A member or employee of a committee may not receive reimbursement for the cost of any transportation in connection with travel outside the United States unless the member or employee actually paid for the transportation.

(d) The restrictions respecting travel outside the United States set forth in paragraph (c) also shall apply to travel outside the United States by a Member, Delegate, Resident Commissioner, officer, or employee of the House authorized under any standing rule.

Before the adoption of this clause (formerly clause 2(n) of rule XI) and of clause 1(b) of rule XI under the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), each committee was given separate authority to incur expenses in connection with its investigations and studies, and certain committees were authorized to use local currencies for foreign committee travel, in resolutions reported from the Committee on Rules in each Congress. This clause was

amended in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70) to clarify the availability of local currencies for travel outside the United States and its territories and possessions, to require reports within 60 days for use in complying with statutory reporting requirements, and to authorize the Committee on House Administration to recommend in expense resolutions expenses for foreign as well as domestic travel. This clause was further amended on March 2, 1977 (H. Res. 287, 95th Cong., pp. 5933–53) to limit all travel expenses to the maximum per diem rate or actual, unreimbursed expenses, whichever is less. Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(n) of rule XI, except that the "lame duck" travel prohibitions formerly found in clause 2(n)(5) of rule XI and clause 8 of rule I were transferred to former rule XXV (redesignated as rule XXIV in the 107th Congress) (H. Res. 5, Jan. 6, 1999, p. 47).

Under section 502(b) of the Mutual Security Act of 1954 (22 U.S.C. 1754(b)), foreign local currencies owned or purchased by the United States may be used for foreign travel expenses by members or employees of standing or select committees when authorized by the chairman thereof, and by other Members or employees when authorized by the Speaker. Consolidated committee reports prepared on a quarterly basis, and individual reports required within 30 days after the travel involved, must be forwarded to the Clerk of the House and published in the Congressional Record.

Committee staffs

9. (a)(1) Subject to subparagraph (2) and paragraph (f), each standing committee may appoint, by majority vote, not more than 30 professional staff members to be compensated from the funds provided for the appointment of committee staff by primary and additional expense resolutions. Each professional staff member appointed under this subparagraph shall be assigned to the chairman and the ranking minority member of the committee, as the committee considers advisable.

§ 771. Thirty professional staff.

§ 772. Assignment.

(2) Subject to paragraph (f) whenever a majority of the minority party members of a standing committee (other than the Committee on Standards of Official Conduct

§ 773. Minority.

or the Permanent Select Committee on Intelligence) so request, not more than 10 persons (or one-third of the total professional committee staff appointed under this clause, whichever is fewer) may be selected, by majority vote of the minority party members, for appointment by the committee as professional staff members under subparagraph (1). The committee shall appoint persons so selected whose character and qualifications are acceptable to a majority of the committee. If the committee determines that the character and qualifications of a person so selected are unacceptable, a majority of the minority party members may select another person for appointment by the committee to the professional staff until such appointment is made. Each professional staff member appointed under this subparagraph shall be assigned to such committee business as the minority party members of the committee consider advisable.

This clause (formerly clause 6 of rule XI) had its origins in section 202 of the Legislative Reorganization Act of 1946 (60 Stat. 812), which allocated up to four nonpartisan professionals to each committee other than Appropriations and specifically provided for clerical staff, and which was incorporated into the rules on January 3, 1953 (p. 24). Section 302(b) of the Legislative Reorganization Act of 1970 (84 Stat. 1140), which increased the authorized maximum for professional staff from four to six and added the concept of minority staffing, was incorporated into the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). In the 93d Congress the maximum was increased from six to 18, the minority entitlement within that number was increased from two to six, a requirement that professional staff be appointed without regard to political affiliation was eliminated, and prohibitions against consideration of race, creed, sex, or age in the appointment of staff were added (H. Res. 988, Oct. 8, 1974, p. 34470). An exemption for the Committee on the Budget was included in section 901 of the Congressional Budget Act of 1974 (88 Stat. 330), was later omitted under the Committee Reform Amendments of 1974 (H. Res. 988, Oct. 8, 1974, p. 34470), and was reinserted by the 94th Congress (H. Res. 5,

Jan. 14, 1975, p. 20). The requirement added in 1975 that staff positions made available to subcommittee chairmen and ranking minority members pursuant to former provisions of clause 5 of rule XI be provided from staff positions available under this clause unless provided in a primary or additional expense resolution was eliminated in the 104th Congress (sec. 101(c)(5), H. Res. 6, Jan. 4, 1995, p. 462). The 98th Congress added the Permanent Select Committee on Intelligence to the exception for the Committee on Standards of Official Conduct (H. Res. 58, Mar. 1, 1983, p. 3241). The 101st Congress added an exemption for the Committee on Rules (H. Res. 5, Jan. 3, 1989, p. 72). The Ethics Reform Act of 1989 struck the antidiscrimination provisions as redundant (P.L. 101–194, Nov. 30, 1989). The 104th Congress eliminated the former distinction between professional and clerical staff, set the authorized maximum for committee staff under expense resolutions at 30, eliminated subcommittee entitlement to staff, and set the entitlement of the full committee minority within that number at one-third (sec. 101(c)(5), H. Res. 6, Jan. 4, 1995, p. 462). The 104th Congress also mandated that the total number of staff of House committees be at least one-third less than the corresponding total in the 103d Congress (sec. 101(a), H. Res. 6, Jan. 4, 1995, p. 462). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6 of rule XI (H. Res. 5, Jan. 6, 1999, p. 47).

Additional staff of committees are authorized by the Committee on House Administration and agreed to by the House. There is no legal power to fill a vacancy in the clerkship of a committee after one Congress has expired and before the next House has been organized (IV, 4539). An assault upon the clerk of a committee within the walls of the Capitol was held to be a breach of privilege (II, 1629). The pay of clerks has been the subject of several decisions (IV, 4536–4538).

§ 774. Consultants and training.

Committees may, with the approval of the Committee on House Administration, procure the temporary or intermittent services of consultants and obtain specialized training for professional staff, subject to expense resolutions, under the Legislative Reorganization Act of 1970, sections 303 and 304 (2 U.S.C. 72a(i) and (j)).

§ 775. Staff duties.

(b)(1) The professional staff members of each standing committee—

(A) may not engage in any work other than committee business during congressional working hours; and

(B) may not be assigned a duty other than one pertaining to committee business.

§ 776. "Associate" or "shared" staff.

(2)(A) Subparagraph (1) does not apply to staff designated by a committee as "associate" or "shared" staff who are not paid exclusively by the committee, provided that the chairman certifies that the compensation paid by the committee for any such staff is commensurate with the work performed for the committee in accordance with clause 8 of rule XXIII.

(B) The use of any "associate" or "shared" staff by a committee other than the Committee on Appropriations shall be subject to the review of, and to any terms, conditions, or limitations established by, the Committee on House Administration in connection with the reporting of any primary or additional expense resolution.

The Ethics Reform Act of 1989 prescribed that staff work be confined to committee business during congressional working hours but maintained exceptions for the Committees on the Budget and Rules (P.L. 101–194, Nov. 30, 1989). The 104th Congress eliminated exceptions by committee in favor of exceptions for "associate" or "shared" staff (sec. 101(c)(5), H. Res. 6, Jan. 4, 1995, p. 462). Technical corrections were effected in the 104th Congress (H. Res. 254, Nov. 30, 1995, p. 35077); in the 106th Congress, which conformed references to a renamed committee (H. Res. 5, Jan. 6, 1999, p. 47); in the 107th Congress, which conformed references to a redesignated rule (sec. 2(s), H. Res. 5, Jan. 6, 2001, p. ——); and in the 108th Congress, which confined the exception for the Committee on Appropriations to subparagraph (B), rather than to the entire paragraph (sec. 2(f), H. Res. 5, Jan. 7, 2003, p. ——). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6 of rule XI (H. Res. 5, Jan. 6, 1999, p. 47).

§ 777. Pay.

(c) Each employee on the professional or investigative staff of a standing committee shall be entitled to pay at a single gross per annum rate, to be fixed by the chairman and that does not exceed the max-

imum rate of pay as in effect from time to time under applicable provisions of law.

This provision (formerly clause 6(c) of rule XI) was derived from section 477(c) of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and was incorporated into the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). Under the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), the maximum salary was set at level V of the Executive Schedule, rather than at the highest rate of basic pay law (5 U.S.C. 5332(a)(1)), as specified in the 1970 Reorganization Act, and effective in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70), the authority for two professional staff to be paid at level IV of the Executive Schedule was added to the clause. Under section 311 of the Legislative Branch Appropriations Act, 1988 (2 U.S.C. 60a–2a), the maximum salary for staff members is now set by pay order of the Speaker. At the beginning of the 101st Congress, references to particular levels of the executive schedule were deleted (H. Res. 5, Jan. 3, 1989, p. 72). In the 104th Congress this paragraph was amended to reflect the elimination of the former distinction between "professional" and "clerical" staff (sec. 101(c)(5), H. Res. 6, Jan. 4, 1995, p. 462). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6 of rule XI (H. Res. 5, Jan. 6, 1999, p. 47).

§ 778. Staff, Committee on Appropriations.

(d) Subject to appropriations hereby authorized, the Committee on Appropriations may appoint by majority vote such staff as it determines to be necessary (in addition to the clerk of the committee and assistants for the minority). The staff appointed under this paragraph, other than minority assistants, shall possess such qualifications as the committee may prescribe.

This paragraph (formerly clause 6(d) of rule XI) derives from section 202(b) of the Legislative Reorganization Act of 1946 (60 Stat. 812), which was incorporated into the rules on January 3, 1953 (p. 24). The exemption was extended to the Committee on the Budget by section 901 of the Congressional Budget Act of 1974 (88 Stat. 330). The reference to that committee was inadvertently omitted by the 93d Congress (H. Res. 988, Oct. 8, 1974, p. 34470) and reinserted by the 94th Congress (H. Res. 5, Jan. 14, 1975, p. 20). The 104th Congress deleted the exemption for the Committee on the Budget (sec. 101(c)(5), H. Res. 6, Jan. 4, 1995, p. 462). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6(d) of rule X (H. Res. 5, Jan. 6, 1999, p. 47).

§ 779. Detailed employees.

(e) A committee may not appoint to its staff an expert or other personnel detailed or assigned from a department or agency of the Government except with the written permission of the Committee on House Administration.

This paragraph was contained in section 202(f) of the Legislative Reorganization Act of 1946 (60 Stat. 812) and was incorporated into the rules on January 3, 1953 (p. 24). In the 104th and 106th Congresses it was amended to conform references to a renamed committee (sec. 202(b), H. Res. 6, Jan. 4, 1995, p. 464; H. Res. 5, Jan. 6, 1999, p. 47).

(f) If a request for the appointment of a minority professional staff member under paragraph (a) is made when no vacancy exists for such an appointment, the committee nevertheless may appoint under paragraph (a) a person selected by the minority and acceptable to the committee. A person so appointed shall serve as an additional member of the professional staff of the committee until such a vacancy occurs (other than a vacancy in the position of head of the professional staff, by whatever title designated), at which time that person is considered as appointed to that vacancy. Such a person shall be paid from the applicable accounts of the House described in clause 1(j)(1) of rule X. If such a vacancy occurs on the professional staff when seven or more persons have been so appointed who are eligible to fill that vacancy, a majority of the minority party members shall designate which of those persons shall fill the vacancy.

(g) Each staff member appointed pursuant to a request by minority party members under paragraph (a), and each staff member appointed

to assist minority members of a committee pursuant to an expense resolution described in clause 6(a), shall be accorded equitable treatment with respect to the fixing of the rate of pay, the assignment of work facilities, and the accessibility of committee records.

(h) Paragraph (a) may not be construed to authorize the appointment of additional professional staff members of a committee pursuant to a request under paragraph (a) by the minority party members of that committee if 10 or more professional staff members provided for in paragraph (a)(1) who are satisfactory to a majority of the minority party members are otherwise assigned to assist the minority party members.

Paragraphs (f)–(h) (formerly clause 6(f)–(h) of rule XI) are derived from section 302(c) of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and were incorporated into the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). Effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), conforming changes were made in paragraphs (f) and (h) to reflect increased minority professional and clerical staff permitted to committees under paragraphs (a) and (b) of this clause. In the 104th Congress paragraphs (f)–(h) were amended to reflect the elimination of the former distinction between "professional" and "clerical" staff (sec. 101(c)(5), H. Res. 6, Jan. 4, 1995, p. 462). The 104th Congress also mandated that the total number of staff of House committees be at least one-third less than the corresponding total in the 103d Congress (sec. 101(a), H. Res. 6, Jan. 4, 1995, p. 462). In the 105th Congress paragraph (f) was amended to update an archaic reference to the "contingent fund" (H. Res. 5, Jan. 7, 1997, p. 121). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6 of rule XI (H. Res. 5, Jan. 6, 1999, p. 47). A clerical correction was effected in the 107th Congress (sec. 2(x), H. Res. 5, Jan. 3, 2001, p. 24), and a conforming change to paragraph (f) was effected in the 109th Congress (sec. 2(a), H. Res. 5, Jan. 4, 2005, p. ——).

§ 780. Nonpartisan staff.

(i) Notwithstanding paragraph (a)(2), a committee may employ nonpartisan staff, in lieu of or in addition to

committee staff designated exclusively for the majority or minority party, by an affirmative vote of a majority of the members of the majority party and of a majority of the members of the minority party.

Section 202(a) of the Legislative Reorganization Act of 1946 (60 Stat. 812), which was incorporated into the rules on January 3, 1953 (p. 24), required committee professional staffs to be appointed on a permanent basis without regard to political affiliation. The concept of minority staffing was added by section 302(b) of the Legislative Reorganization Act of 1970. Under the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), paragraph (i) (formerly clause 6(i) of rule XI) was added to permit committees to employ nonpartisan staff upon an affirmative vote of the majority of the members of each party. In the 104th Congress it was amended to reflect the elimination of the former distinction between "professional" and "clerical" staff (sec. 101(c)(5), H. Res. 6, Jan. 4, 1995, p. 462). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6(i) of rule XI (H. Res. 5, Jan. 6, 1999, p. 47).

§ 781. Reports on staff.

Effective in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70), former clause 6(j) of rule XI, which was added on January 3, 1953 (p. 24) and which was contained in section 134(b) of the Legislative Reorganization Act of 1945, was deleted; that clause required committees to report semiannually to the Clerk, for printing in the Congressional Record, on the names, professions, and salaries of committee employees.

Select and joint committees

§ 782. Party membership as basis for appointment.

10. (a) Membership on a select or joint committee appointed by the Speaker under clause 11 of rule I during the course of a Congress shall be contingent on continuing membership in the party caucus or conference of which the Member, Delegate, or Resident Commissioner concerned was a member at the time of appointment. Should a Member, Delegate, or Resident Commissioner cease to be a member of that caucus or conference, that Member, Delegate, or Resident

Commissioner shall automatically cease to be a member of any select or joint committee to which he is assigned. The chairman of the relevant party caucus or conference shall notify the Speaker whenever a Member, Delegate, or Resident Commissioner ceases to be a member of a party caucus or conference. The Speaker shall notify the chairman of each affected select or joint committee that the appointment of such Member, Delegate, or Resident Commissioner to the select or joint committee is automatically vacated under this paragraph.

This party membership requirement for select and joint committees, analogous to clause 5(b), was added in the 98th Congress (H. Res. 5, 1983, Jan. 3, 1983, p. 34). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6(g) of rule X (H. Res. 5, Jan. 6, 1999, p. 47).

§ 783. Select and joint committee compliance.

(b) Each select or joint committee, other than a conference committee, shall comply with clause 2(a) of rule XI unless specifically exempted by law.

Before the House recodified its rules in the 106th Congress, paragraph (b) was found in clause 2(a) of rule XI (H. Res. 5, Jan. 6, 1999, p. 47). The extension of clause 2(a) requirements to select and joint committees was added to clause 2(a) when that rule was rewritten by the Committee Reform Amendments of 1974 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470).

§ 784. Aging.

A paragraph (i) of former clause 6 of rule X was incorporated into the rules effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), to provide for a permanent Select Committee on Aging. That provision was stricken in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. 49).

Permanent Select Committee on Intelligence

§ 785. Permanent Select Committee on Intelligence.

11. (a)(1) There is established a Permanent Select Committee on Intelligence (hereafter in this clause referred to as the "select committee"). The select committee shall be composed of not more than 21 Members, Delegates, or the Resident Commissioner, of whom not more than 12 may be from the same party. The select committee shall include at least one Member, Delegate, or the Resident Commissioner from each of the following committees:

(A) the Committee on Appropriations;

(B) the Committee on Armed Services;

(C) the Committee on International Relations; and

(D) the Committee on the Judiciary.

(2) The Speaker and the Minority Leader shall be ex officio members of the select committee but shall have no vote in the select committee and may not be counted for purposes of determining a quorum thereof.

(3) The Speaker and Minority Leader each may designate a member of his leadership staff to assist him in his capacity as ex officio member, with the same access to committee meetings, hearings, briefings, and materials as employees of the select committee and subject to the same security clearance and confidentiality requirements as employees of the select committee under this clause.

(4)(A) Except as permitted by subdivision (B), a Member, Delegate, or Resident Commissioner,

other than the Speaker or the Minority Leader, may not serve as a member of the select committee during more than four Congresses in a period of six successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(B) In the case of a Member, Delegate, or Resident Commissioner appointed to serve as the chairman or the ranking minority member of the select committee, tenure on the select committee shall not be limited.

(b)(1) There shall be referred to the select committee proposed legislation, messages, petitions, memorials, and other matters relating to the following:

(A) The Central Intelligence Agency, the Director of Central Intelligence, and the National Foreign Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(B) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(C) The organization or reorganization of a department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence or intelligence-related activities.

(D) Authorizations for appropriations, both direct and indirect, for the following:

(i) The Central Intelligence Agency, the Director of Central Intelligence, and the National Foreign Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(ii) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(iii) A department, agency, subdivision, or program that is a successor to an agency or program named or referred to in (i) or (ii).

(2) Proposed legislation initially reported by the select committee (other than provisions solely involving matters specified in subparagraph (1)(A) or subparagraph (1)(D)(i)) containing any matter otherwise within the jurisdiction of a standing committee shall be referred by the Speaker to that standing committee. Proposed legislation initially reported by another committee that contains matter within the jurisdiction of the select committee shall be referred by the Speaker to the select committee if requested by the chairman of the select committee.

(3) Nothing in this clause shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review an intelligence or intelligence-related activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of that committee.

(4) Nothing in this clause shall be construed as amending, limiting, or otherwise changing the authority of a standing committee to obtain full and prompt access to the product of the intelligence and intelligence-related activities of a department or agency of the Government relevant to a matter otherwise within the jurisdiction of that committee.

(c)(1) For purposes of accountability to the House, the select committee shall make regular and periodic reports to the House on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States. The select committee shall promptly call to the attention of the House, or to any other appropriate committee, a matter requiring the attention of the House or another committee. In making such report, the select committee shall proceed in a manner consistent with paragraph (g) to protect national security.

(2) The select committee shall obtain annual reports from the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence and intelligence-related activities of the agency or department concerned and the intelligence and intelligence-related activities of foreign countries directed at the United States or its interests. An unclassified version of each report may be made available to the public at the discretion of the select com-

mittee. Nothing herein shall be construed as requiring the public disclosure in such reports of the names of persons engaged in intelligence or intelligence-related activities for the United States or the divulging of intelligence methods employed or the sources of information on which the reports are based or the amount of funds authorized to be appropriated for intelligence and intelligence-related activities.

(3) Within six weeks after the President submits a budget under section 1105(a) of title 31, United States Code, or at such time as the Committee on the Budget may request, the select committee shall submit to the Committee on the Budget the views and estimates described in section 301(d) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.

(d)(1) Except as specified in subparagraph (2), clauses 8(a), (b), and (c) and 9(a), (b), and (c) of this rule, and clauses 1, 2, and 4 of rule XI shall apply to the select committee to the extent not inconsistent with this clause.

(2) Notwithstanding the requirements of the first sentence of clause 2(g)(2) of rule XI, in the presence of the number of members required under the rules of the select committee for the purpose of taking testimony or receiving evidence, the select committee may vote to close a hearing whenever a majority of those present determines that the testimony or evidence would endanger the national security.

(e) An employee of the select committee, or a person engaged by contract or otherwise to perform services for or at the request of the select committee, may not be given access to any classified information by the select committee unless such employee or person has—

(1) agreed in writing and under oath to be bound by the Rules of the House, including the jurisdiction of the Committee on Standards of Official Conduct and of the select committee concerning the security of classified information during and after the period of his employment or contractual agreement with the select committee; and

(2) received an appropriate security clearance, as determined by the select committee in consultation with the Director of Central Intelligence, that is commensurate with the sensitivity of the classified information to which such employee or person will be given access by the select committee.

(f) The select committee shall formulate and carry out such rules and procedures as it considers necessary to prevent the disclosure, without the consent of each person concerned, of information in the possession of the select committee that unduly infringes on the privacy or that violates the constitutional rights of such person. Nothing herein shall be construed to prevent the select committee from publicly disclosing classified information in a case in which it determines that national interest in the disclo-

sure of classified information clearly outweighs any infringement on the privacy of a person.

(g)(1) The select committee may disclose publicly any information in its possession after a determination by the select committee that the public interest would be served by such disclosure. With respect to the disclosure of information for which this paragraph requires action by the select committee—

(A) the select committee shall meet to vote on the matter within five days after a member of the select committee requests a vote; and

(B) a member of the select committee may not make such a disclosure before a vote by the select committee on the matter, or after a vote by the select committee on the matter except in accordance with this paragraph.

(2)(A) In a case in which the select committee votes to disclose publicly any information that has been classified under established security procedures, that has been submitted to it by the executive branch, and that the executive branch requests be kept secret, the select committee shall notify the President of such vote.

(B) The select committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of the vote to disclose is transmitted to the President unless, before the expiration of the five-day period, the President, personally in writing, notifies the select committee that he objects to the disclosure of such information, provides his reasons therefor, and certifies that the threat to the

national interest of the United States posed by the disclosure is of such gravity that it outweighs any public interest in the disclosure.

(C) If the President, personally in writing, notifies the select committee of his objections to the disclosure of information as provided in subdivision (B), the select committee may, by majority vote, refer the question of the disclosure of such information, with a recommendation thereon, to the House. The select committee may not publicly disclose such information without leave of the House.

(D) Whenever the select committee votes to refer the question of disclosure of any information to the House under subdivision (C), the chairman shall, not later than the first day on which the House is in session following the day on which the vote occurs, report the matter to the House for its consideration.

(E) If the chairman of the select committee does not offer in the House a motion to consider in closed session a matter reported under subdivision (D) within four calendar days on which the House is in session after the recommendation described in subdivision (C) is reported, then such a motion shall be privileged when offered by a Member, Delegate, or Resident Commissioner. In either case such a motion shall be decided without debate or intervening motion except one that the House adjourn.

(F) Upon adoption by the House of a motion to resolve into closed session as described in subdivision (E), the Speaker may declare a recess

subject to the call of the Chair. At the expiration of the recess, the pending question, in closed session, shall be, "Shall the House approve the recommendation of the select committee?".

(G) Debate on the question described in subdivision (F) shall be limited to two hours equally divided and controlled by the chairman and ranking minority member of the select committee. After such debate the previous question shall be considered as ordered on the question of approving the recommendation without intervening motion except one motion that the House adjourn. The House shall vote on the question in open session but without divulging the information with respect to which the vote is taken. If the recommendation of the select committee is not approved, then the question is considered as recommitted to the select committee for further recommendation.

(3)(A) Information in the possession of the select committee relating to the lawful intelligence or intelligence-related activities of a department or agency of the United States that has been classified under established security procedures, and that the select committee has determined should not be disclosed under subparagraph (1) or (2), may not be made available to any person by a Member, Delegate, Resident Commissioner, officer, or employee of the House except as provided in subdivision (B).

(B) The select committee shall, under such regulations as it may prescribe, make information described in subdivision (A) available to a

committee or a Member, Delegate, or Resident Commissioner, and permit a Member, Delegate, or Resident Commissioner to attend a hearing of the select committee that is closed to the public. Whenever the select committee makes such information available, it shall keep a written record showing, in the case of particular information, which committee or which Member, Delegate, or Resident Commissioner received the information. A Member, Delegate, or Resident Commissioner who, and a committee that, receives information under this subdivision may not disclose the information except in a closed session of the House.

(4) The Committee on Standards of Official Conduct shall investigate any unauthorized disclosure of intelligence or intelligence-related information by a Member, Delegate, Resident Commissioner, officer, or employee of the House in violation of subparagraph (3) and report to the House concerning any allegation that it finds to be substantiated.

(5) Upon the request of a person who is subject to an investigation described in subparagraph (4), the Committee on Standards of Official Conduct shall release to such person at the conclusion of its investigation a summary of its investigation, together with its findings. If, at the conclusion of its investigation, the Committee on Standards of Official Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, Delegate, Resident Commissioner, offi-

cer, or employee of the House, it shall report its findings to the House and recommend appropriate action. Recommendations may include censure, removal from committee membership, or expulsion from the House, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

(h) The select committee may permit a personal representative of the President, designated by the President to serve as a liaison to the select committee, to attend any closed meeting of the select committee.

(i) Subject to the Rules of the House, funds may not be appropriated for a fiscal year, with the exception of a bill or joint resolution continuing appropriations, or an amendment thereto, or a conference report thereon, to, or for use of, a department or agency of the United States to carry out any of the following activities, unless the funds shall previously have been authorized by a bill or joint resolution passed by the House during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Central Intelligence Agency and the Director of Central Intelligence.

(2) The activities of the Defense Intelligence Agency.

(3) The activities of the National Security Agency.

(4) The intelligence and intelligence-related activities of other agencies and subdivisions of the Department of Defense.

(5) The intelligence and intelligence-related activities of the Department of State.

(6) The intelligence and intelligence-related activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

(j)(1) In this clause the term "intelligence and intelligence-related activities" includes—

(A) the collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of such information;

(B) activities taken to counter similar activities directed against the United States;

(C) covert or clandestine activities affecting the relations of the United States with a foreign government, political group, party, military force, movement, or other association;

(D) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by

a department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States; and

(E) covert or clandestine activities directed against persons described in subdivision (D).

(2) In this clause the term "department or agency" includes any organization, committee, council, establishment, or office within the Federal Government.

(3) For purposes of this clause, reference to a department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that a successor engages in intelligence or intelligence-related activities now conducted by the department, agency, bureau, or subdivision referred to in this clause.

(k) Clause 12(a) of rule XXII does not apply to meetings of a conference committee respecting legislation (or any part thereof) reported by the Permanent Select Committee on Intelligence.

§ 786. This clause (formerly rule XLVIII) was adopted in the 95th Congress (H. Res. 658, July 14, 1977, pp. 22932–49) and has had several technical amendments: (1) to change the size of the Select Committee from 13 to 14 members (H. Res. 70, 96th Cong., Jan. 25, 1979, p. 1023); (2) to reflect a change in the name of a committee (H. Res. 89, 96th Cong., Feb. 5, 1979, p. 1848); (3) to change the size to not more than 16 members (H. Res. 33, 99th Cong., Jan. 30, 1985, p. 1271); (4) to change the size to not more than 17 members and to change the cross-reference in clause 7(c)(1) to include paragraph (a) or (b) (H. Res. 5, 100th Cong., Jan. 6, 1987, p. 6); (5) to change the size to not more than 19 members (H. Res. 5, 101st Cong., Jan. 3, 1989, p. 73) and to permit the Speaker to attend meetings and have access to information (H. Res. 268, Nov. 14, 1989, p. 28789); (6) to strike obsolete language relating to tenure restrictions in clause 1 and relating to the requirement for authorizations of appropriations in clause 9 (H. Res. 5, 102d Cong., Jan. 3, 1991,

p. 39); (7) to limit the size of the panel to 16, with no more than nine members from the same party; to set the tenure limitation at four Congresses within a period of six Congresses, with exceptions for ongoing service as chairman or ranking minority member; to make the Speaker (rather than the Majority Leader) an ex officio member of the panel (as opposed to his former free access to its meetings and information); and to conform references to renamed committees (sec. 221, H. Res. 6, 104th Cong., Jan. 4, 1995, p. 469); (8) to make certain conforming changes (Budget Enforcement Act of 1997, sec. 10104, P.L. 105–33; H. Res. 5, Jan. 6, 1999, p. 47); (9) to increase the size of the committee to not more than 18 members, of whom not more than 10 shall be of the same political party (sec. 2(h), H. Res. 5, 107th Cong., Jan. 3, 2001, p. 25); (10) to make a clerical correction in a cross reference (sec. 2(x), H. Res. 5, 107th Cong., Jan. 3, 2001, p. 26); (11) to remove the tenure limitation for the chairman and ranking minority member (sec. 2(e–1), H. Res. 5, 108th Cong., Jan. 7, 2003, p. ——); and (12) to increase the size of the committee to not more than 21 members, of whom not more than 12 shall be of the same political party (H. Res. 51, 109th Cong., Jan. 26, 2005, p. ——). Before the House recodified its rules in the 106th Congress, this provision was found in former rule XLVIII (H. Res. 5, Jan. 6, 1999, p. 47). By order of the House, the size of the committee was increased for the 107th Congress to not more than 20 members, of whom not more than 11 shall be of the same political party (Jan. 6, 2001, p. 25). The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108–458) reorganized the intelligence community.

More substantive amendments have been adopted as follows: (1) clause 4 was amended to make former clause 6(c) of rule XI (current clause 9(c) of rule X) applicable to salaries of the staff of the Select Committee (H. Res. 5, Jan. 15, 1979, pp. 7–16); (2) paragraph (d) (formerly clause 4) was amended to make an exception to the provisions of clause 2(g)(2) of rule XI (requiring a majority of the membership of a committee be present in order to vote to close a hearing) to allow the Select Committee to vote to go into executive session if a majority of the members present, there being in attendance the requisite number under the Select Committee rules for the purpose of taking testimony, determine that it is necessary to do so for national security reasons (but in no event to be determined by less than two members) (H. Res. 165, Mar. 29, 1979, p. 6820); (3) paragraph (d) (formerly clause 4) was amended to provide the Select Committee with permanent professional and clerical staff as provided by former clauses 6(a) and (b) of rule XI (current clauses 9(a) and (b) of rule X) (H. Res. 58, Mar. 1, 1983, p. 3241); (4) paragraph (b)(2) (formerly clause 2(a)) was amended to clarify jurisdiction over the National Foreign Intelligence Program and the tactical intelligence and intelligence-related activities of the Department of Defense and paragraph (a)(3) (formerly clause 1(b)) was added to clarify staffing arrangements for the Speaker and the Minority Leader as ex officio members (sec. 221, H. Res. 6, Jan. 4, 1995, p. 469).

The resolution creating the Select Committee directed the committee to make a study with respect to intelligence and intelligence-related activities of the U.S. and to report thereon, together with appropriate recommendations, not later than the close of the 95th Congress (sec. 3, H. Res. 658; see H. Rept. 95–1795, Oct. 14, 1978), and transferred to the Select Committee all records, files, documents, and other materials of the Select Committee on Intelligence of the 94th Congress in the possession, custody, or control of the Clerk of the House.

The Select Committee has concurrent jurisdiction with the Committee on the Judiciary over bills concerning electronic surveillance of foreign intelligence (Nov. 4, 1977, p. 37070); concurrent jurisdiction with the Committees on Science, Space, and Technology (now Science) and Foreign Affairs (now International Relations) over a bill establishing a satellite monitoring commission (Mar. 15, 1988, p. 3847); and sole jurisdiction over a resolution of inquiry directing the Secretary of Defense to furnish to the House documents and information on Cuban or other foreign military or paramilitary presence in Panama or the Canal Zone (Apr. 6, 1978, p. 9105).

Paragraph (g)(2) places restrictions on the Select Committee only with respect to the public disclosure of classified information in the possession of that committee, and does not prevent the House from determining to release any matter properly presented to it in secret session pursuant to clause 9 of rule XVII (formerly rule XXIX) (Feb. 25, 1980, p. 3618).

For a discussion of the role of the Permanent Select Committee on Intelligence in regulating access to the classified records of the former Select Committee on U.S. National Security and Military/Commercial Concerns With the People's Republic of China, House Practice, ch. 11, §§ 12, 13.

In the 107th Congress the Select Committee was given oversight authority described in clause 3(m) of rule X (sec. 2(f), H. Res. 5, Jan. 3, 2001, p. 25).

RULE XI

PROCEDURES OF COMMITTEES AND UNFINISHED BUSINESS

In general

§ 787. Committee procedure.

1. (a)(1)(A) The Rules of the House are the rules of its committees and subcommittees so far as applicable.

(B) Each subcommittee is a part of its committee and is subject to the authority and direc-

tion of that committee and to its rules, so far as applicable.

(2)(A) In a committee or subcommittee—

(i) a motion to recess from day to day, or to recess subject to the call of the Chair (within 24 hours), shall be privileged; and

(ii) a motion to dispense with the first reading (in full) of a bill or resolution shall be privileged if printed copies are available.

(B) A motion accorded privilege under this subparagraph shall be decided without debate.

This paragraph was first adopted December 8, 1931, to provide that the Rules of the House are the rules of the standing committees (without reference to subcommittees) and to provide for a privileged motion to recess from day to day (VIII, 2215). The paragraph was amended March 23, 1955, when the House adopted rules governing committee investigations that are now embodied in clause 2 (pp. 3569–3585). In the 92d Congress paragraph (a) was amended in the form contained in the Legislative Reorganization Act of 1970 (84 Stat. 1140) to specifically address subcommittees (H. Res. 5, Jan. 22, 1971, p. 144). It was amended again in the 99th Congress to allow a privileged motion to dispense with the first reading of a measure where printed copies are available (H. Res. 7, Jan. 3, 1985, p. 393). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). In the 109th Congress paragraph (a) was reorganized and amended to provide for a privileged motion to recess subject to the call of the chair (within 24 hours) (sec. 2(d), H. Res. 5, Jan. 4, 2005, p. ——). For the requirement in Jefferson's Manual that a bill or resolution be read in full upon demand, before being read by paragraphs or sections for amendment, see § 412, *supra*.

Each committee may appoint subcommittees (VI, 532), which should include majority and minority representation (IV, 4551), and confer on them powers delegated to the committee itself (VI, 532) except such powers as are reserved to the full committee by the Rules of the House; but express authority also has been given subcommittees by the House (III, 1754–1759, 1801, 2499, 2504, 2508, 2517; IV, 4548).

As indicated in § 369, *supra*, clause 1(a)(1)(A) enables standing and select committees to enforce in committee applicable House rules of decorum, such as clause 2 of rule I and rule XVII.

§ 788. Investigative authority.

(b)(1) Each committee may conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under rule X. Subject to the adoption of expense resolutions as required by clause 6 of rule X, each committee may incur expenses, including travel expenses, in connection with such investigations and studies.

(2) A proposed investigative or oversight report shall be considered as read in committee if it has been available to the members for at least 24 hours (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day).

(3) A report of an investigation or study conducted jointly by more than one committee may be filed jointly, provided that each of the committees complies independently with all requirements for approval and filing of the report.

(4) After an adjournment sine die of the last regular session of a Congress, an investigative or oversight report may be filed with the Clerk at any time, provided that a member who gives timely notice of intention to file supplemental, minority, or additional views shall be entitled to not less than seven calendar days in which to submit such views for inclusion in the report.

Paragraph (b)(1) was incorporated into the rules under the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), and, together with clauses 2(m) and 2(n) of rule XI, eliminated the necessity that each committee obtain such authority each Congress by a separate resolution reported from the Committee on Rules. Paragraphs (b)(2), (b)(3), and (b)(4) were added in the 105th Congress (H. Res. 5, Jan. 7, 1997, p. 121). Clerical and stylistic

changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

§ 789. Printing and binding.

(c) Each committee may have printed and bound such testimony and other data as may be presented at hearings held by the committee or its subcommittees. All costs of stenographic services and transcripts in connection with a meeting or hearing of a committee shall be paid from the applicable accounts of the House described in clause 1(j)(1) of rule X.

Paragraph (c) was made part of the rules by the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). In the 105th and 106th Congresses, it was amended to update a reference to the "contingent fund" (H. Res. 5, Jan. 7, 1997, p. 121; H. Res. 5, Jan. 6, 1999, p. 47), and a conforming change was effected in the 109th Congress (sec. 2(a), H. Res. 5, Jan. 4, 2005, p. ——). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

§ 790. Activity reports.

(d)(1) Each committee shall submit to the House not later than January 2 of each odd-numbered year a report on the activities of that committee under this rule and rule X during the Congress ending at noon on January 3 of such year.

(2) Such report shall include separate sections summarizing the legislative and oversight activities of that committee during that Congress.

(3) The oversight section of such report shall include a summary of the oversight plans submitted by the committee under clause 2(d) of rule X, a summary of the actions taken and recommendations made with respect to each such plan, a summary of any additional oversight activities undertaken by that committee, and any

recommendations made or actions taken thereon.

(4) After an adjournment sine die of the last regular session of a Congress, the chairman of a committee may file an activities report under subparagraph (1) with the Clerk at any time and without approval of the committee, provided that—

(A) a copy of the report has been available to each member of the committee for at least seven calendar days; and

(B) the report includes any supplemental, minority, or additional views submitted by a member of the committee.

The provisions of paragraph (d)(1) were first made requirements of the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144, incorporating the provisions of sec. 118(b) of the Legislative Reorganization Act of 1970 (84 Stat. 1140)), and effective on January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470) exemptions from the reporting requirements for the Committees on Appropriations, the Budget, House Administration, Rules, and Standards of Official Conduct were removed, so the paragraph from that point applied to all committees. The 104th Congress added paragraphs (d)(2) and (d)(3) to require that activity reports include separate sections on legislative and oversight activities, including a summary comparison of oversight plans and eventual recommendations and actions (sec. 203(b), H. Res. 6, Jan. 4, 1995, p. 467). Paragraph (d)(4) was added in the 105th Congress (H. Res. 5, Jan. 7, 1997, p. 121). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

Under the Unfunded Mandates Reform Act of 1995, the Committee on Rules is required to include in its activity report a separate item identifying all waivers of points of order relating to Federal mandates, listed by bill or joint resolution number and subject matter (sec. 107(b), P.L. 104–4; 109 Stat. 63).

Adoption of written rules

§ 791. Committee rules.

2. (a)(1) Each standing committee shall adopt written rules governing its procedure. Such rules—

(A) shall be adopted in a meeting that is open to the public unless the committee, in open session and with a quorum present, determines by record vote that all or part of the meeting on that day shall be closed to the public;

(B) may not be inconsistent with the Rules of the House or with those provisions of law having the force and effect of Rules of the House; and

(C) shall in any event incorporate all of the succeeding provisions of this clause to the extent applicable.

(2) Each committee shall submit its rules for publication in the Congressional Record not later than 30 days after the committee is elected in each odd-numbered year.

(3) A committee may adopt a rule providing that the chairman be directed to offer a motion under clause 1 of rule XXII whenever the chairman considers it appropriate.

The requirement that standing committees adopt written rules was first incorporated into the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144), having been included in the Legislative Reorganization Act of 1970 (84 Stat. 1140). Under the Committee Reform Amendments of 1974, clause 2(a) became effective in essentially its present form on January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). In the 94th Congress it was amended to permit a record vote to close the committee meeting at which committee rules are adopted only on the day of the meeting (H. Res. 5, Jan. 14, 1975, p. 20). In the 102d Congress it was amended to allow a committee 30 days after the election of its members, rather than after the convening of the Congress, to publish its rules in the Congressional Record (H. Res. 5, Jan. 3, 1991, p. 39). The provision requiring publication of committee rules in the Congressional Record derived from statute (2 U.S.C. 190a–2 (repealed 1979)). A court interpreted that statute to be mandatory in a case where a Senate committee failed to publish in the Record a rule regarding a quorum for the purpose of taking sworn testi-

mony. In overturning a perjury conviction, the court held that the unpublished committee rule was not valid. United States *v.* Reinecke, 524 F.2d 435 (D.C. Cir. 1975). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). Subparagraph (3) was added in the 109th Congress (sec. 2(d), H. Res. 5, Jan. 4, 2005, p. ——).

Committees have historically adopted rules under which they function (I, 707; III, 1841, 1842; VIII, 2214). Committee rules are compiled by the Committee on Rules each Congress as a committee print. It is the responsibility of the committees, and not the House, to construe and enforce additional committee rules on the calling of committee meetings (Speaker Albert, July 22, 1974, pp. 24436–47). This provision requires a select committee to publish its adopted rules in the Record (June 25, 1998, p. 14014).

§ 792. Committee procedure generally.

Failure to follow certain procedural requirements imposed on committees by this rule may invalidate committee actions. Violation of the requirements as to open meetings and hearings and other hearing irregularities improperly overruled (see clause 2(g)(5) of rule XI) or the prescribed committee procedures for reporting bills and resolutions (clause 2(h) of rule XI) may in some instances be the basis for a point of order in the House, resulting in the recommitment of the bill. However, a point of order does not ordinarily lie in the House against consideration of a bill by reason of defective committee procedures occurring before the time the bill is ordered reported to the House (Procedure, ch. 17, § 11.1).

Many of the procedures applicable to committees derive from Jefferson's Manual, which governs the House and its committees in all cases to which it is applicable (clause 1 of rule XXVIII). A committee may act only when together, and not by separate consultation and consent, nothing being the report (or recommendation) of the committee except what has been agreed to in committee actually assembled (see Jefferson's Manual at § 407, *supra*). A measure before a committee for consideration must be read for amendment by section as in the House (see Jefferson's Manual at §§ 412–414, *supra*), and reading of the measure and of amendments thereto must be in full. The procedures applicable in the House as in the Committee of the Whole (see §§ 424, 427, *supra*) generally apply to proceedings in committees of the House of Representatives, except that since a measure considered in committee must be read for amendment, a motion to limit debate under the five-minute rule in committee must be confined to the portion of the bill then pending. The previous question may only be moved on the measure in committee if the entire measure has been read, or considered as read, for amendment.

Committees generally conduct their business under the five-minute rule but may employ the ordinary motions which are in order in the House, such as under clause 4 of rule XVI, and may also employ the motion to limit debate under the five-minute rule on a proposition which has been read.

Regular meeting days

§ 793. Committee meetings.

(b) Each standing committee shall establish regular meeting days for the conduct of its business, which shall be not less frequent than monthly. Each such committee shall meet for the consideration of a bill or resolution pending before the committee or the transaction of other committee business on all regular meeting days fixed by the committee unless otherwise provided by written rule adopted by the committee.

Additional and special meetings

(c)(1) The chairman of each standing committee may call and convene, as he considers necessary, additional and special meetings of the committee for the consideration of a bill or resolution pending before the committee or for the conduct of other committee business, subject to such rules as the committee may adopt. The committee shall meet for such purpose under that call of the chairman.

(2) Three or more members of a standing committee may file in the offices of the committee a written request that the chairman call a special meeting of the committee. Such request shall specify the measure or matter to be considered. Immediately upon the filing of the request, the clerk of the committee shall notify the chairman of the filing of the request. If the chairman does not call the requested special meeting within three calendar days after the filing of the request (to be held within seven calendar days

after the filing of the request) a majority of the members of the committee may file in the offices of the committee their written notice that a special meeting of the committee will be held. The written notice shall specify the date and hour of the special meeting and the measure or matter to be considered. The committee shall meet on that date and hour. Immediately upon the filing of the notice, the clerk of the committee shall notify all members of the committee that such special meeting will be held and inform them of its date and hour and the measure or matter to be considered. Only the measure or matter specified in that notice may be considered at that special meeting.

Temporary absence of chairman

(d) A member of the majority party on each standing committee or subcommittee thereof shall be designated by the chairman of the full committee as the vice chairman of the committee or subcommittee, as the case may be, and shall preside during the absence of the chairman from any meeting. If the chairman and vice chairman of a committee or subcommittee are not present at any meeting of the committee or subcommittee, the ranking majority member who is present shall preside at that meeting.

Paragraphs (b), (c), and (d) were first adopted on December 8, 1931 (VIII, 2208), were amended on January 3, 1953 (p. 24), and were revised both by the Legislative Reorganization Act of 1970 (84 Stat. 1140) and in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). In the 102d Congress paragraph (d) was amended to provide that the ranking majority Member of each committee and subcommittee be designated as its vice chairman (H. Res. 5, Jan. 3, 1991, p. 39). In the 104th Congress paragraph (d) was amended to permit the chairman of a full committee to designate vice chair-

men of the committee and its subcommittees (sec. 223(c), H. Res. 6, Jan. 4, 1995, p. 477). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

A committee scheduled to meet on stated days, when convened on such day with a quorum present may proceed to the transaction of business regardless of the absence of the chairman (VIII, 2213, 2214). A committee meeting being adjourned for lack of a quorum, a majority of the members of the committee may not, without the consent of the chairman, call a meeting of the committee on the same day (VIII, 2213).

Committee records

§ 794. Required records.

(e)(1)(A) Each committee shall keep a complete record of all committee action which shall include—

(i) in the case of a meeting or hearing transcript, a substantially verbatim account of remarks actually made during the proceedings, subject only to technical, grammatical, and typographical corrections authorized by the person making the remarks involved; and

(ii) a record of the votes on any question on which a record vote is demanded.

§ 795. Public availability.

(B)(i) Except as provided in subdivision (B)(ii) and subject to paragraph (k)(7), the result of each such record vote shall be made available by the committee for inspection by the public at reasonable times in its offices. Information so available for public inspection shall include a description of the amendment, motion, order, or other proposition, the name of each member voting for and each member voting against such amendment, motion, order, or proposition, and the names of those members of the committee present but not voting.

(ii) The result of any record vote taken in executive session in the Committee on Standards of Official Conduct may not be made available for inspection by the public without an affirmative vote of a majority of the members of the committee.

§ 796. Committee files.

(2)(A) Except as provided in subdivision (B), all committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the member serving as its chairman. Such records shall be the property of the House, and each Member, Delegate, and the Resident Commissioner shall have access thereto.

(B) A Member, Delegate, or Resident Commissioner, other than members of the Committee on Standards of Official Conduct, may not have access to the records of that committee respecting the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House without the specific prior permission of that committee.

(3) Each committee shall include in its rules standards for availability of records of the committee delivered to the Archivist of the United States under rule VII. Such standards shall specify procedures for orders of the committee under clause 3(b)(3) and clause 4(b) of rule VII, including a requirement that nonavailability of a record for a period longer than the period otherwise applicable under that rule shall be approved by vote of the committee.

(4) Each committee shall make its publications available in electronic form to the maximum extent feasible.

The first sentence of paragraph (e)(1) was rewritten entirely in the 104th Congress (sec. 206, H. Res. 6, Jan. 4, 1995, p. 475). Its predecessor, requiring a complete record of all committee actions, including votes on any question on which a roll call was demanded, was enacted as section 133(b) of the Legislative Reorganization Act of 1946 (60 Stat. 812) and made part of the standing rules on January 3, 1953 (p. 24). The requirement that committee roll calls be subject to public inspection was added by section 104(b) of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and made a part of the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). The qualified exception for the Committee on Standards of Official Conduct from the requirement of public availability of record votes was added in the 105th Congress (sec. 8, H. Res. 168, Sept. 18, 1997, p. 19336). Effective on January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), the requirement that proxy votes in committee be made available for public inspection was eliminated from this paragraph since proxies were prohibited as of that date, but in the 94th Congress clause 2(f) of rule XI was amended to permit proxies in committee, and this paragraph was likewise amended to reinsert the requirement of availability for public inspection (H. Res. 5, Jan. 14, 1975, p. 20). When proxy voting was again eliminated in the 104th Congress, the reference thereto in the third sentence of paragraph (e)(1) was deleted (sec. 104(b), H. Res. 6, Jan. 4, 1995, p. 463). Paragraph (e)(2) derives from section 202(d) of the Legislative Reorganization Act of 1946 (60 Stat. 812), was made a part of the rules in the 83d Congress (H. Res. 5, Jan. 3, 1953, p. 24), and was amended in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70) to restrict the access of Members to certain records of the Committee on Standards of Official Conduct. Paragraph (e)(3) was added in the 101st Congress (H. Res. 5, Jan. 3, 1989, p. 72). Paragraph (e)(4) was added in the 105th Congress (H. Res. 5, Jan. 7, 1997, p. 121). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

Although all Members have access to committee records under this clause, it is not without qualification. For example, this clause: (1) does not give a Member the right to make photostatic copies of such records (Speaker Rayburn, Aug. 14, 1957, pp. 14737–39), and such records may not be brought into the well of the House if the committee has not authorized such action (Speaker Rayburn, June 3, 1960, p. 11820); (2) does not necessarily apply to records within the possession of the executive branch which the members of the committee have been allowed to examine under limited conditions at the discretion of the executive agency in possession of such materials (Speaker O'Neill, July 31, 1980, p. 20765); (3) does not apply to records (an executive communication not yet referred to com-

mittee) in the possession of the House (Sept. 9, 1998, p. 19769). In the 105th Congress the House adopted a resolution restricting Members' access to documents received from an independent counsel (said to relate to possible grounds for impeachment of the President) and referred to the Committee on the Judiciary (H. Res. 525, Sept. 11, 1998, p. 20020).

Testimony or evidence taken in executive sessions of a committee is under the control and subject to the regulation of the committee and, under clause 2(k)(7) of rule XI (§ 803, *infra*), cannot be released without the consent of the committee (June 26, 1961, p. 11233; see also Deschler, ch. 17, § 18). Furthermore, such access allows a Member to examine executive session materials only in committee rooms and does not permit a Member to copy or to take personal notes from such materials, to keep such notes or copies in his personal office files, or to release such materials to the public without the consent of the committee or subcommittee under clause 2(k)(7) of rule XI (Speaker O'Neill, Dec. 6, 1977, pp. 38470–73). Compare this clause with clause 11(g)(3) of rule X, which only permits access of nonmembers of the Select Committee on Intelligence to classified information in the possession of that committee when authorized by that committee. A resolution directing a standing committee to release executive-session material referred to it by special rule of the House was held to propose a change in the rules and, therefore, not to constitute a question of the privileges of the House under rule IX (Sept. 23, 1998, p. 21562).

In implementing clause 2(e), committees may prescribe regulations to govern the manner of access to their records, such as requiring examination only in committee rooms. See, for example, the rules of the Committees on the Budget, International Relations, and Armed Services, as compiled by the Committee on Rules.

Prohibition against proxy voting

§ 797. Ban on proxies. (f) A vote by a member of a committee or subcommittee with respect to any measure or matter may not be cast by proxy.

The 104th Congress adopted paragraph (f) in this form (sec. 104, H. Res. 6, Jan. 4, 1995, p. 463). An earlier form of the provision was enacted as section 106(b) of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and made part of the standing rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

The original form of this paragraph permitted committees to adopt written rules permitting proxies in writing, designating the persons to execute them and specifying the measures or matters to which they applied. Effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470),

proxies in committee were prohibited, but in the 94th Congress (H. Res. 5, Jan. 14, 1975, p. 20), the rule was amended to permit proxies in committees with additional restrictions requiring an assertion that the grantor was absent on official business or otherwise unable to attend, requiring the Member to sign and date the proxy, and permitting general proxies for procedural matters.

Open meetings and hearings

§ 798. Open meetings and hearings.

(g)(1) Each meeting for the transaction of business, including the markup of legislation, by a standing committee or subcommittee thereof (other than the Committee on Standards of Official Conduct or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of the meeting on that day shall be in executive session because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, would tend to defame, degrade, or incriminate any person, or otherwise would violate a law or rule of the House. Persons, other than members of the committee and such noncommittee Members, Delegates, Resident Commissioner, congressional staff, or departmental representatives as the committee may authorize, may not be present at a business or markup session that is held in executive session. This subparagraph does not apply to open committee hearings, which are governed by clause 4(a)(1) of rule X or by subparagraph (2).

(2)(A) Each hearing conducted by a committee or subcommittee (other than the Committee on Standards of Official Conduct or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would violate a law or rule of the House.

(B) Notwithstanding the requirements of subdivision (A), in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, a majority of those present may—

(i) agree to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would endanger national security, would compromise sensitive law enforcement information, or would violate clause 2(k)(5); or

(ii) agree to close the hearing as provided in clause 2(k)(5).

(C) A Member, Delegate, or Resident Commissioner may not be excluded from nonparticipatory attendance at a hearing of a committee or subcommittee (other than the Committee on Standards of Official Conduct or its subcommittees) unless the House by majority

vote authorizes a particular committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearings to Members, Delegates, and the Resident Commissioner by the same procedures specified in this subparagraph for closing hearings to the public.

(D) The committee or subcommittee may vote by the same procedure described in this subparagraph to close one subsequent day of hearing, except that the Committee on Appropriations, the Committee on Armed Services, and the Permanent Select Committee on Intelligence, and the subcommittees thereof, may vote by the same procedure to close up to five additional, consecutive days of hearings.

(3) The chairman of each committee (other than the Committee on Rules) shall make public announcement of the date, place, and subject matter of a committee hearing at least one week before the commencement of the hearing. If the chairman of the committee, with the concurrence of the ranking minority member, determines that there is good cause to begin a hearing sooner, or if the committee so determines by majority vote in the presence of the number of members required under the rules of the committee for the transaction of business, the chairman shall make the announcement at the earliest possible date. An announcement made under this subparagraph shall be published promptly in the

Daily Digest and made available in electronic form.

(4) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof. In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness.

(5)(A) Except as provided in subdivision (B), a point of order does not lie with respect to a measure reported by a committee on the ground that hearings on such measure were not conducted in accordance with this clause.

(B) A point of order on the ground described in subdivision (A) may be made by a member of the committee that reported the measure if such point of order was timely made and improperly disposed of in the committee.

(6) This paragraph does not apply to hearings of the Committee on Appropriations under clause 4(a)(1) of rule X.

Subparagraphs (1) and (2) relating to open committee meetings and hearings, were first made part of the rules on March 7, 1973 (H. Res. 259, 93d Cong., pp. 6713–20). They were amended in the 94th Congress (H. Res. 5, Jan. 14, 1975, p. 20), to limit to one day (in case of a committee

meeting) or to one day plus one subsequent day (in the case of a hearing) the period during which a committee may close its session. They were again amended in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70), to require that a majority (rather than a quorum) be present when a committee or subcommittee votes to close a meeting or hearing and to provide that a noncommittee Member cannot be excluded from a hearing except by a vote of the House. However, subparagraph (2) was amended in the 96th Congress (H. Res. 5, Jan. 15, 1979, p. 8) to permit a majority of those present under the rules of the committee for the purpose of taking testimony (not less than two members as provided in clause 2(h)(2) of rule XI) to vote to close a hearing either to discuss whether the testimony would endanger national security or would violate clause 2(k)(5) of this rule, or to proceed to close the hearing as provided by clause 2(k)(5). In the 98th Congress subparagraph (2) was amended further to permit the Committees on Appropriations and Armed Services, and the Permanent Select Committee on Intelligence, and their subcommittees, when voting in open session with a quorum present, to close a hearing on that particular day and for up to five additional days, for a total of not to exceed six days (H. Res. 5, Jan. 3, 1983, p. 34). In the 104th Congress the paragraph was amended to require that meetings and hearings open to the public also be open to broadcast and photographic media; subparagraph (2) was further amended to permit closed meetings only on specified conditions and to delete an exception for meetings relating to internal budget or personnel matters and to specify a new condition (sensitive law enforcement information) for closing hearings (sec. 105, H. Res. 6, Jan. 4, 1995, p. 463). The paragraph was also amended to conform references to renamed committees (sec. 202(b), H. Res. 6, Jan. 4, 1995, p. 467; H. Res. 5, Jan. 6, 1999, p. 47). In the 105th Congress subparagraphs (1) and (2) were again amended to reflect an amendment to former clause 4(e)(3) of rule X (currently clause 3 of rule XI) requiring meetings of the Committee on Standards of Official Conduct to occur in executive session (except for adjudicatory subcommittee meetings or full committee sanction hearings) unless opened by an affirmative vote of a majority of members (sec. 5, H. Res. 168, Sept. 18, 1997, p. 19336). Subparagraphs (3)–(6) derive from sections 111(b), 113(b), 115(b), and 242(c) respectively of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and became part of the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). Effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), these provisions were inadvertently omitted from the rules, and were therefore reinserted in the 94th Congress (H. Res. 5, Jan. 14, 1975, p. 20). Subparagraph (3) was amended in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113) to add the requirement of prompt entering of public notice of committee meetings into the committee scheduling service of the House Information Resources. Subparagraph (3) was again amended in the 104th Congress to permit the calling of a hearing on less than seven days' notice upon a determination of good cause either by vote of the committee or subcommittee or by its chairman

with the concurrence of its ranking minority member (H. Res. 43, Jan. 31, 1995, p. 3028). In the 105th and 106th Congresses subparagraphs (3) and (2) (respectively) were amended to effect a technical correction (H. Res. 5, Jan. 7, 1997, p. 121; H. Res. 5, Jan. 6, 1999, p. 47). Subparagraph (4) was rewritten in the 105th Congress to encourage committees to elicit curricula vitae and disclosures of certain interests from nongovernmental witnesses (H. Res. 5, Jan. 7, 1997, p. 121). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

In the 105th Congress the House adopted a resolution restricting access to meetings and hearings held by the Committee on the Judiciary on a communication received from an independent counsel relating to possible grounds for impeachment of the President (H. Res. 525, Sept. 11, 1998, p. 20020).

Quorum requirements

§ 799. Requirement of quorum.

(h)(1) A measure or recommendation may not be reported by a committee unless a majority of the committee is actually present.

This subparagraph is from section 133(d) of the Legislative Reorganization Act of 1946 (60 Stat. 812) and was made a part of the rules on January 3, 1953 (p. 24). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(l)(2)(A) of rule XI (H. Res. 5, Jan. 6, 1999, p. 47). The point of order that a bill was reported from a committee without a formal meeting and a quorum present comes too late if debate has started on a bill in the House (VIII, 2223; Feb. 24, 1947, p. 1374). No committee report is valid unless authorized with a quorum of the committee actually present at the time the vote is taken (IV, 4584; VIII, 2211, 2212, 2221, 2222), and while Speakers have indicated that committee members may come and go during the course of the vote if the roll call indicates that a quorum was present (VIII, 2222), where it is admitted that a quorum was not in the room at any time during the vote and the committee transcript does not show a quorum acting as a quorum, the Chair will sustain the point of order (VIII, 2212). In the 103d Congress, this provision was amended to provide that responses to roll calls in committee be deemed contemporaneous and to require that a point of no quorum with respect to a committee report be timely asserted in committee or considered waived (H. Res. 5, Jan. 5, 1993, p. 49), but in the 104th Congress both of those features were deleted from the rule (sec. 207, H. Res. 6, Jan. 4, 1995, p. 467).

Where the committee transcript was not conclusive and the manager of the bill gave absolute assurance that a majority of the full committee was actually present when the bill was ordered reported the Speaker over-

ruled a point of order made under this provision (Oct. 22, 1987, p. 28807). A point of no quorum pending a committee vote on ordering a measure reported may provoke a quorum call requiring a majority of the committee to be present in the committee room. A committee may act only when together, nothing being the report of the committee except what has been agreed to in committee actually assembled (see Jefferson's Manual at § 407, *supra*).

§ 800. Reduced quorum.

(2) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which may not be less than two.

(3) Each committee (other than the Committee on Appropriations, the Committee on the Budget, and the Committee on Ways and Means) may fix the number of its members to constitute a quorum for taking any action other than one for which the presence of a majority of the committee is otherwise required, which may not be less than one-third of the members.

Subparagraphs (2) and (3) (formerly subparagraphs (1) and (2)) were adopted in the 84th Congress and only related to the authority of a committee to fix a quorum of not less than two for taking testimony (H. Res. 151, Mar. 23, 1955, pp. 3569, 3585). In the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70) subparagraph (3) (formerly subparagraph (2)) was added to authorize committees to fix a quorum less than a majority for certain other action. Before the House recodified its rules in the 106th Congress, paragraph (h) consisted only of subparagraphs (2) and (3) (H. Res. 5, Jan. 6, 1999, p. 47). Subparagraph (3) was amended in the 107th Congress to preserve all requirements for a majority quorum found in House rules (sec. 2(i), H. Res. 5, Jan. 3, 2001, p. 25).

By unanimous consent the Committee on Standards of Official Conduct was authorized to receive evidence and take testimony before a quorum of one of its members for the remainder of the second session of the 100th Congress (Oct. 13, 1988, p. 30467). Authority for a committee to conduct depositions or interrogatories before one member or staff of the committee must be specifically conferred by the House (see, *e.g.*, H. Res. 167, 105th Cong., June 20, 1997, p. 11677).

§ 800a. Postponing votes in committee.

(4)(A) Each committee may adopt a rule authorizing the chairman of a committee or subcommittee—

(i) to postpone further proceedings when a record vote is ordered on the question of approving a measure or matter or on adopting an amendment; and

(ii) to resume proceedings on a postponed question at any time after reasonable notice.

(B) A rule adopted pursuant to this subparagraph shall provide that when proceedings resume on a postponed question, notwithstanding any intervening order for the previous question, an underlying proposition shall remain subject to further debate or amendment to the same extent as when the question was postponed.

This subpararaph was added in the 108th Congress (sec. 2(g), H. Res. 5, Jan. 7, 2003, p. ——).

Limitation on committee sittings

§ 801. Committees not to sit.

(i) A committee may not sit during a joint session of the House and Senate or during a recess when a joint meeting of the House and Senate is in progress.

A clause regulating when committees could sit had its origin in 1794. It was omitted from rule XI in the adoption of rules for the 80th Congress but remained effective as part of the Legislative Reorganization Act of 1946, the applicable provisions of which were continued as a part of the rules of the House. While the rule formerly prohibited committees from sitting at any time when the House was in session, it was narrowed to proscribe sittings during the five-minute rule by the Legislative Reorganization Act of 1970 (sec. 117(b); 84 Stat. 1140) and this revision was made part of the standing rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). Effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), the Committees on Appropriations, the Budget, and Rules were exempted from this clause; and in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70), the Committee on Standards of Official Conduct was also exempted. The Committee on Ways and Means was traditionally per-

mitted to sit during proceedings under the five-minute rule by unanimous consent granted each Congress (Jan. 29, 1975, p. 1677) until it was exempted from the rule in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113). A provision that special leave to sit be granted if ten Members did not object was added to the clause in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70). An exemption for the Committee on House Administration and the prohibition against committee meetings during joint meetings or joint sessions were added in the 101st Congress (H. Res. 5, Jan. 3, 1989, p. 72). In the 103d Congress the prohibition against sitting during proceedings under the five-minute rule was stricken altogether (H. Res. 5, Jan. 5, 1993, p. 49), but in the 104th Congress the former rule was reinstated with exemptions for the Committees on Appropriations, the Budget, Rules, Standards of Official Conduct, and Ways and Means, and also with the provision for a privileged motion by the Majority Leader (sec. 208, H. Res. 6, Jan. 4, 1995, p. 467), on which he controlled one hour of debate (Jan. 23, 1995, p. 2209). In the 105th Congress so much of paragraph (i) as related to proceedings under the five-minute rule was again stricken (H. Res. 5, Jan. 7, 1997, p. 121). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

Calling and questioning of witnesses

§ 802. Witnesses.

(j)(1) Whenever a hearing is conducted by a committee on a measure or matter, the minority members of the committee shall be entitled, upon request to the chairman by a majority of them before the completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.

(2)(A) Subject to subdivisions (B) and (C), each committee shall apply the five-minute rule during the questioning of witnesses in a hearing until such time as each member of the committee who so desires has had an opportunity to question each witness.

(B) A committee may adopt a rule or motion permitting a specified number of its members to

question a witness for longer than five minutes. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

(C) A committee may adopt a rule or motion permitting committee staff for its majority and minority party members to question a witness for equal specified periods. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

Paragraph (j)(1) was contained in section 114(b) of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and was made a part of the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). Paragraph (j)(2) was added to the rules on that latter date. While a majority of the minority members of a committee are entitled to call witnesses selected by the minority for at least one day of hearings, no rule of the House requires the calling of witnesses on opposing sides of an issue (Oct. 14, 1987, p. 27921). In the 105th Congress paragraph (j)(2) was redesignated as (2)(A) and two new subparagraphs were added as (2)(B) and (2)(C) to enable committees to permit extended examinations of witnesses (for 30 additional minutes) by designated members or by staff (H. Res. 5, Jan. 7, 1997, p. 121). A technical correction was effected in the 106th Congress to clarify the procedure to extend questioning, and clerical and stylistic changes were effected when the House recodified its rules in the same Congress (H. Res. 5, Jan. 6, 1999, p. 47).

Hearing procedures

§ 803. Hearing procedure.

(k)(1) The chairman at a hearing shall announce in an opening statement the subject of the hearing.

(2) A copy of the committee rules and of this clause shall be made available to each witness on request.

(3) Witnesses at hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(4) The chairman may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

(5) Whenever it is asserted by a member of the committee that the evidence or testimony at a hearing may tend to defame, degrade, or incriminate any person, or it is asserted by a witness that the evidence or testimony that the witness would give at a hearing may tend to defame, degrade, or incriminate the witness—

(A) notwithstanding paragraph (g)(2), such testimony or evidence shall be presented in executive session if, in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, the committee determines by vote of a majority of those present that such evidence or testimony may tend to defame, degrade, or incriminate any person; and

(B) the committee shall proceed to receive such testimony in open session only if the committee, a majority being present, determines that such evidence or testimony will not tend to defame, degrade, or incriminate any person.

In either case the committee shall afford such person an opportunity voluntarily to appear as a witness, and receive and dispose of requests

from such person to subpoena additional witnesses.

(6) Except as provided in subparagraph (5), the chairman shall receive and the committee shall dispose of requests to subpoena additional witnesses.

(7) Evidence or testimony taken in executive session, and proceedings conducted in executive session, may be released or used in public sessions only when authorized by the committee, a majority being present.

(8) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinence of testimony and evidence adduced at its hearing.

(9) A witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the committee.

The provisions of paragraph (k) were first incorporated into the rules in the 84th Congress (H. Res. 151, Mar. 23, 1955, pp. 3569, 3585). The requirement of paragraph (k)(2) that a copy of committee rules be furnished to each witness was added in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144) and was amended in the 107th Congress to require the committee to furnish such rules only when the witness so requests (sec. 2(j), H. Res. 5, Jan. 3, 2001, p. 25). The former requirement of paragraph (k)(9) that a witness must pay the cost of a transcript copy of his testimony was eliminated under the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). Paragraph (k)(5) was amended in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16) to permit a committee or subcommittee to hear testimony asserted to be defamatory in executive session upon a determination by a majority of those present that such testimony is indeed defamatory, degrading, or incriminating. It was amended in the 107th Congress to permit such an assertion to be made by the witness (with respect to himself) or a member

of the Committee (with respect to any person) (sec. 2(j), H. Res. 5, Jan. 3, 2001, p. 25). In the 105th Congress subparagraph (5) was amended to clarify a majority of those voting (a full quorum being present) may decide to proceed in open session (H. Res. 5, Jan. 7, 1997, p. 121). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). "Investigative" was removed from the heading and subparagraphs (1), (3), and (5) of paragraph (k) in the 107th Congress to conform the rule to House practice, which is to apply this paragraph to all committee investigative, oversight, or legislative hearings (sec. 2(j), H. Res. 5, Jan. 3, 2001, p. 25).

The requirements of clause 2(g)(1) and (2), and of 2(m)(2)(A), of this rule that a majority of the committee or subcommittee shall constitute a quorum for the purposes of closing meetings or hearings or issuing subpoenas have been construed to require, under clause 2(k)(7) of this rule, that a majority shall likewise constitute a quorum to release or make public any evidence or testimony received in any closed meeting or hearing and any other executive session record of the committee or subcommittee. See also clauses 11(c) and 11(g) of rule X, which provide that executive session material transmitted by the Permanent Select Committee on Intelligence to another committee of the House becomes the executive session material of the recipient committee by virtue of the nature of the material and the injunction of clause 11(g) of rule X, which prohibits disclosure of information provided to committees or Members of the House except in a secret session. For a discussion of questions of the privileges of the House addressing committee hearing procedure, see § 704, *supra*.

Supplemental, minority, or additional views

§ 804. Minority views.

(l) If at the time of approval of a measure or matter by a committee (other than the Committee on Rules) a member of the committee gives notice of intention to file supplemental, minority, or additional views for inclusion in the report to the House thereon, that member shall be entitled to not less than two additional calendar days after the day of such notice (excluding Saturdays, Sundays, and legal holidays except when the House is in session on such a day) to file such views, in writing and signed by that member, with the clerk of the committee.

This provision was originally included in section 107 of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and was incorporated into the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). In the 104th Congress it was amended to count as a "calendar day" any day on which the House is in session (H. Res. 254, Nov. 30, 1995, p. 35077). In the 105th Congress it was further amended to reduce the guaranteed time for composing separate views from three full days to two full days after the day of notice (H. Res. 5, Jan. 7, 1997, p. 121). Before the House recodified its rules in the 106th Congress, paragraph (l) consisted of this paragraph and current clause 2(c) of rule XIII (H. Res. 5, Jan. 6, 1999, p. 47).

Power to sit and act; subpoena power

§ 805. Power to sit and to issue subpoenas; oaths.

(m)(1) For the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII), a committee or subcommittee is authorized (subject to subparagraph (3)(A))—

(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings as it considers necessary; and

(B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.

(2) The chairman of the committee, or a member designated by the chairman, may administer oaths to witnesses.

(3)(A)(i) Except as provided in subdivision (A)(ii), a subpoena may be authorized and issued by a committee or subcommittee under subparagraph (1)(B) in the conduct of an investigation or series of investigations or activities only when

authorized by the committee or subcommittee, a majority being present. The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chairman of the committee under such rules and under such limitations as the committee may prescribe. Authorized subpoenas shall be signed by the chairman of the committee or by a member designated by the committee.

(ii) In the case of a subcommittee of the Committee on Standards of Official Conduct, a subpoena may be authorized and issued only by an affirmative vote of a majority of its members.

(B) A subpoena duces tecum may specify terms of return other than at a meeting or hearing of the committee or subcommittee authorizing the subpoena.

(C) Compliance with a subpoena issued by a committee or subcommittee under subparagraph (1)(B) may be enforced only as authorized or directed by the House.

Before the adoption of clause 2(m) under the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), only the Committees on Appropriations, the Budget, Government Operations, Internal Security, and Standards of Official Conduct were permitted by the standing rules to perform the functions as specified in subparagraphs (1)(A) and (1)(B), and other standing and select committees were given those authorities by separate resolutions reported from the Committee on Rules each Congress. In the 94th Congress the paragraph was amended to require authorized subpoenas to be signed by the chairman of the full committee or any member designated by the committee (H. Res. 5, Jan. 14, 1975, p. 20). In the 95th Congress the paragraph was amended to permit a subcommittee, as well as a full committee, to authorize subpoenas and to allow a full committee to delegate such authority to the chairman of the full committee (H. Res. 5, Jan. 4, 1977, pp. 53–70). The special rule for authorizing and issuing a subpoena of a subcommittee of the Committee on Standards of Official Conduct was adopted

in the 105th Congress (sec. 15, H. Res. 168, Sept. 18, 1997, p. 19319). In the 106th Congress subparagraph (3)(B) was added, and clerical and stylistic changes were effected when the House recodified its rules in the same Congress (H. Res. 5, Jan. 6, 1999, p. 47). A clerical correction was effected to paragraph (m)(1) in the 107th Congress to correct a cross reference (sec. 2(x), H. Res. 5, Jan. 3, 2001, p. 26).

A subpoena issued under this clause need only be signed by the chairman of the committee or by any member designated by the committee, whereas when the House issues an order or warrant the Speaker must under clause 4 of rule I issue the summons under his hand and seal, and it must be attested by the Clerk pursuant to clause 2(c) of rule II (formerly clause 3 of rule III) (III, 1668; see H. Rept. 96–1078, p. 22). Pursuant to 2 U.S.C. 191, the President of the Senate, the Speaker of the House of Representatives, or a chairman of any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or of a committee of the whole, or of any committee of either House of Congress, is empowered to administer oaths to witnesses in any case under their examination, and any Member of either House of Congress may administer oaths to witnesses in any matter depending in either House of Congress of which he is a Member, or any committee thereof.

While under this clause the Committee on Standards of Official Conduct may issue subpoenas in investigating the conduct of a Member, officer, or employee of the House (the extent of the committee's jurisdiction under rule X and functions under clause 3 of rule XI), where the House mandates a possible investigation by that committee of other persons not directly associated with the House, the committee's jurisdiction is thereby enlarged and a broader subpoena authority must be conferred on the committee (Mar. 3, 1976, p. 5165). Subparagraph (3)(B) (formerly subparagraph (2)(B)) has been interpreted to require authorization by the full House before a subcommittee chairman could intervene in a law suit in order to gain access to documents subpoenaed by the subcommittee. In re Beef Industry Antitrust Litigation, 589 F.2d 786 (5th Cir. 1979). The authority conferred in clause 2(m)(1)(B) to require information "by subpoena or otherwise" has not been interpreted to authorize depositions and interrogatories. That authority must be conferred by separate action of the House (see § 800, *supra*).

Committee on Standards of Official Conduct

§ 806. Standards of Official Conduct; additional duties.

3. (a) The Committee on Standards of Official Conduct has the following functions:

(1) The committee may recommend to the House from time to time such administrative actions as it may consider appropriate to establish or enforce standards of official conduct for Members, Delegates, the Resident Commissioner, officers, and employees of the House. A letter of reproval or other administrative action of the committee pursuant to an investigation under subparagraph (2) shall only be issued or implemented as a part of a report required by such subparagraph.

(2) The committee may investigate, subject to paragraph (b), an alleged violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House of the Code of Official Conduct or of a law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, Delegate, Resident Commissioner, officer, or employee in the performance of his duties or the discharge of his responsibilities. After notice and hearing (unless the right to a hearing is waived by the Member, Delegate, Resident Commissioner, officer, or employee), the committee shall report to the House its findings of fact and recommendations, if any, for the final disposition of any such investigation and such action as the committee may consider appropriate in the circumstances.

(3) The committee may report to the appropriate Federal or State authorities, either with the approval of the House or by an affirmative vote of two-thirds of the members of the com-

mittee, any substantial evidence of a violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House, of a law applicable to the performance of his duties or the discharge of his responsibilities that may have been disclosed in a committee investigation.

(4) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, Delegate, Resident Commissioner, officer, or employee. With appropriate deletions to ensure the privacy of the person concerned, the committee may publish such opinion for the guidance of other Members, Delegates, the Resident Commissioner, officers, and employees of the House.

(5) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for a written waiver in exceptional circumstances with respect to clause 4 of rule XXIII.

(b)(1)(A) Unless approved by an affirmative vote of a majority of its members, the Committee on Standards of Official Conduct may not report a resolution, report, recommendation, or advisory opinion relating to the official conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House, or, except as provided in subparagraph (2), undertake an investigation of such conduct.

(B)(i) Upon the receipt of information offered as a complaint that is in compliance with this rule and the rules of the committee, the chairman and ranking minority member jointly may appoint members to serve as an investigative subcommittee.

(ii) The chairman and ranking minority member of the committee jointly may gather additional information concerning alleged conduct that is the basis of a complaint or of information offered as a complaint until they have established an investigative subcommittee or either of them has placed on the agenda of the committee the issue of whether to establish an investigative subcommittee.

(2) Except in the case of an investigation undertaken by the committee on its own initiative, the committee may undertake an investigation relating to the official conduct of an individual Member, Delegate, Resident Commissioner, officer, or employee of the House only—

(A) upon receipt of information offered as a complaint, in writing and under oath, from a Member, Delegate, or Resident Commissioner and transmitted to the committee by such Member, Delegate, or Resident Commissioner; or

(B) upon receipt of information offered as a complaint, in writing and under oath, from a person not a Member, Delegate, or Resident Commissioner provided that a Member, Delegate, or Resident Commissioner certifies in writing to the committee that he believes the

information is submitted in good faith and warrants the review and consideration of the committee.

If a complaint is not disposed of within the applicable periods set forth in the rules of the Committee on Standards of Official Conduct, the chairman and ranking minority member shall establish jointly an investigative subcommittee and forward the complaint, or any portion thereof, to that subcommittee for its consideration. However, if at any time during those periods either the chairman or ranking minority member places on the agenda the issue of whether to establish an investigative subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

(3) The committee may not undertake an investigation of an alleged violation of a law, rule, regulation, or standard of conduct that was not in effect at the time of the alleged violation. The committee may not undertake an investigation of such an alleged violation that occurred before the third previous Congress unless the committee determines that the alleged violation is directly related to an alleged violation that occurred in a more recent Congress.

(4) A member of the committee shall be ineligible to participate as a member of the committee in a committee proceeding relating to the member's official conduct. Whenever a member of the committee is ineligible to act as a member of the committee under the preceding sentence,

the Speaker shall designate a Member, Delegate, or Resident Commissioner from the same political party as the ineligible member to act in any proceeding of the committee relating to that conduct.

(5) A member of the committee may disqualify himself from participating in an investigation of the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House upon the submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks to be disqualified. If the committee approves and accepts such affidavit of disqualification, the chairman shall so notify the Speaker and request the Speaker to designate a Member, Delegate, or Resident Commissioner from the same political party as the disqualifying member to act in any proceeding of the committee relating to that case.

(6) Information or testimony received, or the contents of a complaint or the fact of its filing, may not be publicly disclosed by any committee or staff member unless specifically authorized in each instance by a vote of the full committee.

(7) The committee shall have the functions designated in titles I and V of the Ethics in Government Act of 1978, in sections 7342, 7351, and 7353 of title 5, United States Code, and in clause 11(g)(4) of rule X.

(c)(1) Notwithstanding clause 2(g)(1) of rule XI, each meeting of the Committee on Standards

of Official Conduct or a subcommittee thereof shall occur in executive session unless the committee or subcommittee, by an affirmative vote of a majority of its members, opens the meeting to the public.

(2) Notwithstanding clause 2(g)(2) of rule XI, each hearing of an adjudicatory subcommittee or sanction hearing of the Committee on Standards of Official Conduct shall be held in open session unless the committee or subcommittee, in open session by an affirmative vote of a majority of its members, closes all or part of the remainder of the hearing on that day to the public.

(d) Before a member, officer, or employee of the Committee on Standards of Official Conduct, including members of a subcommittee of the committee selected under clause 5(a)(4) of rule X and shared staff, may have access to information that is confidential under the rules of the committee, the following oath (or affirmation) shall be executed:

> "I do solemnly swear (or affirm) that I will not disclose, to any person or entity outside the Committee on Standards of Official Conduct, any information received in the course of my service with the committee, except as authorized by the committee or in accordance with its rules."

Copies of the executed oath shall be retained by the Clerk as part of the records of the House. This paragraph establishes a standard of conduct within the meaning of paragraph (a)(2). Breaches of confidentiality shall be investigated

by the Committee on Standards of Official Conduct and appropriate action shall be taken.

(e)(1) If a complaint or information offered as a complaint is deemed frivolous by an affirmative vote of a majority of the members of the Committee on Standards of Official Conduct, the committee may take such action as it, by an affirmative vote of a majority of its members, considers appropriate in the circumstances.

(2) Complaints filed before the One Hundred Fifth Congress may not be deemed frivolous by the Committee on Standards of Official Conduct.

The investigative authority contained in this provision (formerly clause 4(e) of rule X) was first conferred upon the commitee in the 90th Congress (H. Res. 1099, Apr. 3, 1968, p. 8802). Effective January 3, 1975, the former requirement in paragraph (b)(1)(A) (formerly clause 4(e)(2)(A) of rule X) that seven committee members must authorize an investigation was changed to permit a majority of the commitee to provide that authorization (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). That provision was further amended in the 105th Congress to permit the chairman and ranking minority member, with respect to a properly filed complaint, to gather additional information or to establish an investigative subcommittee (sec. 11, H. Res. 168, Sept. 18, 1997, p. 19318). Paragraph (b)(5) (formerly clause 4(e)(2)(E) of rule X) was added in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70), to provide a mechanism for a committee member to disqualify himself from participating in an investigation, and paragraph (b)(6) (formerly clause 4(e)(2)(F) of rule X) was added in the 96th Congress (H. Res. 5, Jan. 15, 1979, p. 8).

This provision was amended in several particulars by the Ethics Reform Act of 1989 (P.L. 101–194): (1) paragraph (a)(1) (formerly clause 4(e)(1)(A) of rule X) was amended to enable a letter of reproval or other administrative action of the commitee to be implemented as part of a report to the House, with no action required of the House; (2) paragraph (a)(2) (formerly clause 4(e)(1)(B) of rule X) was amended to require the committee to report to the House its findings of fact and any recommendations respecting the final disposition of a matter in which it votes to undertake an investigation; (3) a new paragraph (a)(4) (formerly clause 4(e)(1)(E) of rule X) was added to empower the commitee to consider requests that the rule restricting the acceptance of gifts be waived in exceptional circumstances; and (4) paragraph (b)(3) (formerly clause 4(e)(2)(C) of rule X) was amended to set

a general limitation on actions for committee consideration of ethics matters.

In the beginning of the 105th Congress a subparagraph (3) was added at the end of former clause 4(e) of rule X to establish a Select Committee on Ethics only to resolve a specific inquiry originally undertaken by the standing Committee on Standards of Official Conduct in the 104th Congress but not concluded (H. Res. 5, Jan. 7, 1997, p. 121). The select commitee filed one report to the House (H. Rept. 105–1, H. Res. 31, Jan. 21, 1997, p. 393). The current form of paragraph (c) (formerly clause 4(e)(3) of rule X) was adopted later in the 105th Congress (sec. 5, H. Res. 168, Sept. 18, 1997, p. 19318).

Additional amendments to this provision were adopted in the 105th Congress as follows: (1) paragraphs (d) and (3) (formerly clauses 4(e)(4) and 4(e)(5)) were adopted (sec. 6 and sec. 19, H. Res. 168, Sept. 18, 1997, pp. 19318, 19320); (2) paragraph (b)(2) (formerly clause 4(e)(2)(B) of rule X) was amended to address the disposition of a complaint after expiration of periods set forth in the commitee rules and to specify parameters for the filing of complaints by non-Members (sec. 11, H. Res. 168, Sept. 18, 1997, p. 19318); and (3) paragraph (a)(3) (formerly clause 4(e)(1)(C) of rule X) was amended to permit the commitee to report to the appropriate authorities substantial evidence of a violation of law by an affirmative vote of two-thirds of the members of the commitee without the approval of the House (sec. 18, H. Res. 168, Sept. 18, 1997, p. 19320). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 4(e) of rule X and paragraph (b)(7) was found in former clause 1(p) of rule X (H. Res. 5, Jan. 6, 1999, p. 47). Clause 3(a)(5) was amended in the 107th Congress to reflect the redesignation of a rule (sec. 2(s), H. Res. 5, Jan. 3, 2001, p. 24).

Committee agendas

§ 806a. Standards of Official Conduct; committee rules.

(f) The committee shall adopt rules providing that the chairman shall establish the agenda for meetings of the committee, but shall not preclude the ranking minority member from placing any item on the agenda.

Committee staff

(g)(1) The committee shall adopt rules providing that—

(A) the staff be assembled and retained as a professional, nonpartisan staff;

(B) each member of the staff shall be professional and demonstrably qualified for the position for which he is hired;

(C) the staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner;

(D) no member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election;

(E) no member of the staff or outside counsel may accept public speaking engagements or write for publication on any subject that is in any way related to his or her employment or duties with the committee without specific prior approval from the chairman and ranking minority member; and

(F) no member of the staff or outside counsel may make public, unless approved by an affirmative vote of a majority of the members of the committee, any information, document, or other material that is confidential, derived from executive session, or classified and that is obtained during the course of employment with the committee.

(2) Only subdivisions (C), (E), and (F) of subparagraph (1) shall apply to shared staff.

(3)(A) All staff members shall be appointed by an affirmative vote of a majority of the members of the committee. Such vote shall occur at the first meeting of the membership of the committee during each Congress and as necessary during the Congress.

(B) Subject to the approval of the Committee on House Administration, the committee may retain counsel not employed by the House of Representatives whenever the committee determines, by an affirmative vote of a majority of the members of the committee, that the retention of outside counsel is necessary and appropriate.

(C) If the committee determines that it is necessary to retain staff members for the purpose of a particular investigation or other proceeding, then such staff shall be retained only for the duration of that particular investigation or proceeding.

(D) Outside counsel may be dismissed before the end of a contract between the committee and such counsel only by an affirmative vote of a majority of the members of the committee.

(4) In addition to any other staff provided for by law, rule, or other authority, with respect to the committee, the chairman and ranking minority member each may appoint one individual as a shared staff member from his or her personal staff to perform service for the committee. Such shared staff may assist the chairman or ranking minority member on any subcommittee on which he serves.

Meetings and hearings

(h)(1) The committee shall adopt rules providing that—

(A) all meetings or hearings of the committee or any subcommittee thereof, other

than any hearing held by an adjudicatory subcommittee or any sanction hearing held by the committee, shall occur in executive session unless the committee or subcommittee by an affirmative vote of a majority of its members opens the meeting or hearing to the public; and

(B) any hearing held by an adjudicatory subcommittee or any sanction hearing held by the committee shall be open to the public unless the committee or subcommittee by an affirmative vote of a majority of its members closes the hearing to the public.

Public disclosure

(i) The committee shall adopt rules providing that, unless otherwise determined by a vote of the committee, only the chairman or ranking minority member, after consultation with each other, may make public statements regarding matters before the committee or any subcommittee thereof.

Requirements to constitute a complaint

(j) The committee shall adopt rules regarding complaints to provide that whenever information offered as a complaint is submitted to the committee, the chairman and ranking minority member shall have 14 calendar days or five legislative days, whichever is sooner, to determine whether the information meets the requirements of the rules of the committee for what constitutes a complaint.

Duties of chairman and ranking minority member regarding properly filed complaints

(k)(1) The committee shall adopt rules providing that whenever the chairman and ranking minority member jointly determine that information submitted to the committee meets the requirements of the rules of the committee for what constitutes a complaint, they shall have 45 calendar days or five legislative days, whichever is later, after that determination (unless the committee by an affirmative vote of a majority of its members votes otherwise) to—

(A) recommend to the committee that it dispose of the complaint, or any portion thereof, in any manner that does not require action by the House, which may include dismissal of the complaint or resolution of the complaint by a letter to the Member, officer, or employee of the House against whom the complaint is made;

(B) establish an investigative subcommittee; or

(C) request that the committee extend the applicable 45-calendar day or five-legislative day period by one additional 45-calendar day period when they determine more time is necessary in order to make a recommendation under subdivision (A).

(2) The committee shall adopt rules providing that if the chairman and ranking minority member jointly determine that information submitted to the committee meets the requirements of the

rules of the committee for what constitutes a complaint, and the complaint is not disposed of within the applicable time periods under subparagraph (1), then they shall establish an investigative subcommittee and forward the complaint, or any portion thereof, to that subcommittee for its consideration. However, if, at any time during those periods, either the chairman or ranking minority member places on the agenda the issue of whether to establish an investigative subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

Duties of chairman and ranking minority member regarding information not constituting a complaint

(l) The committee shall adopt rules providing that whenever the chairman and ranking minority member jointly determine that information submitted to the committee does not meet the requirements of the rules of the committee for what constitutes a complaint, they may—

(1) return the information to the complainant with a statement that it fails to meet the requirements of the rules of the committee for what constitutes a complaint; or

(2) recommend to the committee that it authorize the establishment of an investigative subcommittee.

Investigative and adjudicatory subcommittees

(m) The committee shall adopt rules providing that—

(1)(A) an investigative subcommittee shall be composed of four Members (with equal representation from the majority and minority parties) whenever such a subcommittee is established pursuant to the rules of the committee;

(B) an adjudicatory subcommittee shall be composed of the members of the committee who did not serve on the pertinent investigative subcommittee (with equal representation from the majority and minority parties) whenever such a subcommittee is established pursuant to the rules of the committee; and

(C) notwithstanding any other provision of this clause, the chairman and ranking minority member of the committee may consult with an investigative subcommittee either on their own initiative or on the initiative of the subcommittee, shall have access to information before a subcommittee with which they so consult, and shall not thereby be precluded from serving as full, voting members of any adjudicatory subcommittee;

(2) at the time of appointment, the chairman shall designate one member of a subcommittee to serve as chairman and the ranking minority member shall designate one member of the subcommittee to serve as the ranking minority member; and

(3) the chairman and ranking minority member of the committee may serve as members of an investigative subcommittee, but may not serve as non-voting, ex officio members.

Standard of proof for adoption of statement of alleged violation

(n) The committee shall adopt rules to provide that an investigative subcommittee may adopt a statement of alleged violation only if it determines by an affirmative vote of a majority of the members of the subcommittee that there is substantial reason to believe that a violation of the Code of Official Conduct, or of a law, rule, regulation, or other standard of conduct applicable to the performance of official duties or the discharge of official responsibilities by a Member, officer, or employee of the House of Representatives, has occurred.

Subcommittee powers

(o)(1) The committee shall adopt rules providing that an investigative subcommittee or an adjudicatory subcommittee may authorize and issue subpoenas only when authorized by an affirmative vote of a majority of the members of the subcommittee.

(2) The committee shall adopt rules providing that an investigative subcommittee may, upon an affirmative vote of a majority of its members, expand the scope of its investigation approved by an affirmative vote of a majority of the members of the committee.

(3) The committee shall adopt rules to provide that—

(A) an investigative subcommittee may, upon an affirmative vote of a majority of its members, amend its statement of alleged violation anytime before the statement of alleged violation is transmitted to the committee; and

(B) if an investigative subcommittee amends its statement of alleged violation, the respondent shall be notified in writing and shall have 30 calendar days from the date of that notification to file an answer to the amended statement of alleged violation.

Due process rights of respondents

(p) The committee shall adopt rules to provide that—

(1) not less than 10 calendar days before a scheduled vote by an investigative subcommittee on a statement of alleged violation, the subcommittee shall provide the respondent with a copy of the statement of alleged violation it intends to adopt together with all evidence it intends to use to prove those charges which it intends to adopt, including documentary evidence, witness testimony, memoranda of witness interviews, and physical evidence, unless the subcommittee by an affirmative vote of a majority of its members decides to withhold certain evidence in order to protect a witness; but if such evidence is withheld, the subcommittee shall inform the respondent

that evidence is being withheld and of the count to which such evidence relates;

(2) neither the respondent nor his counsel shall, directly or indirectly, contact the subcommittee or any member thereof during the period of time set forth in paragraph (1) except for the sole purpose of settlement discussions where counsel for the respondent and the subcommittee are present;

(3) if, at any time after the issuance of a statement of alleged violation, the committee or any subcommittee thereof determines that it intends to use evidence not provided to a respondent under paragraph (1) to prove the charges contained in the statement of alleged violation (or any amendment thereof), such evidence shall be made immediately available to the respondent, and it may be used in any further proceeding under the rules of the committee;

(4) evidence provided pursuant to paragraph (1) or (3) shall be made available to the respondent and his or her counsel only after each agrees, in writing, that no document, information, or other materials obtained pursuant to that paragraph shall be made public until—

(A) such time as a statement of alleged violation is made public by the committee if the respondent has waived the adjudicatory hearing; or

(B) the commencement of an adjudicatory hearing if the respondent has not waived an adjudicatory hearing;

but the failure of respondent and his counsel to so agree in writing, and their consequent failure to receive the evidence, shall not preclude the issuance of a statement of alleged violation at the end of the period referred to in paragraph (1);

(5) a respondent shall receive written notice whenever—

(A) the chairman and ranking minority member determine that information the committee has received constitutes a complaint;

(B) a complaint or allegation is transmitted to an investigative subcommittee;

(C) an investigative subcommittee votes to authorize its first subpoena or to take testimony under oath, whichever occurs first; or

(D) an investigative subcommittee votes to expand the scope of its investigation;

(6) whenever an investigative subcommittee adopts a statement of alleged violation and a respondent enters into an agreement with that subcommittee to settle a complaint on which that statement is based, that agreement, unless the respondent requests otherwise, shall be in writing and signed by the respondent and respondent's counsel, the chairman and ranking minority member of the subcommittee, and the outside counsel, if any;

(7) statements or information derived solely from a respondent or his counsel during any settlement discussions between the committee or a subcommittee thereof and the respondent shall not be included in any report of the subcommittee or the committee or otherwise publicly disclosed without the consent of the respondent; and

(8) whenever a motion to establish an investigative subcommittee does not prevail, the committee shall promptly send a letter to the respondent informing him of such vote.

Committee reporting requirements

(q) The committee shall adopt rules to provide that—

(1) whenever an investigative subcommittee does not adopt a statement of alleged violation and transmits a report to that effect to the committee, the committee may by an affirmative vote of a majority of its members transmit such report to the House of Representatives;

(2) whenever an investigative subcommittee adopts a statement of alleged violation, the respondent admits to the violations set forth in such statement, the respondent waives his or her right to an adjudicatory hearing, and the respondent's waiver is approved by the committee—

(A) the subcommittee shall prepare a report for transmittal to the committee, a final draft of which shall be provided to the respondent not less than 15 calendar days be-

fore the subcommittee votes on whether to adopt the report;

(B) the respondent may submit views in writing regarding the final draft to the subcommittee within seven calendar days of receipt of that draft;

(C) the subcommittee shall transmit a report to the committee regarding the statement of alleged violation together with any views submitted by the respondent pursuant to subdivision (B), and the committee shall make the report together with the respondent's views available to the public before the commencement of any sanction hearing; and

(D) the committee shall by an affirmative vote of a majority of its members issue a report and transmit such report to the House of Representatives, together with the respondent's views previously submitted pursuant to subdivision (B) and any additional views respondent may submit for attachment to the final report; and

(3) members of the committee shall have not less than 72 hours to review any report transmitted to the committee by an investigative subcommittee before both the commencement of a sanction hearing and the committee vote on whether to adopt the report.

In the 105th Congress a 12-member bipartisan task force was informally appointed by the Majority and Minority Leaders to conduct a comprehensive review of the House ethics process. At the same time an order of the House was adopted imposing a moratorium on filing or processing ethics complaints and on raising certain questions of privilege under rule IX with respect to official conduct. The moratorium was imposed in the expectation that the recommendations of the task force would include changes

relating to the Committee on Standards of Official Conduct and the process by which the House enforces standards of official conduct (Feb. 12, 1997, p. 2058). The moratorium was extended through September 10, 1997 (July 30, 1997, p. 16958). On September 18, 1997, the House adopted the recommendations of the task force with certain amendments (H. Res. 168, 105th Cong., p. 19340), which included not only changes to the standing Rules of the House but also free-standing directives to the Committee on Standards of Official Conduct, which were reaffirmed for the 106th Congress (sec. 2(c), H. Res. 5, Jan. 6, 1999, p. 47) and again in the 107th Congress with an exception to section 13 (sec. 3(a), H. Res. 5, Jan. 3, 2001, p. 24). In the 108th Congress the pertinent freestanding provisions were codified (including the exception to section 13 added in the 107th Congress) as new paragraphs (f) through (q) of clause 3 (sec. 2(h), H. Res. 5, Jan. 7, 2003, p. ——). On the opening day of the 109th Congress, various changes were made to paragraphs (b), (k), (p), and (q) (sec. 2(k), H. Res. 5, Jan. 4, 2005, p. ——). Later in the 109th Congress, those changes were redacted and the affected provisions as they existed at the close of the 108th Congress were reinstated (H. Res. 240, Apr. 27, 2005, p. ——).

Section 803 of the Ethics Reform Act of 1989 (2 U.S.C. 29d) contains several free-standing provisions, which are carried in this annotation. The requirement that the respective party caucuses nominate seven majority and seven minority members should be read in light of clause 5 of rule X, setting the composition of the committee at 10, five from the majority and five from the minority. The requirement that the committee adopt rules establishing investigative and adjudicative subcommittees should be read in light of clause 3(m), which constitutes the same requirement. The references to clause 5(d) of rule XI applied to a former rule regarding minority staffing requirements, which was eliminated in the 104th Congress (sec. 101(c)(5), H. Res. 6, Jan. 4, 1995, p. 462).

"SEC. 803. REFORMS RESPECTING THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT.—

* * *

"(b) COMMITTEE COMPOSITION.—The respective party caucus or conference of the House of Representatives shall each nominate to the House of Representatives at the beginning of each Congress 7 members to serve on the Committee on Standards of Official Conduct.

"(c) INVESTIGATIVE SUBCOMMITTEES.—The Committee on Standards of Official Conduct shall adopt rules providing—

> "(1) for the establishment of a 4 or 6-member investigative subcommittee (with equal representation from the majority and minority parties) whenever the committee votes to undertake any investigation;

"(2) that the senior majority and minority members on an investigative subcommittee shall serve as the chairman and ranking minority member of the subcommittee; and

"(3) that the chairman and ranking minority member of the full committee may only serve as non-voting, ex officio members on an investigative subcommittee.

"Clause 5(d) of rule XI of the Rules of the House of Representatives shall not apply to any investigative subcommittee.

"(d) ADJUDICATORY SUBCOMMITTEES.—The Committee on Standards of Official Conduct shall adopt rules providing—

"(1) that upon the completion of an investigation, an investigative subcommittee shall report its findings and recommendations to the committee;

"(2) that, if an investigative subcommittee by majority vote of its membership adopts a statement of alleged violation, the remaining members of the committee shall comprise an adjudicatory subcommittee to hold a disciplinary hearing on the violation alleged in the statement;

"(3) that any statement of alleged violation and any written response thereto shall be made public at the first meeting or hearing on the matter which is open to the public after the respondent has been given full opportunity to respond to the statement in accordance with committee rules, but, if no public hearing or meeting is held on the matter, the statement of alleged violation and any written response thereto shall be included in the committee's final report to the House of Representatives as required by clause 4(e)(1)(B) of rule X of the Rules of the House of Representatives;

"(4) that a quorum for an adjudicatory subcommittee for the purpose of taking testimony and conducting any business shall consist of a majority of the membership of the subcommittee plus one; and

"(5) that an adjudicatory subcommittee shall determine, after receiving evidence, whether the counts in the statement have been proved and shall report its findings to the committee.

"Clause 5(d) of rule XI of the Rules of the House of Representatives shall not apply to any adjudicatory subcommittee.

* * *

"(i) ADVICE AND EDUCATION.—(1) The Committee on Standards of Official Conduct shall establish within the Committee an Office on Advice and Education (hereinafter in this subsection referred to as the 'Office') under the supervision of the chairman.

"(2) The Office shall be headed by a director who shall be appointed by the chairman, in consultation with the ranking minority member, and shall be comprised of such staff as the chairman determines is necessary to carry out the responsibilities of the Office.

"(3) The primary responsibilities of the Office shall include:

"(A) Providing information and guidance to Members, officers and employees of the House regarding any laws, rules, regulations, and other standards of conduct applicable to such individuals in their official capacities, and any interpretations and advisory opinions of the committee.

"(B) Submitting to the chairman and ranking minority member of the committee any written request from any such Member, officer or employee for an interpretation of applicable laws, rules, regulations, or other standards of conduct, together with any recommendations thereon.

"(C) Recommending to the committee for its consideration formal advisory opinions of general applicability.

"(D) Developing and carrying out, subject to the approval of the chairman, periodic educational briefings for Members, officers and employees of the House on those laws, rules, regulations, or other standards of conduct applicable to them.

"(4) No information provided to the Committee on Standards of Official Conduct by a Member, officer or employee of the House of Representatives when seeking advice regarding prospective conduct of such Member, officer or employee may be used as the basis for initiating an investigation under clause 4(e)(1)(B) of rule X of the Rules of the House of Representatives, if such Member, officer or employee acts in accordance with the written advice of the committee.".

On occasions where the House has directed the committee to conduct specific investigations by separate resolution, it has authorized the committee to take depositions with one Member present, notwithstanding clause 2(h) of rule XI, to serve subpoenas within or without the United States, and to participate by special counsel in relevant judicial proceedings (see H. Res. 252, 95th Cong., Feb. 9, 1977, pp. 3966–75; H. Res. 608, Mar. 27, 1980, pp. 6995–98; H. Res. 254, June 30, 1983, p. 18279), and to investigate persons other than Members, officers and employees with expanded subpoena authority (see H. Res. 1054, 94th Cong., Mar. 3, 1976, pp. 5165–68). By unanimous consent the committee was authorized to receive evidence and take testimony before a quorum of one of its Members for the remainder of the second session of the 100th Congress (Oct. 13, 1988, p. 30467). By resolutions considered as questions of the privileges of the House, the committee has been directed to investigate illegal solicitation of political contributions in the House Office Building by unnamed sitting Members (July 10, 1985, p. 18397); to review GAO audits of the operations of the "bank" in the Office of the Sergeant-at-Arms (Oct. 3, 1991, p. 25435), to disclose the names and pertinent account information of Members and former Members found to have abused the privileges of that entity (Mar. 12, 1992, p. 5519), and to disclose further account information respecting Members and former Members having checks held by that entity (Mar.

12, 1992, p. 5534); and to investigate violations of confidentiality by staff engaged in the investigation of the operation and management of the Office of the Postmaster (July 22, 1992, p. 18786). In compliance with one such direction of the House, the acting chairman of the Committee on Standards of Official Conduct inserted in the Record names and pertinent account information of Members and former Members found to have abused the privileges of the "bank" in the Office of the Sergeant-at-Arms (H. Res. 393, Apr. 1, 1992, p. 7888). In the 106th Congress the chairman of the Committee on Standards of Official Conduct inserted in the Record an explanation of the committee's amendment to committee rule 20(f) to reflect that the full committee retains discretion whether to report to the House that an investigative subcommittee has not adopted a statement of alleged violation (Apr. 13, 2000, p. 5631). In the 106th Congress the committee filed a report issuing a letter of reproval regarding the conduct of a Member (Oct. 16, 2000, p. 22834).

Under clause 3(b)(4) (formerly clause 4(e)(2)(D) of rule X), a member of the Committee on Standards of Official Conduct is ineligible to participate in a committee proceeding relating to that member's official conduct. Upon notification to the Speaker of such ineligibility, the Speaker designates another Member of the same political party as the ineligible member to serve on the committee during proceedings relating to that conduct (Speaker O'Neill, Feb. 5, 1980, p. 1908; July 23, 1996, p. 18596). Under clause 3(b)(5) (formerly clause 4(e)(2)(E) of rule X), a member of the committee may be recused from serving on the committee during proceedings relating to a pending investigation by submitting an affidavit of disqualification to the committee stating that the member cannot render an impartial and unbiased decision relating to that investigation. If the committee accepts the affidavit, the chairman notifies the Speaker and requests the Speaker to designate another Member from the same political party as the disqualified member to serve on the committee during proceedings relating to that investigation (Speaker O'Neill, Mar. 18, 1980).

The committee has compiled statutory and rule-based ethical standards in the *House Ethics Manual* (102d Cong., 2d Sess.). In the *Manual*, the committee incorporates its advisory opinions issued under clause 3(a)(4) (formerly clause 4(e)(1)(D) of rule X), together with advisory opinions issued by the former Select Committee on Ethics, in its discussions of various ethical issues, including gifts, outside income, financial disclosure, staff rights and duties, official allowances and franking, casework considerations, campaign financing and practices, and involvement with official and unofficial organizations. The committee also has compiled a complete statement of the rules on gifts and travel, which supersedes Chapter 2 of the 1992 *House Ethics Manual* (*Gifts and Travel,* 106th Cong., 2d Sess.) and a complete statement of the rules on campaign funds, which supersedes chapter 8 of such *Manual* (*Campaign Activity,* 107th Cong.).

Audio and visual coverage of committee proceedings

§ 807. Coverage of committee proceedings.

4. (a) The purpose of this clause is to provide a means, in conformity with acceptable standards of dignity, propriety, and decorum, by which committee hearings or committee meetings that are open to the public may be covered by audio and visual means—

(1) for the education, enlightenment, and information of the general public, on the basis of accurate and impartial news coverage, regarding the operations, procedures, and practices of the House as a legislative and representative body, and regarding the measures, public issues, and other matters before the House and its committees, the consideration thereof, and the action taken thereon; and

(2) for the development of the perspective and understanding of the general public with respect to the role and function of the House under the Constitution as an institution of the Federal Government.

(b) In addition, it is the intent of this clause that radio and television tapes and television film of any coverage under this clause may not be used, or made available for use, as partisan political campaign material to promote or oppose the candidacy of any person for elective public office.

§ 808. Media coverage.

(c) It is, further, the intent of this clause that the general conduct of each meeting (whether of a hearing or otherwise)

covered under authority of this clause by audio or visual means, 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 and observance of the acceptable standards of dignity, propriety, courtesy, and decorum traditionally observed by the House in its operations, and may not be such as to—

(1) distort the objects and purposes of the hearing or other meeting or the activities of committee members in connection with that hearing or meeting or in connection with the general work of the committee or of the House; or

(2) cast discredit or dishonor on the House, the committee, or a Member, Delegate, or Resident Commissioner or bring the House, the committee, or a Member, Delegate, or Resident Commissioner into disrepute.

(d) The coverage of committee hearings and meetings by audio and visual means shall be permitted and conducted only in strict conformity with the purposes, provisions, and requirements of this clause.

§ 809. When permitted.

(e) Whenever a hearing or meeting conducted by a committee or subcommittee is open to the public, those proceedings shall be open to coverage by audio and visual means. A committee or subcommittee chairman may not limit the number of television

or still cameras to fewer than two representatives from each medium (except for legitimate space or safety considerations, in which case pool coverage shall be authorized).

§ 810. Committee rules.

(f) Each committee shall adopt written rules to govern its implementation of this clause. Such rules shall contain provisions to the following effect:

(1) If audio or visual coverage of the hearing or meeting is to be presented to the public as live coverage, that coverage shall be conducted and presented without commercial sponsorship.

(2) The allocation among the television media of the positions or the number of television cameras permitted by a committee or subcommittee chairman in a hearing or meeting room shall be in accordance with fair and equitable procedures devised by the Executive Committee of the Radio and Television Correspondents' Galleries.

(3) Television cameras shall be placed so as not to obstruct in any way the space between a witness giving evidence or testimony and any member of the committee or the visibility of that witness and that member to each other.

(4) Television cameras shall operate from fixed positions but may not be placed in positions that obstruct unnecessarily the coverage of the hearing or meeting by the other media.

(5) Equipment necessary for coverage by the television and radio media may not be in-

stalled in, or removed from, the hearing or meeting room while the committee is in session.

(6)(A) Except as provided in subdivision (B), floodlights, spotlights, strobelights, and flashguns may not be used in providing any method of coverage of the hearing or meeting.

(B) The television media may install additional lighting in a hearing or meeting room, without cost to the Government, in order to raise the ambient lighting level in a hearing or meeting room to the lowest level necessary to provide adequate television coverage of a hearing or meeting at the current state of the art of television coverage.

(7) In the allocation of the number of still photographers permitted by a committee or subcommittee chairman in a hearing or meeting room, preference shall be given to photographers from Associated Press Photos and United Press International Newspictures. If requests are made by more of the media than will be permitted by a committee or subcommittee chairman for coverage of a hearing or meeting by still photography, that coverage shall be permitted on the basis of a fair and equitable pool arrangement devised by the Standing Committee of Press Photographers.

§ 811. Press photographers.

(8) Photographers may not position themselves between the witness table and the members of the committee at any time during the course of a hearing or meeting.

(9) Photographers may not place themselves in positions that obstruct unnecessarily the coverage of the hearing by the other media.

(10) Personnel providing coverage by the television and radio media shall be currently accredited to the Radio and Television Correspondents' Galleries.

(11) Personnel providing coverage by still photography shall be currently accredited to the Press Photographers' Gallery.

§ 812. Accreditation.

(12) Personnel providing coverage by the television and radio media and by still photography shall conduct themselves and their coverage activities in an orderly and unobtrusive manner.

The rule permitting broadcasting of committee hearings was contained in section 116(b) of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and became part of the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). In the 93d Congress (H. Res. 1107, July 22, 1974, p. 24447), the rule was amended to permit committees to adopt rules allowing coverage of committee meetings as well as hearings. Paragraphs (e), (f)(3), (f)(5), and (f)(8) of this clause were amended in the 99th Congress to remove the limit on the number of television cameras (previously four) and press photographers (previously five) covering committee proceedings, and to provide the committee or subcommittee chairman with the discretion to determine the appropriate number (H. Res. 7, Jan. 3, 1985, p. 393). At the beginning of the 104th Congress paragraph (d) was amended to delete the former characterization of broadcast and photographic coverage of committee meetings and hearings as "a privilege made available by the House," and paragraph (e) was amended to eliminate the requirement that a committee vote to permit broadcast and photographic coverage of open hearings and meetings and to prohibit chairmen from limiting coverage to less than two representatives from each medium, except where space or safety considerations warrant pool coverage (sec. 105, H. Res. 6, Jan. 4, 1995, p. 463). Later in the 104th Congress this clause was again amended to make conforming changes in its heading and in paragraph (f) (H. Res. 254, Nov. 30, 1995, p. 35077). Former clause 4(f)(2), permitting a witness to terminate audio and visual (including photographic) coverage, was eliminated in the

105th Congress (H. Res. 301, Nov. 12, 1997, p. 26041). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 3 of rule XI (H. Res. 5, Jan. 6, 1999, p. 47).

Pay of witnesses

§ 813. Fees of witnesses before the House or committees.

5. Witnesses appearing before the House or any of its committees shall be paid the same per diem rate as established, authorized, and regulated by the Committee on House Administration for Members, Delegates, the Resident Commissioner, and employees of the House, plus actual expenses of travel to or from the place of examination. Such per diem may not be paid when a witness has been summoned at the place of examination.

This clause (formerly rule XXXV) was adopted in 1872, with amendments in 1880 (III, 1825), 1930 (VI, 393), April 19, 1955 (p. 4722), August 12, 1969 (H. Res. 495, 91st Cong., p. 23355), and July 28, 1975 (H. Res. 517, 94th Cong. p. 25258). The last amendment eliminated the specific per diem and travel rate of reimbursement and allowed actual travel costs and per diem for witnesses requested or subpoenaed to appear at the same rate as established by the Committee on House Administration for Members and employees. In the 104th and 106th Congresses it was amended to conform references to a renamed committee (sec. 202(b), H. Res. 6, Jan. 4, 1995, p. 467; H. Res. 5, Jan. 6, 1999, p. 47). Before the House recodified its rules in the 106th Congress, this provision was found in former rule XXXV (H. Res. 5, Jan. 6, 1999, p. 47). For further provisions relating to witnesses, see clauses 2(j) and (k) of rule XI (§§ 802–803, *supra*).

Regulations of the Committee on House Administration do not permit per diem reimbursement for witnesses. Regulations for reimbursement of actual travel costs may be found in the Committees' Congressional Handbook, Committee on House Administration, under the section entitled "Hearings and Meetings."

Unfinished business of the session

§ 814. Resumption of business of a preceding session.

6. All business of the House at the end of one session shall be resumed at the commencement of the next session of the same Congress in the same manner as if no adjournment had taken place.

At first the Congress attempted to follow the rule of the English Parliament that business unfinished in one session should begin anew at the next; but in 1818, after an investigation of a joint committee in 1816, a rule was adopted that House bills remaining undetermined in the House should be continued at the next session after six days. This rule did not reach House bills sent to the Senate; but in 1848 the two Houses remedied this omission by a joint rule. Business referred to committees of the House was still subject to the old rule of Parliament; but in 1860 the present rule was adopted as a supplement to the rule of 1818. In 1890, desiring to do away with the limitation of the six days and apparently overlooking the main purpose of the rule of 1818, the House rescinded that portion of this provision which dated from 1818. Also, in 1876 the joint rules were abrogated, leaving no provision, except the headline of the rule, for the continuance of business not before committees. The practice, however, had become so well established that no question has ever been raised (V, 6727). Before the House recodified its rules in the 106th Congress, this provision was found in former rule XXVI (H. Res. 5, Jan. 6, 1999, p. 47).

The business of conferences between the two Houses is not interrupted by an adjournment of a session which does not terminate the Congress (V, 6260–6262), and even where one House asks a conference at one session the other may agree to it in the next session (V, 6286). Where bills were enrolled and signed by the presiding officers of the two Houses at the close of one session they were sent to the President and approved at the beginning of the next session (IV, 3486–3488).

RULE XII

RECEIPT AND REFERRAL OF MEASURES AND MATTERS

Messages

§815. Entry of messages in the Journal and Record.

1. Messages received from the Senate, or from the President, shall be entered on the Journal and published in the Congressional Record of the proceedings of that day.

This provision was adopted in 1867 and amended in 1880 (V, 6593). It was renumbered January 3, 1953 (p. 24). Before the House recodified its rules in the 106th Congress, this provision was found in former rule XXXIX (H. Res. 5, Jan. 6, 1999, p. 47).

The House may receive a message from the Senate when the Senate is not in session (VIII, 3338).

Referral

§816. Referral procedures.

2. (a) The Speaker shall refer each bill, resolution, or other matter that relates to a subject listed under a standing committee named in clause 1 of rule X in accordance with the provisions of this clause.

(b) The Speaker shall refer matters under paragraph (a) in such manner as to ensure to the maximum extent feasible that each committee that has jurisdiction under clause 1 of rule X over the subject matter of a provision thereof may consider such provision and report to the House thereon. Precedents, rulings, or procedures in effect before the Ninety-Fourth Congress shall be applied to referrals under this clause only to the extent that they will contribute to the achievement of the objectives of this clause.

(c) In carrying out paragraphs (a) and (b) with respect to the referral of a matter, the Speaker—

(1) shall designate a committee of primary jurisdiction (except where he determines that extraordinary circumstances justify review by more than one committee as though primary);

(2) may refer the matter to one or more additional committees for consideration in sequence, either initially or after the matter has been reported by the committee of primary jurisdiction;

(3) may refer portions of the matter reflecting different subjects and jurisdictions to one or more additional committees;

(4) may refer the matter to a special, ad hoc committee appointed by the Speaker with the approval of the House, and including members of the committees of jurisdiction, for the specific purpose of considering that matter and reporting to the House thereon;

(5) may subject a referral to appropriate time limitations; and

(6) may make such other provision as may be considered appropriate.

This provision became effective as part of the rules on January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). Before that time a bill or resolution could not be divided for reference among two or more committees, although it contained matter properly within the jurisdiction of several committees (IV, 4361). Paragraph (c) was amended on January 4, 1977 (H. Res. 5, pp. 53–70) to authorize the Speaker to place an appropriate time limit for consideration by the first committee or committees to which referred. In the 104th Congress paragraph (c) was again amended to require the Speaker to initially designate a committee of primary jurisdiction in each referral of a measure to more than one committee (sec. 205, H. Res. 6, Jan. 4, 1995, p. 467). In the 108th Congress the parenthetical excep-

tion in paragraph (c)(1) was added (sec. 2(i), H. Res. 5, Jan. 7, 2003, p. ——). A paragraph (e) was added to the clause on January 4, 1977 (H. Res. 5, pp. 53–70) to abolish the legislative jurisdiction in the House of the Joint Committee on Atomic Energy. The legislative jurisdiction of the Joint Committee was divided among the Committees on Armed Services (military applications of nuclear energy), Interior and Insular Affairs (now Resources) (regulation of the domestic nuclear energy industry, since transferred to the Committee on Energy and Commerce in the 104th Congress), Foreign Affairs (now International Relations) (nonproliferation of nuclear energy and international nuclear export agreements), Interstate and Foreign Commerce (now Energy and Commerce) (the same jurisdiction over nuclear energy as exercised over other energy), and Science and Technology (now Science) (nondefense nuclear research and development). In addition, the Committee on Interstate and Foreign Commerce (now Energy and Commerce) was given oversight jurisdiction over all laws, programs, and government activities affecting nuclear energy. Paragraph (e) was deleted entirely in the 97th Congress (H. Res. 5, Jan. 5, 1981, p. 98). At the same time the House deleted former paragraph (d) which required the Congressional Research Service of the Library of Congress to prepare factual descriptions of each bill or resolution introduced in the House to be published in the Congressional Record. Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5 of rule X (H. Res. 5, Jan. 6, 1999, p. 47).

An order of the House that no organizational or legislative business be conducted on certain days (first by provision of a concurrent resolution, but extended by unanimous consent) was considered not to deprive Members of the privilege of introducing bills and resolutions during pro forma sessions on those days, such measures being numbered on the day introduced but not noted in the Record or referred to committee until the day on which business was resumed (H. Con. Res. 260, 102d Cong., Nov. 26, 1991, p. 35840; see Jan. 22, 1992, p. 149, and Jan. 28, 1992, p. 745).

Under clause 2(c), the Speaker may (1) refer a bill to more than one committee for their respective consideration of such provisions of the bill as fall within their jurisdiction (Speaker Albert, Feb. 25, 1976, p. 4315), (2) divide a matter for initial reference to committees (Speaker Albert, Feb. 4, 1975, p. 2253; Speaker Hastert, Apr. 26, 1999, p. 7354), or (3) refer designated portions of a bill to one committee while referring the entire bill to another committee (Speaker O'Neill, Mar. 3, 1982, p. 3155). The Speaker also may set appropriate time limitations on the initial reference to each committee (Speaker O'Neill, Feb. 16, 1977, p. 4532; Speaker O'Neill, May 2, 1977, p. 13184). For example, the Speaker may refer a bill to two committees, with a time limit on one of the committees ending within a certain period after the other committee reports to the House (Speaker O'Neill, Jan. 27, 1983, p. 937; Speaker O'Neill, Feb. 2, 1983, p. 1492; Speaker Wright, Apr. 9, 1987, p. 8665) or with a time limit on one committee ending with a date certain (Speaker O'Neill, July 31, 1985, p.

21936; Speaker Hastert, Mar. 13, 2001, p. 3448; Speaker Hastert, July 26, 2002, p. ——). The Speaker may discharge a committee from further consideration of a bill not reported by it within the time for which the bill was referred and place the bill on the appropriate calendar (Speaker O'Neill, May 8, 1978, p. 12924).

Before paragraph (c) was amended in the 104th Congress to require the Speaker to designate a committee of primary jurisdiction, the Speaker announced at the convening of the 98th Congress that he would exercise his authority, in situations that warranted it, to designate a primary committee among those to which a bill was jointly referred, and to impose time limits on committees having a secondary interest following the report of the primary committee under a joint referral (Speaker O'Neill, Jan. 3, 1983, p. 54; reiterated by Speaker Foley, Jan. 5, 1993, p. 105). The Speaker may refer a bill primarily to one committee (as now required by paragraph (c)) while also referring it initially to additional committees for time periods to be subsequently determined when the primary committee reports, in each case for consideration of matters within their respective jurisdictions (Speaker Gingrich, Jan. 4, 1995, p. 123).

Pursuant to the Speaker's authority under clause 2 of rule XIV (formerly clause 2 of rule XXIV), relating to messages from the Senate, he has discretionary authority to refer from the Speaker's table to standing committees, Senate amendments to House-passed bills, under any conditions permitted under this provision for introduced bills; he may for example impose a time limitation for consideration only of a portion of the Senate amendment, not germane to the original House bill, by the standing committee with subject-matter jurisdiction, without referring the remainder of the Senate amendment to the House committee with jurisdiction over the original House bill (Speaker O'Neill, H.R. 31, Mar. 26, 1981, p. 5397). Beginning with the 98th Congress, the Speaker announced a policy of referring nongermane Senate amendments under certain conditions (Speaker O'Neill, Jan. 3, 1983, p. 54; Speaker Foley, Jan. 5, 1993, p. 105).

§ 816a. Sequential referral procedures.

Under clause 2(c), the Speaker has authority to sequentially refer a bill reported from a committee to other committees for a time certain for consideration of such portions of the bill as fall within their respective jurisdictions (Speaker Albert, Apr. 9, 1976, p. 10265; Speaker Albert, May 17, 1976, p. 14093). Under that authority, the Speaker may limit a sequential referral to matters having a direct effect on subjects within the committee's jurisdiction (Speaker O'Neill, Apr. 5, 1982, p. 6580; Speaker O'Neill, June 7, 1983, p. 14699; Speaker Wright, Sept. 9, 1987, p. 23648). For example, the Speaker sequentially referred a bill reported by the Committee on Energy and Commerce to the Committee on the Judiciary for a specified time for consideration of "such provisions of the bill and amendment recommended by the Committee on Energy and Commerce as propose to narrow the purview of the Attorney General under section 271 of the Communications Act of 1934" (Speaker Hastert, May 24, 2001, p. ——). The Speaker exercised

his authority under this clause to sequentially refer a joint resolution making continuing appropriations, reported as privileged by the Committee on Appropriations, to the committee having legislative jurisdiction over a legislative provision in the resolution, without a time limitation on the sequential referral (Speaker O'Neill, Sept. 22, 1983, p. 25523).

The Speaker has sometimes announced the application of his authority on sequential referrals at the outset of a Congress. For example, in the 97th Congress, the Speaker announced that the sequential referral of a measure would be based on the subject matter of any amendment recommended by the reporting committee, as well as upon the original text of the measure (Speaker O'Neill, Jan. 5, 1981, pp. 115, 116). In the 100th Congress, the Speaker announced that, in certain cases, a sequential referral would be based only upon the text of a reported substitute amendment in lieu of original text (Speaker Wright, Jan. 6, 1987, p. 22). The Speaker has sequentially referred (1) a bill for consideration of the bill and amendment of the previous committee (Speaker O'Neill, Oct. 13, 1977, p. 33716); (2) a bill to two committees for different periods of time, solely for consideration of designated sections of the first committee's recommended amendment (Speaker O'Neill, May 18, 1982, p. 10418; Speaker O'Neill, Aug. 1, 1985, p. 22681); (3) a bill for consideration by a third committee of a portion of an amendment in the nature of a substitute recommended by one of the committees to which the bill had been initially referred (Speaker O'Neill, May 22, 1985, p. 13126); and (4) a bill back to the first-reporting committee when it was reported from the second-reporting committee with a nongermane amendment within the jurisdiction of the first committee and not within the bounds of the initial referral (Speaker Wright, Oct. 4, 1988, p. 28242). The Speaker also may base a sequential referral only on the text of the bill as introduced, even a bill reported by the primary committee with an amendment in the nature of a substitute (Speaker Gingrich, Sept. 12, 1995, p. 24791). For example, the Speaker sequentially referred a bill where the amendment recommended by the primary committee would delete portions of the bill within the jurisdiction of the sequential committee (Speaker Hastert, May 10, 1999, p. 8690).

In the 96th Congress, the Speaker followed a more restrictive policy, permitting a sequential committee to review (1) those portions of introduced text within its jurisdiction and (2) those portions of an amendment within its jurisdiction when the introduced version also warranted a sequential referral to the committee (Speaker O'Neill, Apr. 15, 1980, p. 7760). The Speaker first exercised the authority to base referrals on committee amendments by sequentially referring a bill reported from the Committee on Public Works and Transportation (now Transportation and Infrastructure), relating only to Corps of Engineers' water projects as introduced but amended in committee to address general water resource policy affecting irrigation and reclamation projects and soil conservation programs, to the Committees on Agriculture and Interior and Insular Affairs (now

Resources) for consideration of provisions of the committee amendment within their jurisdiction (Speaker O'Neill, May 20, 1981, p. 10361).

The Speaker may (1) discharge a measure from the Union Calendar and sequentially refer it to another committee (Speaker O'Neill, Apr. 27, 1978, p. 11742; Speaker O'Neill, May 21, 1982, p. 11169; Speaker O'Neill, June 19, 1986, p. 14741; Speaker Foley, June 12, 1990, p. 13670; Speaker Hastert, Nov. 30, 2001, p. ——); (2) sequentially refer a bill that has been initially referred to several committees but reported only by one, for consideration of the reporting committee's amendment (Speaker O'Neill, June 17, 1982, p. 14069; Speaker Foley, Sept. 5, 1990, p. 23477); and (3) sequentially refer a bill referred to more than one committee when the first committee reports, for a period ending a number of days after the next committee reports (Speaker O'Neill, Aug. 1, 1985, p. 22681), or after all committees report (Speaker Wright, June 10, 1988, p. 14079).

The Speaker may (1) extend the time of a sequentially referred bill and may refer the bill to yet another committee under the same sequential referral conditions (Speaker Albert, June 1, 1976, p. 16588); (2) delimit the period for sequential consideration of a bill in terms of legislative days (Speaker Wright, June 30, 1988, p. 16597); or (3) sequentially refer a bill without day (Speaker Wright, Sept. 27, 1988, p. 25827). On the last day of an expiring sequential referral, a committee has until midnight to file its report with the Clerk (Oct. 9, 1991, p. 26045).

§ 816b. Referral procedures to an ad hoc select committee.

Resolutions authorizing the Speaker to establish an ad hoc committee for the consideration of a particular bill under paragraph (c) of this clause, and extending the reporting date for such a committee, are privileged when offered from the floor at the Speaker's request (Speaker Albert, Apr. 22, 1975, p. 11261; Speaker Albert, Jan. 26, 1976, p. 876; Speaker O'Neill, Jan. 11, 1977, pp. 894–98; Speaker O'Neill, Apr. 21, 1977, pp. 11550–56).

Pursuant to his authority under paragraph (c)(4), the Speaker may refer a bill to a special ad hoc committee appointed by him with the approval of the House (from the members of the committees with legislative jurisdiction) for consideration and report on that particular bill (Speaker Albert, Apr. 22, 1975, p. 11261) or may jointly refer a report of a select committee filed with the Clerk to standing committees of the House for their study (Speaker Albert, Feb. 16, 1976, p. 3158).

The Speaker may refer to an ad hoc committee, established with the approval of the House, bills, resolutions, and other matters (including messages and communications) for the purpose of considering such matters and reporting to the House thereon, and the resolution creating such a committee may specify whether referrals to such a committee shall be by initial or sequential reference or by any of the other methods provided by this clause (H. Res. 508, Apr. 21, 1977, pp. 11550–56; Speaker O'Neill, July 11, 1977, p. 22183; Speaker O'Neill, July 20, 1977, p. 24167). For

a discussion of Speaker's referrals to the former Select Committees on Homeland Security, see § 723b, *supra*.

Clause 7 provides the mechanism for changes of referrals erroneously made.

§ 817. Restriction on the reference of claims.

(d) A bill for the payment or adjudication of a private claim against the Government may not be referred to a committee other than the Committee on International Relations or the Committee on the Judiciary, except by unanimous consent.

The present form of this paragraph was made effective January 2, 1947, as a part of the Legislative Reorganization Act of 1946 (60 Stat. 812). It was amended several times to conform references to renamed committees (H. Res. 163, Mar. 19, 1975, p. 7343; H. Res. 89, Feb. 5, 1979, p. 1848; sec. 202(b), H. Res. 6, Jan. 4, 1995, p. 467). The old rule, adopted in 1885 and amended May 29, 1936, provided that private claims bills be referred to a Committee on Invalid Pensions, Claims, War Claims, Public Lands, and Accounts, in addition to the Committees on Foreign Affairs (now International Relations) and the Judiciary. Certain private bills, resolutions and amendments are barred (see § 822, *infra*). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 4 of rule XXI (H. Res. 5, Jan. 6, 1999, p. 47).

Under this paragraph unanimous consent is required for the reference of a bill for the payment of a private claim to a committee other than the Committee on the Judiciary or the Committee on International Relations (May 4, 1978, p. 12615). The Committee on the Judiciary, and not the Committee on Ways and Means, has jurisdiction over a private bill specifying that a certain annuity fund is exempt from taxation under provisions of the Internal Revenue Code (Deschler, ch. 17, § 43.22).

Petitions, memorials, and private bills

§ 818. Introduction and reference of petitions, memorials, and private bills.

3. If a Member, Delegate, or Resident Commissioner has a petition, memorial, or private bill to present, he shall endorse his name, deliver it to the Clerk, and may specify the reference or disposition to be made thereof. Such petition, memorial, or private bill (except when judged by the Speaker to be obscene or insulting) shall be en-

tered on the Journal with the name of the Member, Delegate, or Resident Commissioner presenting it and shall be printed in the Congressional Record.

At the first organization of the House in 1789 the rules then adopted provided for the presentation of petitions to the House by the Speaker and Members, and for the introduction of bills by motion for leave. In 1842 it was found necessary, in order to save time, to provide that petitions and memorials should be filed with the Clerk. In 1870, 1879, and 1887 the practice as to petitions was extended to private bills, at first as to certain classes and later so that all should be filed with the Clerk (IV, 3312, 3365; VII, 1024). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1 of rule XXII (H. Res. 5, Jan. 6, 1999, p. 47).

§ 819. Duties of Speaker and Members in presenting petitions.

Petitions, memorials, and other papers addressed to the House may be presented by the Speaker as well as by a Member (IV, 3312). Petitions from the country at large are presented by the Speaker in the manner prescribed by the rule (III, 2030; IV, 3318; VII, 1025). A Member may present a petition from the people of a State other than his own (IV, 3315, 3316). The House itself may refer one portion of a petition to one committee and another portion to another committee (IV, 3359, 3360), but ordinarily the reference of a petition does not come before the House itself. A committee may receive a petition only through the House (IV, 4557).

§ 820. As to division of bills for reference.

The parliamentary law provides that the House may commit a portion of a bill, or a part to one committee and part to another (V, 5558), yet under the practice of the House until January 3, 1975, a bill or joint resolution could not be divided for reference, although it might contain matters properly within the jurisdiction of several committees (IV, 4372, 4376). On that date, the Speaker was given authority over referral of bills as prescribed in clause 2 of this rule (formerly clause 5 of rule X). In the 106th Congress the Speaker referred a bill by title to two committees (H.R. 1554, Apr. 26, 1999, p. 7355).

§ 821. Fraudulent introduction of a bill.

The fraudulent introduction of a bill involves a question of privilege, and a bill so introduced was ordered stricken from the files (IV, 3388). As the result of the unauthorized introduction of several bills without the knowledge of the Members listed as sponsors, the Speaker directed that all bills and resolutions must be signed by the prime sponsor thereof in order to be accepted for introduction (Speaker Albert, Feb. 3, 1972, p. 2521).

§ 822. Certain private bills prohibited.

4. A private bill or private resolution (including an omnibus claim or pension bill), or amendment thereto, may not be received or considered in the House if it authorizes or directs—

(a) the payment of money for property damages, for personal injuries or death for which suit may be instituted under the Tort Claims Procedure provided in title 28, United States Code, or for a pension (other than to carry out a provision of law or treaty stipulation);

(b) the construction of a bridge across a navigable stream; or

(c) the correction of a military or naval record.

This paragraph derives from section 131 of the Legislative Reorganization Act of 1946 (60 Stat. 812) and was made a part of the standing rules January 3, 1953 (p. 24). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(a) of rule XXII (H. Res. 5, Jan. 6, 1999, p. 47). The prohibition relating to correction of a miltary record does not apply to a private bill that changes the computation of retired pay for a former member of the armed services (after exhaustion of administrative remedies) but does not directly correct his military record (Sept. 18, 1984, p. 25824).

Prohibition on commemorations

§ 823. Commemoratives prohibited.

5. (a) A bill or resolution, or an amendment thereto, may not be introduced or considered in the House if it establishes or expresses a commemoration.

(b) In this clause the term "commemoration" means a remembrance, celebration, or recognition for any purpose through the designation of a specified period of time.

The 104th Congress added the prohibition against commemorative legislation and directed the Committee on Government Reform and Oversight (now Government Reform) to consider alternative means for establishing commemorations, including the creation of an independent or executive branch commission for such purpose, and to report to the House any recommendations thereon (sec. 216, H. Res. 6, Jan. 4, 1995, p. 468). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(b) of rule XXII (H. Res. 5, Jan. 6, 1999, p. 47). The House by unanimous consent waived the prohibition against introduction of a certain joint resolution proposing a commemoration (which was contained in the resolved clause and not merely in the preamble), specified by sponsor and title (Oct. 24, 2001, p. ——).

Excluded matters

§ 824. Correction of errors in reference; and relation to jurisdiction.

6. A petition, memorial, bill, or resolution excluded under this rule shall be returned to the Member, Delegate, or Resident Commissioner from whom it was received. A petition or private bill that has been inappropriately referred may, by direction of the committee having possession of it, be properly referred in the manner originally presented. An erroneous reference of a petition or private bill under this clause does not confer jurisdiction on a committee to consider or report it.

This clause of the rule was first adopted in 1880, although the portion relating to the return of certain petitions and bills was adapted from an older rule of 1842 (IV, 3312, 3365). In the 104th Congress it was amended to conform to the new prohibition against commemorative legislation (sec. 216, H. Res. 6, Jan. 4, 1995, p. 468). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 3 of rule XXII (H. Res. 5, Jan. 6, 1999, p. 47).

Errors in reference of petitions, memorials, or private bills are corrected at the Clerk's table, without action by the House, at the suggestion of the committee holding possession (IV, 4379). As provided in the rule, the erroneous reference of a private House bill does not confer jurisdiction, and a point of order is good when the bill comes up for consideration either in the House or in the Committee of the Whole (IV, 4382–4389). But in cases wherein the House itself refers a private House or Senate bill a point of order may not be raised as to jurisdiction (IV, 4390, 4391; VII, 2131).

The Speaker may correct the erroneous referral of a bill as private by referring it to the appropriate (Union) calendar as a public bill when reported (June 1, 1988, p. 13184).

Sponsorship

§ 825. Introduction, reference, and change of reference of public bills, memorials, and resolutions.

7. (a) Bills, memorials, petitions, and resolutions, endorsed with the names of Members, Delegates, or the Resident Commissioner introducing them, may be delivered to the Speaker to be referred. The titles and references of all bills, memorials, petitions, resolutions, and other documents referred under this rule shall be entered on the Journal and printed in the Congressional Record. An erroneous reference may be corrected by the House in accordance with rule X on any day immediately after the Pledge of Allegiance to the Flag by unanimous consent or motion. Such a motion shall be privileged if offered by direction of a committee to which the bill has been erroneously referred or by direction of a committee claiming jurisdiction and shall be decided without debate.

(b)(1) The primary sponsor of a public bill or public resolution may name cosponsors. The name of a cosponsor added after the initial printing of a bill or resolution shall appear in the next printing of the bill or resolution on the written request of the primary sponsor. Such a request may be submitted to the Speaker at any time until the last committee authorized to consider and report the bill or resolution reports it to the House or is discharged from its consideration.

(2) The name of a cosponsor of a bill or resolution may be deleted by unanimous consent. The Speaker may entertain such a request only by the Member, Delegate, or Resident Commissioner whose name is to be deleted or by the primary sponsor of the bill or resolution, and only until the last committee authorized to consider and report the bill or resolution reports it to the House or is discharged from its consideration. The Speaker may not entertain a request to delete the name of the primary sponsor of a bill or resolution. A deletion shall be indicated by date in the next printing of the bill or resolution.

(3) The addition or deletion of the name of a cosponsor of a bill or resolution shall be entered on the Journal and printed in the Congressional Record of that day.

(4) A bill or resolution shall be reprinted on the written request of the primary sponsor. Such a request may be submitted to the Speaker only when 20 or more cosponsors have been added since the last printing of the bill or resolution.

The rule of 1789 provided that all bills should be introduced on report of a committee or by motion for leave. By various modifications it was first provided that all classes of private bills should be introduced by filing them with the Clerk, and in 1890 this system was by this rule extended to all public bills (IV, 3365). In the 105th and 107th Congresses paragraph (a) was amended to effect technical corrections (H. Res. 5, Jan. 7, 1997, p. 121; sec. 2(x), H. Res. 5, Jan. 3, 2001, p. 26). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 4 of rule XXII (H. Res. 5, Jan. 6, 1999, p. 47).

At its organization for the 106th Congress the House adopted an order of the House that the first 10 bill numbers be reserved for assignment by the Speaker during a specified period (sec. 2(g), H. Res. 5, Jan. 6, 1999, p. 47). In the 107th and 108th Congresses the House adopted the same order, but extended the applicable time to the entire first session (sec. 3(d), H. Res. 5, Jan. 3, 2001, p. 24; sec. 3(c), H. Res. 5, Jan. 7, 2003, p.

——). In the 108th Congress, the House by unanimous consent extended such authority through the remainder of the Congress (Oct. 4, 2004, p. ——). In the 109th Congress the House adopted the same initial order but for the entire Congress (sec. 3(c), H. Res. 5, Jan. 4, 2005, p. ——).

The motion for a change of reference and subsidiary motions take precedence over motions to go into the Committee of the Whole for the consideration of appropriation bills and the consideration of conference reports (VII, 2124), and may not be debated (VII, 2126–2128). But the motion is not in order on Calendar Wednesday (VII, 2117), and is not privileged under the rule if the original reference was not erroneous (VII, 2125). The motion may be amended, but the amendment, like the original motion, is subject to the requirement that it be authorized by the committee (VII, 2127). The motion must apply to a single bill and not to a class of bills (VII, 2125).

According to the later practice the erroneous reference of a public bill, if it remain uncorrected, in effect gives jurisdiction to the committee receiving it (IV, 4365–4371; VII, 1489, 2108–2113; VIII, 2312). It is too late to move a change of reference after such committee has reported the bill (VII, 2110; VIII, 2312), but the Speaker may, pursuant to authority granted him by clause 2 (formerly clause 5 of rule X) effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), refer a bill sequentially to other committees. All bills and resolutions must be signed by the primary sponsor thereof (Speaker Albert, Feb. 3, 1972, p. 2521).

Joint sponsorship of public bills by not more than 25 Members was authorized in the 90th Congress (H. Res. 42, Apr. 25, 1967, p. 10712). Prior thereto a special committee had reported against this practice and the report had been adopted by the House (VII, 1029). Effective January 3, 1979 (H. Res. 86, 95th Cong., Oct. 10, 1978, p. 34929), paragraph (b) was added to allow unlimited cosponsorship and to provide a mechanism for Members to add their names as cosponsors to bills or resolutions which have already been introduced, up until the bill is finally reported from committee, and on January 15, 1979, the Speaker announced his directive for the processing of lists of cosponsors pursuant to the new clause (Speaker O'Neill, Jan. 15, 1979, p. 19).

Although, before the 106th Congress, paragraph (b)(2) only permitted a cosponsoring Member himself to request unanimous consent for his deletion as a cosponsor, the primary sponsor of a measure was permitted to request unanimous consent to delete from the permanent Record the name of a cosponsor he had inadvertently or erroneously listed (Feb. 9, 1982). This practice was codified in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). Unanimous-consent requests to delete Members' names as cosponsors are not entertained after the last committee authorized to consider the bill has reported to the House (or has been discharged from further consideration) (Oct. 8, 1985, p. 26668; Feb. 10, 2000, p. 982), and the Speaker has vacated unanimous-consent orders of the House to delete cosponsors when advised that the bill had already been reported (Aug. 5, 1987, p.

22458). A Member may request unanimous consent that his name be deleted as a cosponsor of an unreported bill during its consideration under suspension of the rules and before a final vote thereon (June 9, 1986, p. 12979).

By unanimous consent a Member may add his own name as a cosponsor of an unreported bill where the primary sponsor is no longer a Member of the House (Aug. 4, 1983, p. 23188), and a designated Member may be authorized to sign and submit lists of additional cosponsors where the actual primary sponsor is no longer a Member (*e.g.*, June 23, 1989, p. 13271; Apr. 5, 2000, p. 4487; June 20, 2001, p. ——; Sept. 21, 2004, p. ——), but the Chair will not otherwise entertain a request to add cosponsors by a Member other than the primary sponsor (Mar. 5, 1991, p. 5026). In fact, the Chair will not entertain any unanimous-consent request to add a cosponsor (July 24, 2000, p. 15878), whether such request includes only the Member making the request (Oct. 25, 1995, p. 29352), includes all Members (Dec. 18, 1985, p. 37765), or includes a specified additional sponsor (Jan. 28, 1985, p. 1141; May 23, 1985, p. 13421). Such requests must be made by a primary sponsor through the hopper not later than the last day on which any committee is authorized to consider and report the measure to the House (Nov. 4, 1997, p. 24413).

The Chair does not entertain a unanimous-consent request to designate a co-offeror of an amendment (May 20, 2004, p. ——; Sept. 4, 2004, p. ——).

An order of the House that no organizational or legislative business be conducted on certain days (first by provision of a concurrent resolution, but extended by unanimous consent) was considered not to deprive Members of the privilege of introducing bills and resolutions during pro forma sessions on those days, such measures being numbered on the day introduced but not noted in the Record or referred to committee until the day on which business was resumed (H. Con. Res. 260, 102d Cong., Nov. 26, 1991, p. 35840; Jan. 22 and 28, 1992, pp. 149, 745).

At its organization for the 104th Congress the House resolved that each of the first 20 bills and each of the first two joint resolutions introduced in the House in that Congress could have more than one Member reflected as a primary sponsor (sec. 223(g), H. Res. 6, Jan. 4, 1995, p. 469); and the Speaker stated that all signatures of "primary" sponsors would be required on the bills (Speaker Gingrich, Jan. 4, 1995, p. 551). A Member was subsequently added as a "primary" sponsor by unanimous consent (Jan. 18, 1995, p. 1447).

§ 826. Introduction of bills, resolutions, or memorials by request.

(5) When a bill or resolution is introduced "by request," those words shall be entered on the Journal and printed in the Congressional Record.

This provision was adopted in 1888 (IV, 3366). Before the House recodified its rules in the 106th Congress, it was found in former clause 6 of rule XXII (H. Res. 5, Jan. 6, 1999, p. 47). It has never been the practice of the House to permit the names of the persons requesting the introduction of the bill to be printed in the Record.

Executive communications

§ 827. Reception and reference of executive communications, including estimates.

8. Estimates of appropriations and all other communications from the executive departments intended for the consideration of any committees of the House shall be addressed to the Speaker for referral as provided in clause 2 of rule XIV.

This rule was adopted in 1867 and amended in 1880 (V, 6593). It was renumbered January 3, 1953 (p. 24). Before the House recodified its rules in the 106th Congress, this provision was found in former rule XL (H. Res. 5, Jan. 6, 1999, p. 47). Formerly estimates of appropriations were transmitted through the Secretary of the Treasury (IV, 3573–3576, 4045), but under the Budget Act they are transmitted by the President.

RULE XIII

CALENDARS AND COMMITTEE REPORTS

Calendars

§ 828. Calendar for reports of committees.

1. (a) All business reported by committees shall be referred to one of the following three calendars:

(1) A Calendar of the Committee of the Whole House on the state of the Union, to which shall be referred public bills and public resolutions raising revenue, involving a tax or charge on the people, directly or indirectly making appropriations of money or property or requiring such appropriations to be made, authorizing payments out of appropriations already made, releasing any liability to the

United States for money or property, or referring a claim to the Court of Claims.

(2) A House Calendar, to which shall be referred all public bills and public resolutions not requiring referral to the Calendar of the Committee of the Whole House on the state of the Union.

(3) A Private Calendar as provided in clause 5 of rule XV, to which shall be referred all private bills and private resolutions.

This provision was adopted in 1880 and amended in 1911 (VI, 742); but as early as 1820 a rule was adopted creating calendars for the Committees of the Whole. Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47), including a change in subparagraph (3) from the "Calendar of the Committee of the Whole House" to the "Private Calendar." Bills not requiring consideration in Committee of the Whole were considered when reported, but in 1880 the House Calendar was created to remedy the delays in making reports caused by such consideration (IV, 3115). Reference of bills to calendars is governed by text of bills as referred to committees and amendments reported by committees are not considered (VIII, 2392).

A motion to correct an error in referring a bill to the proper calendar presents a question of privilege (III, 2614, 2615); but a mere clerical error in the calendar does not give rise to such question (III, 2616). A bill improperly reported is not entitled to a place on the calendar (IV, 3117).

A bill on the wrong calendar may be transferred to the proper calendar as of date of original reference by direction of the Speaker (VI, 744–748; VII, 859, 2406; Dec. 7, 1950, p. 16307; Apr. 26, 1984, p. 10242; Sept. 10, 1990, p. 23677). But the Speaker has no authority to change calendar reference made by the House (VI, 749; VII, 859). Reports from the Court of Claims do not remain on the calendar from Congress to Congress, even when a law seems so to provide (IV, 3298–3302). In determining whether a bill should be placed on the House or Union Calendar, clause 3 of rule XVIII should be consulted. The Speaker may correct the erroneous referral of a bill as private by referring it to the appropriate (Union) calendar as a public bill when reported (June 1, 1988, p. 13184).

Although the Speaker has no general authority to remove a reported bill from the Union Calendar (other than to correct the erroneous reference of a reported bill between calendars), he may discharge a bill therefrom for reference to another committee when required (1) by section 401(b) of the Congressional Budget Act of 1974, permitting 15-day referral to the Committee on Appropriations of reported bills providing new entitle-

ment authority in excess of that allocated to the reporting committee in connection with the most recently agreed-to concurrent resolution on the budget (Speaker O'Neill, Sept. 8, 1977, p. 28153), or (2) by clause 2 of rule XII (formerly clause 5 of rule X), authorizing and directing the Speaker to assure that each committee has responsibility to consider legislation within its jurisdiction by fashioning sequential referrals where appropriate (Speaker O'Neill, Apr. 27, 1978, p. 11742; June 19, 1986, p. 14741).

§ 830. Motion to discharge.

(b) There is established a Calendar of Motions to Discharge Committees as provided in clause 2 of rule XV.

From the 106th Congress through the 108th Congress, paragraph (b) was occupied by a cross reference to the Corrections Calendar. The provision was added when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47) and was stricken when the Corrections Calendar was abolished in the 109th Congress (sec. 2(f), H. Res. 5, Jan. 4, 2005, p. ——). Before the House recodified its rules in the 106th Congress, the current paragraph (b) was found in former clause 5 of rule XIII (H. Res. 5, Jan. 6, 1999, p. 47).

Filing and printing of reports

§ 831. Nonprivileged reports filed with the Clerk.

2. (a)(1) Except as provided in subparagraph (2), all reports of committees (other than those filed from the floor as privileged) shall be delivered to the Clerk for printing and reference to the proper calendar under the direction of the Speaker in accordance with clause 1. The title or subject of each report shall be entered on the Journal and printed in the Congressional Record.

§ 832. Adverse reports.

(2) A bill or resolution reported adversely shall be laid on the table unless a committee to which the bill or resolution was referred requests at the time of the report its referral to an appropriate calendar under clause 1 or unless, within three days thereafter, a Member, Delegate, or Resident Commissioner makes such a request.

An erstwhile form of the rule applied to nonprivileged reports only (VI, 411). A technical amendment was effected by the 93d Congress (H. Res. 988, Oct. 8, 1974, p. 34470). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

Even when reported adversely, a resolution of inquiry is privileged, is presented from the floor (unless filed with the Clerk under clause 2(c)), and is referred to the House Calendar (*e.g.*, June 16, 2004, p. ——).

§ 833. Requirement that reports of committees be in writing and be printed.

When the House codified its rules in the 106th Congress, it deleted the portion of clause 2 of rule XVIII that required the printing of reports. That provision was redundant because this provision carries the same requirement (H. Res. 5, Jan. 6, 1999, p. 47). Former clause 2 of rule XVIII was adopted in 1880 (V, 5647).

The House insists on its requirement that all reports must be in writing (IV, 4655) and does not receive verbal reports as to bills (IV, 4654). But the sufficiency of a report is passed on by the House and not by the Speaker (II, 1339; IV, 4653). A report is not necessarily signed by all those concurring (II, 1274) or even by any of those concurring, but minority, supplemental, and additional views are signed by those submitting them (IV, 4671; VIII, 2229; see clause 2(l)(5) of rule XI). Under this rule, the printing requirement is not a condition precedent to consideration of the matter reported (VIII, 2307–2309). However, for various availability and layover requirements in the rules, see clause 6 of rule X (§ 764, *supra*), clauses 4, 5, and 6 of rule XIII (§§ 850–852, § 853, § 857, *infra*, respectively), and clause 8 of rule XXII (§ 1082, *infra*). See also clause 3(a)(2) of rule XIII (§ 838, *infra*) which excepts from the availability requirements of clause 4 supplemental reports to correct a technical error in the depiction of record votes in a committee report.

Unless filed with the report, minority, supplemental, or additional views may be presented only with the consent of the House (IV, 4600; VIII, 2231, 2248). See clause 2(c) of rule XIII for the procedure by which such views may be filed as part of the committee report.

It has been held that the fact that a report was not printed by the Public Printer as originally made to the House does not prevent the consideration of the matter reported (VIII, 2307). A committee may not file its report on a bill after the House has passed the bill (Sept. 30, 1985, p. 25270).

§ 834. Chairman's duty.

(b)(1) It shall be the duty of the chairman of each committee to report or cause to be reported promptly to the House a measure or matter approved by the committee and to take or cause to be taken steps

necessary to bring the measure or matter to a vote.

§ 835. Filing by majority of committee.

(2) In any event, the report of a committee on a measure that has been approved by the committee shall be filed within seven calendar days (exclusive of days on which the House is not in session) after the day on which a written request for the filing of the report, signed by a majority of the members of the committee, has been filed with the clerk of the committee. The clerk of the committee shall immediately notify the chairman of the filing of such a request. This subparagraph does not apply to a report of the Committee on Rules with respect to a rule, joint rule, or order of business of the House, or to the reporting of a resolution of inquiry addressed to the head of an executive department.

Subparagraph (1) (formerly clause 2(l)(1)(A) of rule XI) is derived from section 133(c) of the Legislative Reorganization Act of 1946 (60 Stat. 812) and was made a part of the standing rules on January 3, 1953 (p. 24). It is sufficient authority for the chairman to call up a bill on Calendar Wednesday (Speaker Rayburn, Feb. 22, 1950, p. 2162). Subparagraph (2) (formerly clause 2(l)(1)(B) of rule XI) is derived from section 105 of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and was made part of the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). Former clause 2(l)(1)(C) of rule XI was added by the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), to incorporate section 307 of the Congressional Budget Act of 1974 (88 Stat. 313), requiring the Committee on Appropriations to strive to complete committee action on all regular appropriation bills before reporting any of them to the House, and to submit a report comparing specified spending levels, but was repealed by section 232(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177). An obsolete reference in former subdivision (B) to the former subdivision (C) was deleted in the 104th Congress (sec. 223(f), H. Res. 6, Jan. 4, 1995, p. 469). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(l)(1) of rule XI (H. Res. 5, Jan. 6, 1999, p. 47).

Absent a special order of the House, committee reports must be submitted while the House is in session, except as permitted under clause 2(c) of rule XIII with respect to the guaranteed time for composing separate views (see § 836, *infra*) (Dec. 17, 1982, p. 31951).

§ 836. Filing with minority views.

(c) All supplemental, minority, or additional views filed under clause 2(l) of rule XI by one or more members of a committee shall be included in, and shall be a part of, the report filed by the committee with respect to a measure or matter. When time guaranteed by clause 2(l) of rule XI has expired (or, if sooner, when all separate views have been received), the committee may arrange to file its report with the Clerk not later than one hour after the expiration of such time. This clause and provisions of clause 2(l) of rule XI do not preclude the immediate filing or printing of a committee report in the absence of a timely request for the opportunity to file supplemental, minority, or additional views as provided in clause 2(l) of rule XI.

The first sentence of this paragraph was originally included in section 107 of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and was made a part of the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). The remainder of the paragraph (establishing standing authority for committees to file reports with the Clerk after honoring the guarantee of the rule) was adopted in the 105th Congress (H. Res. 5, Jan. 7, 1997, p. 121). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(l)(5) of rule XI (H. Res. 5, Jan. 6, 1999, p. 47).

Content of reports

§ 837. Single volume.

3. (a)(1) Except as provided in subparagraph (2), the report of a committee on a measure or matter shall be printed in a single volume that—

(A) shall include all supplemental, minority, or additional views that have been submitted by the time of the filing of the report; and

(B) shall bear on its cover a recital that any such supplemental, minority, or additional views (and any material submitted under paragraph (c)(3)) are included as part of the report.

§ 838. Technical error.

(2) A committee may file a supplemental report for the correction of a technical error in its previous report on a measure or matter. A supplemental report only correcting errors in the depiction of record votes under paragraph (b) may be filed under this subparagraph and shall not be subject to the requirement in clause 4 or clause 6 concerning the availability of reports.

Clause 3 (formerly clause 2(l)(5) of rule XI) was originally included in section 107 of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and was incorporated into the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). This paragraph permits the filing of a supplemental report to correct a technical error in a previous report. A supplemental report filed under this clause is subject to the three-day availability under clause 4 of this rule (Deschler, ch. 17, § 64.1). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(l)(5) of rule XI, and the former companion provision of clause 2(l)(5) of rule XI entitling members to supplemental, minority, or additional views was transferred to new clause 2(l) of rule XI (H. Res. 5, Jan. 6, 1999, p. 47). The last sentence of subparagraph (2) was added in the 107th Congress (sec. 2(k), H. Res. 5, Jan. 3, 2001, p. 25). A technical correction to subparagraph (1)(B) was effected in the 108th Congress (sec. 2(u), H. Res. 5, Jan. 7, 2003, p. ——).

§ 839. Vote on reporting.

(b) With respect to each record vote on a motion to report a measure or matter of a public nature, and on any amendment offered to the measure or matter, the total number of votes cast for and against,

and the names of members voting for and against, shall be included in the committee report. The preceding sentence does not apply to votes taken in executive session by the Committee on Standards of Official Conduct.

The requirement of subparagraph (b) (formerly clause 2(l)(2)(B) of rule XI) was contained in section 104(b) of the Legislative Reorganization Act of 1970 (84 Stat. 1140), was incorporated into the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144), and was restated in the 104th Congress to require that reports also reflect the total number of votes cast for and against any public measure or matter and any amendment thereto and the names of those voting for and against (sec. 209, H. Res. 6, Jan. 4, 1995, p. 468). The last sentence was adopted in the 105th Congress (sec. 8, H. Res. 168, Sept. 18, 1997, p. 19318). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(l)(2)(B) of rule XI (H. Res. 5, Jan. 6, 1999, p. 47). If the accompanying report erroneously reflects information required by this paragraph, a bill would be subject to a point of order against its consideration, unless corrected pursuant to clause 3(a)(2) by a supplemental report; however, a point of order would not lie if the error was introduced by the Government Printing Office (Jan. 19, 1995, p. 1613). A question alleging that a committee report contained descriptions of recorded votes (as required by this clause) that deliberately mischaracterized certain amendments and directing the chairman of the committee to file a supplemental report to change those descriptions was held to constitute a question of privileges of the House (May 3, 2005, p. ——).

§ 840. Content of reports.

(c) The report of a committee on a measure that has been approved by the committee shall include, separately set out and clearly identified, the following:

(1) Oversight findings and recommendations under clause 2(b)(1) of rule X.

(2) The statement required by section 308(a) of the Congressional Budget Act of 1974, except that an estimate of new budget authority shall include, when practicable, a comparison of the total estimated funding level for the rel-

evant programs to the appropriate levels under current law.

(3) An estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 if timely submitted to the committee before the filing of the report.

(4) A statement of general performance goals and objectives, including outcome-related goals and objectives, for which the measure authorizes funding.

This provision (formerly clause 2(l)(3) of rule XI) became effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). It was amended in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70), to correct a cross-reference, and in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. 49) to correct the typographical transposition of a phrase. Subparagraphs (2) and (3) (formerly clauses 2(l)(3)(B) and 2(l)(3)(C) of rule XI) are requirements of sections 308(a) and 402 of the Congressional Budget Act of 1974 (88 Stat. 297). Subparagraph (2) (formerly clause 2(l)(3)(B) of rule XI) was amended in the 99th Congress by section 232(f) of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177) to include new entitlement and credit authority in conformity with section 308(a)(1) of the Congressional Budget Act of 1974, as amended by that law. It was again amended in the 104th Congress to require estimates of new budget authority, when practicable, to compare the total estimated funding for the program to the appropriate level under current law (sec. 102(a), H. Res. 6, Jan. 4, 1995, p. 462). In the 104th and 106th Congresses, it was amended to conform references to a renamed committee (sec. 202(b), H. Res. 6, Jan. 4, 1995, p. 467; H. Res. 5, Jan. 6, 1999, p. 47). This provision was amended in the 105th Congress to reflect the repeal of the collective definition of "new spending authority" and the revision of various remaining parts and to effect a technical and conforming change (Budget Enforcement Act of 1997 (sec. 10116, P.L. 105–33)). Subparagraph (4) was amended to replace a requirement that committees include in their reports oversight findings and recommendations by the Committee on Government Reform with a requirement that they include a statement of performance goals and objectives (sec. 2(l), H. Res. 5, Jan. 3, 2001, p. 25).

§ 841. Constitutional authority.

(d) Each report of a committee on a public bill or public joint resolution shall contain the following:

(1) A statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.

This reporting requirement subsequently replaced former clause 2(l)(4) of rule XI, which became a part of the rules under the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). In its original form the provision required an analytical statement of inflationary impact, but in the 105th Congress it was converted to require a statement of constitutional authority (H. Res. 5, Jan. 7, 1997, p. 121). If a point of order were sustained under this subparagraph, the measure would be "recommitted" to await possible return to the Calendar by the filing of a supplemental report pursuant to clause 3(a)(2) correcting the technical error (Feb. 13, 1995, p. 4591).

§ 842. Application of laws to legislative branch.

Under the Congressional Accountability Act of 1995, each report accompanying a bill or joint resolution relating to terms and conditions of employment or access to public services or accommodations must describe the manner in which the provisions apply to the legislative branch or a statement of the reasons the provisions do not apply; and any Member may raise a point of order against the consideration of a bill or joint resolution not complying with this requirement, which may be waived in the House by majority vote (sec. 102(b)(3), P.L. 104–1; 109 Stat. 6).

§ 843. Unfunded mandates.

The Unfunded Mandates Reform Act of 1995 (P.L. 104–4; 109 Stat. 48) added a new part B to title IV of the Congressional Budget Act of 1974 (2 U.S.C. 658–658g) that imposes several requirements on committees with respect to measures effecting "Federal mandates" (secs. 423–424; 2 U.S.C. 658b–c) and establishes points of order to permit separate votes on whether to enforce those requirements (sec. 425; 2 U.S.C. 658d). See § 1127, *infra*.

§ 844. Estimate of cost.

(2)(A) An estimate by the committee of the costs that would be incurred in carrying out the bill or joint resolution in the fiscal year in which it is reported and in each of the five fiscal years following that fiscal year (or for the authorized duration of any program authorized by the bill or joint resolution if less than five years);

(B) a comparison of the estimate of costs described in subdivision (A) made by the com-

mittee with any estimate of such costs made by a Government agency and submitted to such committee; and

(C) when practicable, a comparison of the total estimated funding level for the relevant programs with the appropriate levels under current law.

(3)(A) In subparagraph (2) the term "Government agency" includes any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or the government of the District of Columbia.

(B) Subparagraph (2) does not apply to the Committee on Appropriations, the Committee on House Administration, the Committee on Rules, or the Committee on Standards of Official Conduct, and does not apply when a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been included in the report under paragraph (c)(3).

This provision was adopted in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144) as part of the implementation of section 252(b) of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and was amended in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70) to remove references to the Joint Committee on Atomic Energy. Subparagraph (3)(B) (formerly clause 7(d)) was amended in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113) to render committee cost estimates optional where an estimate by the Congressional Budget Office is included in the report. It was amended by the Budget Enforcement Act of 1990 (2 U.S.C. 900 note) to require five-year estimates of revenue changes in legislative reports. In the 104th Congress it was amended to require estimates of new budget authority, when practicable, to compare the total estimated funding for the program to the appropriate level under current law (sec. 102(b), H. Res. 6, Jan. 4, 1995, p. 462). In the 104th and 106th Congresses subparagraph (3)(B)

(formerly clause 7(d)) was amended to conform references to a renamed committee (sec. 202(b), H. Res. 6, Jan. 4, 1995, p. 467; H. Res. 5, Jan. 6, 1999, p. 47). In the 105th Congress it was again amended to effect a technical change (Budget Enforcement Act of 1997 (sec. 10116, P.L. 105–33)). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 7 of this rule (H. Res. 5, Jan. 6, 1999, p. 47).

A committee cost estimate identifying certain spending authority as recurring annually and indefinitely was held necessarily to address the five-year period required by section 308 of the Congressional Budget Act of 1974 (Nov. 20, 1993, p. 31354).

§ 845. Unfunded mandates.

The Unfunded Mandates Reform Act of 1995 (P.L. 104–4; 109 Stat. 48) added a new part B to title IV of the Congressional Budget Act of 1974 (2 U.S.C. 658–658b–c) that imposes several requirements on the Director of the Congressional Budget Office and on committees of the House with respect to measures effecting "Federal mandates" (secs. 423–424; 2 U.S.C. 658b–c) and establishes points of order to permit separate votes on whether to enforce those requirements (sec. 425; 2 U.S.C. 658d). See § 1127, *infra*, and § 843, *supra*.

§ 846. "Ramseyer Rule."

(e)(1) Whenever a committee reports a bill or joint resolution proposing to repeal or amend a statute or part thereof, it shall include in its report or in an accompanying document—

(A) the text of a statute or part thereof that is proposed to be repealed; and

(B) a comparative print of any part of the bill or joint resolution proposing to amend the statute and of the statute or part thereof proposed to be amended, showing by appropriate typographical devices the omissions and insertions proposed.

(2) If a committee reports a bill or joint resolution proposing to repeal or amend a statute or part thereof with a recommendation that the bill or joint resolution be amended, the comparative print required by subparagraph (1) shall reflect

the changes in existing law proposed to be made by the bill or joint resolution as proposed to be amended.

The first part of this paragraph (formerly clause 3) was adopted January 28, 1929 (VIII, 2234), was redesignated January 3, 1953 (p. 24), and subparagraph (2) (formerly a proviso in clause 3(2)) was added September 22, 1961 (p. 20823). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 3 of this rule (H. Res. 5, Jan. 6, 1999, p. 47).

Technical failure of a committee report to comply with the "Ramseyer" rule may be remedied by a supplemental report (VIII, 2247). While the filing of such a corrective report formerly required the consent of the House (VIII, 2248), it may now be filed with the Clerk pursuant to clause 3(a)(2). Reports held to violate the rule because they are not susceptible to correction by the filing of a supplemental report under clause 3(a)(2), as in the case of a substantial violation, are automatically recommitted to the respective committees reporting them (VIII, 2237, 2245, 2250). When a bill is so recommitted, further proceedings are de novo and the bill is considered again and reported by the committee as if no previous report had been made (VIII, 2249).

Although a bill proposes but one minor and obvious change in existing law, the failure of the report to indicate the change is in violation of the rule (VIII, 2236). The statute proposed to be amended must be quoted in the report and it is not sufficient that it is incorporated in the bill (VIII, 2238). Under the rule the committee report on a bill amending existing law by the addition of a proviso should quote in full the section immediately preceding the proposed amendment (VIII, 2237). The rule applies to appropriation bills where such bills include legislative provisions (VIII, 2241) and reports on appropriation bills are also subject to the requirements of clause 3(f) of rule XIII, requiring a concise statement of the effect of any direct or indirect changes in the application of existing law. In order to fall within the purview of the rule the bill must seek to repeal or amend specifically an existing law (VIII, 2235, 2239, 2240).

Special orders providing for consideration of bills, unless specifically waiving points of order, do not preclude the point of order that reports on such bills fail to indicate proposed changes in existing law (VIII, 2245). The point of order that a report fails to comply with the rule is properly made when the bill is called up in the House and comes too late after the House has resolved into the Committee of the Whole for its consideration (VIII, 2243–2245).

Where the comparative print contained certain errors in punctuation and capitalization and utilized abbreviations not appearing in existing provisions of law, the Speaker held that the committee report was in substantial compliance with the rule and overruled a point of order against the report (Deschler, ch. 17, §§ 60.13, 60.14).

§ 847. Content of reports on appropriation bills.

(f)(1) A report of the Committee on Appropriations on a general appropriation bill shall include—

(A) a concise statement describing the effect of any provision of the accompanying bill that directly or indirectly changes the application of existing law; and

(B) a list of all appropriations contained in the bill for expenditures not currently authorized by law for the period concerned (excepting classified intelligence or national security programs, projects, or activities), along with a statement of the last year for which such expenditures were authorized, the level of expenditures authorized for that year, the actual level of expenditures for that year, and the level of appropriations in the bill for such expenditures.

This provision (formerly clause 3 of rule XXI) became a part of the rules under the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). This provision was amended on January 14, 1975 (H. Res. 5, 94th Cong., p. 32) to confine its applicability to general appropriation bills, and again in the 104th Congress to add subparagraph (1)(B) concerning unauthorized items (sec. 215(d), H. Res. 6, Jan. 4, 1995, p. 468). Subparagraph (1)(B) was amended in the 107th Congress to require more detail on the status of unauthorized appropriations (sec. 2(m), H. Res. 5, Jan. 3, 2001, p. 25). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 3 of rule XXI (H. Res. 5, Jan. 6, 1999, p. 47).

(2) Whenever the Committee on Appropriations reports a bill or joint resolution including matter specified in clause 1(b)(2) or (3) of rule X, it shall include—

(A) in the bill or joint resolution, separate headings for "Rescissions" and "Transfers of Unexpended Balances"; and

(B) in the report of the committee, a separate section listing such rescissions and transfers.

This provision (formerly clause 1(b) of rule X) was added by the Committee Reform Amendments of 1974 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1(b) of rule X (H. Res. 5, Jan. 6, 1999, p. 47).

§ 848. Comparative print.

(g) Whenever the Committee on Rules reports a resolution proposing to repeal or amend a standing rule of the House, it shall include in its report or in an accompanying document—

(1) the text of any rule or part thereof that is proposed to be repealed; and

(2) a comparative print of any part of the resolution proposing to amend the rule and of the rule or part thereof proposed to be amended, showing by appropriate typographical devices the omissions and insertions proposed.

This provision (formerly clause 4(d) of rule XI) was added to the rules under the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), and is similar to the "Ramseyer Rule" requirements of paragraph (e) relating to bills and joint resolutions repealing or amending existing law. Before the House recodified its rules in the 106th Congress, this provision was found in former clause 4(d) of rule XI (H. Res. 5, Jan. 6, 1999, p. 47). This clause is applicable to resolutions reported from the Committee on Rules which propose direct permanent repeal or amendment of a rule of the House, but does not apply to resolutions providing temporary waivers of rules during the consideration of particular legislative business (Speaker Albert, Mar. 20, 1975, p. 7676; Mar. 24, 1975, p. 8418), or to a special order of business resolution providing for the consideration of a bill with textual modifications that would effect certain changes in House rules on enact-

ment of the bill into law, but not itself repealing or amending any rule (May 27, 1993, p. 11597).

§ 849. Tax complexity analysis.

(h)(1) It shall not be in order to consider a bill or joint resolution reported by the Committee on Ways and Means that proposes to amend the Internal Revenue Code of 1986 unless—

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

(B) the chairman of the Committee on Ways and Means causes such a tax complexity analysis to be printed in the Congressional Record before consideration of the bill or joint resolution.

This provision was added by the Internal Revenue Service Restructuring and Reform Act of 1998 as a new clause 2(l)(8) of rule XI, effective after January 1, 1999 (sec. 4022, P.L. 105–206). It was transferred to this paragraph when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

(2)(A) It shall not be in order to consider a bill or joint resolution reported by the Committee on Ways and Means that proposes to amend the Internal Revenue Code of 1986 unless—

(i) the report includes a macroeconomic impact analysis;

(ii) the report includes a statement from the Joint Committee on Internal Revenue Taxation explaining why a macroeconomic impact analysis is not calculable; or

(iii) the chairman of the Committee on Ways and Means causes a macroeconomic impact

analysis to be printed in the Congressional Record before consideration of the bill or joint resolution.

(B) In subdivision (A), the term 'macroeconomic impact analysis' means—

(i) an estimate prepared by the Joint Committee on Internal Revenue Taxation of the changes in economic output, employment, capital stock, and tax revenues expected to result from enactment of the proposal; and

(ii) a statement from the Joint Committee on Internal Revenue Taxation identifying the critical assumptions and the source of data underlying that estimate.

This requirement of a macroeconomic analysis of any tax proposal replaced a provision that authorized the chairman of the Committee on Ways and Means to request the Joint Committee on Internal Revenue Taxation to prepare a dynamic estimate of revenue changes proposed in a measure designated by the Majority Leader as major tax legislation (sec. 2(j), H. Res. 5, Jan. 7, 2003, p. ——). The former provision was added in the 105th Congress (H. Res. 5, Jan. 7, 1997, p. 121); but, before the House recodified its rules in the 106th Congress, it was found in former clause 7(e) of rule XIII (H. Res. 5, Jan. 6, 1999, p. 47).

Availability of reports

§ 850. Three-day layover.

4. (a)(1) Except as specified in subparagraph (2), it shall not be in order to consider in the House a measure or matter reported by a committee until the third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which each report of a committee on that measure or matter has been available to Members, Delegates, and the Resident Commissioner.

(2) Subparagraph (1) does not apply to—

(A) a resolution providing a rule, joint rule, or order of business reported by the Committee on Rules considered under clause 6;

(B) a resolution providing amounts from the applicable accounts described in clause 1(j)(1) of rule X reported by the Committee on House Administration considered under clause 6 of rule X;

(C) a resolution presenting a question of the privileges of the House reported by any committee;

(D) a measure for the declaration of war, or the declaration of a national emergency, by Congress; and

(E) a measure providing for the disapproval of a decision, determination, or action by a Government agency that would become, or continue to be, effective unless disapproved or otherwise invalidated by one or both Houses of Congress. In this subdivision the term "Government agency" includes any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or of the government of the District of Columbia.

(b) A committee that reports a measure or matter shall make every reasonable effort to have its hearings thereon (if any) printed and available for distribution to Members, Delegates, and the Resident Commissioner before the consideration of the measure or matter in the House.

This provision (formerly clause 2(l)(6) of rule XI) was originally contained in section 108 of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and was incorporated into the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). It was amended in the 94th Congress (H. Res. 5, Jan. 14, 1975, p. 20), in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70), and in the 96th Congress (H. Res. 5, Jan. 15, 1979, p. 8). In the 102d Congress it was amended to clarify the availability requirements for reported measures, including concurrent resolutions on the budget (H. Res. 5, Jan. 3, 1991, p. 39). It was amended in the 104th Congress to count as a "calendar day" any day on which the House is in session (H. Res. 254, Nov. 30, 1995, p. 35077), and again in the 105th Congress to achieve like treatment in the case of a concurrent resolution on the budget (H. Res. 5, Jan. 7, 1997, p. 121). The rule was later amended in the 105th Congress to conform to a change in the layover requirement for a concurrent resolution on the budget (Budget Enforcement Act of 1997 (sec. 10109, P.L. 105–33)). In the 106th Congress two technical and conforming corrections were effected. The 106th Congress also recodified the rules, transferring this provision from former clause 2(l)(6) of rule XI, which consisted of this provision and current clause 6(a)(2) of this rule (H. Res. 5, Jan. 6, 1999, p. 47). Subparagraph (2)(C) was added in the 107th Congress (sec. 2(n), H. Res. 5, Jan. 3, 2001, p. 25). In the 109th Congress a conforming change to subparagraph (2)(B) was effected and a subdivision was deleted as obsolete upon the repeal of the Corrections Calendar (sec. 2(a), H. Res. 5, Jan. 4, 2005, p. ——).

The availability requirement is not applicable to privileged reports from the Committee on Rules or to bills before the House which have not been reported from committee (Speaker Albert, Aug. 10, 1976, p. 26793). The Committee on Rules has the authority under clause 5(a) of rule XIII (formerly clause 4(a) of rule XI) to report a special order making in order the text of an introduced bill as a substitute original text for a reported bill, and no point of order lies that such introduced text has not been available for three days under this rule, which only applies to the consideration of reported measures themselves (Oct. 9, 1986, p. 29973). The exceptions from the three-day layover requirement were expanded in the 97th Congress (H. Res. 5, Jan. 5, 1981, p. 98) to include resolutions called up pursuant to legislative veto provisions in laws having the effect of approving or invalidating the actions of any government agency (and not just agencies of the executive branch). That exception allows the consideration of a measure disapproving an executive branch decision pursuant to statute within three days of the expiration of the congressional review period, notwithstanding the three-day availability requirement (concurrent resolution disapproving a regulation of the Federal Trade Commission pursuant to the Federal Trade Commission Improvements Act, P.L. 96–252) (May 26, 1982, pp. 12027–30). A report from a committee raising a question of the privileges of the House, such as a report relating to the contemptuous conduct of a witness before the committee, may be considered notwithstanding the

availability requirements of this clause (Speaker Albert, July 13, 1971, pp. 24720–23; see also VI, 48; Deschler, ch. 14, § 7.4, fn. 10, and Oct. 8, 1998, p. 24680, with respect to impeachment reports; and Feb. 12, 1998, p. 1323, with respect to a resolution dismissing an election contest reported as privileged under clause 5(a)(3) of rule XIII). Clause 3(a)(2) of rule XIII was amended in the 107th Congress to except from the three-day layover requirement a supplemental report only correcting errors in the depiction of record votes under clause 3(b) (sec. 2(k), H. Res. 5, Jan. 3, 2001, p. 25).

§ 851. One-day layover.

A committee expense resolution reported by the Committee on House Administration pursuant to clause 5 of rule XIII need only be available for one day. However, other resolutions reported from that committee which are privileged (such as a resolution authorizing the printing of material as a House document), but which do not constitute questions of the privileges of the House, are subject to this clause (Speaker Albert, Mar. 6, 1975, p. 5537).

§ 852. Printed hearings on appropriation bills.

(c) A general appropriation bill reported by the Committee on Appropriations may not be considered in the House until the third calendar day (excluding Saturdays, Sundays, and legal holidays except when the House is in session on such a day) on which printed hearings of the Committee on Appropriations thereon have been available to Members, Delegates, and the Resident Commissioner.

This provision from section 139(a) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953 (p. 24), and was amended (by the addition of the parenthetical clause) on January 22, 1971 (p. 144). In the 104th Congress it was amended to count as a "calendar day" any day on which the House is in session (H. Res. 254, Nov. 30, 1995, p. 35077). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 7 of rule XXI; and a requirement that the report also be available for three days was deleted as redundant because reports on general appropriation bills are covered under the availability requirements of paragraph (a) (H. Res. 5, Jan. 6, 1999, p. 47). In counting the "three calendar days" specified in the clause, the date the bill is filed or the date on which it is to be called up for consideration are counted, but not both (May 26, 1969, p. 13720).

Privileged reports, generally

§ 853. Privileged reports.

5. (a) The following committees shall have leave to report at any time on the following matters, respectively:

(1) The Committee on Appropriations, on general appropriation bills and on joint resolutions continuing appropriations for a fiscal year after September 15 in the preceding fiscal year.

(2) The Committee on the Budget, on the matters required to be reported by such committee under titles III and IV of the Congressional Budget Act of 1974.

(3) The Committee on House Administration, on enrolled bills, on contested elections, on matters referred to it concerning printing for the use of the House or the two Houses, on expenditure of the applicable accounts of the House described in clause 1(j)(1) of rule X, and on matters relating to preservation and availability of noncurrent records of the House under rule VII.

(4) The Committee on Rules, on rules, joint rules, and the order of business.

(5) The Committee on Standards of Official Conduct, on resolutions recommending action by the House with respect to a Member, Delegate, Resident Commissioner, officer, or employee of the House as a result of an investigation by the committee relating to the official conduct of such Member, Delegate, Resident Commissioner, officer, or employee.

(b) A report filed from the floor as privileged under paragraph (a) may be called up as a privileged question by direction of the reporting committee, subject to any requirement concerning its availability to Members, Delegates, and the Resident Commissioner under clause 4 or concerning the timing of its consideration under clause 6.

The origins of this provision appear as early as 1812, but it was in 1886 that the various provisions were consolidated in one rule. The rule was amended by the Legislative Reorganization Act of 1946 (60 Stat. 812), on February 2, 1951 (p. 883), and by the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). On the latter date the privileges given to the Committee on Interior and Insular Affairs (now Resources) on bills for the forfeiture of land grants to railroad and other corporations, preventing speculation in the public lands and reserving public lands for the benefit of actual and bona fide settlers, and for the admission of new States, to the Committee on Public Works (now Transportation and Infrastructure) on bills authorizing the improvement of rivers and harbors, to the Committee on Veterans' Affairs on general pension bills, and to the Committee on Ways and Means on bills raising revenue, were eliminated from the rule. In the 94th Congress (H. Res. 5, Jan. 14, 1975, p. 20), the rule was further amended to reinsert "contested elections" under the authority of the Committee on House Administration, a matter inadvertently omitted by the 93d Congress (H. Res. 988, Oct. 8, 1974, p. 34470). The rule was amended in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113) to permit joint resolutions continuing appropriations to be privileged if reported after a certain date. In the 101st Congress (H. Res. 5, Jan. 3, 1989, p. 72), the rule was amended to include under the authority of the Committee on House Administration all matters relating to preservation and availability of noncurrent House records. In the 104th and 106th Congresses, it was amended to conform references to a renamed committee (sec. 202(b), H. Res. 6, Jan. 4, 1995, p. 467; H. Res. 5, Jan. 6, 1999, p. 47). In the 105th Congress it was amended to update an archaic reference to the "contingent fund" (H. Res. 5, Jan. 7, 1997, p. 121). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 4 of rule XI; as part of that recodification, former clause 9 of rule XVI (restating the privilege of general appropriation bills) was deleted as obsolete (H. Res. 5, Jan. 6, 1999, p. 47). A conforming change to subparagraph (3) was effected in the 109th Congress (sec. 2(a) H. Res. 5, Jan. 4, 2005, p. ——).

At the time these privileges originated all reports were made on the floor, and often with great difficulty because of the pressure of business

(IV, 4621), and by giving this privilege the most important matters of business were greatly expedited. In 1890 a rule was adopted providing that reports should be made by filing with the Clerk, but privileged reports must still be made from the floor (IV, 3146; VIII, 2230). A privileged report from the Committee on Rules may be filed at any time when the House is in session, including during special-order speeches (Oct. 14, 1986, p. 30861). Before the original adoption of the provisions contained in former clause 2(l)(6) of rule XI in the 92d Congress (current clause 4 of rule XIII) (H. Res. 5, Jan. 22, 1971, p. 144), the right of reporting at any time was held to give the right of immediate consideration by the House (IV, 3131, 3132, 3142–3147; VIII, 2291, 2312). However, from that date until the effective date of the provision of former clause 2(l)(6) (current clause 4 of this rule) on January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), only the Committees on House Administration, Rules (subject to the two-thirds vote requirement of clause 6 of this rule), and Standards of Official Conduct could call up a matter in the House for immediate consideration as soon as the report was filed. Now only reports from the Committee on Rules on rules, joint rules, and the order of business under clause 6 of this rule; reports from the Committee on House Administration on committee expense resolutions under clause 5(a) of this rule; reports constituting questions of privilege (see generally Deschler, ch. 14, § 7.4, fn. 10, discussing ruling of Speaker Albert, July 13, 1971, on a reported contempt); and reports on the official conduct of a Member (*e.g.*, H. Res. 31, Jan. 21, 1997, p. 393) are exempt from the requirements of former clause 2(l)(6) (current clause 4 of this rule) (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). Other committees enumerated in this clause may still utilize the privilege after the report on the bill or resolution has been available for at least three calendar days (excluding Saturdays, Sundays, and legal holidays except when the House is in session on such a day). Once called up for consideration, the matter so reported remains privileged until disposed of (IV, 3145). The House proceeds to the consideration of privileged questions only on motion directed to be made by the several committees reporting such questions (VIII, 2310). Privileged questions reported adversely have the same status so far as their privilege is concerned as those reported favorably (VI, 413; VIII, 2310).

§ 854. Privileged reports defined.

The matters reported under the provisions of this clause are denominated "privileged reports" or "privileged questions," and since the privilege relates merely to the order of business under the rules, they must be distinguished from "questions of privilege" which relate to the safety or dignity of the House itself defined in rule IX (III, 2718). Therefore, "questions of privilege" take precedence over these matters which are privileged under the rules (III, 2426–2530; V, 6454; VIII, 3465).

Privileged questions interrupt the regular order of business as established by former rule XXIV (current rule XIV), but when they are disposed of the regular order continues on from the point of interruption (IV, 3070,

3071). But the Speaker has declined to allow a call of committees to be interrupted by a privileged report (IV, 3132). The presence of matter not privileged with privileged matter destroys the privileged character of a bill (IV, 4622, 4624, 4633, 4640, 4643; VIII, 2289; Speaker Rayburn, May 21, 1958, pp. 9212–16), or resolution (VIII, 2300), and when the text of a bill contains nonprivileged matter, privilege may not be created by a committee amendment in the nature of a substitute not containing the nonprivileged matter (IV, 4623).

The House may give a committee leave to report at any time only by the process of changing the rules (III, 1770).

§ 855. The privilege of individual committees for reports.

The privilege given by this clause to the Committee on Rules is confined to "action touching rules, joint rules, and order of business" and this committee may not report as privileged a concurrent resolution providing for a Senate investigating committee (VIII, 2255), or provide for the appointment of a clerk (VIII, 2256); but the privilege has been held to include the right to report special orders for the consideration of individual bills or classes of bills (V, 6774), or the consideration of a specified amendment to a bill and prescribing a mode of considering such amendment (VIII, 2258). A special rule providing for the consideration of a bill is not invalidated by the fact that at the time the rule was reported, the bill was not on the calendar (VIII, 2259; Speaker McCormack, Aug. 19, 1964, p. 20212). The authority to report special orders of business includes authority to recommend consideration of measures and amendments thereto the subject of which might be separately pending before a standing committee (Apr. 15, 1986, p. 7531); to make in order the consideration of the text of an introduced bill as original text in a reported bill (Oct. 9, 1986, p. 29973); to permit consideration of a previously unnumbered and unsponsored measure which comes into existence by virtue of adoption by the House of the special order (Speaker O'Neill, Apr. 16, 1986, p. 7610); to recommend a "hereby" resolution, for example, that a concurrent resolution correcting the enrollment of a bill be considered as adopted by the House upon the adoption of the special order (Speaker Wright, May 4, 1988, p. 9865), or that a Senate amendment pending at the Speaker's table and otherwise requiring consideration in Committee of the Whole under clause 3 of rule XXII (formerly clause 1 of rule XX) be "hereby" considered as adopted upon adoption of the special order (Deschler, ch. 21, § 16.11; Feb. 4, 1993, p. 2500); to provide that an amendment containing an appropriation in violation of clause 4 of rule XXI (formerly clause 5(a)) be considered as adopted in the House when the reported bill is under consideration (Feb. 24, 1993, p. 3542); to provide that an amendment containing an appropriation in violation of clause 2 of rule XXI be considered as adopted in the House when the reported bill is under consideration (July 27, 1993, p. 17129); and to provide that a nongermane amendment otherwise in violation of clause 7 of rule XVI be considered as adopted in the House when the bill is under consideration (Feb. 24, 1993, p. 3542; July 27, 1993, p. 17129).

The Committee on Rules also has reported as privileged a joint resolution repealing a statutory joint rule (mandatory July adjournment, sec. 132 of the Legislative Reorganization Act of 1946) (July 27, 1990, p. 20178). The Committee on Rules has reported as privileged a special order of business nearly identical to one previously rejected by the House, but held not to constitute "another of the same substance" within the meaning of the provisions in Jefferson's Manual on reconsideration (§ 513, *supra*) because it provided a different scheme for general debate (July 27, 1993, p. 17115).

A resolution consisting solely of privileged matter, albeit in two separate jurisdictions empowered to report at any time under clause 4(a), has been referred to a primary committee, reported therefrom as privileged, referred sequentially, and reported as privileged from the sequential committee as well (H. Res. 258, 102d Cong., Nov. 8, 1991, p. 30979; Nov. 19, 1991, p. 32903).

The right of the Committee on Appropriations to report at any time was confined strictly to general appropriation bills (IV, 4629–4632; VIII, 2282–2284) and does not include appropriations for specific purposes (VIII, 2285). Before privilege was extended to continuing appropriation bills (in 1981), the rule was construed not to apply to resolutions extending appropriations (VIII, 2282–2284).

Reports from the Committee on House Administration authorizing appropriations from the Treasury directly for compensation of employees (IV, 4645) or fixing the salaries of employees are not privileged (VIII, 2302).

§ 856. Privileged motion for consideration of revenue and appropriation bills.

As early as 1835 the necessity of giving appropriation bills precedence became apparent, and in 1837 former clause 9 of rule XVI was adopted to establish that principle, but was deleted in recodification as redundant to this rule. Former clause 4(a) of rule XI was amended by the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470) to eliminate the authority of the Committee on Ways and Means to report as privileged bills raising revenue, and former clause 9 of rule XVI was amended in the 104th Congress (H. Res. 254, Nov. 30, 1995, p. 35077) to delete as obsolete the reference to bills raising revenue (see § 853, *supra*). However, the privilege to call up general appropriation bills in both rules was retained. When both types of reports were privileged under the rule before the 94th Congress, motions to consider revenue bills and appropriation bills were of equal privilege (IV, 3075, 3076).

The motion may designate the particular appropriation bill to be considered (IV, 3074). The motion is privileged at any time after the approval of the Journal (subject to relevant report and hearing availability requirements), but only if offered at the direction of the committee (July 23, 1993, p. 16820). The motion is in order on District Mondays (VI, 716–718; VII, 876, 1123); and takes precedence of the motion to go into Committee of the Whole House to consider the Private Calendar (IV, 3082–3085; VI,

719, 720). The motion could be made on a "suspension day" as on other days (IV, 3080); and on consent days the call of the former Consent Calendar (abolished in the 104th Congress) took precedence of the motion (VII, 986). On Wednesdays the privilege of the motion is limited by clause 6 of rule XV. It may not be amended (VI, 52, 723), debated (VI, 716), laid on the table, or indefinitely postponed (VI, 726), and the previous question may not be demanded on it (IV, 3077–3079). Although highly privileged, it may not take precedence of a motion to reconsider (IV, 3087), or a motion to change the reference of a bill (VII, 2124). The motion is less highly privileged than the motion to discharge a committee from further consideration of a bill under former clause 3 of rule XXVII (current clause 2 of rule XV) (VII, 1011, 1016).

Privileged reports by the Committee on Rules

§ 857. Reports from Committee on Rules.

6. (a) A report by the Committee on Rules on a rule, joint rule, or the order of business may not be called up for consideration on the same day it is presented to the House except—

(1) when so determined by a vote of two-thirds of the Members voting, a quorum being present;

(2) in the case of a resolution proposing only to waive a requirement of clause 4 or of clause 8 of rule XXII concerning the availability of reports; or

(3) during the last three days of a session of Congress.

(b) Pending the consideration of a report by the Committee on Rules on a rule, joint rule, or the order of business, the Speaker may entertain one motion that the House adjourn. After the result of such a motion is announced, the Speaker may not entertain any other dilatory motion until the report shall have been disposed of.

(c) The Committee on Rules may not report—

(1) a rule or order proposing that business under clause 6 of rule XV be set aside by a vote of less than two-thirds of the Members voting, a quorum being present;

(2) a rule or order that would prevent the motion to recommit a bill or joint resolution from being made as provided in clause 2(b) of rule XIX, including a motion to recommit with instructions to report back an amendment otherwise in order, if offered by the Minority Leader or a designee, except with respect to a Senate bill or resolution for which the text of a House-passed measure has been substituted.

The Committee on Rules, "by uniform practice of the House," exercised the privilege of reporting at any time as early as 1888. The right to report at any time is confined to privileged matters (VIII, 2255). This was probably the survival of a practice which existed as early as 1853 of giving the privilege of reporting at any time to this committee for a session (IV, 4650). In 1890 the committee was included among the committees whose reports were privileged by rule. The present rule (formerly clause 4(b) of rule XI) was adopted in 1892 (IV, 4621) and was amended on March 15, 1909. Clause 6(a)(1) (former matter found in parentheses in clause 4(b) of rule XI) was adopted January 18, 1924 (pp. 1139, 1141), and the rule was further amended by the Committee Reform Amendments of 1974, effective January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), to limit its application to reports from the Committee on Rules on rules, joint rules, and orders of business. In the 94th Congress it was amended to permit the immediate consideration of a resolution reported from the Committee on Rules waiving the two-hour layover requirement (H. Res. 868, Feb. 26, 1976, p. 4625). In the 104th Congress the provision was amended to prohibit the Committee on Rules from recommending a rule or order that would prevent a motion by the Minority Leader or his designee to recommit a bill or joint resolution with instructions to report back an amendment otherwise in order except in the case of a Senate bill or resolution for which the text of a House-passed measure is being substituted (sec. 210, H. Res. 6, Jan. 4, 1995, p. 468). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 4(b) of rule XI (H. Res. 5, Jan. 6, 1999, p. 47). A conforming change to paragraph (c)(1) was effected in the 109th Congress (sec. 2(f), H. Res. 5, Jan. 4, 2005, p. ——). For rulings under the earlier form of the rule, see § 859, *infra*.

Pursuant to this clause, a privileged report from the Committee on Rules may be considered on the same legislative day only by a two-thirds vote, but a report properly filed by the committee at any time before the convening of the House on the next legislative day may be called up for immediate consideration without the two-thirds requirement (Speaker Albert, July 31, 1975, p. 26243), including a report filed during special-order speeches after legislative business on that prior legislative day (Oct. 14, 1986, p. 30861), and if the House continues in session into a second calendar day and then meets again that day, or convenes for two legislative days on the same calendar day, any report filed on the first legislative day may be called up on the second without the question of consideration being raised (Speaker O'Neill, Dec. 16, 1985, p. 36755; Speaker Wright, Oct. 29, 1987, p. 29937). This clause does not require that a privileged resolution, and the report thereon, from the Committee on Rules be printed before it is called up for consideration (Speaker O'Neill, Feb. 2, 1977, p. 3344).

In the case of certain resolutions reported from the Committee on Rules, the two-thirds vote requirement for consideration on the same day reported does not apply. This clause provides for the immediate consideration of a resolution from the Rules Committee waiving the requirement that copies of reports and reported measures be available for three days before their consideration, and waiving the requirement that copies of conference reports or amendments reported from conference in disagreement be available for two hours before their consideration (see Aug. 10, 1984, p. 23978).

Although highly privileged, a report from the Committee on Rules yields to questions of privilege (VIII, 3491; Mar. 11, 1987, p. 5403), and is not in order after the House has voted to go into Committee of the Whole (V, 6781). Also a conference report has precedence of it, even when the yeas and nays and previous question have been ordered (V, 6449). Formerly if a report from the Committee on Rules contained substantive propositions, a separate vote could be had on each proposition (VIII, 2271, 2272, 2274, 3167); but these decisions were nullified by the adoption of clause 5(b)(2) of rule XVI (formerly clause 6). A report from the Committee on Rules takes precedence over a motion to consider a measure which is "highly privileged" pursuant to a statute enacted as an exercise in the rulemaking authority of the House, acknowledging the constitutional authority of the House to change its rules at any time (Speaker Wright, Mar. 11, 1987, p. 5403). Before the House adopts rules, the Speaker may recognize a Member to offer for immediate consideration a special order providing for the consideration of a resolution adopting the rules (H. Res. 5, Jan. 4, 1995, p. 447).

The Committee on Rules may report and call up as privileged resolutions temporarily waiving or altering any rule of the House, including statutory provisions enacted as an exercise of the House's rulemaking authority which would otherwise prohibit the consideration of a bill being made in order by the resolution. (Speaker Albert, Mar. 20, 1975, p. 7676; Mar. 24,

1975, p. 8418), or which would otherwise establish an exclusive procedure for consideration of a particular type of measure (Speaker O'Neill, Apr. 16, 1986, p. 7610; Speaker Wright, Mar. 11, 1987, p. 5403). No rule of the House precludes the Committee on Rules from reporting a special order making in order specified amendments that have not been preprinted as otherwise required by an announced policy of that committee (Oct. 23, 1991, p. 28097). No point of order lies against a resolution reported from the Committee on Rules that waives points of order against a measure or provides special procedures for its consideration, where no law constituting a rule of the House prohibits consideration of such a resolution (resolution providing for consideration of a budget resolution, where a statute (P.L. 96–389), reaffirmed congressional commitment to balanced Federal budgets but did not dictate what legislation could be considered or otherwise constitute a rule of the House) (June 10, 1982, p. 13353).

For a discussion of the Speaker's announced policy with respect to his entertaining unanimous-consent requests in the House to alter a special order previously adopted by the House, see § 956, *infra*. For a discussion of the unanimous-consent requests that may not be entertained in the Committee of the Whole if their effect is to materially modify procedures required by a special order adopted by the House, see § 993, *infra*.

§ 858. Dilatory motions not permitted.

In the later practice it has been held that the question of consideration may not be raised against a report from the Committee on Rules (V, 4961–4963; VIII, 2440, 2441). The clause forbidding dilatory motions has been construed strictly (V, 5740–5742), and in the later practice the following have been excluded: (1) the motion to commit after the ordering of the previous question (V, 5593–5601; VIII, 2270, 2750; Feb. 22, 1984, p. 2965); (2) an appeal from the Chair's decision not to entertain the question of consideration or a motion to lay the pending resolution on the table (V, 5739); and (3) the motion to postpone to a day certain (Oct. 9, 1986, p. 29972). A motion to reconsider the vote on ordering the previous question has been held not dilatory (V, 5739). Before debate has begun on a report from the Committee on Rules, a question of the privileges of the House takes precedence (VIII, 3491; Mar. 11, 1987, p. 5403). In the event that the previous question is rejected on a privileged resolution from the Committee on Rules, the provisions of clause 6(b) prohibiting "dilatory" motions no longer strictly apply; the resolution is subject to proper amendment, further debate, or a motion to table or refer, and the Member who lead the opposition to the previous question has the prior right to recognition (Oct. 19, 1966, pp. 27713, 27725–29; May 29, 1980, pp. 12667–78), subject to being preempted by a preferential motion offered by another Member (Aug. 13, 1982, pp. 20969, 20975–78). The member of the Committee on Rules calling up a privileged resolution on behalf of the committee may offer an amendment, and House rules do not require a specific authorization from the committee (Sept. 25, 1990, p. 25575). A motion to table such a pending amendment is dilatory and not in order under this provision, but the motion to recon-

sider the vote on ordering the previous question on the rule and amendment thereto is not (see V, 5739; Sept. 25, 1990, p. 25575), and may be laid on the table without carrying with it the resolution itself (Sept. 25, 1990, p. 25575). Only one motion to adjourn is admissible during the consideration of a report from the Committee on Rules (July 23, 1997, pp. 15366, 15374; Mar. 20, 2002, p. ——), and the motion may not be made when another Member has the floor (Sept. 27, 1993, p. 22608). Where the House adjourns during the consideration of a report from the Committee on Rules, further consideration of the report becomes the unfinished business on the following day, and debate resumes from the point where interrupted (Sept. 27, 1993, p. 22609; Sept. 28, 1993, p. 22719). The Chair has held that a virtually consecutive invocation of former rule XXX (current clause 6 of rule XVII), resulting in a second pair of votes on use of a chart and on reconsideration thereof, was not dilatory under this clause (or former clause 10 of rule XVI (current clause 1 of rule XVI)) (July 31, 1996, p. 20693). In the 107th Congress clause 6 of rule XVII was amended to render the Chair's recognition for a motion on the use of charts completely discretionary (see § 963, *infra*).

A motion to recommit a special rule from the Committee on Rules is not in order (VIII, 2270, 2753).

§ 859. Restrictions on authority of Committee on Rules.

From 1934 until the amendment to this provision in the 104th Congress (sec. 210, H. Res. 6, Jan. 4, 1995, p. 468), it was consistently held that the Committee on Rules could recommend a special order that limited, but did not totally prohibit, a motion to recommit pending passage of a bill or joint resolution, as by precluding the motion from containing instructions relating to specified amendments (Speaker Rainey, Jan. 11, 1934, pp. 479–83 (sustained on appeal)); or by omitting to preserve the availability of amendatory instructions in the case that the bill is entirely rewritten by the adoption of a substitute made in order as original text (Speaker Foley, June 4, 1991, p. 13170; Speaker Foley, Nov. 25, 1991, p. 34460); or by expressly allowing only a simple ("straight") motion to recommit (without instructions) (Oct. 16, 1990, p. 29657 (sustained by tabling of appeal); Feb. 26, 1992, p. 3441 (sustained by tabling of appeal); May 7, 1992, p. 10586 (sustained by tabling of appeal); June 16, 1992, p. 14973 (sustained by tabling of appeal); Nov. 21, 1993, p. 31544; Nov. 22, 1993, p. 31815). A special order providing for consideration of a bill under suspension of the rules does not prevent a motion to recommit from being made "as provided in clause 4 of rule XVI," *i.e.*, after the previous question is ordered on passage, a procedure not applicable to a motion to suspend the rules (VIII, 2267; Speaker Foley, June 21, 1990, p. 15229). See Deschler, ch. 21, § 26.11; see generally Deschler, ch. 23, § 25.

The caveat against including in a special order matter privileged to be reported by another committee (Deschler, ch. 21, § 17.13) does not extend to a "hereby" resolution (*e.g.*, that a concurrent resolution correcting the enrollment of a bill within the jurisdiction of another committee be consid-

ered as adopted by the House upon the adoption of the special order), so long as not precluding the motion to recommit a bill or joint resolution (Speaker Wright, May 4, 1988, p. 9865).

The Committee on Rules has reported special rules to dispose of Senate amendments that have ordered the previous question to adoption without intervening motion. At this stage the special order need not preserve (under clause 6(c) of rule XIII) the motion to recommit (as provided in clause 2(b) of rule XIX) because the bill is not at the stage of initial passage. For an illustrative list of such rules, see House Practice, ch. 51, § 11. For an exchange of correspondence between the chairman and ranking minority member of the Rules Committee regarding this practice, see January 24, 1996, pp. 1228, 1229.

§ 860. Unfunded mandates.

The Unfunded Mandates Reform Act of 1995 (P.L. 104–4; 109 Stat. 48) added a new part B to title IV of the Congressional Budget Act of 1974 (2 U.S.C. 658–658g) that, effective on January 1, 1996, or 90 days after appropriations are made available to the Congressional Budget Office pursuant to the 1995 Act (whichever is earlier), imposes several requirements on committees with respect to "Federal mandates" (secs. 423, 424; 2 U.S.C. 658b, 658c), establishes points of order to permit separate votes on whether to enforce those requirements (sec. 425; 2 U.S.C. 658d), and permits a vote on the consideration of a rule or order waiving such points of order in the House (sec. 426(a); 2 U.S.C. 658e(a)). See § 1127, *infra*.

§ 861. Filing reports.

(d) The Committee on Rules shall present to the House reports concerning rules, joint rules, and the order of business, within three legislative days of the time when they are ordered. If such a report is not considered immediately, it shall be referred to the calendar. If such a report on the calendar is not called up by the member of the committee who filed the report within seven legislative days, any member of the committee may call it up as a privileged question on the day after the calendar day on which the member announces to the House his intention to do so. The Speaker shall recognize a member of the committee who rises for that purpose.

(e) An adverse report by the Committee on Rules on a resolution proposing a special order of business for the consideration of a public bill or public joint resolution may be called up as a privileged question by a Member, Delegate, or Resident Commissioner on a day when it is in order to consider a motion to discharge committees under clause 2 of rule XV.

Before the House recodified its rules in the 106th Congress, this provision was found in one paragraph, former paragraph (c) of clause 4 of rule XI (H. Res. 5, Jan. 6, 1999, p. 47). What is now paragraph (d) was initially adopted January 18, 1924, and was amended on January 6, 1987 (H. Res. 5, p. 6) (requiring one calendar day's notice before calling up a special order eligible under the rule. What is now paragraph (e) was amended December 8, 1931 (VIII, 2268), January 3, 1949 (p. 16) (establishing the so-called "21-day rule"), January 3, 1951 (p. 18) (abolishing the "21-day rule"), January 4, 1965 (p. 24) (reestablishing the "21-day rule"), January 10, 1967 (H. Res. 7, p. 28) (abolishing the "21-day rule"). Technical changes to this provision were effected on January 3, 1975 (H. Res. 988, Oct. 8, 1974, p. 34470). A special order reported from the Committee on Rules and not called up within seven legislative days may be called up by any member of that committee, including a minority member (Nov. 13, 1979, p. 32185; May 6, 1982, p. 8905).

§ 862. (f) If the House has adopted a resolution making in order a motion to consider a bill or resolution, and such a motion has not been offered within seven calendar days thereafter, such a motion shall be privileged if offered by direction of all reporting committees having initial jurisdiction of the bill or resolution.

This provision was contained in section 109 of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and became part of the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(l)(7) of rule XI (H. Res. 5, Jan. 6, 1999, p. 47). In modern practice, this subparagraph is normally inapplicable in light of clause 2(b) of rule XVIII, which provides for the House resolving into the Committee of the Whole

by declaration of the Speaker pursuant to a special order of business rather than by adoption of a motion.

§ 863. Specifying waivers.

(g) Whenever the Committee on Rules reports a resolution providing for the consideration of a measure, it shall (to the maximum extent possible) specify in the resolution the object of any waiver of a point of order against the measure or against its consideration.

This provision (formerly clause 4(e) of rule XI) was adopted in this form in the 104th Congress (sec. 211, H. Res. 6, Jan. 4, 1995, p. 468). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 4(e) of rule XI (H. Res. 5, Jan. 6, 1999, p. 47).

Resolutions of inquiry

§ 864. Resolution of inquiry.

7. A report on a resolution of inquiry addressed to the head of an executive department may be filed from the floor as privileged. If such a resolution is not reported to the House within 14 legislative days after its introduction, a motion to discharge a committee from its consideration shall be privileged.

The House has exercised the right, from its earliest days, to call on the President and heads of departments for information. The first rule on the subject was adopted in 1820 for the purpose of securing greater care and deliberation in the making of requests. The present form of rule, in its essential features, dates from 1879 (III, 1856), while the time period for a committee to report was extended from one week to 14 legislative days in the 98th Congress (H. Res. 5, Jan. 3, 1983, p. 34). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5 of rule XXII (H. Res. 5, Jan. 6, 1999, p. 47).

§ 865. Forms of resolutions of inquiry and delivery thereof.

Resolutions of inquiry are usually simple rather than concurrent in form (III, 1875), and are never joint resolutions (III, 1860). A resolution authorizing a committee to request information has been treated as a resolution of inquiry (III, 1860). It has been considered proper to use the word "request" in asking for information from the President and "direct" in addressing the heads of departments (III, 1856, footnote, 1895). It is usual

for the House in calling on the President for information, especially with relation to foreign affairs, to use the qualifying clause "if not incompatible with the public interest" (II, 1547; III, 1896–1901; V, 5759; VI, 436). But in some instances the House has made its inquiries of the President without condition, and has even made the inquiry imperative (III, 1896–1901). Resolutions of inquiry are delivered under direction of the Clerk (III, 1879) and are answered by subordinate officers of the Government either directly or through the President (III, 1908–1910).

§ 866. Privileged status of resolutions of inquiry.

The practice of the House gives to resolutions of inquiry a privileged status. Thus, they are privileged for report and consideration at any time after their reference to a committee (III, 1870; VI, 413, 414), but not before (III, 1857), and are in order for consideration only on motion directed to be made by the committee reporting the same (VI, 413; VIII, 2310). They are privileged for consideration on "Suspension days" and took precedence of the former Consent Calendar (VI, 409) before its abolishment in the 104th Congress (H. Res. 168, June 20, 1995, p. 16574), but are not in order on Calendar Wednesday (VII, 896–898). And only resolutions addressed to the President and the heads of the executive departments have the privilege (III, 1861–1864; VI, 406). To enjoy the privilege a resolution should call for facts rather than opinions (III, 1872, 1873; VI, 413, 418–432; July 7, 1971, pp. 23810–11), should not require investigations (III, 1872–1874; VI, 422, 427, 429, 432), and should not present a preamble (III, 1877, 1878; VI, 422, 427); but if a resolution on its face calls for facts, the Chair will not investigate the probability of the existence of the facts called for (VI, 422). However, a resolution inquiring for such facts as would inevitably require the statement of an opinion to answer such inquiry is not privileged (Speaker Longworth, Feb. 11, 1926, p. 3805).

Questions of privilege (as distinguished from privileged questions) have sometimes arisen in cases wherein the head of a department has declined to respond to an inquiry and the House has desired to demand a further answer (III, 1891; VI, 435); but a demand for a more complete reply (III, 1892) or a proposition to investigate as to whether or not there has been a failure to respond may not be presented as involving the privileges of the House (III, 1893).

§ 867. Discharge of a committee from a resolution of inquiry.

Committees are required to report resolutions of inquiry back to the House within one week (now 14 days) of the reference, and this time is construed to be legislative days (VIII, 3368; Speaker Rayburn, Feb. 9, 1950, p. 1755) exclusive of the day of introduction and the day of discharge (III, 1858, 1859). If a committee refuses or neglects to report the resolution back, the House may reach the resolution only by a motion to discharge the committee (III, 1865). The ordinary motion to discharge a committee is not privileged (VIII, 2316); but the practice of the House has given privilege to the motion in cases of resolutions of inquiry (III, 1866–1870). And this motion to discharge is privileged at the end of the time period, though

the resolution may have been delayed in reaching the committee (III, 1871). The motion to discharge is not debatable (III, 1868; VI, 415). However, if the motion is agreed to, the resolution is debatable under the hour rule unless the previous question is ordered (VI, 416, 417). If a committee reports a privileged resolution of inquiry (favorably or adversely), it may then be called up only by an authorized member of the reporting committee and not by another Member of the House (VI, 413; VIII, 2310). The Member calling up a privileged resolution of inquiry reported from committee is recognized to control one hour of debate and may move to lay the resolution on the table before or after that time (July 7, 1971, pp. 23807–10; Oct. 20, 1971, pp. 37055–57).

§ 868. Resolutions of inquiry as related to the Executive.

The President having failed to respond to a resolution of inquiry, the House respectfully reminded him of the fact (III, 1890). In 1796 the House declared that its constitutional requests of the Executive for information need not be accompanied by a statement of purposes (II, 1509). As to the kind of information which may be required, especially as to the papers that may be demanded, there has been much discussion (III, 1700, 1738, 1888, 1902, 1903; VI, 402, 435). There have been several conflicts with the Executive (II, 1534, 1561; III, 1884, 1885–1889, 1894) over demands for papers and information, especially when the resolutions have called for papers relating to foreign affairs (II, 1509–1513, 1518, 1519).

RULE XIV

ORDER AND PRIORITY OF BUSINESS

1. The daily order of business (unless varied by the application of other rules and except for the disposition of matters of higher precedence) shall be as follows:

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

First. Prayer by the Chaplain.

Second. Reading and approval of the Journal, unless postponed under clause 8 of rule XX.

Third. The Pledge of Allegiance to the Flag.

Fourth. Correction of reference of public bills.

Fifth. Disposal of business on the Speaker's table as provided in clause 2.

Sixth. Unfinished business as provided in clause 3.

Seventh. The morning hour for the consideration of bills called up by committees as provided in clause 4.

Eighth. Motions that the House resolve into the Committee of the Whole House on the state of the Union subject to clause 5.

Ninth. Orders of the day.

Originally the House had no rule prescribing an order of business, but certain simple usages were gradually established by practice before the first rule on the subject was adopted in 1811. The rule was amended frequently to arrange the business to give the House as large a freedom as possible in selecting for consideration and completing the consideration of the bills that it deems most important. The basic form of the rule has been in place since 1890 (IV, 3056). The 98th Congress made a conforming change to the second order of business relating to the postponement of the vote on approval of the Journal (H. Res. 5, Jan. 3, 1983, p. 34). The 104th Congress added the present third order of business respecting the Pledge of Allegiance (sec. 218, H. Res. 6, Jan. 4, 1995, p. 468). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1 of rule XXIV (H. Res. 5, Jan. 6, 1999, p. 47). A correction to a cross reference was effected in the 107th Congress (sec. 2(x), H. Res. 5, Jan. 3, 2001, p. 26).

The Speaker does not entertain a point of no quorum before the prayer is offered (VI, 663). Under clause 7 of rule XX, a point of no quorum may not be entertained unless a question is pending (see § 1027, *infra*).

In response to serial parliamentary inquiries regarding the pledge of allegiance to the flag, the Chair advised that (1) under clause 1 of rule XIV, the third element of the daily order of business is the Pledge of Allegiance; (2) section 4 of title 4, United States Code, prescribes the text of the pledge; (3) when the pledge is delivered as the third element of the daily order of business, the Record reflects the pledge in its statutory form; and (4) the statute prescribes the manner of delivery of the pledge (Apr. 27, 2004, p. ——).

§ 870. Privileged interruptions of the order of business in the House.

This rule does not, however, bind the House to a daily routine, since the system of making certain important subjects privileged (see clause 5 of rule XIII and rule XXII) permits the interruption of the order of business by matters which, in fact, often supplant it entirely for days at a time. In the 106th Congress the recodification acknowledged in the parenthetical of this clause that the prescribed daily

order of business could be superseded by operation of other rules (H. Res. 5, Jan. 6, 1999, p. 47). But on any day, when the order of business is interrupted by a privileged matter, the business in order goes on from the place of interruption (IV, 3070, 3071) unless the House adjourns. After an adjournment the House begins again at the beginning. While privileged matters may interrupt the order of business, they may do so only with the consent of a majority of the House, expressed as to appropriation bills by the vote on going into Committee of the Whole to consider such bills, and as to matters like conference reports, questions of privilege, etc., by raising and voting on the question of consideration. The only exceptions to the principle that a majority may prevent interruption is contained in clauses 5 and 7 of rule XV, providing for a call of the Private Calendar on the first Tuesday of each month and a call of committees on Wednesdays. By this combination of an order of business with privileged interruptions the House is enabled to give precedence to its most important business without at the same time losing the power by majority vote to go to any other bills on its calendars.

§ 871. The privileged matters which may interrupt the order of business.

The privileged matters which may interrupt the order of business include:

(1) General appropriation bills (clause 5 of rule XIII; IV, 3072).

(2) Conference reports (clause 7(a) of rule XXII; V, 6443) and motions to discharge or instruct conferees (clause 7(c) of rule XXII).

(3) Special orders reported by the Committee on Rules for consideration by the House (clause 5 of rule XIII; IV, 3070–3076, 4621).

(4) Consideration of amendments between the Houses after disagreement (IV, 3149, 3150).

(5) Questions of privilege (rule IX; III, 2521).

(6) Privileged bills reported under the right to report at any time (clauses 5 and 7 of rule XIII; IV, 3142–3144, 4621).

(7) Call of committees on Wednesdays for bills on House and Union Calendars (clause 6 of rule XV).

(8) Private business on Tuesday (clause 5 of rule XV).

(9) Motions on the second and fourth Mondays of the month to discharge committees on public bills and resolutions (clause 2 of rule XV), and consideration of District of Columbia business (clause 4 of rule XV; IV, 3304).

(10) Motions to suspend the rules and pass bills out of the regular order (clause 1 of rule XV; V, 6790).

(11) Bills coming over from a previous day with the previous question ordered (V, 5510–5517).

(12) Bills returned with the objections of the President (IV, 3534–3536).

(13) Motions to send a bill to conference (under clause 1 of rule XXII; Aug. 1, 1972, p. 26153).

In addition to these matters, the House by practice permits its order of business to be interrupted, at the discretion of the Speaker, for the

reception of messages (V, 6602). Before the 104th Congress, addressing the House out of order by unanimous consent, the Speaker announced that on at least two subsequent days he would recognize designated Members after approval of the Journal to lead the House in the Pledge of Allegiance to the Flag (Speaker Wright, Sept. 9, 1988, p. 23310). Requests of Members for leaves of absence are in practice put before the House at the time of adjournment (IV, 3151).

§ 872. The interruption of the order of business by the request for unanimous consent.

When the House has no rule establishing an order of business, as at the beginning of a session before the adoption of rules, it is in order for any Member who is recognized by the Chair to offer a proposition relating to the order of business without asking consent of the House (IV, 3060). But after the adoption of the rule for the order of business, interruptions are confined to matters privileged to interrupt or to cases wherein the House gives unanimous consent for an interruption. A request for unanimous consent to consider a bill is in effect a request to suspend the order of business temporarily (IV, 3059). Therefore any Member, including the Speaker, may object, or reserve the right to object and inquire, for example, about the reasons for the request, or demand the "regular order" (IV, 3058). Debate under a reservation of objection proceeds at the sufferance of the House and may not continue after a demand for the regular order (see, *e.g.*, Speaker Foley, Nov. 14, 1991, p. 32128; Dec. 15, 1995, p. 37142). A Member objecting to a unanimous-consent request or demanding the regular order when another has reserved the right to object must stand to be observed by the Chair (Nov. 7, 1991, p. 30633; June 23, 1992, p. 15703). The Speaker, however, usually signifies his objection by declining to put the request of the Member, thus saving the time of the House. The Speaker's guidelines for recognition for unanimous-consent requests for consideration of unreported measures are issued pursuant to clause 2 of rule XVII and are discussed in § 956, *infra*. The request for unanimous consent began to be used about 1832 when the House first felt a pressure of business and the necessity of adhering to a fixed order (IV, 3155–3159). In 1909, by the adoption of former clause 4 of rule XIII, a Consent Calendar was established, which was abolished in the 104th Congress (H. Res. 168, June 20, 1995, p. 16574). For discussion of unanimous-consent requests and reservations of objections, see § 956, *infra*. Unanimous consent for the immediate consideration of a measure in the House does not preclude a demand for a record vote when the Chair puts the question on final passage, since it merely permits consideration of a matter not otherwise privileged (Dec. 16, 1987, p. 35816).

2. Business on the Speaker's table shall be disposed of as follows:

§ 873. Disposal of business on the Speaker's table.

(a) Messages from the President shall be referred to the appropriate committees without debate.

(b) Communications addressed to the House, including reports and communications from heads of departments and bills, resolutions, and messages from the Senate, may be referred to the appropriate committees in the same manner and with the same right of correction as public bills and public resolutions presented by Members, Delegates, or the Resident Commissioner.

(c) Motions to dispose of Senate amendments on the Speaker's table may be entertained as provided in clauses 1, 2, and 4 of rule XXII.

(d) Senate bills and resolutions substantially the same as House measures already favorably reported and not required to be considered in the Committee of the Whole House on the state of the Union may be disposed of by motion. Such a motion shall be privileged if offered by direction of all reporting committees having initial jurisdiction of the House measure.

A rule to govern disposition of business on the Speaker's table (to be distinguished from the table of the House, which is the Clerk's table) was adopted in 1832. In 1880 and 1885 efforts were made to so modify the rule as to prevent delays in business on the Speaker's table, but it was not until 1890 that the present rule was adopted (IV, 3089). Before the House recodified its rules in the 106th Congress, this provision and clause 2 of rule XXII occupied a single clause (formerly clause 2 of rule XXIV) (H. Res. 5, Jan. 6, 1999, p. 47).

§ 874. Matters on Speaker's table for action by the House or by the Speaker alone.

Such portions of messages from the Senate as require action by the House, all messages from the President except those transmitting his objections to bills (IV, 3534–3536), and all communications and reports from the heads of departments go to the Speaker's table when received, to be disposed of under this rule. Simple resolutions of the Senate that do not require any action by the House are not referred (VII, 1048). All of the President's messages are referred. Such portions of Senate messages (House bills with Senate amendments) that do not require consideration in Committee of the Whole may be laid before the House for action. Communications from the President, other than messages; all portions of Senate messages requiring consideration in Committee of the Whole (IV, 3101); and Senate bills of all kinds (with the exception noted in the rule) may be referred to the appropriate standing committees under direction of the Speaker without action by the House (IV, 3107, 3111; VI, 727). Under clause 2 of former rule XXIV (current rule XIV), the Speaker may temporarily retain custody of an executive communication addressed to him (or may pursuant to former clause 1 of rule IV (current clause 3(a) of rule II) order the Sergeant-at-Arms to assume custody) pending House disposition of a special order reported from the Committee on Rules relating to a referral of the communication to committee (Sept. 9, 1998, p. 19769).

A House bill returned with Senate amendments involving a new matter of appropriation, whether with or without a request for a conference, may be referred directly to a standing committee (VI, 731), and on being reported therefrom is referred directly to the Committee of the Whole (IV, 3094, 3095, 3108–3110). However, the usual practice is to take the bill from the Speaker's table and concur, concur with an amendment, or send to conference by unanimous consent, special rule, or suspension of the rules (VI, 732) (although a motion to send to conference may be privileged under clause 1 of rule XXII). The Speaker's authority under this clause includes the discretionary authority to refer from the Speaker's table Senate amendments to House-passed bills, to standing committees, under any conditions permitted under current clause 2 of rule XII (formerly clause 5 of rule X) for referral of introduced bills; he may for example impose a time limitation for consideration only of a portion of the Senate amendment, not germane to the original House bill, by the standing committee with subject-matter jurisdiction, without referring the remainder of the Senate amendment to the House committee with jurisdiction over the original House bill (Speaker O'Neill, H.R. 31, Mar. 26, 1981, p. 5397). The Speaker announced his policy regarding referral of nongermane Senate amendments to committee (Jan. 3, 1983, p. 54; Jan. 6, 1987, p. 21); and his policy regarding recognition for unanimous-consent requests to dispose of Senate amendments at the Speaker's table (Apr. 26, 1984, p. 10194; Feb. 4, 1987, p. 2676) discussed in § 956, *infra*. A Senate bill to come before the House directly from the table must conform to the conditions prescribed by the

rule (IV, 3098, 3099; VI, 727, 734, 737), and must have come to the House after and not before the House bill "substantially the same" has been placed on the House Calendar (IV, 3096; VI, 727, 736, 738) or Private Calendar (IV, 3102) and not involving an expenditure (IV, 3103). In the event the House bill has passed before the Senate bill is received, the Senate bill may nevertheless be disposed of on motion directed by the committee (VI, 734, 735). The House bill must be correctly on the House Calendar (VI, 736). In determining whether the House bill is substantially the same as the Senate bill, amendments recommended by the House committee must be considered (VI, 734, 736). The rule applies to private as well as to public Senate bills (IV, 3101), and to concurrent resolutions as well as to bills (IV, 3097). Although a committee must authorize the calling up of the Senate bill (VI, 739), the actual motion need not be made by a member of the committee (IV, 3100). The authority of a committee to call up a bill must be given at a formal meeting of the committee (VIII, 2211, 2212, 2222).

§ 875. Reference of President's messages from the Speaker's table.

A message of the President on the Speaker's table is regularly laid before the House only at the time prescribed by the order of business (V, 6635–6638). While it is always read in full and entered on the Journal and the Congressional Record (V, 6963), the accompanying documents are not read on demand of a Member or entered in the Journal or Record (V, 5267–5271; VII, 1108). The annual message of the President is usually referred to the Committee of the Whole House on the state of the Union by the House on motion (V, 6631). In the earlier practice it was distributed to appropriate standing committees by resolutions reported from the Committee on Ways and Means (V, 6621, 6622) but since the first session of the 64th Congress the practice has been discontinued (VIII, 3350). A portion of the annual message has been referred directly to a select committee (V, 6628). A message other than an annual message is usually referred directly to a standing committee by direction of the Speaker (IV, 4053; VIII, 3346), but may be referred by the House itself on motion by a Member (V, 6631; VIII, 3348), and such motion is privileged (VIII, 3348). This reference may be to a select as well as to a standing committee (V, 6633, 6634).

§ 876. Unfinished business.

3. Consideration of unfinished business in which the House may have been engaged at an adjournment, except business in the morning hour and proceedings postponed under clause 8 of rule XX, shall be resumed as soon as the business on the Speaker's table is finished, and at the same time each day thereafter until disposed of. The consideration of

all other unfinished business shall be resumed whenever the class of business to which it belongs shall be in order under the rules.

The first rule relating to unfinished business was adopted in 1794. Changes were made in 1860 and 1880, but the rule finally became unsatisfactory, because of delays caused by it, and in 1890 the present form was adopted (IV, 3112). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 3 of rule XXIV (H. Res. 5, Jan. 6, 1999, p. 47). A clerical correction to a cross reference was effected in the 107th Congress (sec. 2(x), H. Res. 5, Jan. 3, 2001, p. 26).

§ 877. Construction of rule as to unfinished business.

This clause should be understood in light of clause 8 of rule XX, which permits the Chair to postpone record votes on certain questions to a designated time within two legislative days (see § 1030, *infra*). The "business in which the House may be engaged at an adjournment" means, literally, business in the House, as distinguished from the Committee of the Whole; and it further means business in which the House is engaged in its general legislative time, as distinguished from the special periods set aside for classes of business, like the morning hour for calls of committee, Tuesdays for private bills, etc. In general, all business unfinished in the general legislative time goes over as unfinished business under the rule, but there are a few exceptions. Thus, a motion relating to the order of business does not recur as unfinished business on a succeeding day, even though the yeas and nays may have been ordered on it (IV, 3114). The question of consideration, also, when not disposed of at an adjournment, does not recur as unfinished business on a succeeding day (V, 4947, 4948), but may be again raised on a subsequent day when the matter is again called up as unfinished business (VIII, 2438). Where the House adjourns during the consideration of a report from the Committee on Rules, further consideration of the report becomes the unfinished business on the following day, and debate resumes from the point where interrupted (Sept. 27, 1993, p. 22609; Sept. 28, 1993, p. 22719). When the House adjourns on the second legislative day after postponement of a question under clause 8 of rule XX without resuming proceedings thereon, the question remains unfinished business on the next legislative day (Oct. 1, 1997, p. 20922; Oct. 2, 1997, p. 20991). When the House adjourns while a motion to instruct under clause 7(c) of rule XXII is pending, the motion to instruct becomes unfinished business on the next day and does not need to be renoticed (Oct. 1, 1997, p. 20894).

§ 878. Effect of previous question.

When the House adjourns before voting on a proposition on which the previous question has been ordered, either directly or by the terms of a special order (IV, 3185), the matter comes up the next day as unfinished business (V, 5510–5517; VIII, 2691; Aug. 2, 1989, p. 18187). If several bills come over in this situation, they have precedence in the order in which the several mo-

tions for the previous question were made (V, 5518). When the previous question is ordered on a bill undisposed of at adjournment on Friday, the bill comes up for disposition on the next legislative day (VIII, 2694). A bill going over from Calendar Wednesday with the previous question ordered on it should be disposed of on the next legislative day (VII, 967), but when the previous question is ordered on a bill undisposed of when the House adjourns Tuesday, the bill goes over until Thursday (VII, 890–894; VIII, 2674, 2691). A bill coming over from a preceding day with the previous question ordered was of equal privilege with business on the former Consent Calendar (VII, 990).

§ 879. Business unfinished in periods set apart for classes of business.

The rule excepts by its terms certain classes of business which are considered in periods set apart for classes of business, viz:

(*a*) Bills considered in the morning hour and on Calendar Wednesday for the call of committees.

(*b*) Bills in Committee of the Whole.

(*c*) Private bills considered on Tuesdays.

(*d*) District of Columbia bills.

(*e*) Bills brought up under the rule setting apart days for motions to suspend the rules, motions to discharge committees, and bills under consideration after a committee has been discharged.

A bill brought up in the morning hour and undisposed of when the call ceases for the day remains as unfinished business in the morning hour (IV, 3113, 3120), *i.e.*, it is considered when the House next goes to a call of committees. Business unfinished when the Committee of the Whole rises remains unfinished, to be considered first in order when the House next goes into Committee of the Whole to consider that business (IV, 4735, 4736).

On District of Columbia day business unfinished on the preceding District day is in order for consideration, but does not come before the House unless called up (IV, 3307; VII, 879). Unless postponed under clause 8 of rule XX, a motion to suspend the rules, which is undisposed of on one suspension day, goes over as unfinished business to the next suspension day, individual motions going over to a committee day, and vice versa (V, 6814–6816; VII, 1005; VIII, 3411, 3412).

§ 880. The morning hour for the call of committees.

4. After the unfinished business has been disposed of, the Speaker shall call each standing committee in regular order and then select committees. Each committee when named may call up for consideration a bill or resolution reported by it on a previous day and on the House Calendar. If the Speaker does not complete the call of the com-

mittees before the House passes to other business, the next call shall resume at the point it left off, giving preference to the last bill or resolution under consideration. A committee that has occupied the call for two days may not call up another bill or resolution until the other committees have been called in their turn.

The morning hour is one of the oldest devices of the rules for devoting an early portion of the session to a specific class of business. Until 1885 it was the hour for the reception of reports from committees. In 1890 it was provided that reports should be filed with the Clerk, and the morning hour was by this rule devoted to a call of committees for the consideration of House Calendar bills (IV, 3181). Since the adoption of the Calendar Wednesday rule (clause 6 of rule XV), the morning hour has been used but rarely. Before the House recodified its rules in the 106th Congress, this provision was found in former clause 4 of rule XXIV (H. Res. 5, Jan. 6, 1999, p. 47).

§ 881. Procedure in the morning hour.

Originally the morning hour was a fixed period of 60 minutes (IV, 3118); but under the present rule it does not terminate until the call is exhausted or until the House adjourns (IV, 3119), unless the House on motion made at the end of 60 minutes votes to go into Committee of the Whole House on the state of the Union (clause 5 of rule XIV; IV, 3134), or unless other privileged matter intervenes (IV, 3131, 3132). Before the expiration of the 60 minutes the Speaker has declined to permit the call to be interrupted by a privileged report (IV, 3132) or by unanimous consent (IV, 3130). Where the business for which the call is interrupted is concluded, the call is resumed unless there be other interrupting business or the House adjourns (IV, 3133). A bill once brought up on the call continues before the House in that order of business until disposed of (IV, 3120), unless withdrawn by authority of the committee before action which puts it in possession of the House (IV, 3129); and may not be made a special order for a future day by a motion to postpone to a day certain (IV, 3164). In order to be called up in this order a bill must actually be on the House Calendar, and properly there, in order to be considered (IV, 3122–3126), and a bill on the Union Calendar may not be brought up on call of committees under this clause (VI, 753). If the authority of the committee to call up a bill is disputed, the Chair does not consider it his duty to decide the question (IV, 3127), but the Chair may base its decision on statements from the chairman and other members of the committee (IV, 3128).

5. After consideration of bills or resolutions under clause 4 for one hour, it shall be in order, pending consideration thereof, to entertain a motion that the House resolve into the Committee of the Whole House on the state of the Union or, when authorized by a committee, that the House resolve into the Committee of the Whole House on the state of the Union to consider a particular bill. Such a motion shall be subject to only one amendment designating another bill. If such a motion is decided in the negative, another such motion may not be considered until the matter that was pending when such motion was offered is disposed of.

§ 882. Interruption of the call of committees by motion to go into Committee of the Whole House on the state of the Union.

This portion of the rule was adopted in 1890 as part of the plan for enabling the House at will to go at any time to any public bill on its calendars (IV, 3134). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5 of rule XXIV (H. Res. 5, Jan. 6, 1999, p. 47).

§ 883. Conditions of the motion to go into Committee of the Whole at the end of one hour.

The words of the rule "one hour" have been interpreted to mean a less time in case the call of committees shall have exhausted itself before the expiration of one hour (IV, 3135); but not otherwise (IV, 3141). After the House has been in Committee of the Whole under this order and has risen and reported, and the report has been acted on by the House, other motions to go into Committee to consider other bills are in order (IV, 3136). The motion to go into Committee generally may be made by the individual Member (IV, 3138), but when it is proposed to designate a particular bill he must have the authority of a committee (IV, 3138). The amendment to the motion to consider a particular bill must refer to a bill on the Union Calendar (IV, 3139). This order of business is used entirely for nonprivileged bills and is not used in the House for consideration of bills in Committee of the Whole House on the state of the Union if otherwise privileged under clause 5 of rule XIII.

6. All questions relating to the priority of business shall be decided by a majority without debate.

§ 884. Decision of questions as to priority of business without debate.

This provision was adopted in 1803 to prevent obstructive debate (IV, 3061). Before the House recodified its rules in the 106th Congress, this provision was found in former rule XXV (H. Res. 5, Jan. 6, 1999, p. 47). The question of consideration under clause 3 of rule XVI and the motion that the House resolve itself into the Committee of the Whole are not debatable (VIII, 2447; IV, 3062, 3063).

This rule may not be invoked to establish an order of business or to inhibit the Speaker's power of recognition (Speaker Albert, July 31, 1975, p. 26249). It has been held that appeals from decisions of the Chair as to priority of business are not debatable under this rule (V, 6952).

RULE XV

BUSINESS IN ORDER ON SPECIAL DAYS

Suspensions

§ 885. Motions to suspend the rules.

1. (a) A rule may not be suspended except by a vote of two-thirds of the Members voting, a quorum being present. The Speaker may not entertain a motion that the House suspend the rules except on Mondays, Tuesdays, and Wednesdays and during the last six days of a session of Congress.

This provision (formerly clause 1 of rule XXVII) developed from a rule adopted in 1794, which provided that no rule should be rescinded without one day's notice. In 1822 a paragraph was added that no rule should be suspended except by a two-thirds vote. In 1828 it was amended to provide that the order of business, as established by the rules, should not be changed except by a two-thirds vote. Originally contemplating motions to suspend the rules on any day, the rule was amended in 1847 to restrict the motion to Mondays of each week, and, in 1880, to the first and third Mondays of each month. In 1874 the old limit of 10 days at the end of the session was reduced to six days. In the 93d Congress, the rule was amended to permit motions to suspend the rules on the first and third Mondays and on the Tuesdays immediately following those days and to eliminate the distinction between days on which committees and individuals had preference (H. Res. 6, Jan. 3, 1973, pp. 26, 27). In the 95th Congress, the rule was amended to permit such motions on every Monday and Tuesday (H. Res. 5, Jan. 4, 1977, 95th Cong., pp. 53–70). During the first session of the 108th Congress, the House authorized the Speaker to entertain motions that the House suspend the rules on Wednesdays through the second Wednesday in April as though under this clause (sec.

3(d), H. Res. 5, Jan. 7, 2003, p. ——). That authority was extended by unanimous consent through the last Wednesday in June (Apr. 30, 2003, p. ——) and by resolution through the entire 108th Congress (H. Res. 297, June 26, 2003, p. ——). The 109th Congress amended the rule to permit motions to suspend the rules every Wednesday (sec. 2(e), H. Res. 5, Jan. 4, 2005, p. ——). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1 of rule XXVII (H. Res. 5, Jan. 6, 1999, p. 47).

§ 886. Nature of the motion to suspend the rules.

Originally, when the House was operating under the older rules for the order of business, the motion was used to establish a special order of business for the consideration of a particular measure (IV, 3152, 3162; V, 6852). In 1890, the House adopted rules for the order of business which enabled the House on any day to consider public bills on its calendars. About the same time, the House perfected the process of establishing a special order of business by a majority vote through a report from the Committee on Rules (IV, 3169). As a result of these changes, the use of the motion to suspend gradually changed from one that established a special order of business to one that passes or adopts a measure (V, 6790, 6846, 6847). The latter motion suspends all rules inconsistent with its purposes, including a rule requiring that a recess be taken (V, 5752) or that a quorum be present when a bill is reported from committee (Sept. 22, 1992, p. 26932).

Although the normal use of the motion is to pass or adopt a noncontroversial measure, the motion may also be used to change or suspend a rule or order that is susceptible to suspension or to suspend the parliamentary law of Jefferson's Manual (V, 6796, 6862). The rules forbid the Speaker to entertain a motion to suspend the rules relating to the privilege of the floor (clause 2(b) of rule IV; V, 7283; VIII, 3634), the use of the Hall of the House (clause 1 of rule IV; V, 7270), or prohibiting the introduction of persons in the galleries (clause 7 of rule XVII; VI, 197).

The motion to suspend may include a series of actions, such as the discharge of a committee from consideration of a bill and the passage of it (V, 6850), the reconsideration of the vote passing a bill, amendment of it, and passage again (V, 6849), the permission for a committee to report several bills (V, 6857), an order to the Clerk to incorporate in the engrossment of a general appropriation bill a provision not otherwise in order (IV, 3845), an authorization to the House to entertain a specified motion to suspend the rules on a future day, not a suspension day (IV, 3845), a motion to take a bill (V, 6288; VIII, 3425) or a motion to reconsider, from the table (V, 5640). A motion to suspend may provide for agreeing to a conference report which has been ruled out of order by the Speaker (Dec. 20, 1974, p. 41860) or may provide for passage of a bill that consists of the text of two bills previously passed by the House (Sept. 19, 2000, p. 18510). One motion to suspend the rules having been rejected, the Speaker may recognize for a similar motion (Dec. 21, 1973, pp. 43270–81).

A motion to suspend the rules may provide for the passage of a bill regardless of whether it has been reported by committee, referred to a calendar, or even previously introduced (VIII, 3421; July 16, 1996, p. 17228). It may include an amendment without the formality of committee approval (June 22, 1992, p. 15617). Copies of reports on bills considered under suspension are not required to be available in advance. No advance notice to Members of bills to be called up under suspension of the rules is required (Mar. 20, 1978, p. 7535). However, where a special rule requires that the object of a motion to suspend the rules be announced on the floor at least one hour before the Chair's entertaining the motion, unanimous consent is required to permit the Chair to entertain the motion before that time (Sept. 28, 1996, p. 25765, 25774).

§ 886a. Consideration of the motion to suspend the rules.

The motion that the House "suspend the rules and pass [or adopt]" a measure is not subject to the demand for a division of the question, either as to the two branches of the motion or as to distinct substantive propositions in the subject of the motion (V, 6141–6143). The motion may not be amended (V, 5322, 5405, 6858; Deschler, ch. 21, § 14.6; Apr. 11, 2000, p. 5206), and the power to modify the motion rests with its proponent (July 18, 2005, p. ——). The motion may not be postponed (V, 5322) or laid on the table (V, 5405). The motion to reconsider may not be applied to a negative vote on the motion (V, 5645, 5646; VIII, 2781; Sept. 28, 1996, p. 25797), although it may be applied to an affirmative vote (Sept. 28, 1996, p. 25796). The motion to refer may not be applied to the bill that it is proposed to pass under suspension of the rules (V, 6860). Pursuant to clause 1(b) of rule XV, the Speaker may entertain one motion to adjourn pending a motion to suspend the rules. However, after that vote, the Speaker may not entertain any other motion until the vote is taken on the motion to suspend the rules.

Some older precedents indicate that the right of a Member to have read the paper on which he is called to vote is not changed by the fact that the procedure is by suspension of the rules (V, 5277; VIII, 3400), and in earlier instances the separate motion to suspend the rules and dispense with reading of pending measures was held in order (V, 5278–84). However, under the modern practice, only the motion to suspend the rules is itself read, and the Clerk reports the title of the bill only. Amendments included in the motion are not reported separately. Where a motion to suspend the rules and agree to a resolution that provided for concurring in a Senate amendment with an amendment consisting of the text of a bill introduced in the House, the Speaker ruled that the reading of the resolution itself was sufficient and that it could be re-read to the House only by unanimous consent (Dec. 21, 1973, pp. 43251–63).

For a discussion of debate on the motion and the Chair's recognition of a Member to control time in opposition to the motion, see § 891, *infra*.

§ 887. Precedence of the motion to suspend the rules.

In the early practice, when the motion to suspend the rules was used to enable a matter to be taken up for consideration out of order, it was not admitted when a subject was already before the House (V, 5278, 6836, 6837, 6852, 6853). However, a motion to suspend the rules was in order to dispense with the reading of a pending measure (V, 5278). A bill taken up under this early practice might be amended by the House (V, 6842, 6856) or withdrawn by the mover, in which case another Member might not present it (V, 6854, 6855).

In the later practice, where the motion includes both suspension of the rules and action on the subject, it is admitted even though another matter is pending (V, 6834), the yeas and nays are demanded on another privileged motion (V, 6835), or the previous question has been ordered or moved on another matter (V, 6827, 6831–6833; VIII, 3418; Sept. 17, 1990, p. 24695). Earlier rulings did not permit a motion to suspend the rules to permit a vote to be taken in gross on a series of pending Senate amendments (V, 6828, 6830). The motion to suspend the rules has been ruled out of order when the House is considering a bill under a special order (V, 6838) or when a question of privilege under rule IX is before the House (V, 6825, 6826; VI, 553, 565). The motion to suspend the rules has been held of equal privilege with the motion to instruct conferees under former clause 1(c) of rule XXVIII (current clause 7(c) of rule XXII), which is of the highest privilege (Mar. 1, 1988, pp. 2749, 2751, 2754). A motion to suspend the rules and approve the Journal was held in order, although the Journal had not been read and the highly privileged motion to fix the day to which the House should adjourn was pending (IV, 2758). Although the motion is privileged, it may be superseded by a question of the privileges of the House (III, 2553; VI, 565). Moreover, in the absence of a motion to suspend, the ordinary motions relating to business of the House may be made on suspension days as on other days (IV, 3080).

The motion to suspend the rules may be made on days other than suspension days by unanimous consent (V, 6795) or by adoption of a resolution reported by the Rules Committee. On suspension days the motion to suspend the rules has been admitted at the discretion of the Speaker since 1881 (V, 6791–6794, 6845; VIII, 3402–3404), and no appeal may be taken from the Speaker's denial of recognition (II, 1425).

§ 888. Individual and committee motions to suspend the rules.

Before the 93d Congress, the rule gave to individuals preference on the first Monday of the month for making motions to suspend the rules, and preference on the third Mondays for committees to make the motion (V, 6790). If on a committee day an individual motion was made and seconded, it was then too late to make a point of order (V, 6809). In rare instances, under earlier House practice, the Speaker called the committees in regular order for motions to suspend the rules, but this method was not required (V, 6810, 6811). The earlier practice also required a motion to be formally and specifically authorized by a committee (V, 6805–6807),

including specific authorization to include an amendment (V, 6812); but after the motion was seconded and debate had begun it was too late to raise a question as to the authorization (V, 6808). The committee could not present a bill which had not been referred to it (V, 6813) or was not within its jurisdiction (V, 6848).

Authorization by a committee is not required for the Speaker to recognize for a motion to suspend the rules (VIII, 3410), including a motion to suspend the rules and pass a measure "as amended" (June 22, 1992, p. 15617).

§ 889. The second of the motion to suspend the rules.

Before the 102d Congress, certain motions to suspend the rules were required to be seconded, if demanded, by a majority by tellers, but this requirement was eliminated from the rule (H. Res. 5, Jan. 3, 1991, p. 39). The requirement for a second was adopted in 1874, was rescinded two years later, but was again adopted in 1880. The object of it was to prevent consumption of the time of the House by forcing consideration of undesirable propositions (V, 6797). The requirement (formerly clause 2 of rule XXVII) was amended in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16) so that a second was not required where printed copies of the proposed measure were available. The constitutional right of a Member to demand the yeas and nays, or the right of a Member under clause 1(b) of rule XX to demand a recorded vote, did not exist on the question of ordering a second under the former clause 2 of rule XXVII, which only permitted the ordering of a second by tellers if a quorum was present (V, 6032–6036; VIII, 3109; Dec. 16, 1981, p. 31851). The fact that a majority of the Members of the House did not pass between the tellers on the question of ordering a second did not conclusively show that a quorum was not present in the Chamber, and the Speaker could count the House to determine whether a quorum was actually present (Dec. 16, 1981, p. 31851). However, where a quorum failed on the vote for a second, under clause 6 of rule XX the yeas and nays were ordered (IV, 3053–3055; Dec. 21, 1973, pp. 43251–63).

§ 889a. Withdrawal of motion.

A motion to suspend the rules may be withdrawn at any time before the Chair puts the question and a voice vote is taken thereon (V, 6840, 6844; VIII, 3405, 3419). The motion may be withdrawn by unanimous consent, even after the Speaker has put the question on its adoption and postponed further proceedings (Deschler, ch 21 § 13.23).

§ 890. Dilatory motions pending motions to suspend rules.

(b) Pending a motion that the House suspend the rules, the Speaker may entertain one motion that the House adjourn. After the result of such a motion is announced, the Speaker may not enter-

tain any other motion until the vote is taken on the suspension.

This provision (formerly clause 8 of rule XVI) was adopted in 1868 (V, 5743), and amended in 1911 (VIII, 2823). A motion for a recess (V, 5748–5751) and for a call of the House when there was no doubt of the presence of a quorum (V, 5747) were held to be dilatory motions within the meaning of the rule. But where a motion to suspend the rules has been made and, after one motion to adjourn has been acted on, a quorum has failed, another motion to adjourn has been admitted (V, 5744–5746).

§ 891. The 40 minutes of debate on motion to suspend the rules.

(c) A motion that the House suspend the rules is debatable for 40 minutes, one-half in favor of the motion and one-half in opposition thereto.

This provision (formerly clause 2 of rule XXVII) was adopted in 1880 (V, 6821). It was amended and redesignated from clause 3 to clause 2 of rule XXVII in the 102d Congress to conform to the repeal of the former clause 2, relating to the requirement of a second (H. Res. 5, Jan. 3, 1991, p. 39). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2 of rule XXVII. Former clause 2 consisted of paragraph (b) and another provision currently found in clause 1(a) of rule XIX permitting 40 minutes debate on an otherwise debatable question on which the previous question has been ordered without debate (H. Res. 5, Jan. 6, 1999, p. 47). Before the adoption of this provision in 1880 (V, 6821) the motion to suspend the rules was not debatable (V, 5405, 6820). The 40 minutes of debate is divided between the mover and a Member opposed to the bill, unless it develops that the mover is opposed to the bill, in which event some Member in favor is recognized for debate (VIII, 3416; Oct. 5, 2004, p. ——). When the mover and the opponent divide their time with others, the practice as to alternation of recognitions is not insisted on so rigidly as in other debate (II, 1442). Debate should be confined to the object of the motion and may not range to the merits of a bill not scheduled for suspension on that day (Nov. 23, 1991, p. 34189).

Where recognition for the 20 minutes in opposition is contested, the Speaker will accord priority first on the basis of true opposition, then on the basis of committee membership, and only then on the basis of party affiliation, the latter preference inuring to the minority party (VIII, 3415; Nov. 18, 1991, p. 32510). The Chair will not examine the degree of opposition to the motion by a member of the committee who seeks the time in opposition (Aug. 3, 1999, p. 19275). Where the Chair allocates the time in opposition to the motion to the ranking minority member of the reporting committee, a challenge that that member does not qualify as opposed, in order to control such time, must be made when the time is allocated by the Chair (May 15, 1984, p. 12215; Speaker Wright, June 2, 1987, p. 14223).

This paragraph formerly included a provision dealing with the Speaker's authority to postpone further proceedings on motions to suspend the rules and pass bills or resolutions. It was added in the 93d Congress (H. Res. 998, Apr. 9, 1974, pp. 10195–99), amended in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70), and amended further in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16). It was deleted entirely in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113) when all of the Speaker's postponing authorities were consolidated into clause 5 of rule I (current clause 8 of rule XX).

Discharge motions, second and fourth Mondays

§ 892. Motion to discharge a committee.

2. (a) Motions to discharge committees shall be in order on the second and fourth Mondays of a month.

(b)(1) A Member may present to the Clerk a motion in writing to discharge—

(A) a committee from consideration of a public bill or public resolution that has been referred to it for 30 legislative days; or

(B) the Committee on Rules from consideration of a resolution that has been referred to it for seven legislative days and that proposes a special order of business for the consideration of a public bill or public resolution that has been reported by a standing committee or has been referred to a standing committee for 30 legislative days.

(2) Only one motion may be presented for a bill or resolution. A Member may not file a motion to discharge the Committee on Rules from consideration of a resolution providing for the consideration of more than one public bill or public resolution or admitting or effecting a nongermane amendment to a public bill or public resolution.

(c) A motion presented under paragraph (b) shall be placed in the custody of the Clerk, who shall arrange a convenient place for the signatures of Members. A signature may be withdrawn by a Member in writing at any time before a motion is entered on the Journal. The Clerk shall make signatures a matter of public record, causing the names of the Members who have signed a discharge motion during a week to be published in a portion of the Congressional Record designated for that purpose on the last legislative day of the week and making cumulative lists of such names available each day for public inspection in an appropriate office of the House. The Clerk shall devise a means for making such lists available to offices of the House and to the public in electronic form. When a majority of the total membership of the House shall have signed the motion, it shall be entered on the Journal, published with the signatures thereto in the Record, and referred to the Calendar of Motions to Discharge Committees.

(d)(1) On the second and fourth Mondays of a month (except during the last six days of a session of Congress), immediately after the Pledge of Allegiance to the Flag, a motion to discharge that has been on the calendar for at least seven legislative days shall be privileged if called up by a Member whose signature appears thereon. When such a motion is called up, the House shall proceed to its consideration under this paragraph without intervening motion except one motion to adjourn. Privileged motions to dis-

charge shall have precedence in the order of their entry on the Journal.

(2) When a motion to discharge is called up, the bill or resolution to which it relates shall be read by title only. The motion is debatable for 20 minutes, one-half in favor of the motion and one-half in opposition thereto.

(e)(1) If a motion prevails to discharge the Committee on Rules from consideration of a resolution, the House shall immediately consider the resolution, pending which the Speaker may entertain one motion that the House adjourn. After the result of such a motion to adjourn is announced, the Speaker may not entertain any other dilatory motion until the resolution has been disposed of. If the resolution is adopted, the House shall immediately proceed to its execution.

(2) If a motion prevails to discharge a standing committee from consideration of a public bill or public resolution, a motion that the House proceed to the immediate consideration of such bill or resolution shall be privileged if offered by a Member whose signature appeared on the motion to discharge. The motion to proceed is not debatable. If the motion to proceed is adopted, the bill or resolution shall be considered immediately under the general rules of the House. If unfinished before adjournment of the day on which it is called up, the bill or resolution shall remain the unfinished business until it is disposed of. If the motion to proceed is rejected, the bill or resolution shall be referred to the appro-

priate calendar, where it shall have the same status as if the committee from which it was discharged had duly reported it to the House.

(f)(1) When a motion to discharge originated under this clause has once been acted on by the House, it shall not be in order to entertain during the same session of Congress—

(A) a motion to discharge a committee from consideration of that bill or resolution or of any other bill or resolution that, by relating in substance to or dealing with the same subject matter, is substantially the same; or

(B) a motion to discharge the Committee on Rules from consideration of a resolution providing a special order of business for the consideration of that bill or resolution or of any other bill or resolution that, by relating in substance to or dealing with the same subject matter, is substantially the same.

(2) A motion to discharge on the Calendar of Motions to Discharge Committees that is rendered out of order under subparagraph (1) shall be stricken from that calendar.

This clause (formerly clause 3 of rule XXVII) was adopted December 8, 1931, and amended January 3, 1935 (VII, 1007). It displaced a rule providing for a motion to instruct a committee to report a public bill or resolution. The first discharge rule was adopted in the 61st Congress (June 17, 1910, pp. 8439, 8445). It was amended during the 62d Congress (Apr. 4–5, 1911, pp. 18, 80). It was further amended in the 62d Congress (H. Res. 407, Feb. 3, 1912, p. 1685), the 68th Congress (H. Res. 146, Jan. 18, 1924, p. 1143), and the 69th Congress (H. Res. 6, Dec. 7, 1925, p. 383). This provision was redesignated from clause 4 to clause 3 in the 102d Congress to conform to the repeal of the former clause 2 of rule XXVII, relating to the requirement of a second; it was at the same time amended to enable debate on a resolution discharged from the Committee on Rules (H. Res. 5, Jan. 3, 1991, p. 39). Under the previous form of the rule, where the Committee on Rules was discharged from further consideration of a

resolution the House immediately voted on adoption of the resolution (Speaker Rayburn, Jan. 24, 1944, p. 631).

In the 103d Congress, after a successful petition under this clause placed on the calendar a motion to discharge the Committee on Rules from further consideration of a resolution to require publication of the names of Members who had signed pending discharge petitions, the clause was so amended (H. Res. 134, Sept. 28, 1993, p. 22698). In the 104th Congress the clause was amended to ensure the periodic publication of such names (sec. 219, H. Res. 6, Jan. 4, 1995, p. 468). Before the 103d Congress signatures on a motion to discharge a committee were not made public until the requisite number had signed the motion (VII, 1008; Apr. 12, 1934, p. 6489). In the 105th Congress the clause was amended to clarify that, to be a proper object of a discharge petition, a resolution providing a special rule must address the consideration of only one measure and must not propose to admit or effect a nongermane amendment (H. Res. 5, Jan. 7, 1997, p. 121). A clerical correction was effected in the 107th Congress (sec. 2(x), H. Res. 5, Jan. 3, 2001, p. 26).

The phrase "a majority of the total membership of the House" was construed to mean 218 Members (Speaker Byrns, Apr. 15, 1936, p. 5509), not including Delegates or the Resident Commissioner; and a Delegate or the Resident Commissioner may not sign a discharge petition even by unanimous consent (Oct. 1, 2003, p. ——). The rule does not authorize signature of discharge motions by proxy (VII, 1014). When a Member withdraws his signature from a discharge petition at any time before it garners 218 signatures and is entered on the Journal, the withdrawal is printed in the Record (Apr. 23, 1998, p. 6590).

The rule does not apply to a bill that has been reported by a committee during the interval between the placing of a motion to discharge on the calendar and the day when such motion is called up for action in the House (Apr. 23, 1934, p. 7156). The Committee on Rules may not be discharged from further consideration of a resolution providing for an investigating committee (Apr. 23, 1934, p. 7161).

The death or resignation of a Member who has signed a motion does not invalidate his signature because a majority of the whole House is necessary for a discharge motion (May 31, 1934, p. 10159). It may be withdrawn by his successor (Dec. 7, 1943, p. 10388; Jan. 17, 1946, p. 96; Mar. 5, 1946, p. 1968; July 30, 1946, pp. 10464, 10491; Mar. 2, 1948, pp. 1993, 2001; Jan. 16, 1950, p. 436). The seven days that the motion must be on the calendar before it may be called up begins to run as of the day the motion is placed on the calendar (Dec. 14, 1937, p. 1517). A discharge petition in the 102d Congress received the requisite number of signatures on the same day it was filed (May 20, 1992, p. 12222), and subsequently by unanimous consent the House dispensed with the motion to discharge and agreed to consider the object of the petition (a special order of business resolution) on a date certain under the same terms as if discharged by motion (June 4, 1992, p. 13618). In the 103d Congress a discharge petition

also received the requisite number of signatures on the same day it was filed (Feb. 24, 1994, p. 2999). In the 107th Congress a petition received the requisite signatures to enable a motion to discharge a rule providing for the consideration of a measure to provide campaign finance reform (Jan. 24, 2002, p. ——).

The right to close 20 minute debate on a motion to discharge a committee is reserved to the proponent of the motion (VII, 1010a); and the chairman of the committee being discharged, if opposed to the motion, has been recognized to control the 10 minutes in opposition (Aug. 10, 1970, p. 27999).

Where a measure not requiring consideration in the Committee of the Whole House on the state of the Union is brought before the House by a successful motion to discharge, the Member moving its consideration is recognized in the House under the hour rule (Aug. 10, 1970, p. 28004).

The point of order provided in clause 4 of rule XXI (formerly clause 5(a) of rule XXI) does not apply to an appropriation in a bill taken away from a committee by the motion to discharge (VII, 1019a).

Under Jefferson's Manual (§ 364, *supra*) a line of Members waiting to sign a discharge petition should proceed to the rostrum from the far right-hand aisle and should not stand between the Chair and Members engaging in debate (Oct. 24, 1997, p. 23293).

Adverse report by the Committee on Rules, second and fourth Mondays

§ 893. Adverse report by Rules Committee.

3. An adverse report by the Committee on Rules on a resolution proposing a special order of business for the consideration of a public bill or public joint resolution may be called up under clause 6(e) of rule XIII as a privileged question by a Member, Delegate, or Resident Commissioner on a day when it is in order to consider a motion to discharge committees under clause 2.

This provision was initially adopted January 18, 1924, amended December 8, 1931 (VIII, 2268), January 3, 1949 (p. 16), January 3, 1951 (p. 18), January 4, 1965 (p. 24) (inserting the so-called "21-day rule"), January 10, 1967 (H. Res. 7, p. 28) (deleting the "21-day rule" in effect in the 89th Congress), January 3, 1975 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). Before the House recodified its rules in the 106th Congress, this provision was found only in former clause 4(c) of rule XI. It is currently found in both this provision and clause 6(e) of rule XIII (H. Res. 5, Jan. 6, 1999, p. 47).

District of Columbia business, second and fourth Mondays

§ 894. District of Columbia.

4. The second and fourth Mondays of a month shall be set apart for the consideration of such District of Columbia business as may be called up by the Committee on Government Reform after the disposition of motions to discharge committees and after the disposal of such business on the Speaker's table as requires reference only.

The first rule allocating a fixed day for District of Columbia business was adopted in 1870. In 1890 the rule (formerly clause 8 of rule XXIV) was amended (IV, 3304). It was again amended December 8, 1931 (VII, 872). In the 104th Congress it was amended to reflect that the jurisdiction of the former Committee on the District of Columbia had been subsumed within the amalgamated jurisdiction of the newly designated Committee on Government Reform and Oversight (and in the 106th Congress to reflect a change in the name of a committee) (sec. 202, H. Res. 6, Jan. 4, 1995, p. 465; H. Res. 5, Jan. 6, 1999, p. 47). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 8 of rule XXIV (H. Res. 5, Jan. 6, 1999, p. 47).

The Committee on Government Reform and Oversight (now Government Reform) may not, on a District day, call up a bill reported from another committee (IV, 3311). If certain of the committee's bills are on one of the calendars of the Committees of the Whole, a motion to go into committee to consider them is in order (IV, 3310). Bills reported from the District Committee (now Government Reform) are not so privileged as to prevent their being taken up under call of committees on Wednesday (VII, 937). Business unfinished on one District day does not come up on the next unless called up (IV, 3307; VII, 879, 880). The question of consideration may not be demanded against District business generally, but may be demanded against any bill as it is presented (IV, 3308, 3309).

On District days it is in order to go into the Committee of the Whole to consider revenue or general appropriation bills (VI, 716–718; VII, 876, 1123). Consideration of conference reports is in order on District Monday (VIII, 3202). District of Columbia business is in order on the second and fourth Mondays of the month before or after other business (such as motions to suspend the rules), and the fact that the House has considered some District of Columbia business before motions to suspend the rules does not affect the eligibility of further such business after suspensions have been completed (Sept. 17, 1984, p. 25523).

Private Calendar, first and third Tuesdays

§ 895. Interruption of the regular order on Tuesdays for consideration of the Private Calendar.

5. (a) On the first Tuesday of a month, the Speaker shall direct the Clerk to call the bills and resolutions on the Private Calendar after disposal of such business on the Speaker's table as requires reference only. If two or more Members, Delegates, or the Resident Commissioner object to the consideration of a bill or resolution so called, it shall be recommitted to the committee that reported it. No other business shall be in order before completion of the call of the Private Calendar on this day unless two-thirds of the Members voting, a quorum being present, agree to a motion that the House dispense with the call.

(b)(1) On the third Tuesday of a month, after the disposal of such business on the Speaker's table as requires reference only, the Speaker may direct the Clerk to call the bills and resolutions on the Private Calendar. Preference shall be given to omnibus bills containing the texts of bills or resolutions that have previously been objected to on a call of the Private Calendar. If two or more Members, Delegates, or the Resident Commissioner object to the consideration of a bill or resolution so called (other than an omnibus bill), it shall be recommitted to the committee that reported it. Two-thirds of the Members voting, a quorum being present, may adopt a motion that the House dispense with the call on this day.

(2) Omnibus bills shall be read for amendment by paragraph. No amendment shall be in order except to strike or to reduce amounts of money or to provide limitations. An item or matter stricken from an omnibus bill may not thereafter during the same session of Congress be included in an omnibus bill. Upon passage such an omnibus bill shall be resolved into the several bills and resolutions of which it is composed. The several bills and resolutions, with any amendments adopted by the House, shall be engrossed, when necessary, and otherwise considered as passed severally by the House as distinct bills and resolutions.

(c) The Speaker may not entertain a reservation of the right to object to the consideration of a bill or resolution under this clause. A bill or resolution considered under this clause shall be considered in the House as in the Committee of the Whole. A motion to dispense with the call of the Private Calendar under this clause shall be privileged. Debate on such a motion shall be limited to five minutes in support and five minutes in opposition.

§ 896. Tuesday as a day for private business.

This provision (formerly clause 6 of rule XXIV) was adopted in the 62d Congress in lieu of special orders under which pension and private business formerly had been considered. The rule was amended on April 23, 1932 (VII, 846) and was adopted in its present form on March 27, 1935 (pp. 4480–89, 4538). When the House recodified its rules in the 106th Congress, this provision was transferred from former clause 6 of rule XXIV and the archaic reference to the "Calendar of the Committee of the Whole House" was changed to the "Private Calendar" (H. Res. 5, Jan. 6, 1999, p. 47). A Member serving as an "official objector" for the Private Calendar has periodically included in the Record an explanation of how bills on the Private Calendar are considered (see, *e.g.*, Dec. 5, 1995, p. 35354; June 17,

1997, p. 11015; Nov. 17, 2003, p. ——). Clause 4 of rule XII prohibits consideration of certain private bills. Under former clause 6(e)(2) of rule XV (current clause 7(b) of rule XX), the Speaker may in his discretion recognize a Member to move a call of the House before the call of the Private Calendar (July 8, 1987, p. 18972).

§ 897. Methods of considering omnibus bills.

During the consideration of omnibus bills the Chair declines to recognize Members for unanimous-consent requests to address the House (May 7, 1935, p. 7100); motions to strike out the last word are not in order, and requests for extension of time under the five-minute rule are not entertained (Speaker Byrns, Mar. 17, 1936, pp. 3890, 3894).

An omnibus private bill is normally passed over by the Clerk when the Private Calendar is called on the first Tuesday of the month, but the House may prescribe, by special order, that such omnibus bills shall be passed over (June 27, 1968, p. 19106). During the consideration of the First Omnibus Bill of 1968, seven roll calls occurred and seven of the 15 bills carried therein were stricken by motion (Sept. 17, 1968, pp. 27165–84). Amendments to the bill were strictly limited by the rule to those striking out or reducing amounts of money carried in the bill or to provide limitations, and debate on those permissible motions was under the five-minute rule. After the passage of an omnibus bill, it is resolved into the various private bills of which it is composed and each is engrossed and messaged to the Senate as if individually passed; thus it is possible, after passage of the omnibus bill, to lay on the table a private House or Senate bill which was included therein (by unanimous consent) (Sept. 17, 1968, p. 27184).

On the third Tuesday of the month, the calendar is not called unless the Speaker so directs (Oct. 16, 1990, p. 29646); and when he does direct the Clerk to call the Private Calendar, omnibus bills on the Calendar are called before individual bills thereon (Feb. 17, 1970, pp. 3605–13). A motion to dispense with the call of the Private Calendar on the third Tuesday of each month is likewise in order in the Chair's discretion because no rule or precedent prohibits the motion, and it is consistent with the discretionary authority of the Chair to dispense with the call of the entire Calendar (appeal from the Chair's ruling laid on the table) (Nov. 17, 1981, p. 27770).

§ 898. Former Corrections Calendar.

In the 109th Congress the Corrections Calendar (formerly clause 6 of rule XV) was abolished (sec. 2(f), H. Res. 5, Jan. 4, 2005, p. ——). The Corrections Calendar was established in the 104th Congress as a replacement for the Consent Calendar (H. Res. 168, June 20, 1995, p. 16574). Later in the 104th Congress several technical changes were effected to admit amendments by a designee of the chairman of the primary committee (H. Res. 254, Nov. 30, 1995, p. 14974). In the 105th Congress it was amended to permit bills to be called from the Calendar at any time on a "corrections day" and in any order (H. Res. 5, Jan. 7, 1997, p. 121). In the 107th Congress it was amended to delete the requirement that a bill be on the Corrections

Calendar for three days before being called therefrom (sec. 2(n), H. Res. 5, Jan. 3, 2001, p. 25). Before the House recodified its rules in the 106th Congress, the provision was found in former clause 4 of rule XIII (H. Res. 5, Jan. 6, 1999, p. 47). The House could by unanimous consent direct the call of the Corrections Calendar on a day other than a "corrections day" (June 24, 1996, p. 14974). In the 105th Congress the House established a Corrections Calendar Office to assist the Speaker in management of the Calendar (H. Res. 7, Jan. 7, 1997, p. 142; 2 U.S.C. 74d; see § 1124, *infra*). Section 106 of the Legislative Branch Appropriations Act, 2004, transferred the positions, and associated funding, of the Corrections Calendar Office to the Speaker and the Minority Leader (117 Stat. 1041).

§ 899. Former Consent Calendar.

The original form of former clause 4 of rule XIII, providing for the former Consent Calendar, was adopted March 15, 1909, amended January 18, 1924; December 7, 1925; December 8, 1931; and April 23, 1932 (VII, 972). Bills must have been on the printed calendar three legislative days in order to be eligible for consideration (VII, 992, 994). When a House bill was on the Consent Calendar, by unanimous consent the House committee could have been discharged from the consideration of a Senate bill on the same subject, and the Senate bill considered in lieu of the House bill (VII, 1004). The status of bills on the Consent Calendar was not affected by their consideration from another calendar and such bills could have been called up for consideration from the Consent Calendar while pending as unfinished business in the House or Committee of the Whole (VII, 1006).

The former rule did not preclude the Speaker from recognizing Members to suspend the rules before completion of the Consent Calendar (decided by the House, VIII, 3405; also held by Speaker Clark, Oct. 5, 1914, p. 16182, and by Speaker Gillett, Sept. 4, 1919, p. 5128). Recognition to suspend the rules did not preclude the continuation of the call of the calendar later in the day (VII, 991). The call of the Consent Calendar on days devoted to its consideration took precedence of the motion to go into the Committee of the Whole to consider revenue or appropriation bills (VII, 986), and a contested-election case could not supplant the call of the Calendar (VII, 988), but the Speaker could recognize a Member to call up a conference report before directing the call of the Consent Calendar (May 4, 1970, pp. 13991–95).

Calendar Call of Committees, Wednesdays

§ 900. Calendar Wednesday business.

6. (a) On Wednesday of each week, business shall not be in order before completion of the call of the committees (except as provided by clause 4 of rule XIV) unless two-thirds of the Members voting, a quorum

being present, agree to a motion that the House dispense with the call. Such a motion shall be privileged. Debate on such a motion shall be limited to five minutes in support and five minutes in opposition.

(b) A bill or resolution on either the House or the Union Calendar, except bills or resolutions that are privileged under the Rules of the House, may be called under this clause. A bill or resolution called up from the Union Calendar shall be considered in the Committee of the Whole House on the state of the Union without motion, subject to clause 3 of rule XVI. General debate on a measure considered under this clause shall be confined to the measure and may not exceed two hours equally divided between a proponent and an opponent.

(c) When a committee has occupied the call under this clause on one Wednesday, it shall not be in order on a succeeding Wednesday to consider unfinished business previously called up by that committee until the other committees have been called in their turn unless—

(1) the previous question has been ordered on such unfinished business; or

(2) the House adopts a motion to dispense with the call under paragraph (a).

(d) If any committee has not been called under this clause during a session of a Congress, then at the next session of that Congress the call shall resume where it left off at the end of the preceding session.

(e) This clause does not apply during the last two weeks of a session of Congress.

(f) The Speaker may not entertain a motion that the Speaker be authorized to declare a recess on a Wednesday except during the last two weeks of a session of Congress.

The first portion of this rule (formerly clause 7 of rule XXIV) was adopted March 1, 1909, and amended March 15, 1909. The last sentence of paragraph (b) (first proviso of former clause 7 of rule XXIV) and paragraph (c) (second proviso of former clause 7 of rule XXIV) were adopted January 18, 1916. Paragraph (d) (the last proviso of former clause 7 of rule XXIV) was adopted December 8, 1931 (VII, 881), and was amended in the 102d Congress to specify that the alphabetical call of the committees under Calendar Wednesday resumes where left off between sessions within a Congress (H. Res. 5, Jan. 3, 1991, p. 39). Technical corrections to paragraphs (e) and (f) were effected in the 109th Congress (sec. 2(l), H. Res. 5, Jan. 4, 2005, p. ——).

§ 901. Decisions on Calendar Wednesday.

The rule applies to unprivileged bills only, and when a bill otherwise unprivileged is given a privileged status by unanimous consent or by rule it is automatically rendered ineligible for consideration on Calendar Wednesday (VII, 932–935). House Calendar bills have no preference over Union Calendar bills (VII, 938). The motion to dispense with a call of committees under this rule is privileged and may be made before the consideration of District of Columbia business under clause 4 of this rule (June 11, 1973, pp. 19028–30).

When a bill on the Union Calendar is called up on Calendar Wednesday the House automatically resolves itself into the Committee of the Whole House on the state of the Union (VII, 939; Jan. 25, 1984, p. 358), and when a Union Calendar bill is the unfinished business the Speaker declares the House in Committee of the Whole without motion (VII, 940, 942).

The question of consideration may be raised on a bill on the House Calendar on Calendar Wednesday, even after one Wednesday has been devoted to its consideration (VIII, 2447), and the question of consideration is properly raised on Union Calendar bills in the House before automatically going into Committee of the Whole House on the state of the Union (VII, 952).

During the 61st and 62d Congresses it was held that the call of committees rested where the call left off on the preceding day, whether the last call was on a Wednesday or during the morning hour on another day, thus making but one committee call under the two rules. But under the later practice there have been two distinct calls of committees, one under clause 4 of rule XIV (formerly clause 4 of rule XXIV), the morning hour, and another under Calendar Wednesday (VII, 944). Before the adoption of paragraph (c) (the second proviso of former clause 7 of rule XXIV), it

was held that one committee could not occupy more than two Calendar Wednesdays (except for unfinished business) until other committees were called, notwithstanding the fact that the call rested on said committee (VII, 944), but the adoption of the second proviso of the rule has defined the status of debate and unfinished business more explicitly. It was formerly held that a bill undisposed of on Calendar Wednesday became the unfinished business on the following Calendar Wednesday (VII, 965), but since the adoption of paragraph (c) (the second proviso of former clause 7 of rule XXIV), one committee can occupy but one Calendar Wednesday for the consideration of its business (unless the House by two-thirds vote shall otherwise determine).

The same rule of debate applies to House Calendar bills called up on Calendar Wednesday as on other days, and the Member in charge of the bill may move the previous question at any time (VII, 955).

The previous question having been ordered on a bill undisposed of when the House adjourns Tuesday, the bill goes over as unfinished business until Thursday, and is not in order for consideration on Calendar Wednesday (VII, 890–894). The previous question having been ordered on a bill on Calendar Wednesday, the bill becomes the unfinished business on Thursday (VII, 895, 967).

It is in order to consider a vetoed bill on Calendar Wednesday, since such a question is privileged under the Constitution of the United States (VII, 912), but a bill privileged by reason of the Rules of the House cannot be called up on Calendar Wednesday (VII, 932); for example, a general appropriation bill (VII, 904), or a bill under consideration by reason of a special order, unless the special order expressly sets aside Calendar Wednesday (VII, 773), or a conference report (VII, 899). A motion to reconsider an action taken on a bill on Tuesday may be entered, but may not be considered on Calendar Wednesday (VII, 905). Privileged bills may be reported but not considered on Calendar Wednesday (VII, 907), except by unanimous consent (Jan. 25, 1984, p. 357). The Speaker has entertained a unanimous-consent request for business (to send a bill to conference) before the call of committees on Calendar Wednesday (Mar. 28, 1984, p. 6869). District of Columbia business is eligible for consideration on Calendar Wednesday (VII, 937). Once the call of committees on Calendar Wednesday is completed, other business may be conducted (VII, 921).

The Committee on Rules cannot report a rule which is aimed strictly or directly toward setting aside Calendar Wednesday, but the committee is not thereby prevented from reporting a resolution couched in general terms which may indirectly accomplish that ultimate result, such as a resolution providing for six days' suspension of the rules (VIII, 2267).

The motion to grant a committee an additional Wednesday under paragraph (c) (the second proviso of former clause 7 of rule XXIV) is in order before the Wednesday on which the committee is called (VII, 946).

It has been held that if no Member opposed to the bill desires to claim the hour specified in the rule for general debate against the bill, the time

may be claimed by some Member who is in favor of the bill (VII, 962), but this principle has been questioned (VII, 961).

Clause 2(b) of rule XIII (formerly clause 2(l)(1) of rule XI), requiring the chairman of each committee to report or cause to be reported promptly measures approved by his committee and to take such necessary steps to bring the matter to a vote, is sufficient authority for the chairman to call up a bill on Calendar Wednesday, but any other committee member must obtain specific authority of his committee to call up a reported bill on Calendar Wednesday (VII, 928, 929; Feb. 22, 1950, p. 2162; Feb. 1, 1984, p. 1193; Sept. 12, 1984, p. 25100). Before the Legislative Reorganization Act of 1946 and the subsequent adoption of former clause 2(l)(1)(A) of rule XI, authority to call up a bill on Calendar Wednesday must have been given to a chairman by his committee (IV, 3127).

RULE XVI

MOTIONS AND AMENDMENTS

Motions

§ 902. Motions reduced to writing and entered on the Journal.

1. Every motion entertained by the Speaker shall be reduced to writing on the demand of a Member, Delegate, or Resident Commissioner and, unless it is withdrawn the same day, shall be entered on the Journal with the name of the Member, Delegate, or Resident Commissioner offering it. A dilatory motion may not be entertained by the Speaker.

The first sentence of this clause was made up in 1880 of old rules adopted in 1789 and 1806 (V, 5300). The last sentence of this clause (formerly clause 10 of rule XVI) was adopted in 1890 (V, 5706) to make permanent a principle already enunciated in a ruling of the Speaker, who had declared that the "object of a parliamentary body is action, and not stoppage of action" (V, 5713). When the House recodified its rules, it consolidated clause 1 and former clause 10 of rule XVI under this clause (H. Res. 5, Jan. 6, 1999, p. 47).

Because of this provision it has been held not in order to amend or strike out a Journal entry setting forth a motion exactly as made (IV, 2783, 2789). A motion not entertained is not entered on the Journal (IV, 2813, 2844–2846). See § 71, *supra*, for discussion of Journal entries. Any Member may demand that a motion be reduced to writing and in the proper form, includ-

ing the motion to adjourn (Sept. 27, 1993, p. 22608; Jan. 4, 1995, p. 509), and the demand may be initiated by the Chair (July 24, 1986, p. 17641). Consistent with this clause, the Chairman of the Committee of the Whole requires that each amendment be reduced to writing (July 22, 1994, p. 17617). Although a motion to recommit is properly presented in writing, no rule requires that the proponent distribute copies on the floor (June 28, 2000, p. 12749).

§ 903. Dilatory motions.

The Speaker has declined to entertain debate or appeal on a question as to the dilatoriness of a motion, as to do so would be to nullify the rule (V, 5731); but has recognized that the authority conferred by the rule should not be exercised until the object of the dilatory motion "becomes apparent to the House" (V, 5713, 5714). For example, the Chair has held that a virtually consecutive invocation of former rule XXX (current clause 6 of rule XVII), resulting in a second pair of votes on use of a chart and on reconsideration thereof, was not dilatory under this provision (or former clause 4(b) of rule XI (current clause 6(b) of rule XIII)) (July 31, 1996, p. 20700). Usually, but not always, the Speaker awaits a point of order from the floor before acting (V, 5715–5722). The rule has been applied to the motions to adjourn (V, 5721, 5731–5733; VIII, 2796, 2813), to reconsider (V, 5735; VIII, 2797, 2815, 2822), to fix the time of five-minute debate in Committee of the Whole (V, 5734; VIII, 2817), to lay on the table (VIII, 2816), and to the question of consideration (V, 5731–5733). The point of "no quorum" also has been ruled out (V, 5724–5730; VIII, 2801, 2808), and former clause 6 of rule XV (current clause 7 of rule XX), as adopted in the 93d Congress and as amended in the 95th Congress prevents the making of a point of no quorum under certain circumstances. A demand for tellers has been held dilatory (V, 5735, 5736; VIII, 2436, 2818–2821), but the constitutional right of the Member to demand the yeas and nays may not be overruled (V, 5737; VIII, 3107). For ruling by Speaker Gillett construing dilatory motions, see VIII, 2804. For a discussion of dilatory motions pending consideration of Rules Committee report, see §§ 857–858, *supra*.

Withdrawal

§ 904. Stating and withdrawing of motions.

2. When a motion is entertained, the Speaker shall state it or cause it to be read aloud by the Clerk before it is debated. The motion then shall be in the possession of the House but may be withdrawn at any time before a decision or amendment thereon.

The provisions of this clause were adopted first in 1789. At that time a second was required for every motion, but in practice this requirement

became obsolete very early, and it was dropped from the rule in 1880 (V, 5304). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47).

The House always insists that the motion shall be stated or read before debate shall begin (V, 4983) and the Clerk's reading may be dispensed with only by unanimous consent (Dec. 15, 1975, p. 40671; see also § 432, *supra*). It is the duty of the Speaker to put a motion in order under the rules and practice without passing on its constitutional effect (IV, 3550; VIII, 2225, 3031, 3071, 3427). In a case wherein a clerk presiding during organization of the House declined to put a question, a Member-elect put the question from the floor (I, 67).

Under certain circumstances (such as the practice of extinguishing reconsideration by laying a motion to reconsider on the table), a Member may offer a double motion (V, 5637).

§ 905. Conditions of withdrawal of motions.

A motion may be withdrawn at any time before a decision thereon, including a motion to instruct conferees (Oct. 31, 2000, p. 25737) and a contempt resolution (Oct. 27, 2000, p. 25200). Unanimous consent is not required to withdraw a pending unanimous-consent request (Dec. 16, 1985, p. 36575).

While the House was dividing on a second of the previous question (this second is no longer required) on a motion to refer a resolution, the Member was permitted to withdraw the resolution (V, 5350). A motion was withdrawn after the previous question had been ordered on an appeal from a decision on a point of order as to the motion (V, 5356).

A motion to suspend the rules could be withdrawn at any time before a second was ordered (a second is no longer required) (V, 6844; VIII, 3405, 3419), even on another suspension day (V, 6844). However, the motion could not be withdrawn if a second were ordered, except by unanimous consent (VIII, 3420). In the modern practice, where a second is not required on a motion to suspend the rules, the motion may be withdrawn at any time before action is taken thereon (July 27, 1981, p. 17563).

A motion may be withdrawn although an amendment has been offered and is pending (V, 5347; VI, 373; VIII, 2639). In the House an amendment, whether simple or in the nature of a substitute, may be withdrawn at any time before an amendment is adopted thereto or a decision is had thereon (VI, 587; VIII, 2332, 2764). The same right to withdraw an amendment exists in the House as in Committee of the Whole (IV, 4935; June 26, 1973, p. 21315) and in standing committees where general procedures of the House as in the Committee of the Whole apply (§ 427, *supra*). However, unanimous consent to withdraw an amendment is required in Committee of the Whole (V, 5221, 5753; VI, 570; VIII, 2465, 2859, 3405), unless withdrawal authority has been conferred by the House (July 22, 1999, p. 17291; Apr. 3, 2003, p. ——). An amendment disposed of in the Committee of the Whole by voice vote may not be withdrawn (June 17, 2004, p. ——).

A motion may be withdrawn after the affirmative side has been taken on a division (V, 5348). Withdrawal of a pending resolution is not in order when the absence of a quorum has been announced by the Chair (Oct. 14, 1970, pp. 36665–69). A motion that the House resolve into the Committee of the Whole for the consideration of a bill may be withdrawn pending a point of order against consideration of the bill. If the motion is withdrawn, the Chair is not obligated to rule on the point of order (VIII, 3405; Dec. 3, 1979, p. 34385).

A decision which prevents withdrawal may consist of the following: (1) the ordering of the yeas and nays (V, 5353), either directly on the motion or on a motion to lay it on the table (V, 5354); (2) the ordering of the previous question (V, 5355; June 29, 1995, p. 17967), or the demand therefor (V, 5489), or (3) the refusal to lay on the table (V, 5351, 5352; VIII, 2640).

Where the Speaker has put the question on adoption of a resolution to a voice vote without the ordering of the previous question, and the yeas and nays have not been ordered, the resolution may be withdrawn (V, 5349; Feb. 26, 1985, p. 3501). A privileged resolution called up in the House is debated under the hour rule; and the Member calling up such a resolution is recognized for an hour notwithstanding the fact that the resolution has been previously considered, debated, and then withdrawn before action thereon (Apr. 8, 1964, pp. 7303–08).

Where proceedings are postponed on a motion for the previous question pending a point of no quorum on a voice vote thereon (pursuant to former clause 5 of rule I (current clause 8 of rule XX)), the manager may withdraw the motion when it is again before the House as unfinished business (July 24, 1989, p. 15818).

A Member having the right to withdraw a motion before a decision thereon has the resulting power to modify the motion (V, 5358; Oct. 23, 1990, p. 32667), and a Member having the right to withdraw a motion to instruct conferees before a decision thereon has the resulting power to modify the motion by offering a different motion at the same stage of proceedings (July 14, 1993, p. 15661). A motion being withdrawn, all proceedings on an appeal arising from a point of order related to it fell thereby (V, 5356).

Question of consideration

§ 906. The question of consideration.

3. When a motion or proposition is entertained, the question, "Will the House now consider it?" may not be put unless demanded by a Member, Delegate, or Resident Commissioner.

The question of consideration is an outgrowth of the practice of the House, and was in use as early as 1808. The rule was adopted in 1817 in order to limit its use. Clerical and stylistic changes were effected when

the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). It is the means by which the House protects itself from business that it does not wish to consider (V, 4936; VIII, 2436). The refusal to consider does not amount to the rejection of a bill or prevent its being brought before the House again (V, 4940), and an affirmative vote does not prevent the question of consideration from being raised on a subsequent day when the bill is again called up as unfinished business (VIII, 2438). It has once been held that a question of privilege which the House has refused to consider may be brought up again on the same day (V, 4942). The question of consideration is not debatable (VIII, 2447), and thus not subject to the motion to lay on the table (Oct. 4, 1994, p. 27643). See also clause 6 of rule XIV (§ 884, *supra*), which provides that questions relating to the priority of business are not debatable.

§ 907. Raising the question of consideration.

A Member may demand the question of consideration, although the Member in charge of the bill may claim the floor for debate (V, 4944, 4945; VI, 404); but after debate has begun the demand may not be made (V, 4937–4939). It has been admitted, however, after the offering of a motion to lay on the table but before its disposition (V, 4943). The demand for the question of consideration may not be prevented by a motion for the previous question (V, 5478), but after the previous question is ordered it may not be demanded (V, 4965, 4966), even on another day, unless other business has intervened (V, 4967, 4968). The question of consideration pending, a motion to refer is not in order (V, 5554).

The intervention of an adjournment does not destroy the right to raise the question of consideration (V, 4946), but this right did not hold good in a case where the yeas and nays had been ordered and the House had adjourned pending the failure of a quorum on the roll call (V, 4949). A question of consideration undisposed of at an adjournment does not recur as unfinished business on a succeeding day (V, 4947, 4948). It is not in order to reconsider the vote whereby the House refuses to consider a bill (V, 5626, 5627), although it is in order to reconsider an affirmative vote on the question of consideration (Oct. 4, 1994, p. 27644).

§ 908. Questions subject to the question of consideration.

The question of consideration may be demanded against a matter of the highest privilege, such as the right of a Member to his seat (V, 4941), a question involving the privilege of the House (VI, 560), against the motion to reconsider (VIII, 2437), but not against a bill returned with the President's objection (V, 4960, 4970). It may not be raised against a proposition before the House for reference merely, as a petition (V, 4964). It may not be demanded against a class of business in order under a special order or rule, but may be demanded against each bill individually (IV, 3308, 3309; V, 4958, 4959). It may be raised against a bill that has been made a special order (IV, 3175; V, 4953–4957), unless the order provides for immediate consideration (V, 4960) or provides for the Speaker's declaration that the House resolve into the Committee of

the Whole under clause 2 of rule XVIII. The question may be raised against a bill on the Union Calendar on Calendar Wednesday before resolving into the Committee of the Whole even after one Wednesday has been devoted to it (VIII, 2447); but it may not be raised against a report from the Committee on Rules relating to the order of considering individual bills (V, 4961–4963; VIII, 2440, 2441, see § 858, *supra*).

The question of consideration may not be raised on a motion relating to the order of business (V, 4971–4976; VIII, 2442; May 21, 1958, p. 9216); to a motion to discharge a committee (V, 4977); or against a motion to take from the Speaker's table Senate bills substantially the same as House bills already favorably reported and on the House Calendar (VIII, 2443). On a motion to go into Committee of the Whole to consider a bill the House expresses its wish as to consideration by its vote on this motion (V, 4973–4976; VI, 51; VIII, 2442; May 21, 1958, p. 9216).

§ 909. Relation of question of consideration to points of order.

A point of order against the eligibility for consideration of a bill which if sustained might prevent consideration should be made and decided before the question of consideration is put (V, 4950, 4951; VII, 2439), but if the point relates merely to the manner of considering, it should be passed on afterwards (V, 4950). In general, after the House has decided to consider, a point of order raised with the object of preventing consideration, in whole or part, comes too late (IV, 4598; V, 4952, 6912–6914), but on a conference report the question of consideration may be demanded before points of order are raised against the substance of the report (VIII, 2439; Speaker Albert, Sept. 28, 1976, p. 33019).

§ 910. Unfunded mandates.

The Unfunded Mandates Reform Act of 1995 (P.L. 104–4; 109 Stat. 48) added a new part B to title IV of the Congressional Budget Act of 1974 (2 U.S.C. 658–658g) that imposes several requirements on committees with respect to "Federal mandates" (secs. 423–424; 2 U.S.C. 658b–c), establishes points of order to permit votes on whether to enforce those requirements (sec. 425; 2 U.S.C. 658d), and permits a vote on the question of consideration of a rule or order waiving such points of order in the House (sec. 426(a); 2 U.S.C. 658e(a)). The latter provision also prescribes that such points of order be disposed of by the question of consideration with respect to the proposition against which they are lodged (after 20 minutes of debate) (sec. 426(b); 2 U.S.C. 658e(b)). See § 1127, *infra*.

Precedence of motions

§ 911. Precedence of privileged motions.

4. (a) When a question is under debate, only the following motions may be entertained (which shall have precedence in the following order):

(1) To adjourn.

(2) To lay on the table.

(3) For the previous question.

(4) To postpone to a day certain.

(5) To refer.

(6) To amend.

(7) To postpone indefinitely.

(b) A motion to adjourn, to lay on the table, or for the previous question shall be decided without debate. A motion to postpone to a day certain, to refer, or to postpone indefinitely, being decided, may not be allowed again on the same day at the same stage of the question.

(c)(1) It shall be in order at any time for the Speaker, in his discretion, to entertain a motion—

(A) that the Speaker be authorized to declare a recess; or

(B) that when the House adjourns it stand adjourned to a day and time certain.

(2) Either motion shall be of equal privilege with the motion to adjourn and shall be decided without debate.

The first form of this clause appears in 1789, but amendments have been made at various times (V, 5301; VIII, 2757). Paragraph (c) (former final two sentences of the clause) were added in the 93d Congress to enable a privileged, nondebatable motion to fix the adjournment (H. Res. 6, Jan. 3, 1973, pp. 26–27), and amended in the 102d Congress to enable a privileged, nondebatable motion for recess authority (H. Res. 5, Jan. 3, 1991, p. 39). When the House recodified its rules in the 106th Congress, the provision of this clause addressing the motion for the previous question was transferred to clause 2 of rule XIX (H. Res. 5, Jan. 6, 1999, p. 47).

The application of the first sentence of the clause is confined to cases wherein a question is "under debate" (V, 5379). It has been held that a question ceases to be "under debate" after the previous question has been ordered (V, 5415). For a discussion of the motion for the previous question, see §§ 994–1000, *infra*.

§912. The motion to adjourn.

The motion to adjourn not only has the highest precedence when a question is under debate, but, with certain restrictions, it has the highest privilege under all other conditions. Even the following yield to it: (1) a question of privilege (III, 2521), including a resolution considered to be a "question of high constitutional privilege" such as one declaring the office of Speaker vacant and to direct the House to proceed at once to the election of a new Speaker (VIII, 2641); (2) the filing of a privileged report pursuant to former clause 4(a) of rule XI (current clause 5 of rule XIII) (Apr. 29, 1985, p. 9699); (3) a motion to suspend the rules (Aug. 11, 1992, p. 23086); (4) a motion to reconsider (V, 5605; see also clause 3 of rule XIX); (5) in the absence of a quorum, the motion for a call of the House (VIII, 2642); (6) a motion to dispense with further proceedings under the call (VIII, 2643); (7) a motion directing the Sergeant-at-Arms to arrest absentees during a call of the House (June 6, 1973, p. 18403). A conference report may defer it only until the report is before the House (V, 6451–6453).

Pursuant to clause 6(b) of rule XIII or clause 1(b) of rule XV, only one motion to adjourn is in order pending consideration of a privileged report from the Committee on Rules or a motion that the House suspend the rules, respectively. The motion may be made: (1) after the yeas and nays are ordered and before the roll call has begun (V, 5366); (2) before the reading of the Journal (IV, 2757) or the Speaker's approval thereof (Speaker Wright, Nov. 2, 1987, p. 30386); (3) pending a motion to reconsider (Sept. 20, 1979, p. 25512); (4) after the House rejects a motion to table a motion to instruct conferees and before the vote occurs on the motion to instruct (May 29, 1980, pp. 12717–19); or (5) when the Speaker is absent and the Clerk is presiding (I, 228). The motion to adjourn may not interrupt a Member who has the floor (V, 5369, 5370; VIII, 2646; Mar. 25, 1993, p. 6373; Oct. 1, 1997, p. 20902) as, for example, by virtue of unanimous-consent permission to announce to the House the legislative program (Dec. 14, 1982, p. 30549), or a call of the yeas and nays (V, 6053), or the actual act of voting by other means (V, 5360), or be made after the House has voted to go into Committee of the Whole (IV, 4728; V, 5367, 5368), or defer the right of a Member to take the oath (I, 622) and may not be repeated in the absence of intervening business (Speaker Albert, July 31, 1975, p. 26243); and when no question is under debate it may not displace a motion to fix the day to which the House shall adjourn (V, 5381). The motion to adjourn is not available when the previous question has been ordered by special rule to final passage without intervening motion (IV, 3211–3213, June 14, 2001, p. ——). A Member's mere revelation that he seeks to offer a motion to adjourn does not suffice to make that motion "pending," and thus the Chair remains able to declare a short recess under clause 12 of rule I (Oct. 28, 1997, p. 23524; June 25, 2003, p. ——).

When the House has fixed the hour of daily meeting, the simple motion to adjourn may neither be amended (V, 5754) by specifying a particular day (V, 5360) or hour (V, 5364) (but see §913, *infra*, for a discussion of

the equally privileged motion to fix the day and time to which the House shall adjourn); nor by stating the purposes of adjournment (V, 5371, 5372; VIII, 2647). However, when the hour of daily meeting is not fixed, the motion to adjourn may fix it (V, 5362, 5363). A motion to adjourn is in order in simple form only (VIII, 2647), is not debatable (V, 5359; Feb. 13, 2002, p. ——), may not be laid on the table (Aug. 3, 1990, p. 22195), is not in order in Committee of the Whole (IV, 4716), and is not entertained when the Committee of the Whole rises to report proceedings incident to securing a quorum (VI, 673; VIII, 2436). After the motion is made neither another motion nor an appeal may intervene before the taking of the vote (V, 5361). When the House adopts the motion to adjourn, it must adjourn immediately; and a unanimous-consent request that the House proceed to the calling of special-order speeches is not in order (Sept. 27, 1993, p. 22608).

§ 913. Motion to fix the day to which the House shall adjourn and motion to authorize the Speaker to declare a recess.

The motion to fix the day and time to which the House shall adjourn, in its present form, was included in this clause and given privileged status in the 93d Congress (H. Res. 6, Jan. 3, 1973, p. 26). At several times during the 19th Century, the motion to fix the day to which the House should adjourn was included within the rule as to the precedence of motions but was dropped because of its use in obstructive tactics (V, 5301, 5379). The following precedent relates to the use of the motion in its earlier form: No question being under debate, a motion to fix the day to which the House should adjourn, already made, was held not to give way to a motion to adjourn (V, 5381). But if the motion to adjourn be made first, the motion to fix the day or for a recess is not entertained (V, 5302). The motion to fix the day is not debatable (V, 5379, 5380; VIII, 2648, 3367), requires a quorum for adoption (IV, 2954; June 19, 1975, p. 19789; June 22, 1976, p. 19755), and is only in order if offered on the day on which the adjournment applies (Sept. 23, 1976, p. 32104). The House may convene and adjourn twice on the same calendar day pursuant to a motion under this clause that when the House adjourn it adjourn to a time certain later in the day, thereby meeting for two legislative days on the same calendar day (Nov. 17, 1981, p. 27771; Oct. 29, 1987, p. 29933; June 29, 1995, p. 17716). When the Speaker exercises his discretion to entertain at any time a motion that when the House adjourn it stand adjourned to a day and time certain, the motion is of equal privilege with the simple motion to adjourn and takes precedence over a pending question on which the vote has been objected to for lack of a quorum (Nov. 17, 1981, p. 27770). The motion is not subject to the motion to lay on the table since it is not debatable and the precedence conferred on the motion to table only applies to a question that is "under debate" (Nov. 17, 1981, p. 27770).

Under the express terms of clause 4, the motion to authorize the Speaker to declare a recess is nondebatable and has equal privilege with the motion to adjourn. The House (without the consent of the Senate) may authorize

the Speaker to declare a recess for up to three days (Dec. 15, 1995, p. 37102).

§914. Motion to lay on the table.

The motion to lay on the table is used in the House for a final, adverse disposition of a matter without debate (V, 5389), and is in order before the Member entitled to prior recognition for debate has begun his remarks (V, 5391–5395; VIII, 2649, 2650). Under the explicit terms of this clause, the motion is not debatable (Oct. 17, 1991, p. 26749). The motion is applicable to a motion to reconsider (VIII, 2652, 2659), a motion to postpone to a day certain (VIII, 2654, 2657), a resolution presenting a question of privilege (VI, 560), a privileged resolution offered at the direction of a party caucus electing Members to committees (Feb. 5, 1997, p. 1541), an appeal from a decision of the Chair (VIII, 3453), a motion to discharge a committee from a resolution of inquiry (VI, 415), a proposal to investigate with a view to impeachment (VI, 541), a concurrent resolution to adjourn sine die (Mar. 27, 1936, p. 4512), and a resolution to expel a Member (Oct. 1, 1976, p. 35111). But a question of privilege (affecting the right of a Member to a seat) that has been laid on the table may be taken therefrom on motion made and agreed to by the House (V, 5438). The motion to lay on the table has the precedence given it by the rule, but may not be made after the previous question is ordered (V, 5415–5422; VIII, 2655), or even after the yeas and nays have been ordered on the demand for the previous question (V, 5408, 5409); but pending the demand for the previous question on a motion that is under debate, the motion to lay the primary motion on the table is preferential and is voted on first (Speaker Albert, Sept. 22, 1976, pp. 31876–82; Speaker O'Neill, July 10, 1985, pp. 18397–18400). The previous question having been ordered on a bill to final passage, the motion to lay the bill on the table may not then be offered pending a motion to reconsider the vote whereby the bill had been passed or rejected (Sept. 20, 1979, p. 25512).

When a bill is laid on the table, pending motions connected therewith go to the table also (V, 5426, 5427); and when a proposed amendment is laid on the table the pending bill goes there also (V, 5423; VIII, 2656), and if a pending amendment to a special order reported from the Committee on Rules were tabled, it would carry the resolution with it and is thus considered dilatory under former clause 4(b) of rule XI (current clause 6(b) of rule XIII) (Sept. 25, 1990, p. 25575). This rule holds good as to a House bill with Senate amendments (V, 5424, 6201–6203; Sept. 28, 1978, p. 32334), but laying on the table the motion to postpone consideration of Senate amendments was held not to carry to the table pending motions for their disposition (VIII, 2657). The Journal does not accompany a proposed amendment to the table (V, 5435, 5436); the original question does not accompany an appeal (V, 5434); a resolution does not accompany another resolution with which it is connected, or a preamble (V, 5248, 5430); and a petition does not accompany the motion to receive it when

the latter is laid on the table (V, 5431–5433); a bill does not accompany a motion to instruct conferees which is laid on the table (VIII, 2658).

A motion to lay on the table a motion to reconsider the vote by which an amendment to a resolution had been agreed to would not carry the resolution to the table (VIII, 2652).

The motion is not in order in Committee of the Whole (IV, 4719, 4720; VIII, 2330, 2556a, 3455; Mar. 16, 1995, p. 8112; July 21, 1999, p. 17054) and does not apply to motions to go into the Committee of the Whole (VI, 726). It may not be amended (V, 5754), for example, to operate for a specified time (Oct. 17, 1991, p. 26749).

The motion to lay on the table generally is not applicable to motions that are neither debatable nor amendable. As such, it is not applicable to the following motions: (1) to adjourn (Aug. 3, 1990, p. 22195); (2) that when the House adjourn it stand adjourned to a day and time certain (Nov. 17, 1981, p. 27770); (3) to dispense with further proceedings under a call of the House (Speaker McCormack, Aug. 27, 1962, pp. 17651–54); (4) to order the previous question (V, 5410, 5411; Oct. 4, 1994, p. 27649). Furthermore, the motion may not be applied to a motion: (1) to suspend the rules (V, 5405); (2) to commit after the previous question is ordered (V, 5412–5414; VIII, 2653, 2655); (3) to any motion relating to the order of business (V, 5403, 5404). It may not be applied to a motion to discharge a committee under former clause 3 of rule XXVII (current clause 2 of rule XV) (June 11, 1945, p. 5892) but may be applied to the motion to discharge a committee from consideration of a resolution of inquiry (V, 5407).

The motion to lay on the table is applicable to debatable secondary or privileged motions for disposal of another matter; thus a motion to refer (V, 5433; Aug. 13, 1982, pp. 20969, 20975–78) or a motion to recede and concur in a Senate amendment in disagreement may be laid on the table (Speaker O'Neill, Feb. 22, 1978, p. 4072) without carrying the pending matter to the table. The motion is not applicable to a conference report (V, 6540).

The precedents relating to the motion for the previous question are annotated in §§ 994–1000.

§ 914a. The motion for the previous question.

§ 915. The motions to postpone.

As indicated in the rule, the motions to postpone are two in number and distinct. The first one is to postpone to a day certain, and the second one is to postpone indefinitely. Each must apply to the whole and not a part of the pending proposition (V, 5306). Neither may be entertained after the previous question is ordered (V, 5319–5321; VIII, 2616, 2617), or be applied to a special order providing for the consideration of a class of bills (V, 4958); but when a bill comes before the House under the terms of a special order that assigns a day merely, a motion to postpone may be applied to the bill (IV, 3177–3182). Business postponed to a day certain is in order on that day immediately after the approval of the Journal and disposition of business on the Speaker's table, unless displaced by more highly privi-

leged business (VIII, 2614). Where consideration of a measure postponed to a day certain resumes as unfinished business in the House, recognition for debate does not begin anew but recommences from the point where it was interrupted (June 10, 1980, p. 13801). It is not in order to postpone pending business to Calendar Wednesday (VIII, 2614), but if so postponed by consent, when consideration is concluded on that Wednesday, the remainder of the day is devoted to business in order under the Calendar Wednesday rule (VII, 970). The motion is not available in Committee of the Whole (July 14, 1998, p. 15305), but a motion that a bill be reported with the recommendation that it be postponed is in order in the Committee of the Whole proceeding under the general rules of the House (IV, 4765; VIII, 2372), is debatable (VIII, 2372), and is a preferential motion (VIII, 2372, 2615), but debate is confined to the advisability of postponement only (VIII, 2372). It has been held in order to postpone an appeal (VIII, 2613). A bill under consideration in the morning hour may not be made a special order by a motion to postpone to a day certain (IV, 3164).

The motion to postpone to a day certain may not specify the hour (V, 5307). The motion may be amended (V, 5754; VIII, 2824). It is debatable within narrow limits only (V, 5309, 5310), the merits of the bill to which it is applied not being within those limits (V, 5311–5315; VIII, 2372, 2616, 2640).

The motion to postpone indefinitely opens to debate all the merits of the proposition to which it is applied (V, 5316). It may not be applied to the motion to refer (V, 5317), the motion to suspend the rules (V, 5322), or the motion to resolve into the Committee of the Whole (VI, 726), and it is reasonable to infer that it is equally inapplicable to the other secondary or privileged motions enumerated in the rule and to motions relating to the order of business. However, the motion to postpone indefinitely may be applied to the motion that the House resolve itself into the Committee of the Whole pursuant to the provisions of a statute, enacted under the rulemaking power of the House of Representatives, that specifically allows such a motion in the consideration of a resolution disapproving a certain executive action (Mar. 10, 1977, p. 7021; Aug. 3, 1977, p. 26528).

§916. The motions to refer.

The parliamentary motion to refer is explicitly recognized and given status in four different situations under House rules: The ordinary motion provided for in this clause; the motion to recommit with or without instructions after the previous question has been ordered on a bill or joint resolution to final passage, provided in clause 2 of rule XIX; the motion to commit, with or without instructions, pending the motion for or after ordering of the previous question as provided in clause 1 of rule XIX (V, 5569); and the motion to refer, with or without instructions, pending a vote in the House to strike out the enacting clause as provided in clause 9 of rule XVIII. The terms "refer," "commit," and "recommit" are sometimes used interchangeably (V, 5521; VIII, 2736), but when used in the precise manner and situation contemplated in each rule, reflect certain differences based upon whether the

question to which applied is "under debate," whether the motion itself is debatable, whether a minority Member or a Member opposed to the question to which the motion is applied is entitled to a priority of recognition, and whether the prohibition against a special order reported from the Committee on Rules denying a motion to recommit a bill or joint resolution pending final passage is applicable. For a discussion of the motion to recommit, see the annotations under clause 2 of rule XIX. The motion may not be used in direct form in Committee of the Whole (IV, 4721; VIII, 2326); and where a bill is being considered under the provisions of a resolution stating that "at the conclusion of the consideration of the bill for amendment under the five-minute rule the Committee shall rise and report the bill back to the House with such amendments as may have been adopted," a motion that the Committee rise and report to the House with the recommendation that the bill be recommitted to the legislative committee reporting it is not in order (Aug. 10, 1950, p. 12219). It may be made after the engrossment and third reading of a bill, even though the previous question may not have been ordered (V, 5562, 5563).

If the previous question is rejected on a preferential motion to dispose of Senate amendments in disagreement, the preferential motion remains "under debate" and the motion to refer may be offered under this clause (Speaker Albert, Sept. 16, 1976, p. 30887). A motion to refer takes precedence over motion to amend when a question is under debate (such as where the previous question has been rejected), and the Chair recognizes the Member seeking to offer the preferential motion before the less preferential motion is read (Aug. 13, 1982, pp. 20969, 20975–78).

The simple motion to refer under the first sentence of this clause is debatable within narrow limits (V, 5054) and may be offered by any Member (who need not qualify as being in opposition to the pending question) when that question is "under debate," *i.e.*, when the previous question has not been moved or ordered, but the merits of the proposition sought to be referred may not be brought into the debate (V, 5564–5568; VI, 65, 549; VIII, 2740). The motion to refer with instructions is also debatable (V, 5561); but the previous question is preferential (Mar. 22, 1990, p. 4997).

§ 917. Instructions with the motion to refer.

The motion to refer may specify that the reference shall be to a select as well as a standing committee (IV, 4401) without regard for rules of jurisdiction (IV, 4375; V, 5527) and may provide for reference to another committee than that reporting the bill (VIII, 2696, 2736), or to the Committee of the Whole (V, 5552, 5553), and even that the committee be endowed with power to send for persons and papers (IV, 4402). Unless the previous question is ordered the motion may be amended (VIII, 2712, 2738), in part (V, 5754); by substitute (VIII, 2698, 2738, 2759); or by adding instructions (V, 5521, 5570, 5582–5584; VIII, 2695, 2762; Aug. 13, 1982, pp. 20969, 20975–78).

§918. Repetition of motions.

The rule specifies that the motions to postpone and refer shall not be repeated on the same day at the same stage of the question (V, 5301, 5591; VIII, 2738, 2760). Under the practice, a motion to adjourn may be repeated only after intervening business (V, 5373; VIII, 2814), debate (V, 5374), the ordering of the yeas and nays (V, 5376, 5377), decision of the Chair on a question of order (V, 5378), or reception of a message (V, 5375). The motion to lay on the table may also be repeated after intervening business (V, 5398–5400); but the ordering of the previous question (V, 5709), a call of the House (V, 5401), or decision of a question of order have been held not to be such intervening business, it being essential that the pending matter be carried to a new stage in order to permit a repetition of the motion (V, 5709).

Divisibility

§919. Division of the question.

5. (a) Except as provided in paragraph (b), a question shall be divided on the demand of a Member, Delegate, or Resident Commissioner before the question is put if it includes propositions so distinct in substance that, one being taken away, a substantive proposition remains.

(b)(1) A motion or resolution to elect members to a standing committee of the House, or to a joint standing committee, is not divisible.

(2) A resolution or order reported by the Committee on Rules providing a special order of business is not divisible.

§920. Motion to strike out and insert not divisible.

(c) A motion to strike and insert is not divisible, but rejection of a motion to strike does not preclude another motion to amend.

Paragraphs (a) and (b) (former clause 6) was first adopted in 1789, and was amended in 1837 (V, 6107). Paragraph (b)(1) (first part of the former proviso) was adopted April 2, 1917 (VIII, 2175), and paragraph (b)(2) (last part of the former proviso) was adopted May 3, 1933 (VIII, 3164). Paragraph (c) (first part of former clause 7) was adopted in 1811, and amended in 1822 (V, 5767). When the House recodified its rules in the 106th Congress, former clause 5 of this rule (requiring time of adjournment to be

entered on the Journal) was transferred to clause 2(c)(2) of rule II, paragraphs (a) and (b) were found in former clause 6, and paragraph (c) was found in the first part of former clause 7 (H. Res. 5, Jan. 6, 1999, p. 47).

The House may by adoption of a resolution reported from the Committee on Rules suspend the rule providing for the division of a question (VII, 775).

§ 921. Principles governing the division of the question.

The principle that there must be at least two substantive propositions in order to justify division is insisted on rigidly (V, 6108–6113), as failure to do so produces difficulties (III, 1725). The question may not be divided after it has been put (V, 6162), or after the yeas and nays have been ordered (V, 6160, 6161); but division of the question may be demanded after the previous question is ordered (V, 5468, 6149; VIII, 3173). In passing on a demand for division the Chair considers only substantive propositions and not the merits of the question presented (V, 6122). It seems to be most proper, also, that the division should depend on grammatical structure rather than on the legislative propositions involved (I, 394; V, 6119), but a question presenting two propositions grammatically is not divisible if either does not constitute a substantive proposition when considered alone (VII, 3165). Thus a resolution censuring a Member and adopting a report of a committee thereon, which recommends censure on the basis of the committee's findings, is not divisible since those questions are substantially equivalent (Speaker O'Neill, Oct. 13, 1978, p. 37016); and an adjournment resolution that also authorizes the receipt of veto messages from the President during the adjournment is not subject to a division of the question, as the receipt authority would be nonsensical standing alone (June 30, 1976, p. 21702). However, a concurrent resolution on the budget is subject to a demand for a division of the question if, for example, the resolution grammatically and substantively relates to different fiscal years (May 7, 1980, pp. 10185–87), or includes a separate, hortatory section having its own grammatical and substantive meaning (Speaker Foley, Mar. 5, 1992, p. 4657).

Decisions have been made that a resolution affecting two individuals may be divided, although such division may involve a reconstruction of the text (I, 623; V, 6119–6121). The better practice seems to be, however, that this reconstruction of the text should be made by the adoption of a substitute amendment of two branches, rather than by interpretation of the Chair (II, 1621). But merely formal words, such as "resolved," may be supplied by interpretation of the Chair (V, 6114–6118). A resolution with two resolve clauses separately certifying the contemptuous conduct of two individuals is divisible (Feb. 27, 1986, p. 3040); as is a resolution with one resolve clause certifying contemptuous conduct of several individuals (Oct. 27, 2000, p. 25200, *contrast*, Deschler-Brown, ch. 30, § 49.1). A measure containing a series of simple resolutions (V, 6149), and a resolution confirming several nominations (Speaker Albert, Mar. 19, 1975, p.

7344) may be divided. A resolution of impeachment presenting discrete articles may be divided (VI, 545; Dec. 18, 1998, p. 11064).

Except on resolutions to elect Members to committees or on resolutions reported from the Committee on Rules providing a special order of business, where division of the question is prohibited by this clause, a resolution reported from the Committee on Rules may be divided where otherwise appropriate. Thus a resolution reported from that committee establishing several select committees in grammatically divisible titles, not being a special order of business, is subject to a demand for a division of the question (Jan. 8, 1987, p. 1036). However, it is not in order to demand a division of a subject incorporated by reference in the pending text, as when a resolution to adopt a series of rules, not made a part of the resolution, was before the House, it was held not in order to demand a separate vote on each rule (V, 6159).

The question on engrossment and third reading under former clause 1 of rule XXI (current clause 8(c) of rule XVI) is not divisible (Speaker Foley, Aug. 3, 1989, p. 18544); and in voting on the engrossment or passage of a bill or joint resolution, a separate vote may not be demanded on the various portions (V, 6144–6146; VIII, 3172), or on the preamble (V, 6147).

Where an amendment is offered to an appropriation bill providing that no part of the appropriation may be paid to named individuals, the amendment may be divided for a separate vote on each name (Feb. 5, 1943, p. 645). An amendment (to a joint resolution making continuing appropriations) containing separate paragraphs appropriating funds for different programs may be substantively and grammatically divisible although preceded by the same prefatory language applicable to all the paragraphs, and the Clerk will read each paragraph as including the prefatory language before the Chair's putting the question thereon (Nov. 8, 1983, p. 31495). A division may be demanded on an amendment to strike out various unrelated phrases (VIII, 3166; Mar. 28, 1984, p. 6898). An amendment proposing to change a figure in one paragraph of an appropriation bill and also to insert a new ("fetch-back") paragraph at another point in the bill is divisible (July 15, 1993, p. 15843). Absent a contrary order, the question may be divided on an amendment en bloc comprising discrete instructions to amend, even though unanimous consent has just been granted for the en bloc consideration (July 25, 1990, p. 19174; July 18, 1991, p. 18851).

A division of the question may not be demanded on a motion to strike out and insert (V, 5767, 6123; VIII, 3169), including substitutes for pending amendments (V, 6127; VIII, 3168; Aug. 17, 1972, pp. 28887–90; July 2, 1980, pp. 18288–92), although an amendment comprising two discrete instructions to strike and insert may be divided (June 4, 1998, p. 5418) and a perfecting amendment to an amendment may be divided if not in the form of a motion to strike out and insert (V, 6131). When it is proposed to strike out and insert not one but several connected matters, it is not in order to demand a separate vote on each of those matters (V, 6124, 6125), as when an amendment in the nature of a substitute containing

several resolutions is proposed; but after this amendment has been agreed to, it is in order to demand a division of the original resolution as amended (V, 6127, 6128). When, however, an amendment simply adding or inserting is proposed, it is in order to divide the amendment (V, 6129–6133). To a motion to strike certain words and insert others, a simple motion to strike out the words may not be offered as a substitute, as it would have the effect of dividing the motion to strike out and insert (June 29, 1939, pp. 8282, 8284; June 19, 1979, pp. 15566–68).

A division may be demanded on the motion to recede from disagreement to a Senate amendment and concur therein (see § 525, *supra*; V, 6209; VIII, 3197–3199, 3203), but may not be demanded on Senate amendments when sending to conference (V, 6151–6156; VIII, 3175). A division of the question may not be demanded, with respect to a motion to concur in a Senate amendment with an amendment, between concurring and amending (VIII, 3176), and may not be demanded on separate parts of the proposed amendment if it is not properly divisible under the same tests that apply to any other amendment (Aug. 3, 1973, pp. 28124–26; Oct. 11, 1984, p. 32188). Thus a proposed amendment to a Senate amendment is not divisible if in the form of a motion to strike out and insert (Oct. 15, 1986, p. 32135). Each Senate amendment must be voted on as a whole (VIII, 3175) but the Committee of the Whole having reported a Senate amendment with the recommendation that it be agreed to with an amendment, a separate vote was had on the amendment to the Senate amendment (VIII, 2420). When Senate amendments to a House bill are considered in the House, a separate vote may be had on each amendment (VIII, 2383, 2400, 3191), and separate votes may be had on nongermane portions of Senate amendments as provided in clause 10 of rule XXII.

It is not in order to divide a motion to lay several connected propositions on the table (V, 6138–6140). Similarly, it is not in order to divide a motion for the previous question on two related propositions, as on a spe'cial order reported from the Committee on Rules and a pending amendment thereto (Sept. 25, 1990, p. 25575). An appeal from a decision of the Speaker involving two distinct questions may be divided (V, 6157).

On a motion to commit with instructions it is not in order to demand a separate vote on the instructions or various branches thereof (V, 6134–6137; VIII, 2737, 3170; Speaker Rayburn, Apr. 11, 1956, p. 6157; June 29, 1993, p. 14618). However, an amendment reported forthwith pursuant to instructions contained in a successful motion to recommit may be divided on the question of its adoption if composed of substantively and grammatically distinct propositions (June 29, 1993, p. 14618). A motion to recommit a bill to conference with various instructions may not be divided (Sept. 29, 1994, p. 27681). However, a motion to instruct conferees under clause 7(c) of rule XXII (when multiple motions are in order) may be divided (Speaker Byrns, May 26, 1936, p. 7951; Sept. 20, 2000, p. 18622), provided that separate substantive propositions are presented (Speaker Rayburn, May 9, 1946, p. 4750).

A division of the question may not be demanded on bills or joint resolutions for reference (IV, 4376) or change of reference (VII, 2125), a motion to elect Members to committees of House (VIII, 2175, 3164), a question against which a point of order is pending (VIII, 3432), a proposition under a motion to suspend the rules (V, 6141–6143; VIII, 3171). A proposition reported from the Committee of the Whole as an entire and distinct amendment may not be divided, but must be voted on in the House as a whole (IV, 4883–4892). A separate vote may not be demanded in the House on an amendment adopted in the Committee of the Whole to an amendment (VIII, 2422, 2426, 2427).

After the vote on the first member of the question, the second is open to debate and amendments, unless the previous question is ordered (see § 482, *supra*). Where a motion to concur in a Senate amendment is divided pursuant to a special rule permitting that procedure, the Chair puts the question first on the first portion of the Senate amendment, and then on the remaining portion (Mar. 4, 1993, p. 4163). Where a division of the question is demanded on a portion of an amendment, the Chair puts the question first on the remaining portions of the amendment, and that portion on which the division is demanded remains open for further debate and amendment (Oct. 21, 1981, pp. 24785–89). However, where no further debate or amendment is in order on the divided portion, the Chair may put the question first on the divided portion(s) and then immediately on the remaining portion (Aug. 17, 1972, Deschler, ch. 27, § 22.14; June 8, 1995, p. 15302). Where a division of the question is demanded on more than one portion of an amendment, the Chair may put the question first on the remaining portions of the amendment (if any), then (after further debate) on the first part on which a division is demanded, and then (after further debate) on the last part on which a division is demanded (Oct. 21, 1981, pp. 24785–89). Where the question on adopting an amendment is divided by special rule (rather than on demand from the floor), the Chair puts the question on each divided portion of the amendment in the order in which it appears (May 23, 1996, p. 12316).

A demand for a division of the question on a separate portion of an amendment may be withdrawn before the question is put on the first portion thereof (July 15, 1993, p. 15843), but once the Chair has put the question on the first portion of the amendment, a demand for a division may be withdrawn only by unanimous consent (Sept. 9, 1976, pp. 29538–40).

Amendments

§ 922. Amendments to text and to title.

6. 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 may 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 provision (formerly rule XIX) was adopted in 1880, with an amendment adding the portion in relation to the title in 1893. The rule of 1880, however, merely stated in form of rule what had been the practice of the House for many years (V, 5753). Before the House recodified its rules in the 106th Congress, this provision was found in former rule XIX (H. Res. 5, Jan. 6, 1999, p. 47). For further discussion see Deschler, ch. 27, §§ 15–19.

§ 923. Conditions of the motion to amend.

It is not in order to offer more than one motion to amend of the same nature at a time (V, 5755; VIII, 2831), but the four motions specified by the rule may be pending at the same time (V, 5793; VIII, 2883, 2887). Where, pursuant to a special rule, a committee amendment in the nature of a substitute is being read as original text for purpose of amendment, there may be pending to that text the four stages of amendment permitted by this rule (Apr. 23, 1969, p. 10066). When a request for a recorded vote in the Committee of the Whole is postponed under authority of a special order of the House (such authority now found in clause 6(g) of rule XVIII), the amendment becomes unfinished business and is no longer pending, thereby permitting the offering of another amendment (May 10, 2000, p. 7513). An amendment in the third degree is not specified by the rule and is not permissible (V, 5754; VIII, 2580, 2888, 2891), even when the third degree is in the nature of a substitute for an amendment to a substitute (V, 5791; VIII, 2889).

An amendment must contain instructions to the Clerk as to the portion of the bill it seeks to amend and is subject to a point of order if not in proper form (Oct. 3, 1985, p. 25970). An amendment may not propose to change portions of a measure not yet read for amendment (Mar. 24, 1999, p. 5418). Under a "modified-closed" rule permitting only amendments printed in the report accompanying the rule, the Chair will permit an amendment to be offered in the form actually submitted for printing rather than requiring that it be offered in the erroneous form printed (Mar. 10, 1994, p. 4405). The Chair does not entertain a unanimous-consent request to designate a co-offeror of an amendment (May 20, 2004, p. ——; Sept. 14, 2004, p. ——).

A Member may not amend or modify his own amendment except by unanimous consent (Oct. 1, 1985, p. 25453); and where the Chair recognizes the proponent of an amendment to propound such a unanimous-consent request before commencing debate, the Chair does not charge time consumed under a reservation of objection against the proponent's time for debate on the amendment (Feb. 3, 1993, p. 1978; May 27, 1993, p. 11849). Under the five-minute rule, the proponent of an amendment may not yield to another to offer an amendment to the amendment; rather an amendment to the amendment may be offered after the proponent of the pending amendment has explained it (Sept. 7, 1995, p. 24071).

Two independent amendments may be voted on at once only by unanimous consent of the House (V, 5979). Amendments en bloc, once pending, are open to perfecting amendment at any point (June 12, 1991, p. 14337). If a point of order is sustained against a discrete portion of an en bloc amendment, the entire en bloc amendment may not be considered; however, each constituent amendment may be offered separately if otherwise in order (Sept. 16, 1981, pp. 20735–38). An amendment considered with others en bloc and rejected may be offered separately at a subsequent time (Deschler, ch. 27, § 35.15; Nov. 4, 1991, p. 29932).

The substitute provided for in this rule has been construed as a substitute for the amendment and not as a substitute for the original text (VIII, 2883). A substitute amendment may be amended by striking out all after its first word and inserting a new text (V, 5793, 5794). While this is in effect a substitute, it is not technically so. A substitute always proposes to replace all the words of a pending amendment. The amendatory instructions contained in a substitute direct changes to be made in the original language rather than to the pending amendment. Although a substitute may change parts of a bill not changed by the pending amendment, the substitute must be germane to the pending amendment (VIII, 2879, 2880; Deschler, ch. 27, § 18.6). A substitute may result in similar language to the original text proposed to be changed by the pending amendment, but may not result in identical language (Deschler, ch. 27, § 18.15). To an amendment adding a new section, an amendment making perfecting changes in the bill rather than in the amendment is not a proper perfecting amendment, but may, if germane, be offered as a substitute for the amendment (Deschler, ch. 27, § 18.7). The Chair will not look behind the form of the amendment in determining whether it is a perfecting amendment or a substitute (June 13, 1994, p. 12731). Once a perfecting amendment to an amendment is disposed of, the original amendment, as amended or not, remains open to further perfecting amendment (June 20, 1991, p. 15610); and all such amendments are disposed of before voting on substitutes for the original amendment and amendments thereto (July 26, 1984, p. 21253).

An amendment offered as a substitute and rejected may again be offered as an original amendment without presenting an equivalent question. In the first case the question is the relationship between the substitute and

the amendment to which offered, and in the second case the question is the relationship between the original amendment and the text of the bill (V, 5797; VIII, 2843). An amendment that is adopted as amended by a substitute may not be reoffered in its original form if it would directly change the amended portion of the bill. However, it may be reoffered if the original amendment amends a different part of the bill (as in the case where the amendatory instructions of the substitute displaces the language of the original amendment). In such a case the vote on the amendment as amended by the substitute is not equivalent to a direct vote on the original amendment (June 25, 1987, p. 17416). An amendment considered with others en bloc and rejected may be offered separately at a subsequent time (Deschler, ch. 27, § 35.15; Nov. 4, 1991, p. 29932).

An amendment in the nature of a substitute always proposes to strike out all after the enacting or resolving words in order to insert a new text (V, 5785, footnote). An amendment in the nature of a substitute may be proposed before amendments to the pending portion of original text have been acted on, but may not be voted on until such amendments have been disposed of (V, 5787). When a bill is considered by sections or paragraphs an amendment in the nature of a substitute is properly offered after the reading for amendment is concluded (V, 5788). However, when it is proposed to offer a single substitute for several paragraphs of a bill that is being considered by paragraphs, the substitute may be moved to the first paragraph, with notice that, if agreed to, motions will be made to strike out the remaining paragraphs (V, 5795; VIII, 2898, 2900–2903; July 29, 1969, p. 21218). An amendment in the nature of a substitute, as well as the original proposition, may be perfected by amendments before the vote on it is taken (V, 5786). Where there is pending an amendment in the nature of a substitute, it is in order to offer a perfecting amendment to the pending portion of original text (VIII, 2861; Apr. 27, 1976, p. 11411; see also Deschler, ch. 27, § 5.34). An amendment in the nature of a substitute having been agreed to, the vote is then taken on the original proposition as amended (II, 983; V, 5799, 5800), and no further amendment is in order (Speaker O'Neill, Mar. 26, 1985, p. 6274). If a perfecting amendment to an amendment in the nature of a substitute, striking out all after the short title and inserting a new text, is agreed to, further amendments to the text so perfected are not in order, but amendments are in order to add new language at the end of the amendment in the nature of a substitute as amended (May 16, 1979, p. 11420).

§ 924. Relation of point of order to motion to amend.

A point of order against an amendment is timely if made or reserved before formal recognition of the proponent to commence debate thereon (July 16, 1991, p. 18391), but thereafter comes too late (V, 6894, 6898–6899) except as provided in clauses 4 and 5(a) of rule XXI. To preclude a point of order, debate should be on the merits of the proposition (V, 6901). The mere making of a unanimous-consent request to dispense with the reading of an amendment and to revise and extend remarks thereon is not such

intervening business as would render a point of order untimely under this clause, where the Member making the point of order is on his feet seeking recognition (July 16, 1991, p. 18391; see Deschler-Brown, ch. 31, §§ 6.39, 6.41). When enough of an amendment has been read to show that it is out of order, a point of order may be raised without waiting for the reading to be completed (V, 6886–6887; VIII, 2912, 3437), though the Chair may decline to rule until the entire proposition has been read (Dec. 14, 1973, pp. 41716–18). A timely reservation of a point of order by one Member inures to the benefit of any other Member who desires to press a point of order (V, 6906; July 18, 1990, p. 17930).

§ 925. Withdrawal of the motion to amend.

While the rule provides that either an ordinary or substitute amendment may be withdrawn in the House (V, 5753) or "in the House as in Committee of the Whole" (IV, 4935; June 26, 1973, p. 21315), it may not be withdrawn or modified in Committee of the Whole except by unanimous consent (clause 5 of rule XVIII; V, 5221; VIII, 2564, 2859).

§ 926. Precedence of the motion to amend.

Pursuant to clause 4 of rule XVI, the motion for the previous question takes precedence of a motion to amend (Nov. 8, 1971, p. 39944); and if the previous question is not ordered, the motion to refer also has precedence of the motion to amend (V, 5555; VI, 373). Amendments reported by a committee are acted on before those offered from the floor (V, 5773; VIII, 2862, 2863), but 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 (Oct. 4, 1972, pp. 33779–82), and there is a question as to the extent to which the chairman of the committee reporting a bill should be recognized to offer amendments to perfect it in preference to other Members (II, 1450). Amendments may not be offered by proxy (VIII, 2830). The motion to strike out the enacting clause has precedence of the motion to amend, and may be offered while an amendment is pending (V, 5328–5331; VIII, 2622–2624); but the motion to amend takes precedence over a motion that the Committee of the Whole rise and report the bill with the recommendation that it pass (July 27, 1937, p. 7699).

§ 927. Relation of the motion to amend to other motions.

With some exceptions an amendment may attach itself to secondary and privileged motions (V, 5754). Thus, the motions to postpone, refer, amend, for a recess, and to fix the day to which the House shall adjourn may be amended (V, 5754; VIII, 2824). But the motions for the previous question, to lay on the table, to adjourn (V, 5754) and to go into Committee of the Whole to consider a privileged bill may not be amended (IV, 3078, 3079; VI, 723–725).

An amendment to the title of a bill is not in order in Committee of the Whole (Jan. 29, 1986, p. 682).

Germaneness

7. No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.

§ 928. Germane amendments.

This clause was adopted in 1789, and amended in 1822 (V, 5767, 5825). Before the House recodified its rules in the 106th Congress, this clause and clause 5(c) occupied a single former clause 7 (H. Res. 5, Jan. 6, 1999, p. 47).

It introduced a principle not then known to the general parliamentary law (V, 5825), but of high value in the procedure of the House (V, 5866). Before the adoption of rules, when the House is operating under general parliamentary law, as modified by the usage and practice of the House, an amendment may be subject to the point of order that it is not germane to the proposition to which offered (Jan. 3, 1969, p. 23). The principle of the rule applies to a proposition by which it is proposed to modify the pending bill, and not to a portion of the bill itself (V, 6929); thus a point of order will not lie that an appropriation in a general appropriation bill is not germane to the rest of the bill (Dec. 16, 1963, p. 24753). In general, an amendment simply striking out words already in a bill may not be ruled out as not germane (V, 5805; VIII, 2918) unless such action would change the scope and meaning of the text (VIII, 2917–2921; Mar. 23, 1960, p. 6381); and a pro forma amendment "to strike out the last word" has been considered germane (July 28, 1965, p. 18639). While a committee may report a bill or resolution embracing different subjects, it is not in order during consideration in the House to introduce a new subject by way of amendment (V, 5825). The rule that amendments should be germane applies to amendments reported by committees (V, 5806), but a resolution providing for consideration of the bill with committee amendments may waive points of order (Oct. 10, 1967, p. 28406), and the point of order under this rule does not apply to a special order reported from the Committee on Rules "self-executing" the adoption in the House of a nongermane amendment to a bill, since the amendment is not separately before the House during consideration of the special order (Feb. 24, 1993, p. 3542; July 27, 1993, p. 17117). A resolution reported from the Committee on Rules providing for the consideration of a bill relating to a certain subject may be amended neither by an amendment that would substitute the consideration of a different proposition (V, 5834–5836; VIII, 2956; Sept. 14, 1950, p. 14844) nor an amendment that would permit the additional consideration of a nongermane amendment to the bill (May 29, 1980, pp. 12667–73; Aug. 13, 1982, p. 20972). The Chair will not interpret as a point of order under a specific rule of the House an objection to a substitute as narrowing the scope of a pending amendment, absent some stated or necessarily implied reference to germaneness or other rule (June 25, 1987,

p. 17415). The burden of proof is on the proponent of an amendment to establish its germaneness (VIII, 2995; July 10, 2000, p. 13605), and where an amendment is equally susceptible to more than one interpretation, one of which will render it not germane, the Chair will rule it out of order (June 20, 1975, p. 19967).

§ 929. Proposition to which amendment must be germane.

Under the later practice an amendment should be germane to the particular paragraph or section to which it is offered (V, 5811–5820; VIII, 2922, 2936; Oct. 14, 1971, pp. 36194, 36211; Sept. 19, 1986, p. 24729), without reference to subject matter of other titles not yet read (July 31, 1990, p. 20816), and an amendment inserting an additional section should be germane to the portion of the bill to which it is offered (V, 5822; VIII, 2927, 2931; July 14, 1970, pp. 24033–35), though it may be germane to more than one portion of a bill (Mar. 27, 1974, p. 8508), and when offered as a separate paragraph is not required to be germane to the paragraph immediately preceding or following it (VII, 1162; VIII, 2932–2935).

The test of germaneness in the case of a motion to recommit with instructions is the relationship of the instructions to the bill taken as a whole (and not merely to the separate portion of the bill specifically proposed to be amended in the instructions) (Mar. 28, 1996, p. 6932).

Subject to clause 2(c) of rule XXI (requiring that limitation amendments to general appropriation bills be offered at the end of the reading of the bill for amendment), an amendment limiting the use of funds by a particular agency funded in a general appropriation bill may be germane to the paragraph carrying the funds, or to any general provisions portion of the bill affecting that agency or all agencies funded by the bill (July 16, 1979, p. 18807). However, to a paragraph containing funds for an agency but not transferring funds to that account from other paragraphs in the bill, an amendment increasing that amount by transfer from an account in another paragraph is not germane, since affecting budget authority for a different agency not the subject of the pending paragraph (July 17, 1985, p. 19436). Similarly, an amendment to a general appropriation bill in the form of a limitation on funds therein but extending to activities prescribed by laws unrelated to the functions of departments and agencies addressed by the bill is not germane (July 10, 2000, p. 13605).

In passing on the germaneness of an amendment, the Chair considers the relationship between the amendment and the bill as modified by the Committee of the Whole (Apr. 23, 1975, p. 11545; July 8, 1987, p. 19013).

An amendment adding a new section to a bill being read by titles must be germane to the pending title (Sept. 17, 1975, p. 28925), but where a bill is considered as read and open to amendment at any point, an amendment must be germane to the bill as a whole and not to a particular section (Sept. 29, 1975, p. 30761; Jan. 30, 1986, p. 1052). Where a title of a bill is open to amendment at any point, the germaneness of an amendment perfecting one section therein depends on its relationship to the title as a whole and not merely on its relationship to the one section (June 25,

1991, p. 16152). An amendment in the form of a new title, when offered at the end of a bill containing several diverse titles on a general subject, need not be germane to the portion of the bill to which offered, it being sufficient that the amendment be germane to the bill as a whole in its modified form (Nov. 4, 1971, p. 39267; July 2, 1974, p. 22029; Sept. 18, 1975, p. 29322; July 11, 1985, p. 18601; Oct. 8, 1985, pp. 26548–51). While the heading of the final title of a bill as "miscellaneous" does not thereby permit amendments to that title which are not germane thereto, the inclusion of sufficiently diverse provisions in such title affecting various provisions in the bill may permit further amendments which need only be germane to the bill as a whole (Apr. 10, 1979, pp. 8034–37).

Under clause 10 of rule XXII, a portion of a conference report incorporating part of a Senate amendment in the nature of a substitute to a House bill, or incorporating part of a Senate bill that the House has amended, must be germane to the bill in the form passed by the House; thus where a House-passed bill contained several sections and titles amending diverse portions of the Internal Revenue Code relating to tax credits, a modified Senate provision adding a new section dealing with another tax credit was held germane to the House-passed measure as a whole (Speaker Albert, Mar. 26, 1975, p. 8900); but a Senate provision in a conference report, on a Senate bill with a House amendment in the nature of a substitute, which authorized appointment of a special prosecutor for any criminal offenses committed by certain Federal officials was held not germane to the bill as passed by the House, which related to offenses directly related to official duties and responsibilities of Federal officials (Oct. 12, 1978, pp. 36459–61).

The test of germaneness of an amendment to or a substitute for an amendment in the nature of a substitute is its relationship to the substitute and not its relationship to the bill to which the amendment in the nature of a substitute has been offered (July 19, 1973, p. 24958; July 22, 1975, p. 23990; June 1, 1976, pp. 16051–56; July 28, 1982, pp. 18355–58, 18361), and an amendment to a substitute is not required to affect the same page and line numbers as the substitute in order to be germane, it being sufficient that the amendment is germane to the subject matter of the substitute (Aug. 1, 1979, pp. 21944–47). When an amendment in the nature of a substitute is offered at the end of the first section of a bill, the test of germaneness is the relationship between the amendment and the entire bill, and the germaneness of an amendment in the nature of a substitute for a bill is not necessarily determined by an incidental portion of the amendment which if offered separately might not be germane to the portion of the bill to which offered (July 8, 1975, p. 21633).

The test of germaneness of an amendment offered as a substitute for a pending amendment is its relationship to the pending amendment and not its relationship to the underlying bill (Feb. 14, 1995, p. 4714).

An amendment germane to the bill as a whole, but hardly germane to any one section, may be offered at an appropriate place with notice of

motions to strike out the following sections which it would supersede (V, 5823; July 29, 1969, p. 21221). Where a perfecting amendment to the text is offered pending a vote on a motion to strike out the same text, the perfecting amendment must be germane to the text to which offered, not to the motion to strike (Oct. 3, 1969, p. 28454).

§ 930. Instructions to committees and amendments thereto.

The rule that amendments must be germane applies to amendments to the instructions in a motion to instruct conferees (VIII, 3230, 3235), and the test of germaneness of an amendment to a motion to instruct conferees, in addition to the measurement of scope of conference, is the relationship of the amendment to the subject matter of the House or Senate version of the bill (Deschler-Brown, ch. 28, § 28.2). The rule of germaneness similarly applies to the instructions in a motion to recommit a bill to a committee of the House, as it is not in order to propose as part of a motion to recommit any proposition that would not have been germane if proposed as an amendment to the bill in the House (V, 5529–5541; VIII, 2708–2712; Mar. 2, 1967, p. 5155), and the instructions must be germane to the bill as perfected in the House (Nov. 19, 1993, p. 30513), even where the instructions do not propose a direct amendment to the bill but merely direct the committee to pursue an unrelated approach (Speaker O'Neill, Mar. 2, 1978, p. 5272; July 16, 1991, p. 18397) or direct the committee not to report the bill back to the House until an unrelated contingency occurs (VIII, 2704). Under the same rationale as amendments to a motion to instruct conferees, amendments to a motion to recommit to a standing committee with instructions must be germane to the subject matter of the bill (see V, 6888; VIII, 2711).

The fact that an amendment is offered in conjunction with a motion to recommit a bill with instructions to a standing committee does not affect the requirement that the subject matter of the amendment be germane and within the jurisdiction of the committee reporting the bill (Mar. 2, 1967, p. 5155; July 16, 1991, p. 18397).

§ 931. Senate amendments and matter contained in conference reports.

In the consideration of Senate amendments to a House bill an amendment must be germane to the particular Senate amendment to which it is offered (V, 6188–6191; VIII, 2936; May 14, 1963, p. 8506; Dec. 13, 1980, p. 34097), and it is not sufficient that an amendment to a Senate amendment is germane to the original House bill if it is not germane to the subject matter of a Senate amendment that merely inserts new matter and does not strike out House provisions (V, 6188; VIII, 2936). But where a Senate amendment proposes to strike out language in a House bill, the test of the germaneness of a motion to recede and concur with an amendment is the relationship between the language in the motion and the provisions in the House bill proposed to be stricken, as well as those to be inserted, by the Senate amendment (June 8, 1943, p. 5511; June 15, 1943, p. 5899; Dec. 12, 1974, p. 39272). The test of the germaneness of an amendment to a motion to concur in a Senate amend-

ment with an amendment is the relationship between the amendment and the motion, and not between the amendment and the Senate amendment to which the motion has been offered (Aug. 3, 1973, Deschler-Brown, ch. 28, § 27.6). Formerly, a Senate amendment was not subject to the point of order that it was not germane to the House bill (VIII, 3425), but under changes in the rules points of order may be made and separate votes demanded on portions of Senate amendments and conference reports containing language that would not have been germane if offered in the House. Clause 10 of rule XXII permits points of order against language in a conference report which was originally in the Senate bill or amendment and which would not have been germane if offered to the House-passed version, and permits a separate motion to reject such portion of the conference report if found nongermane (Oct. 15, 1986, p. 31498). For purposes of that rule, the House-passed version, against which Senate provisions are compared, is that finally committed to conference, taking into consideration all amendments adopted by the House, including House amendments to Senate amendments (July 28, 1983, p. 21401). Clause 10 of rule XXII permits points of order against motions to concur or concur with amendment in nongermane Senate amendments, the stage of disagreement having been reached, and, if such points of order are sustained, permits separate motions to reject such nongermane matter. Clause 10 of rule XXII is not applicable to a provision contained in a motion to recede and concur with an amendment (the stage of disagreement having been reached) which is not contained in any form in the Senate version, the only requirement in such circumstances being that the motion as a whole be germane to the Senate amendment as a whole under clause 7 of rule XVI (Oct. 4, 1978, pp. 33502–06; June 30, 1987, p. 18294).

§ 932. Subject matter as test of germaneness.

An amendment must relate to the subject matter under consideration. Thus, the following are not germane: To 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 (July 25, 1962, p. 14778); to a bill establishing an office in the Department of the Interior to manage biological information, an amendment addressing socioeconomic matters (Oct. 26, 1993, p. 26082); to a bill authorizing military assistance to Israel and funds for the United Nations emergency force in the Middle East, an amendment expressing the sense of Congress that the President conduct negotiations to obtain a peace treaty in the Middle East and the resumption of diplomatic and trade relations between Arab nations and the United States and Israel (Dec. 11, 1973, p. 40842); to a concurrent resolution expressing congressional concern over certain domestic policies of a foreign government and urging that government to improve those internal problems in order to enhance better relations with the United States, amendments expressing the necessity for United States diplomatic initiatives as a consequence of that foreign government's policies (July 12, 1978, pp. 20500–05); to a resolution amending several clauses

of a rule of the House but confined in its scope to the issue of access to committee hearings and meetings, an amendment to another clause of that rule relating to committee staffing (Mar. 7, 1973, p. 6714); to a title of a bill that only addresses the administrative structure of a new department and not its authority to carry out transferred programs, an amendment prohibiting the department from withholding funds to carry out certain objectives (June 12, 1979, p. 14485); to an amendment authorizing the use of funds for a specific study, an amendment naming any program established in the bill for an unrelated purpose for a specified Senator (Aug. 15, 1986, p. 22075); to one of two reconciliation bills reported by the Budget Committee, an amendment making a prospective indirect change to the other reconciliation bill not then pending before the House (June 25, 1997, p. 12488); to a bill reauthorizing the National Sea Grant College Program, a proposal to amend existing law to provide for automatic continuation of appropriations in the absence of timely enactment of a regular appropriation bill (June 18, 1997, p. 11333); to a bill regulating immigration, an amendment reaffirming an agreement with Japan (VIII, 3050); to a bill opposing concessional loans to a country and outlining principles governing the conduct of industrial cooperation projects of U.S. nationals in that country, an amendment waiving provisions of other law by requiring changes in tariff schedules to achieve overall trade reciprocity between that country and the United States (Nov. 6, 1997, p. 24824); to a resolution authorizing the deployment of troops to implement a peace agreement, an amendment expressing support for the armed forces in carrying out such mission (Mar. 11, 1999, p. 4301); to a bill addessing enforcement of State liquor laws, an amendment addressing enforcement of State firearm laws (Aug. 3, 1999, p. 19213); to a bill addressing taxation under the Internal Revenue Code, an amendment extending unemployment insurance benefits (May 9, 2003, p. ——); to a bill reauthorizing the National Transportation Safety Board, an amendment extending unemployment insurance benefits (May 15, 2003, p. —— (sustained on appeal)).

An amendment that is germane, not being "on a subject different from that under consideration," belongs to a class illustrated by the following: to a bill providing for an interoceanic canal by one route, an amendment providing for a different route (V, 5909); to a bill providing for the reorganization of the Army, an amendment providing for the encouragement of marksmanship by enlisted personnel (V, 5910); to a proposition to create a board of inquiry, an amendment specifying when it shall report (V, 5915); to a bill relating to "oleomargarine and other imitation dairy products," an amendment on the subject of "renovated butter" (V, 5919); to a resolution rescinding an order for final adjournment, an amendment fixing a new date therefor (V, 5920); to a proposition directing a feasibility investigation, an amendment requiring the submission of legislation to implement that investigation (Dec. 14, 1973, p. 41747); and to a section of a bill prescribing the functions of a new Federal Energy Administration by conferring wide discretionary powers upon the Administrator, an amend-

ment directing the Administrator to issue preliminary summer guidelines for citizen fuel use (as a further delineation of those functions) (Mar. 6, 1974, p. 5436).

A bill comprehensively addressing a subject requires careful analysis to determine whether an amendment addresses a different subject. For example, to an amendment in the nature of a substitute comprehensively amending several sections of the Clean Air Act with respect to the impact of shortages of energy resources on standards imposed under that Act, an amendment to another section of the Act suspending temporarily the authority of the Administrator of the EPA to control automobile emissions was held germane (Dec. 14, 1973, p. 41688). On the other hand, to a bill comprehensively restructuring the production and distribution of food, an amendment proposed in a motion to recommit to provide nutrition assistance, including food stamps and soup kitchen programs, was held not germane (Feb. 29, 1996, p. 3257).

§ 933. Fundamental purpose as test of germaneness.

The fundamental purpose of an amendment must be germane to the fundamental purpose of the bill (VIII, 2911). The Chair discerns the fundamental purpose of a bill by examining the text of the bill and its report language (Deschler-Brown, ch. 28, § 5.6; Aug. 3, 1999, p. 19213), rather than the motives that circumstances may suggest (V, 5783, 5803; Dec. 13, 1973, pp. 41267–69; Aug. 15, 1974, p. 28438). To a bill that comprehensively addresses a subject matter, an amendment that relates to that subject matter may not be ruled out as nongermane merely because the amendment may be characterized as private legislation benefitting certain individuals offered to a public bill (May 30, 1984, p. 14495). Similarly, to a bill proposing to accomplish a result by methods comprehensive in scope, an amendment in the nature of a substitute seeking to achieve the same result was held germane where it was shown that additional provisions not contained in the original bill were merely incidental conditions or exceptions that were related to the fundamental purpose of the bill (Aug. 2, 1973, pp. 27673–75; July 8, 1975, p. 21633; Sept. 29, 1980, pp. 27832–52). On the other hand, an amendment may relate to the same subject matter yet still stray from adherence to a common fundamental purpose. For example, an amendment singling out one constituent element of a larger subject for specific and unrelated scrutiny is not germane (Aug. 3, 1999, p. 19213). Similarly, to a bill appropriating for only one fiscal year (and containing no provisions extending beyond that fiscal year), an amendment to extend an appropriation to another fiscal year is not germane (June 20, 2001, p. ——).

In order to be germane, 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 (Aug. 11, 1970, p. 28165). Thus the following are germane: to a bill raising revenue by several methods of taxation, an amendment proposing a tax on undistributed profits

(the Committee of the Whole overruling the Chair) (VII, 3042); 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 (Dec. 15, 1937, pp. 1572–89; June 9, 1941, p. 4905; Dec. 19, 1973, p. 42618); to a bill to achieve a certain purpose by conferring discretionary authority to set fair labor standards upon an independent agency, an amendment in the nature of a substitute to attain that purpose by a more inflexible method (prescribing fair labor standards) (Dec. 15, 1937, pp. 1590–94; Oct. 14, 1987, p. 27885); to a proposition to accomplish the broad purpose of settling land claims of Alaska natives by a method general in scope, an amendment accomplishing the same purpose by a method more detailed in its provisions (Oct. 20, 1971, p. 37079); to an amendment comprehensively amending the Natural Gas Act to deregulate interstate sales of new natural gas and regulate aspects of intrastate gas use, a substitute providing regulatory authority for interstate and intrastate gas sales of large producers (Feb. 4, 1976, p. 2387); to a bill providing a temporary extension of existing authority, an amendment achieving the same purpose by providing a nominally permanent authority was held germane where both the bill and the amendment were based on reported economic projections under which either would achieve the same, necessarily temporary result by method of direct or indirect amendment to the same existing law (May 13, 1987, p. 12344); to a bill subjecting employers who fail to apprise their workers of health risks to penalties under other laws and regulations, a substitute subjecting such employers to penalties prescribed in the substitute itself (Oct. 14, 1987, p. 27885); to an amendment freezing the obligation of funds for fiscal year 1996 for missile defense until the Secretary of Defense rendered a specified readiness certification, an amendment permitting an increase in the obligation of such funds on the basis of legislative findings concerning readiness, as each proposition addressed the relationship between 1996 funding levels for missile defense and readiness (Feb. 15, 1995, p. 5026).

However, an amendment to accomplish a similar purpose by an unrelated method, not contemplated by the bill, is not germane. Thus, the following are not germane: to a bill providing relief to foreign countries through government agencies, an amendment providing for relief to be made through the International Red Cross (Dec. 10, 1947, pp. 11242–44); 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 (Aug. 8, 1967, pp. 21846–50); to a bill providing assistance to Vietnam war victims, amendments containing foreign policy declarations as to culpability in the Vietnam war (Apr. 23, 1975, p. 11510); to a bill conserving energy by civil penalties on manufacturers of autos with low gas mileage, an amendment conserving energy by tax rebates to purchasers of high-mileage autos (June 12, 1975, p. 18695); to a proposition whose fundamental purpose was registration and public disclosure by, but not regulation of the activities of, lobbyists, amendments prohibiting lobbying

in certain places, restricting monetary contributions by lobbyists, and providing civil penalties for violating Rules of the House in relation to floor privileges (Sept. 28, 1976, p. 33070) (but to a similar bill, an amendment requiring disclosure of any lobbying communication made on the floor of the House or Senate or in adjoining rooms, but not regulating such conduct, was held germane (Apr. 26, 1978, p. 11641)); to a bill seeking to accomplish a purpose by one method (creation of an executive branch agency), an amendment accomplishing that result by a method not contemplated in the bill (creation of office within legislative branch as function of committee oversight) (Nov. 5, 1975, p. 35041); to a bill authorizing foreign military assistance programs, an amendment authorizing contributions to an international agency for nuclear missile inspections (Mar. 3, 1976, p. 5226); to a joint resolution proposing a constitutional amendment for representation of the District of Columbia in Congress, a motion to recommit with instructions that the Committee on the Judiciary consider a resolution retroceding populated portions of the District to Maryland (Speaker O'Neill, Mar. 2, 1978, p. 5272, implicitly overruling V, 5582); to a bill prohibiting poll taxes, a motion to recommit the bill with instructions that the committee report it back in the form of a joint resolution amending the Constitution to accomplish the purpose of the bill (Deschler-Brown, ch. 28, § 23.8); to an amendment to achieve a national production goal for synthetic fuels for national defense needs by loans and grants and development of demonstration synthetic fuel plants, a substitute to require by regulation that any fuel sold in commerce require a certain percentage of synthetic fuels, as broader in scope and an unrelated method (June 26, 1979, pp. 16663–74); to a bill to provide financial assistance to domestic agriculture through price support payments, an amendment to protect domestic agriculture by restricting imports in competition therewith as proposing an unrelated method of assistance within the jurisdiction of another committee (Oct. 14, 1981, p. 23899); to a bill authorizing financial assistance to unemployed individuals for employment opportunities, an amendment providing instead for tax incentives to stimulate employment as employing an unrelated method within the jurisdiction of a different committee of the House (Sept. 21, 1983, p. 25145); to a bill relating to one government agency, an amendment having as its fundamental purpose a change in the law relating to another agency, even though it contemplated a consultative role for the agency covered by the bill (July 8, 1987, p. 19014); to a proposition changing congressional budget procedures to require consideration of balanced budgets, an amendment changing concurrent resolutions on the budget to joint resolutions, bringing executive enforcement mechanisms into play (July 18, 1990, p. 17920); to a bill to promote technological advancement by fostering Federal research and development, and amendment exhorting to do so by changes in tax and antitrust laws (July 16, 1991, p. 18397); to a bill extending unemployment compensation benefits during a period of economic recession, an amendment to stimulate economic growth by tax incentives and regulatory reform (Sept. 17, 1991,

p. 23156); an amendment to change a direct appropriation of new budget authority from the general fund into a reappropriation (in effect a rescission) of funds previously appropriated for an entirely different purpose in a special reserve account (Feb. 28, 1985, p. 4146); to a bill addressing substance abuse through prevention and treatment, an amendment imposing civil penalties on drug dealers (Sept. 16, 1998, p. 20587); to a resolution impeaching the President, an amendment censuring the President (Dec. 19, 1998, p. 28107); to a bill authorizing a State attorney general to bring a civil action in Federal court against a person who has violated a State law regulating intoxicating liquor, an amendment singling out certain violations of liquor laws on the basis of their regard for any and all firearms issues (Aug. 3, 1999, p. 19213); to the same bill, an amendment creating new Federal laws to regulate intoxicating liquor (Aug. 3, 1999, p. 19216); to a bill addressing persons convicted of sex offenses against children with criminal punishment, an amendment addressing such perpetrators by treatment and rehabilitation (Mar. 14, 2002, p. ——).

§ 934. Committee jurisdiction as test of germaneness.

An amendment when considered as a whole should be within the jurisdiction of the committee reporting the bill (Jan. 29, 1976, p. 1582; July 25, 1979, pp. 20601–03; June 27, 1985, pp. 17417–19), although committee jurisdiction over the subject of an amendment and of the original bill is not the exclusive test of germaneness (Aug. 2, 1973, pp. 27673–75), and the Chair relates the amendment to the bill in its perfected form (Aug. 17, 1972, p. 28913). Thus, the following are not germane: To a bill reported from the Committee on Agriculture providing price support programs for various agricultural commodities, an amendment repealing price control authority for all commodities under an act reported from the Committee on Banking and Currency (July 19, 1973, p. 24950); to a bill reported from the Committee on Ways and Means providing for a temporary increase in the public debt ceiling for the current fiscal year (not directly amending the Second Liberty Bond Act), an amendment proposing permanent changes in that Act and also affecting budget and appropriation procedures (matters within the jurisdiction of other House committees) (Nov. 7, 1973, p. 36240); to a bill relating to intelligence activities of the executive branch, an amendment effecting a change in the Rules of the House by directing a committee to impose an oath of secrecy on its members and staff (May 1, 1991, p. 9669); to a bill reported by the Committee on Government Operations creating an executive agency to protect consumers, an amendment conferring on congressional committees with oversight over consumer protection the authority to intervene in judicial or administrative proceedings (a rulemaking provision within the jurisdiction of the Committee on Rules) (Nov. 6, 1975, p. 35373); to a proposition reported from the Committee on Public Works and Transportation, authorizing funds for local public works employment, an amendment to mandate expenditure of already appropriated funds (as a purported disapproval of deferral of such funds under the Impoundment Control Act of 1974) and to set discount rates

for reclamation and public works projects, subjects within the jurisdictions of the Committees on Appropriations and Interior and Insular Affairs (May 3, 1977, p. 13242); to a bill reported from the Committee on Armed Services authorizing military procurement and personnel strengths for one fiscal year, a proposition imposing permanent prohibitions and conditions on troop withdrawals from the Republic of Korea since including statements of policy within the jurisdiction of the Committee on Foreign Affairs (May 24, 1978, pp. 15293–95); to a bill reported from the Committee on Government Operations creating a new department, transferring the administration of existing laws to it, and authorizing appropriations to carry out the Act subject to provisions in existing law, an amendment prohibiting the use of funds so authorized to carry out a designated funding program transferred to the department, where the purpose of the authorization is to allow appropriations in general appropriation bills for the department to carry out its functions but where changes in the laws to be administered by the department remain within the jurisdiction of other committees of the House (June 19, 1979, p. 15570); to a bill reported by the Committee on Public Works authorizing funds for highway construction and mass transportation systems using motor vehicles, an amendment relating to urban mass transit (then within the jurisdiction of the Committee on Banking and Currency) and the railroad industry (then within the jurisdiction of the Committee on Interstate and Foreign Commerce) (Oct. 5, 1972, p. 34115); to a bill reported from the Committee on Interior and Insular Affairs designating certain areas in a State as wilderness, an amendment providing unemployment benefits to workers displaced by the designation (a subject in the jurisdiction of other committees) (Mar. 21, 1983, p. 6347); to a bill reported from the Committee on Science and Technology authorizing environmental research and development activities of an agency, an amendment expressing the sense of Congress with respect to that agency's regulatory and enforcement authority, within the jurisdiction of the Committee on Energy and Commerce (Feb. 9, 1984, p. 2423); to a bill authorizing environmental research and development activities of an agency for two years, an amendment adding permanent regulatory authority for that agency by amending a law not within the jurisdiction of the committee reporting the bill (June 4, 1987, p. 14757); to a bill reported from the Committee on Education and Labor dealing with education, an amendment regulating telephone communications (a matter within the jurisdiction of the Committee on Energy and Commerce) (Apr. 19, 1988, p. 7355); to a bill addressing various research programs and authorities, an amendment addressing matters of fiscal and economic policy and regulation (July 16, 1991, p. 18391; Sept. 22, 1992, pp. 26734, 26741); to a bill reported from the Committee on Ways and Means addressing unemployment compensation, an amendment addressing stimuli for economic growth involving the jurisdictions of the Committees on Banking, Finance, and Urban Affairs and the Judiciary (Sept. 17, 1991, p. 23177); to a bill reported from the Committee on Armed Services amending several laws within that commit-

tee's jurisdiction on military procurement and policy, an amendment to the Renegotiation Act, a matter within the jurisdiction of the Committee on Banking, Finance and Urban Affairs and not solely related to military contracts (June 26, 1985, pp. 17417–19) and an amendment requiring reports on Soviet Union compliance with arms control commitments, a matter exclusively within the jurisdiction of the Committee on Foreign Affairs (Deschler-Brown, ch. 28, §4.26); to a bill reported from the Committee on Energy and Commerce, relating to mentally ill individuals, an amendment prohibiting the use of general revenue sharing funds (within the jurisdiction of the Committee on Government Operations) (Jan. 30, 1986, p. 1053); to a bill reported from the Committee on Merchant Marine and Fisheries authorizing various activities of the Coast Guard, an amendment urging the Secretary of State in consultation with the Coast Guard to elicit cooperation from other nations concerning certain Coast Guard and military operations (a matter within the jurisdiction of the Committee on Foreign Affairs) (July 8, 1987, p. 19013); to a bill reported by the Committee on Banking, Finance and Urban Affairs dealing with housing and community development grant and credit programs, an amendment expressing the sense of Congress on tax policy (the deductibility of mortgage interest), a matter within the jurisdiction of the Committee on Ways and Means (Aug. 1, 1990, p. 21256); to a bill reported from the Committee on Education and Labor authorizing a variety of civilian national service programs, an amendment establishing a contingent military service obligation (a matter within the selective service jurisdiction of the Committee on Armed Services) (July 28, 1993, p. 17398); to a bill reauthorizing programs administered by two agencies within one committee's jurisdiction, an amendment more general in scope affecting agencies within the jurisdiction of other committees (May 12, 1994, p. 10024); to a bill reported by the Committee on Transportation and Infrastructure reforming and privatizing Amtrak, an amendment rescinding previously appropriated funds for certain administrative expenses, a matter within the jurisdiction of the Committee on Appropriations (Nov. 30, 1995, p. 35071); to a measure expressing a sense of Congress with respect to the availability of public funds for expenses incurred in the evaluation of a problem, an amendment addressing legislative responses to that problem, within the jurisdiction of other committees (Feb. 4, 1998, p. 794); to a bill reported from Government Reform and Oversight proposing to alter responsibilities of executive branch agencies under an existing law, an amendment proposing to extend the application of that law to entities of the legislative branch, a matter within the jurisdiction of the Committee on House Administration (Mar. 12, 1998, p. 3389); to a resolution authorizing the deployment of troops to implement a peace agreement within the jurisdiction of the Committee on International Relations, an amendment expressing support for the armed forces carrying such mission within the jurisdiction of both the Committees on Armed Services and International Relations (Mar. 11, 1999, p. 4301); to a bill addressing certain diplomatic efforts to curb alleged price-fixing in the global oil mar-

ket within the jurisdiction of the Committee on International Relations, an amendment proposing to suspend oil exportation through changes to the Mineral Leasing Act within the jurisdiction of the Committee on Resources and an amendment proposing to change the Energy Policy and Conservation Act to reauthorize Presidential authority to draw down the strategic petroleum reserve, a matter within the jurisdiction of the Committee on Commerce (Mar. 22, 2000, p. 3281).

Committee jurisdiction is not the sole test of germaneness where: (1) the proposition to which the amendment is offered is so comprehensive (overlapping several committees' jurisdictions) as to diminish the pertinency of that test; (2) the amendment does not demonstrably affect a law within another committee's jurisdiction (July 21, 1976, p. 23167; Oct. 8, 1985, pp. 26548–51); (3) the portion of the bill also contains language, related to the amendment, not within the jurisdiction of the committee reporting the bill (Apr. 2, 1976, p. 9254; Aug. 10, 1984, p. 23975); or (4) the bill has been amended to include matter within the jurisdiction of another committee thus permitting further similar amendments to be germane (July 11, 1985, p. 18601; Sept. 19, 1986, p. 24769). Thus, to a bill reported from the Committee on Agriculture relating to the food stamp program, an amendment requiring the Secretary of the Treasury, after consultation with the Secretary of Agriculture, to collect from certain recipients the monetary value of food stamps received was held germane since the performance of new duties by the Secretary of the Treasury and by the Internal Revenue Service not affecting the application of the Internal Revenue Code is not a matter solely within the jurisdiction of the Committee on Ways and Means (July 27, 1977, pp. 25249–52). On the other hand, to a comprehensive farm bill authorizing a variety of programs within the jurisdiction of the Committees on Agriculture and International Relations, and amended to include matter within the jurisdiction of the Committee on Energy and Commerce (but not amending laws within the jurisdiction of other committees), an amendment proposing to alter an existing interstate dairy compact and grant consent to additional compacts, matters within the jurisdiction of the Committee on the Judiciary, is not germane (Oct. 4, 2001, p. ——).

To a bill amending an existing law to grant to merchant mariners benefits substantially equivalent to those granted to veterans in a separate law in the jurisdiction of another committee, an amendment directly changing the separate law to extend its benefits to merchant mariners was held not germane (Sept. 9, 1992, p. 23951); but where the pending bill incorporates by reference provisions of a law from another committee and conditions the bill's effectiveness upon actions taken pursuant to a section of that law, an amendment to alter that section of the law may be germane (Apr. 8, 1974, pp. 10108–10).

The test of the germaneness of an amendment in the nature of a substitute for a bill is its relationship to the bill as a whole, and is not necessarily determined by the content of an incidental portion of the amend-

ment which, if considered separately, might be within the jurisdiction of another committee (Aug. 2, 1973, p. 27673; June 1, 1976, pp. 16021–25). However, the House may by adopting a special rule allow a point of order that a section of a committee amendment in the nature of a substitute would not have been germane if offered separately to the bill as introduced (May 23, 1978, pp. 15094–96; May 24, 1978, pp. 15293–95; Aug. 11, 1978, p. 25705).

The fact that an amendment is offered in conjunction with a motion to recommit a bill with instructions does not affect the requirement that the subject matter of the amendment be germane and within the jurisdiction of the committee reporting the bill (Mar. 2, 1967, p. 5155). Thus the following are not germane: to a bill reported from the Committee on Foreign Affairs addressing U.S. claims against Iraq, a motion to recommit with instructions to prohibit the admission of former members of Iraq's armed forces to the United States as refugees (a matter within the jurisdiction of the Committee on the Judiciary) is not germane (Apr. 28, 1994, p. 8803); and to a bill amending a law reported by the Committee on Banking and Financial Services opposing concessional loans to a country and outlining principles governing the conduct of industrial cooperation projects of U.S. nationals in that country, an amendment proposed in a motion to recommit waiving provisions of other law by requiring changes in tariff schedules to achieve overall trade reciprocity between that country and the United States, a subject within the jurisdiction of the Committee on Ways and Means (Nov. 6, 1997, p. 24824).

§ 935. Various tests of germaneness are not exclusive.

The standards by which the germaneness of an amendment may be measured, as set forth in §§ 932–934, *supra*, are not exclusive; an 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. Thus, the following have been held not to be germane: To a proposition relating to the terms of Senators, an amendment changing the manner of their election (V, 5882); to a bill relating to commerce between the States, an amendment relating to commerce within the several States (V, 5841); to a proposition to relieve destitute citizens of the United States in Cuba, a proposition declaring a state of war in Cuba and proclaiming neutrality (V, 5897); to a proposition for the appointment of a select committee to investigate a certain subject, an amendment proposing an inquiry of the executive on that subject (V, 5891); to a bill granting a right of way to a railroad, an amendment providing for the purchase of the railroad by the Government (V, 5887); to a provision for the erection of a building for a mint, an amendment to change the coinage laws (V, 5884); to a resolution proposing expulsion, an amendment proposing censure (VI, 236); to a resolution authorizing the administration of the oath to a Member-elect, an amendment authorizing such oath administration but adding several conditions of punishment predicated on acts committed in a prior Congress (Jan. 3, 1969, pp.

23–25); to a general tariff bill, an amendment creating a tariff board (May 6, 1913, p. 1234; Speaker Clark, May 8, 1913, p. 1381); to a proposition to sell two battleships and build a new battleship with the proceeds, a proposition to devote the proceeds to building wagon roads (VIII, 2973); to a bill authorizing a State attorney general to bring a civil action in Federal court against a person who has violated a State law regulating intoxicating liquor, an amendment singling out certain violations of liquor laws on the basis of their regard for any and all firearms issues (Aug. 3, 1999, p. 19213).

§ 936. One individual proposition not germane to another.

One individual proposition may not be amended by another individual proposition even though the two belong to the same class (VIII, 2951–2953, 2963–2966, 3047; Jan. 29, 1986, p. 684; Oct. 22, 1990, p. 32346; Oct. 24, 1991, p. 28561). Thus, the following are not germane: To a bill proposing the admission of one territory into the Union, an amendment for admission of another territory (V, 5529); to a bill amending a law in one particular, amending the law in another particular (VIII, 2949); 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 (VIII, 2913; Nov. 13, 1980, pp. 29523–28; see also May 2, 1979, p. 9564; Oct. 12, 1979, pp. 28097–99); to a measure earmarking funds in an appropriation bill, an amendment authorizing the program for which the appropriation is made (Nov. 15, 1989, p. 29019); to a bill for the relief of one individual, an amendment proposing similar relief for another (V, 5826–5829); to a resolution providing a special order for one bill, an amendment to include another bill (V, 5834–5836); to a provision for extermination of the cotton-boll weevil, an amendment including the gypsy moth (V, 5832); to a provision for a clerk for one committee, an amendment for a clerk to another committee (V, 5833); to a Senate amendment dealing with use of its contingent fund for art restoration in that body, a proposed House amendment for use of the House contingent fund for a similar but broader purpose (May 24, 1990, p. 12203); to a bill prohibiting transportation of messages relative to dealing in cotton futures, an amendment adding wheat, corn, etc. (VIII, 3001); to a bill prohibiting cotton futures, an amendment prohibiting wheat futures (VIII, 3001); to a bill for the relief of certain aliens, an amendment for the relief of other persons who are not aliens (May 14, 1975, p. 14360); to a bill providing relief for agricultural producers, an amendment extending such relief to commercial fishermen, another class within the jurisdiction of another committee (Apr. 24, 1978, p. 11080); to a bill governing the political activities of Federal civilian employees, an amendment to cover members of the uniformed services (June 7, 1977, p. 17713); to a bill covering the civil service system for Federal civilian employees, an amendment bringing other classes of employees (postal and District of Columbia employees) within the scope of the bill (Sept. 7, 1978, pp. 28437–39; Oct. 9, 1985, pp. 26951–54); to a portion of an appropriation bill containing

funds for a certain purpose to be expended by one agency, an amendment containing funds for another agency for the same purpose (July 24, 1981, p. 17226); to an amendment exempting national defense budget authority from the reach of a proposed Presidential rescission authority, an amendment exempting social security (Feb. 2, 1995, p. 5501); to a Senate amendment striking an earmarking from an appropriation bill, a House amendment reinserting part of the amount but adding other earmarking for unrelated programs (Nov. 15, 1989, p. 29019); to a Senate amendment relating to a feasibility study of a land transfer in one State, a House amendment requiring an environmental study of land in another State (Nov. 15, 1989, p. 29035); to a bill prohibiting certain uses of polygraphy in the private sector, an amendment applying the terms of the bill to the Congress (Nov. 4, 1987, p. 30870); to a bill to determine the equitability of Federal pay practices under statutory systems applicable to agencies of the executive branch, an amendment to extend the scope of the determination to pay practices in the legislative branch (ruling sustained by Committee of Whole, Sept. 28, 1988, p. 26422); to a special appropriation bill providing funds and authority for agricultural credit programs but containing no transfers of funds, reappropriations, or rescissions, an amendment (contained in a motion to recommit) deriving funds for the bill by transfer of unobligated balances in the Energy Security Reserve and thus decreasing and transferring funds provided for a program unrelated to the subject matter or method of funding provided in the bill (Feb. 28, 1985, p. 4146); to a bill prohibiting importation of goods made in whole or in part by convict, pauper, or detained labor, or made in whole or in part from materials that have been made in whole or in part in any manner manipulated by convict or prison labor, an amendment prohibiting importation of goods produced by child labor, a second discrete class (VIII, 2963); similarly, to an amendment authorizing grants to States for purchase of one class of equipment (photographic and fingerprint equipment) for law enforcement purposes, an amendment including assistance for the purchase of a different class of equipment (bulletproof vests) (Oct. 12, 1979, pp. 28121–24); to a bill repealing section 14(b) of the National Labor Relations Act and making conforming changes in two related sections of labor law, all pertaining solely to the so-called "right-to-work" issue, an amendment excluding from the applicability of certain labor-management agreements members of religious groups (July 28, 1965, p. 18633); to a bill relating to the design of certain coin currency, an amendment specifying the metal content of other coin currency (Sept. 12, 1973, p. 29376); to a proposition to accomplish a single purpose without amending a certain existing law, an amendment to accomplish another individual purpose by changing that existing law (Dec. 14, 1973, pp. 41723–25); to a bill regulating poll closing time in Presidential general elections, an amendment extending its provisions to Presidential primary elections (Jan. 29, 1986, p. 684); to a bill authorizing grants to private entities furnishing health care to underserved populations, an amendment authorizing grants to States to control a public

health hazard was held not germane as relating to a different category of recipient (Mar. 5, 1986, p. 3604); to a bill siting a certain type of repository for a specified kind of nuclear waste, an amendment prohibiting the construction at another site of another type of repository for another kind of nuclear waste (July 21, 1992, p. 18718); to a bill addressing violent crimes, an amendment addressing nonviolent crimes, such as crimes of fraud and deception or crimes against the environment (May 7, 1996, pp. 10342, 10343); to a bill naming a facility after a specific person, an amendment proposing to substitute the name of a different person is not germane (VIII, 2955) where it could not be shown that the amendment intended a return to the facility's existing designation (Feb. 4, 1998, p. 792); to a joint resolution addressing whether public funds should be available for specified endeavors of one group, an amendment addressing the same question for unrelated endeavors of another group (Feb. 4, 1998, p. 819); to a bill proposing to alter responsibilities of executive branch agencies under an existing law, an amendment proposing to extend the application of that law to entities of the legislative branch (Mar. 12, 1998, p. 3389); to a joint resolution proposing an amendment to the Constitution authorizing Congress to prohibit physical desecration of the flag, a motion to recommit with instructions proposing an amendment to the Constitution requiring a balanced budget or requiring that Social Security receipts and outlays be counted as receipts or outlays of the United States (June 22, 2005, p. ——, p. ——).

§ 937. A general provision not germane to a specific subject.

A specific subject may not be amended by a provision general in nature, even when of the class of the specific subject (V, 5843–5846; VIII, 2997, 2998; July 31, 1985, pp. 21832–34; see also Deschler-Brown, ch. 28, § 9). Thus the following are not germane: To a bill for the admission of one territory into the Union, an amendment providing for the admission of several other territories (V, 5837); to a bill relating to all corporations engaged in interstate commerce, an amendment relating to all corporations (V, 5842); to a bill proscribing certain picketing in the District of Columbia, an amendment making the provisions thereof applicable throughout the United States (Aug. 22, 1966, p. 20113); to a joint resolution proposing an amendment to the Constitution prohibiting the United States or any State from denying persons 18 years of age or older the right to vote, an amendment requiring the United States and all States to treat persons 18 years and older as having reached the age of majority for all purposes under the law (Mar. 23, 1971, p. 7567); to a bill dealing with enforcement of United Nations sanctions against one country in relation to a specific trade commodity, an amendment imposing United States sanctions against all countries for all commodities and communications (Mar. 14, 1977, p. 7446); to a bill to enable the Department of HEW to investigate and prosecute fraud and abuse in medicare and medicaid health programs, an amendment to prohibit any officer or employee from disclosing any identifiable medical record absent patient approval (Sept. 23, 1977, pp. 30534–

35); to an amendment to a budget resolution changing one functional category only, an amendment changing several other categories and covering an additional fiscal year (May 2, 1979, pp. 9556–64); 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 (Aug. 10, 1982, p. 20256); to a bill relating to aircraft altitude over units of the National Park System, an amendment relating to aircraft collision avoidance generally (Sept. 18, 1986, p. 24084); to a proposition prohibiting the use of funds appropriated for a fiscal year for a specified purpose, an amendment prohibiting the use of funds appropriated for that or any prior fiscal year for an unrelated purpose is not germane (June 30, 1987, p. 18294); to a proposition providing for a training vessel for one state maritime academy, an amendment relating to training vessels for all state maritime academies is not germane (June 30, 1987, p. 18296); to a proposition waiving a requirement in existing law that an authorizing law be enacted before the obligation of certain funds, an amendment affirmatively enacting bills containing not only that authorization but also other policy matters (Sept. 28, 1988, p. 26108); to a proposition pertaining only to a certain appropriation account in a bill, an amendment relating not only to that account but also to funds in other acts (Sept. 30, 1988, p. 27148); to a proposition raising an employment ceiling for one year, an amendment proposing also to address in permanent law a hiring preference system for such employees (Oct. 11, 1989, p. 24089); to an omnibus farm bill, with myriad programs to improve agricultural economy, an amendment to the Animal Welfare Act but not limited to agricultural pursuits (Aug. 1, 1990, p. 21573); to a bill authorizing Federal funding for qualifying State national service programs, an amendment conditioning a portion of such funding on the enactment of State laws immunizing volunteers in nonprofit or public programs, generally, from certain legal liabilities (July 28, 1993, p. 17401); to an amendment addressing particular educational requirements imposed on educational agencies by the underlying bill, an amendment addressing any requirements imposed on educational agencies by the underlying bill (Mar. 21, 1994, p. 5771); to a bill reauthorizing programs administered by the Economic Development Administration and the Appalachian Regional Commission, an amendment providing for the waiver of any Federal regulation that would interfere with economic development (May 12, 1994, p. 10024); to a bill prohibiting a certain class of abortion procedures, an amendment prohibiting any or all abortion procedures (Mar. 20, 1997, p. 4425); to a bill addressing a class of imported goods (those produced by forced labor), an amendment addressing all imported goods from one specified country (Nov. 5, 1997, p. 24643); and to a general appropriation bill, an amendment in the form of a limitation on funds therein for activities unrelated to the functions of departments and agencies addressed by the bill (July 10, 2000, p. 13605).

To a bill limited in its applicability to certain departments and agencies of government, an amendment applicable to all departments and agencies

is not germane (Sept. 27, 1967, p. 26957). Thus, the following are not germane: to a bill establishing an office without regulatory authority in the Department of the Interior to manage biological information, an amendment addressing requirements of compensation for constitutional takings by other regulatory agencies (Oct. 26, 1993, p. 26076); to a bill amending an authority of an agency under an existing law, an amendment independently expressing the sense of Congress on regulatory agencies generally (May 14, 1992, p. 11287); to a proposition authorizing activities of certain government agencies for a temporary period, an amendment permanently changing existing law to cover a broader range of government activities (May 5, 1988, p. 9938); and to a joint resolution continuing funding within one executive department, neither an amendment addressing funding for other departments nor one addressing the compensation of Federal employees on a government-wide basis (Dec. 20, 1995, pp. 37886, 37888).

To a bill modifying an existing law as to one specific particular, an amendment relating to the terms of the law other than those dealt with by the bill is not germane (V, 5806–5808). Thus, the following are not germane: to a bill amending the war-time prohibition act in one particular, an amendment repealing that act (VIII, 2949); to a proposition temporarily suspending certain requirements of the Clean Air Act, an amendment temporarily suspending other requirements of all other environmental protection laws (Dec. 14, 1973, p. 41751); to an amendment striking from a bill one activity from those covered by the law being amended, a substitute striking out the entire subsection of the bill, thereby eliminating the applicability of existing law to a number of activities (Sept. 23, 1982, p. 24963); to a bill amending an existing law to authorize a program, an amendment restricting authorizations under that or any other act (Dec. 10, 1987, p. 34676); to a bill proposing a temporary change in law, an amendment making permanent changes in that law (Nov. 19, 1991, p. 32893); and to a bill amending an existing law in one particular, an amendment amending other laws and more comprehensive in scope (Nov. 19, 1993, pp. 30513, 30515, 30517).

A bill dealing with an individual proposition but rendered general in its scope by amendment is then subject to further amendment by propositions of the same class (VIII, 3003). While a specific proposition covering a defined class may not be amended by a proposition more general in scope, the Chair may consider all pending provisions being read for amendment in determining the generality of the class covered by that proposition (Jan. 30, 1986, p. 1051).

§ 938. Specific subjects germane to general propositions of the class.

A general subject may be amended by specific propositions of the same class (VIII, 3002, 3009, 3012; see also Deschler-Brown, ch. 28, § 11). Thus, the following have been held to be germane: To a bill admitting several territories into the Union, an amendment adding another territory (V, 5838); to a bill providing for the construction of buildings in each of two cities, an amendment providing for similar buildings

in several other cities (V, 5840); to a resolution embodying two distinct phases of international relationship, an amendment embodying a third (V, 5839); to an amendment prohibiting indirect assistance to several countries, an amendment to include additional countries within that prohibition (Aug. 3, 1978, p. 24244); to a portion of a bill providing two categories of economic assistance to foreign countries, an amendment adding a further specific category (Apr. 9, 1979, pp. 7755–57); to a bill bringing two new categories within the coverage of existing law, an amendment to include a third category of the same class (Nov. 27, 1967, p. 33769); to a proposition providing for prepayment of loans by those within a certain class of borrowers who meet a specified criterion, a proposed House amendment eliminating the criterion to broaden the applicability of the Senate amendment to additional borrowers within the same class (June 30, 1987, p. 18308); to an amendment addressing a range of criminal prohibitions, an amendment addressing another criminal prohibition within that range (Oct. 17, 1991, p. 26767); to a bill addressing violent crimes, an amendment addressing violent crimes involving the environment (May 7, 1996, p. 10344).

Where a bill seeks to accomplish a general purpose (support of arts and humanities) by diverse methods, an amendment that adds a specific method to accomplish that result (artist employment through National Endowment for the Arts) may be germane (Apr. 26, 1976, p. 11101; see also June 12, 1979, p. 14460). However, to a resolution authorizing a class of employees in the service of the House, an amendment providing for the employment of a specified individual was held not to be germane (V, 5848–5849). Other examples of amendments that have been held to be germane under this theory include: to a proposition relating in many diverse respects to the political rights of the people of the District of Columbia, an amendment conferring upon that electorate the additional right of electing a nonvoting Delegate to the Senate (Oct. 10, 1973, p. 33656); to a bill containing definitions of several of the terms used therein, an amendment modifying one of the definitions and adding another (Sept. 26, 1967, p. 26878); to a bill authorizing a broad program of research and development, an amendment directing specific emphasis in the administration of the program (Dec. 19, 1973, p. 42607); to a bill providing for investigation of relationships between environmental pollution and cancer, an amendment to investigate the impact of personal health habits, such as cigarette smoking, on that relationship (Sept. 15, 1976, pp. 30496–98); to a supplemental appropriation bill containing funds for several departments and agencies, an amendment in the form of a new chapter providing funds for capital outlays for subway construction in the District of Columbia (May 11, 1971, p. 14437); to a proposal authorizing military procurement, including purchase of food supplies, an amendment authorizing establishment that fiscal year of a military preparedness grain reserve, as a more specific authorization (July 20, 1982, pp. 17073, 17074, 17092, 17093).

§ 939. Amendments to bills amending existing law.

To a bill amending a general law on a specific point an amendment relating to the terms of the law rather than to those of the bill was ruled not to be germane (V, 5808; VIII, 2707, 2708); thus a bill amending several sections of one title of the United States Code does not necessarily bring the entire title under consideration so as to permit an amendment to any portion thereof (Oct. 11, 1967, p. 28649), and where a bill amends existing law in one narrow particular, an amendment proposing to modify such existing law in other particulars will generally be ruled out as not germane (Aug. 16, 1967, p. 22768; VIII, 2709, 2839, 3013, 3031; May 12, 1976, p. 13532). To a bill narrowly amending an anti-discrimination provision in the Education Amendments of 1972 only to clarify the definition of a discriminating entity subject to the statutory penalties (denial of Federal funding), amendments re-defining a class of discrimination (sex), expanding the definition of persons who are the subject of discrimination (to include the unborn), and deeming a new entity (Congress) to be a recipient of Federal assistance (a class not necessarily covered by the class covered by the bill), were ruled not to be germane (June 26, 1984, pp. 18847, 18857, 18861). But to the same bill, an amendment merely defining a word used in the bill was held germane (June 26, 1984, p. 18865). Unless a bill so extensively amends existing law as to open up the entire law to amendment, the germaneness of an amendment to the bill depends on its relationship to the subject of the bill and not to the entire law being amended (Oct. 28, 1975, p. 34031). But a bill amending several sections of an existing law may be sufficiently broad to permit amendments that are germane to other sections of that law not mentioned in the bill (Feb. 19, 1975, p. 3596; Sept. 14, 1978, p. 29487). To a bill continuing and reenacting an existing law amendments germane to the existing act sought to be continued have been held germane to the pending bill (VIII, 2940, 2941, 2950, 3028; Oct. 31, 1963, p. 20728; June 1, 1976, p. 16045); but where a bill merely extends an official's authority under existing law, an amendment permanently amending that law has been held not in order (Sept. 29, 1969, pp. 27341–43). Thus where a bill authorized appropriations to an agency for one year but did not amend the organic law by extending the existence of that agency, an amendment extending the life of another entity mentioned in the organic law was held not germane (May 20, 1976, p. 14912). An amendment making permanent changes in the law relating to organization of an agency is not germane to a title of a bill only authorizing appropriations for such agency for one fiscal year (Nov. 29, 1979, p. 34090); to a general appropriation bill providing funds for one fiscal year, an amendment changing a permanent appropriation in existing law and changing congressional procedures for consideration of that general appropriation bill in future years is more general in scope and in part within the jurisdiction of the Committee on Rules and therefore is not germane (June 29, 1987, p. 18083); and to a temporary authorization bill prescribing the use of an agency's funds for two years but not amending

permanent law, an amendment permanently changing the organic law governing that agency's operations is not germane (Dec. 2, 1982, p. 28537, concerning Sept. 28, 1982, p. 25465). However, to a bill authorizing appropriations for a department for one fiscal year, where the effect of the department's activities pursuant to that authorization may extend beyond such year, an amendment directing a specific use of those funds to perform an activity that may not be completed within the fiscal year was nevertheless germane, since limited to funds in the bill (Oct. 18, 1979, p. 28763). Similarly, to a one-year authorization bill containing diverse limitations and directions to the agency in question during such year, an amendment further directing the agency to obtain information from the private sector, and to make such information public during such year, was held germane (Oct. 18, 1979, pp. 28815–17). While an amendment making a permanent change in existing law has been held not germane to a bill proposing a temporary change in that law, where it is apparent that the fundamental purpose of the amendment is to have only temporary effect and to accomplish the same result as the bill it may be germane. Thus to a bill providing a temporary extension of existing authority, an amendment achieving the same purpose by providing a nominally permanent authority was held germane where both the bill and the amendment were based on reported economic projections under which either would achieve the same, necessarily temporary result by method of direct or indirect amendment to the same existing law (May 13, 1987, p. 12344). However, to a proposal continuing the availability of appropriated funds and also imposing diverse legislative conditions upon the availability of appropriations, an amendment directly and permanently changing existing law as to the eligibility of recipients of funds was held to be nongermane (Dec. 10, 1981, pp. 30536–38). To a bill extending an existing law in modified form, an amendment proposing further modification of that law may be germane (Apr. 23, 1969, p. 10067; Feb. 19, 1975, p. 3596). But to a bill amending a law in one particular, an amendment repealing the law is not germane (Jan. 14, 1964, p. 423). To a bill amending a general law in several particulars, an amendment providing for the repeal of the whole law was held germane (V, 5824), but the bill amending the law must so vitally affect the whole law as to bring the entire act under consideration before the Chair will hold an amendment repealing the law or amending any section of the law germane to the bill (VIII, 2944; Apr. 2, 1924, p. 5437). Where a bill repeals a provision of law, an amendment modifying that provision rather than repealing it may be germane (Oct. 30, 1969, p. 32466); but the modification must relate to the provision of law being repealed (July 28, 1965, p. 18636). Generally to a bill amending one existing law, an amendment changing the provisions of another law or prohibiting assistance under any other law is not germane (May 11, 1976, p. 13419; Aug. 12, 1992, p. 23238). To a bill amending the Bretton Woods Act in relation to the International Monetary Fund, an amendment prohibiting the alienation of gold to the IMF or to any other international organization or its agents was held not

germane (July 27, 1976, p. 24040). However, to a bill comprehensively amending several laws within the same class, an amendment further amending one of those laws on a subject within that class is germane (May 12, 1976, p. 13530); and to a bill authorizing funding for the intelligence community for one fiscal year and making diverse changes in permanent laws relating thereto, an amendment changing another permanent law to address accountability for intelligence activities was held germane (Oct. 17, 1990, p. 30171). To a title of a bill dealing with a number of unrelated authorities of the Secretary of Agriculture, an amendment amending another act within the jurisdiction of the Committee on Agriculture to require the adoption of a minimum standard for the contents of ice cream was held germane since restricted to the authority of the Secretary of Agriculture (July 22, 1977, pp. 24558–70). But to a section of a bill amending a section of the National Labor Relations Act dealing with procedural rules governing labor elections and organizations, an amendment changing the same section of law to require promulgation of rules defining certain conduct as an unfair labor practice was held not germane, where neither the pending section nor the bill itself addressed the subject of unfair labor practices dealt with in another section of the law (Oct. 5, 1977, p. 32507). To a bill narrowly amending one subsection of existing law dealing with one specific criminal activity, an amendment postponing the effective date of the entire section, affecting other criminal provisions and classes of persons as well as the one amended by the bill, or an amendment to another subsection of the law dealing with a related but separate prohibition was held not germane (May 16, 1979, pp. 11470–72), but to an amendment adding sundry punitive sections to the Federal criminal code, an amendment creating an exception to the prohibition of another such section was held germane (Oct. 17, 1991, p. 26767).

§ 940. Amendments imposing conditions, qualifications, and limitations.

Restrictions, qualifications, and limitations sought to be added by way of amendment must be germane to the provisions of the bill. Conditioning the availability of funds may be germane if the condition is related to the general purpose and within the scope of the pending proposition (Deschler-Brown, ch. 28, §§ 29–34). Thus, the following are germane: to a bill authorizing the funding of a variety of programs that satisfy several stated requirements in order to accomplish a general purpose, an amendment conditioning the availability of those funds upon implementation by their recipients of another program related to that general purpose (June 18, 1973, p. 20100); to a bill authorizing funds for military procurement and construction, an amendment declaring that none of the funds be used to carry out military operations in North Vietnam (Mar. 2, 1967, p. 5143); an amendment to an authorization bill that conditions the expenditure of funds covered by the bill by restricting their availability during months in which there is an increase in the public debt, as long as the amendment does not directly affect other provisions of law or impose contingencies textually predicated upon other unrelated actions

of Congress (Sept. 25, 1979, pp. 26150–52); an amendment proposing a conditional restriction on the availability of funds to carry out an activity, that merely requires observation of similar activities of another country, which similar conduct already constitutes the policy basis for the funding of that governmental activity (May 16, 1984, p. 12510); an amendment restricting the payment of Federal funds in a bill to States that enact certain laws relating to the activities being funded (July 28, 1993, p. 17403); an amendment that conditions the availability of funds authorized in the bill by adopting as a measure of their availability the expenditure during the fiscal year of a comparable percentage of funds authorized by other acts as long as the amendment does not directly affect the use of other funds (July 26, 1973, p. 26210); to a bill authorizing certain housing programs, an amendment restricting the amounts of direct spending in the bill to the levels set in the concurrent resolution on the budget as merely a measure of availability of funds in the bill and not a provision directly affecting the congressional budget process (June 11, 1987, p. 15540); to a proposition restricting the availability of funds to a certain category of recipients, an amendment further restricting the availability of funds to a subcategory of the same recipients (Sept. 25, 1979, pp. 26135–43); to a bill authorizing appropriations for an agency, an amendment prohibiting the use of funds for any purpose to which the funds may otherwise be applied (Nov. 5, 1981, p. 26716); an amendment that conditions the availability of funds covered by a bill by adopting as a measure of their availability the monthly increases in the public debt as long as the amendment does not directly affect other provisions of law or impose unrelated contingencies (Sept. 25, 1979, pp. 26150–52); to a bill authorizing defense assistance to a foreign nation, an amendment delaying the availability of that assistance until that nation's former ambassador testified before a House committee, which had been directed by the House to investigate gifts by that nation's representatives to influence Members and employees, as a contingency that sought to compel the furnishing of information related to efforts to induce defense assistance to that nation (Aug. 2, 1978, p. 23932); to a provision authorizing funds for a fiscal year, an amendment restricting the availability of funds appropriated pursuant thereto for a specified purpose until enactment of a subsequent law authorizing that purpose (July 21, 1983, p. 20198); to a bill authorizing humanitarian and evacuation assistance to war refugees, an amendment making such authorization contingent on a report to Congress on costs of a portion of the evacuation program (but not requiring implementation of any new program) (Apr. 23, 1975, p. 11529); and to an amendment precluding the availability of an authorization for part of a fiscal year and then permitting availability for the remainder of the year based upon a contingency, an amendment constituting a prohibition on the availability of the same funds for the entire fiscal year (May 16, 1984, p. 12567).

On the other hand, the following conditions on the availability of funds are not germane: an amendment conditioning the use of funds on the con-

duct of congressional hearings addressing an unrelated subject (July 22, 1994, p. 17613); to a proposition conditioning the availability of funds upon the enactment of an authorizing statute for the enforcing agency, a substitute conditioning the availability of some of those funds upon a prohibition of certain imports into the United States, a contingency unrelated to that to which offered (Nov. 7, 1985, p. 30984); to a bill authorizing funds for military assistance to certain foreign countries, an amendment to make the availability of those funds contingent upon efforts by those countries to control narcotic traffic to the United States, and to authorize the President to offer the assistance of Federal agencies for that purpose, where the subjects of narcotics and the accessibility of Federal agencies are not contained in the bill (June 17, 1971, p. 20589); to a bill authorizing funds for foreign assistance, an amendment placing restrictions on funds authorized or appropriated in prior years (Aug. 24, 1967, p. 24002); to an amendment changing a dollar amount in a bill, a substitute therefor not only changing the figure but also restricting the use of any funds in furtherance of a certain activity (June 7, 1972, p. 19920); to a proposal to restrict availability of agency funds for a year and amending the organic law as it relates to the internal functions thereof, an amendment further restricting funding but also applying with respect to the use of funds in the bill provisions of criminal and other laws not applicable thereto (Oct. 26, 1989, p. 26269); to a provision prohibiting aid to a certain country unless certain conditions were met, an amendment prohibiting aid to another country until that nation took certain acts, and referring to funds provided in other acts (Nov. 17, 1967, p. 32968); and an amendment conditioning the availability of funds to certain recipients based upon their compliance with Federal law not otherwise applicable to them and within the jurisdiction of other House committees (conditioning defense funds for procurement contracts with foreign contractors on their compliance with domestic law regarding discrimination) (June 16, 1983, p. 16060).

An amendment to a general appropriation bill in the form of a limitation on funds therein for activities unrelated to the functions of departments and agencies addressed by the bill is not germane (July 10, 2000, p. 13605).

An amendment delaying the availability of authorizations pending unrelated determinations involving agencies and committee jurisdictions not within the purview of the bill is also not germane (Feb. 7, 1973, p. 3708; July 8, 1981, p. 15010; July 9, 1981, p. 15218). Thus, the following are not germane: to a bill authorizing military assistance to Israel and funds for a U.N. emergency force in the Middle East, an amendment postponing the availability of funds to Israel until the President certifies the existence of a designated level of domestic energy supplies (Dec. 11, 1973, p. 40837); an amendment delaying the availability of an appropriation pending the enactment of certain revenue legislation (Oct. 25, 1979, p. 29639); to a bill authorizing radio broadcasting to Cuba, an amendment prohibiting the use of those funds until Congress has considered a constitutional amendment mandating a balanced budget (Aug. 10, 1982, p. 20250).

Similarly, while it may be in order on a general appropriation bill to delay the availability of certain funds therein if the contingency does not impose new duties on executive officials, the contingency must be related to the funds being withheld and cannot affect other funds in the bill not related to that factual situation (VII, 1596, 1600), may not be made applicable to a trust fund provided (IV, 4017), or may not be made applicable to money appropriated in other acts (IV, 3927; VII, 1495, 1597–1599). Thus, to a general appropriation bill containing funds not only for a former President but also for other departments and agencies, an amendment delaying the availability of all funds in the bill until the former President had made restitution of a designated amount of money is not germane (Oct. 2, 1974, p. 33620). On the other hand, to a general appropriation bill providing funds for the Department of Agriculture and including specific allocation of funds for pest control, an amendment was germane that prohibited the use of funds for use of pesticides prohibited by State or local law (May 26, 1969, p. 13753).

It is not in order to amend a bill to delay the effectiveness of the legislation pending an unrelated contingency (VIII, 3035, 3037). Thus the following are not germane: An amendment delaying the bill's effectiveness pending unrelated determinations involving agencies and committee jurisdictions not within the purview of the bill (Feb. 7, 1973, p. 3708; July 8, 1981, p. 15010; July 9, 1981, p. 15218); an amendment delaying the bill's effectiveness pending enactment of unrelated State legislation (June 29, 1967, p. 17921; July 28, 1993, p. 17401); to a bill proposing relief for women and children in Germany, an amendment delaying the effectiveness of such relief until a soldier's compensation act shall have been enacted (VIII, 3035); to a bill naming an airport, an amendment conditioning the naming on approval by an entity without jurisdiction over the administration of the airport (Feb. 4, 1998, p. 794). On the other hand, the following are germane: an amendment delaying operation of a proposed enactment pending an ascertainment of a fact when the fact to be ascertained relates to the subject matter of the bill (VIII, 3029; Dec. 15, 1982, pp. 30957–61); an amendment postponing the effective date of a title of a bill to a date certain (July 25, 1973, p. 25828); to a provision to become effective immediately, an amendment deferring the time at which it shall become effective, without involving affirmative legislation (VIII, 3030).

Where a proposition confers broad discretionary power on an executive official, an amendment is germane which directs that official to take certain actions in the exercise of the authority or proposes to limit such authority (VIII, 3022). Thus the following are germane: to an amendment in the nature of a substitute authorizing the Federal Energy Administrator to restrict exports of certain energy resources, an amendment directing that official to prohibit the exportation of petroleum products for use in Indochina military operations (Dec. 14, 1973, p. 41753); to a provision conferring Presidential authority to establish priorities among users of petroleum products and requiring priority to education and transportation users, an

amendment restricting such regulatory authority by requiring that petroleum products allocated for public school transportation be used only between the student's home and the closest school (Dec. 13, 1973, pp. 41267–69); to a bill extending the authorities of one government agency, including requirements for consultation with several other agencies, an amendment requiring that agency to perform a function based upon an analysis furnished by yet another agency, as an additional limitation on the authority of the agency being extended which did not separately mandate the performance of an unrelated function by another entity (July 27, 1978, p. 23107); to a proposition authorizing a program to be undertaken, a substitute providing for a study to determine the feasibility of undertaking the same type of program, as a more limited approach involving the same agency (June 26, 1985, pp. 17453, 17458, 17460) (in effect overruling VIII, 2989); and to a bill limiting an official's authority to construe legal authorities transferred to him in the bill, an amendment further restricting his authority to construe under any circumstances certain other laws to be administered by him (as an additional, although more restrictive, curtailment of existing authorities transferred by the bill) (June 11, 1979, pp. 14226–38).

An amendment providing a privileged procedure for expedited review of an agency's regulations is not germane where the bill does not contain such procedures (Aug. 13, 1982, pp. 20969, 20975–78). On the other hand to a bill authorizing an agency to undertake certain activities, an amendment allowing Congress to disapprove regulations issued pursuant thereto if the disapproval mechanism does not amend the rules or procedures of the House is germane (May 4, 1976, p. 12348); and to a bill directing the furnishing of certain intelligence information to the House without amending any House procedure, an amendment imposing relevant conditions of security on the handling of such information in committee (also without amending any House procedure) for the period covered by the bill is also germane (June 11, 1991, p. 14204).

It is germane to condition or restrict assistance to a particular class of recipient covered by the underlying measure. Thus, the following are germane: to a bill providing aid to shipping, an amendment to limit such aid to ships equipped with saving devices (VIII, 3027); to a bill authorizing the insurance of vessels, an amendment denying such insurance to vessels charging exorbitant rates (VIII, 3023); to a proposition denying benefits to recipients failing to meet a certain qualification, a substitute denying the same benefits to some recipients but excepting others (July 28, 1982, pp. 18355–58, 18361). While a bill relating to benefits based on indemnification of liability arising out of an activity does not ordinarily admit as germane amendments relating to regulation of that activity, an amendment conditioning benefits upon agreement by its recipient to be governed by certain safety regulations may be germane if related to the activity giving rise to the liability (July 29, 1987, p. 21448). On the other hand, it is not germane to condition or restrict assistance to a particular class

of recipient upon a related contingency such as action or inaction by another class of recipient or agent not covered by the bill (Mar. 5, 1986, p. 3613).

To a bill not only granting consent of Congress to an interstate compact but also imposing conditions on the granting of that consent, an amendment stating an additional related condition to that consent and not directly changing the compact may be germane (Oct. 7, 1997, p. 21475). To a bill regulating immigration, an amendment providing that the operation of the act should not conflict with an agreement with Japan is not germane (VIII, 3050).

Amendments providing exceptions or exemptions must also be within the scope of the proposition. Thus, to a bill requiring that a certain percentage of autos sold in the United States be manufactured domestically, and imposing an import restriction for autos on persons violating that requirement, an amendment waiving those restrictions with respect to a foreign nation where the President has issued a proclamation that that nation is not imposing unfair import restrictions on any United States product was held not germane, dealing with overall trade issues rather than domestic content requirement for autos sold in the United States (Nov. 2, 1983, p. 30776). However, an amendment to the same bill prohibiting its implementation if resulting in United States violation to resolve conflicts under those agreements, was held germane since the bill already comprehensively addressed those subject matters by disclaiming any purpose to amend international agreements or to confer court jurisdiction relative thereto, and by conferring court jurisdiction over adjudication of penalties assessed under the bill (Nov. 2, 1983, p. 30546). Similarly, the following are germane: to a bill providing for the deportation of aliens, an amendment to exempt a portion of such aliens from deportation (VIII, 3029); to a bill prohibiting the issuance of injunctions by the courts in labor disputes, an amendment to except all labor disputes affecting public utilities (VIII, 3024).

Readings

§941. Reading, engrossment, and passage of bills.

8. Bills and joint resolutions are subject to readings as follows:

(a) A first reading is in full when the bill or joint resolution is first considered.

(b) A second reading occurs only when the bill or joint resolution is read for amendment in a Committee of the Whole House on the

state of the Union under clause 5 of rule XVIII.

(c) A third reading precedes passage when the Speaker states the question: "Shall the bill [or joint resolution] be engrossed [when applicable] and read a third time?" If that question is decided in the affirmative, then the bill or joint resolution shall be read the final time by title and then the question shall be put on its passage.

This provision (formerly clause 1 of rule XXI) was adopted in 1789, amended in 1794, 1880 (IV, 3391), and on Jan. 4, 1965 (H. Res. 8, 89th Cong., p. ——). This latest amendment eliminated the provision which permitted a Member to demand the reading in full of the engrossed copy of a House bill. Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1 of rule XXI. The recodification also clarified paragraphs (a) and (b) to reflect the modern practice of first and second readings (H. Res. 5, Jan. 6, 1999, p. 47).

§ 942. First and second readings.

Formerly a bill was read for the first time by title at the time of its introduction, but since 1890 all bills have been introduced by filing them with the Clerk, thus rendering a reading by title impossible at that time (IV, 3391). But the titles of all bills introduced are printed in the Journal and Record, thereby carrying out the real purpose of the rule.

Under paragraph (a), the first reading of a bill is in full and occurs when a bill is called up in the House (IV, 3391). The initial step of consideration in the Committee of the Whole is sometimes referred to as the "first reading." Under clause 5 of rule XVIII that reading is in full and occurs before general debate commences. However, it customarily is dispensed with by unanimous consent or special rule, although a motion to dispense with the first reading is not in order (VIII, 2335, 2436). The Speaker may object to a request for unanimous consent to dispense with the first reading (IV, 3390; VII, 1054).

Under paragraph (b), the second reading of a bill comprises its reading for amendment in the Committee of the Whole (Apr. 28, 1977, p. 12635).

§ 943. The third reading after engrossment.

The right to demand the reading in full of the engrossed copy of a bill formerly guaranteed by the rule existed only immediately after it had passed to be engrossed and before it had been read a third time by title (IV, 3400, 3403, 3404; VII, 1061); or before the yeas and nays had been ordered on passage (IV, 3402). The right to demand the reading in full caused the bill to be laid aside until engrossed even though the previous

question had been ordered (IV, 3395–3399; VII, 1062). A privileged motion may not intervene before the third reading (IV, 3405), and the question on engrossment and third reading is not subject to a demand for division of the question (Aug. 3, 1989, p. 18544). A vote on passage must first be reconsidered to remedy the omission to read a bill a third time (IV, 3406). Senate bills are not engrossed in the House; but are ordered to a third reading. The demand for the reading of the engrossed copy of a Senate bill cannot be made in the House (VIII, 2426).

§944. Voting on bills.

A bill in the House (as distinguished from the Committee of the Whole) is amended pending the engrossment and third reading (V, 5781; VI, 1051, 1052). The question on engrossment and third reading being decided in the negative the bill is rejected (IV, 3420, 3421). A bill must be considered and voted on by itself (IV, 3408). Where the two Houses pass similar but distinct bills on the same subject it is necessary that one or the other House act again on the subject (IV, 3386). The requirement of a two-thirds vote for proposed constitutional amendments has been construed in the later practice to apply only to the vote on the final passage (V, 7029, 7030; VIII, 3504). A bill having been rejected by the House, a similar but not identical bill on the same subject was afterwards held to be in order (IV, 3384).

RULE XVII

DECORUM AND DEBATE

Decorum

§945. Obtaining the floor for debate; and relevancy and decorum therein.

1. (a) A Member, Delegate, or Resident Commissioner who desires to speak or deliver a matter to the House shall rise and respectfully address himself to "Mr. Speaker" and, on being recognized, may address the House from any place on the floor. When invited by the Chair, a Member, Delegate, or Resident Commissioner may speak from the Clerk's desk.

(b) Remarks in debate (which may include references to the Senate or its Members) shall be confined to the question under debate, avoiding personality.

This clause (formerly clause 1 of rule XIV) was adopted in 1880, but was made up, in its main provisions, from older rules, which dated from 1789 and 1811 (V, 4979). A rule of comity prohibiting most references in debate to the Senate was first enunciated in Jefferson's Manual and was strictly enforced in the House through the 108th Congress (albeit with certain exceptions adopted in the 100th and 101st Congresses and were outlined in paragraph (b)) (§ 371, *supra*; H. Res. 5, Jan. 6, 1987, p. 6; H. Res. 5, Jan. 3, 1989, p. 72). In the 109th Congress the exceptions were deleted and the parenthetical in paragraph (b) was inserted (sec. 2(g), H. Res. 5, Jan. 4, 2005, p. ——). The rule continues to require Members to avoid personality, and the Chair remains under a duty to call to order a Member who violates the rule. Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1 of rule XIV (H. Res. 5, Jan. 6, 1999, p. 47). This clause, and rulings of the Chair with respect to references in debate to the Senate, are discussed in §§ 361, 371, *supra*.

The Speaker, who has a responsibility under rule I to maintain and enforce decorum in debate, and the Chairman of the Committee of the Whole, who enforces decorum in debate under rule XVIII, have reminded and advised Members of the following: (1) clause 1 requires Members seeking recognition to rise and to address themselves to the question under debate, avoiding personality; (2) Members should address their remarks to the Chair only and not to other entities such as the press or the television audience, and the Chair enforces this rule on its own initiative (see, *e.g.*, Nov. 8, 1979, p. 31519; Sept. 29, 1983, p. 26501; Dec. 17, 1987, p. 36139); (3) Members should not refer to or address any occupant of the galleries; (4) Members should refer to other Members in debate only in the third person, by State designation (Speaker O'Neill, June 14, 1978, p. 17615; Oct. 2, 1984, p. 28520; Mar. 7, 1985, p. 5028); (5) Members should refrain from using profanity or vulgarity in debate (Mar. 5, 1991, p. 5036; Feb. 18, 1993, p. 2973; Nov. 17, 1995, p. 33744; July 23, 1998, p. 17032; Oct. 11, 2000, p. 22189; Oct. 2, 2003, p. ——; Mar. 10, 2004, p. ——); (6) the Chair may interrupt a Member engaging in personalities with respect to another Member of the House, as the Chair does with respect to such references to the Senate or the President (Jan. 4, 1995, p. 551); (7) Members should refrain from discussing the President's personal character (May 10, 1994, p. 9697); (8) Members should heed the gavel (*e.g.*, Mar. 16, 1988, p. 4081; May 22, 2003, p. ——; Oct. 2, 2003, p. ——; May 19, 2004, p. ——), and remarks uttered in debate while not under recognition do not appear in the Congressional Record (*e.g.,* May 22, 2003, p. ——; Oct. 2, 2003, p. ——; May 19, 2004, p. ——); (9) Members may not use audio devices during debate (May 24, 2005, p. ——). The Speaker has deplored the tendency to address remarks directly to the President (or others not in the Chamber) in the second person, and cautions Members on his own initiative (see, *e.g.*, Oct. 16, 1989, p. 24715; Oct. 17, 1989, p. 24764; Jan. 24, 1990, p. 426; Oct. 9, 1991, p. 25999). Even when referring in debate

to the Speaker, himself, a Member directs his remarks to the occupant of the Chair and addresses him as "Mr. Speaker" pursuant to this clause (Nov. 1, 1983, p. 30267).

Members should refrain from speaking disrespectfully of the Speaker or arraigning the personal conduct of the Speaker, and under the precedents the sanctions for such violations transcend the ordinary requirements for timeliness of challenges (II, 1248; Jan. 4, 1995, p. 551; Jan. 18, 1995, p. 1441; Jan. 19, 1995, p. 1599). Engaging in personalities with respect to the Speaker's conduct is not in order even though possibly relevant to a pending resolution granting him certain authority (Sept. 24, 1996, p. 24485).

This clause also has been interpreted to proscribe the wearing of badges by Members to communicate a message, since Members must rise and address the Speaker to deliver any matter to the House (Speaker O'Neill, Apr. 15, 1986, p. 7525; Feb. 22, 1995, p. 5435; Mar. 29, 1995, p. 9662; Oct. 19, 1995, pp. 28522, 28540, 28646; Nov. 17, 1995, p. 5435; Mar. 7, 1996, p. 4083; Sept. 26, 1996, p. 25117; July 24, 1998, p. 17157; Sept. 28, 2000, p. 19940; Sept. 22, 2004, p. ——). A Member's comportment may constitute a breach of decorum even though the content of that Member's speech is not, itself, unparliamentary (July 29, 1994, p. 18609). Under this standard the Chair may deny recognition to a Member who has engaged in unparliamentary debate and ignored repeated admonitions by the Chair to proceed in order, subject to the will of the House on the question of his proceeding in order (Sept. 18, 1996, p. 23535).

For further discussion of personalities in debate with respect to references to the official conduct of a Member, see §§ 361–363, *supra*; with respect to references to the President, see § 370, *supra*; and with respect to references to the Senate, see §§ 371–374, *supra*.

Aside from "special-order," "morning-hour," or "one-minute" debate, where no question is pending and recognition is by unanimous consent or leadership listings, it is a general rule that a motion must be made before a Member may proceed in debate (V, 4984, 4985), and this motion may be required to be reduced to writing (V, 4986). A motion must also be stated by the Speaker or read by the Clerk before debate may begin (V, 4982, 4983, 5304). The withdrawal of a motion precludes further debate on it (V, 4989). But sometimes when a communication or a report has been before the House it has been debated before any specific motion has been made in relation to it (V, 4987, 4988). In a few cases, such as conference reports and reports from the Committee of the Whole, the motion to agree is considered as pending without being offered from the floor (IV, 4896; V, 6517).

In presenting a question of personal privilege the Member is not required in the first instance to offer a motion or offer a resolution, but such is not the rule in presenting a case involving the privileges of the House (III, 2546, 2547; VI, 565, 566, 580; see § 708, *supra*). Personal explanations merely are made by unanimous consent (V, 5065).

§ 946. Interruption of a Member in debate.

A Member having the floor may not be taken off his feet by an ordinary motion, even the highly privileged motion to adjourn (V, 5369, 5370; VIII, 2646), or the motion to table (Mar. 18, 1992, p. 6022). He may not be deprived of the floor by a parliamentary inquiry (VIII, 2455–2458), a question of privilege (V, 5002; VIII, 2459), a motion that the Committee rise (VIII, 2325), or a demand for the previous question (VIII, 2609; Mar. 18, 1992, p. 6022), but he may be interrupted for a conference report (V, 6451; VIII, 3294). It is a custom also for the Speaker to request a Member to yield for the reception of a message. A Member may yield the floor for a motion to adjourn or that the Committee of the Whole rise without losing his right to continue when the subject is again continued (V, 5009–5013), but where the House has by resolution vested control of general debate in the Committee of the Whole in designated Members, their control of general debate may not be abrogated by another Member moving to rise, unless they yield for that purpose (May 25, 1967, p. 14121; June 10, 1999, p. 12471). A Member may also resume his seat while a paper is being read in his time without losing his right to the floor (V, 5015). A Member who, having the floor, moved the previous question was permitted to resume the floor on withdrawing the motion (V, 5474). But a Member may not yield to another Member to offer an amendment without losing the floor (V, 5021, 5030, 5031; VIII, 2476), and a Member may not offer an amendment in time secured for debate only (VIII, 2474), or request unanimous consent to offer an amendment unless yielded to for that purpose by the Member controlling the floor (Sept. 24, 1986, p. 25589). A Member recognized under the five-minute rule in the Committee of the Whole may not yield to another Member to offer an amendment, as it is within the power of the Chair to recognize each Member to offer amendments (Apr. 19, 1973, p. 13240; Dec. 12, 1973, p. 41171). A Member desiring to interrupt another in debate should address the Chair for permission of the Member speaking (V, 5006; VI, 193), but the latter may exercise his own discretion as to whether or not he will yield (V, 5007, 5008; VI, 193; VIII, 2463, 2465). It is not in order to disrupt a Member's remarks in debate by repeatedly interrupting to ask whether he will yield after he has declined to do so (Apr. 9, 1992, p. 9040; Nov. 13, 1997, p. 26533). Where a Member interrupts another during debate without being yielded to or otherwise recognized (as on a point of order), his remarks are not printed in the Record (Speaker O'Neill, Feb. 7, 1985, p. 2229; July 21, 1993, p. 16545; July 29, 1994, p. 18609). Members should not engage in disruption while another is speaking (Dec. 20, 1995, p. 37878; June 27, 1996, p. 15915).

§ 947. Speaker in debate.

The Speaker may of right speak from the Chair on questions of order and be first heard (II, 1367), but with this exception he may speak from the Chair only by leave of the House and on questions of fact (II, 1367–1372). On occasions comparatively rare Speakers have called Members to the Chair and participated in debate on questions of order or matters relating their own conduct

or rights, usually without asking consent of the House (II, 1367, 1368, 1371; III, 1950; V, 6097). In more recent years, Speakers have frequently entered into debate from the floor on substantive legislative issues before the House for decision, and the right to participate in debate in the Committee of the Whole is without question (see, *e.g.*, Apr. 30, 1987, p. 10811).

§ 948. Member must confine himself to the subject.

It has always been held, and generally quite strictly, that in the House the Member must confine himself to the subject under debate (V, 5043–5048; VI, 576; VIII, 2481, 2534). The Chair normally waits for the question of relevancy of debate to be raised and does not take initiative (Sept. 27, 1990, p. 26226; Mar. 23, 1995, p. 8986; Nov. 14, 1995, pp. 32354–57, 32374; Dec. 15, 1995, p. 37118; Mar. 12, 1996, p. 4149; Mar. 20, 2002, p. ——).

During debate on a bill, a Member under recognition must confine his remarks to the pending legislation; that is, he must not dwell on another measure not before the House (Nov. 4, 1999, p. 28524), rather he must maintain a constant nexus between debate and the subject of the bill (Nov. 14, 1995, pp. 32354–57; Mar. 12, 1996, p. 4450; Mar. 20, 2002, p. ——; June 3, 2003, p. ——, p. ——, p. ——). Debate on a motion to amend must be confined to the amendment, and may neither include the general merits of the bill (V, 5049–5051), nor range to the merits of a proposition not included in the underlying resolution (Jan. 31, 1995, p. 3032). Similarly, debate on a motion to recommit with instructions should be confined to the subject of the motion rather than dwelling on the general merits of the bill (Mar. 7, 1996, p. 4092). However, the Chair has accorded Members latitude in debating a series of amendments in the nature of a substitute to a concurrent resolution on the budget (Mar. 25, 1999, p. 5734). On a motion to suspend the rules, debate is confined to the object of the motion and may not range to the merits of a bill not scheduled for such consideration (Nov. 23, 1991, p. 34189; June 11, 2002, p. ——). Debate on a special order providing for the consideration of a bill may range to the merits of the bill to be made in order (Sept. 26, 1989, p. 21532; Oct. 16, 1990, p. 29668; Oct. 1, 1991, p. 24836), because the question of consideration of the bill is involved, but should not range to the merits of a measure not to be considered under that special order (Sept. 27, 1990, p. 26226; July 25, 1995, p. 20323; Sept. 20, 1995, p. 15838; Dec. 15, 1995, p. 37118; May 1, 1996, p. 9888; May 8, 1996, p. 10511; May 15, 1996, p. 1131; Mar. 13, 1997, p. 3833; Mar. 20, 2002, p. ——) or to the Rules of the House in general (July 9, 2004, p. —— (sustained by tabling of appeal)). Debate on a resolution providing authorities to expedite the consideration of end-of-session legislation may neither range to the merits of a measure that might or might not be considered under such authorities nor engage in personalities with respect to the official conduct of the Speaker, even as asserted to relate to the question of granting the authorities proposed (Sept. 24, 1996, pp. 24485, 24486). If a unanimous-consent request for a Member to address the House for one hour specifies the subject of the address,

the occupant of the Chair during that speech may enforce the rule of relevancy in debate by requiring that the remarks be confined to the subject so specified (Jan. 23, 1984, p. 93). Debate on a question of personal privilege must be confined to the statements or issue which gave rise to the question of privilege (V, 5075–5077; VI, 576, 608; VIII, 2448, 2481; May 31, 1984, p. 14623). Debate on a privileged resolution recommending disciplinary action against a Member, while it may include comparisons with other such actions taken by or reported to the House for purposes of measuring severity of punishment, may not extend to the conduct of another sitting Member not the subject of a committee report (Dec. 18, 1987, p. 36271). The question whether a Member should be relieved from committee service is debatable only within very narrow limits (IV, 4510; June 16, 1975, p. 19056). Debate on a resolution electing a Member to a committee is confined to the election of that Member and should not extend to that committee's agenda (July 10, 1995, p. 18258).

While the Speakers have entertained appeals from their decisions as to irrelevancy, they have held that such appeals were not debatable (V, 5056–5063).

Under prior practice in Committee of the Whole, a Member did not have to confine himself to the subject during general debate (V, 5233–5238; VIII, 2590; June 28, 1974, p. 21743); but under modern practice a special order providing for consideration of a measure in the Committee of the Whole typically does require such relevance in debate. All five-minute debate in Committee of the Whole is confined to the subject (V, 5240–5256), even on a pro forma amendment (VIII, 2591), in which case debate must relate to an issue in the pending portion of the bill (VIII, 2592, 2593); thus, where a general provisions title is pending debate may relate to any agency funded by the bill (June 13, 1991, p. 14692).

Recognition

§ 949. Speaker's power of recognition.

2. When two or more Members, Delegates, or the Resident Commissioner rise at once, the Speaker shall name the Member, Delegate, or Resident Commissioner who is first to speak. * * *

This provision was adopted in 1789 (V, 4978). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2 of rule XIV (H. Res. 5, Jan. 6, 1999, p. 47).

In the early history of the House, when business proceeded on presentation by individual Members, the Speaker recognized the Member who arose first; and in case of doubt there was an appeal from his recognition (II, 1429–1434). But as the membership and business of the House increased it became necessary to establish and adhere to a fixed order of business, and recognitions, instead of pertaining to the individual Member,

necessarily came to pertain to the bill or other business which would be before the House under the rule regulating the order of business. Hence the necessity that the Speaker should not be compelled to heed the claims of Members as individuals was expressed in 1879 in a report from the Committee on Rules, which declared that "in the nature of the case discretion must be lodged with the presiding officer" (II, 1424). And in 1881 the Speaker declined to entertain an appeal from his decision on a question of recognition (II, 1425–1428), establishing thereby a practice which continues (VI, 292; VIII, 2429, 2646, 2762). It also has been determined that a Member may not invoke clause 6 of rule XIV (formerly rule XXV) (§ 884, *supra*), providing that questions relating to the priority of business shall be decided by a majority without debate, to inhibit the Speaker's power of recognition under this clause (Speaker Albert, July 31, 1975, p. 26249).

§ 950. One-minute and special-order speeches.

Recognition for one-minute speeches by unanimous consent and the order of recognition are entirely within the discretion of the Speaker (Nov. 15, 1983, p. 32657; Mar. 7, 2001, p. 3027). When the House has a heavy legislative schedule, the Speaker may refuse to recognize Members for that purpose until the completion of legislative business (Deschler-Brown, ch. 29, § 73; July 24, 1980, p. 19386). It is not in order to raise as a question of the privileges of the House a resolution directing the Speaker to recognize for such speeches, since a question of privilege cannot amend or interpret the Rules of the House (July 25, 1980, pp. 19762–64). The modern practice of limiting recognition before legislative business to one minute began August 2, 1937 (p. 8004) and was reiterated by Speaker Rayburn on March 6, 1945 (Deschler, ch. 21, § 6.1).

Since the 98th Congress the Speaker has followed announced policies of (1) alternating recognition for one-minute speeches and special-order speeches between majority and minority Members and (2) recognizing for special-order speeches of five minutes or less before longer speeches (Speaker O'Neill, Aug. 8, 1984, p. 22963; Jan. 4, 1995, p. 551). In the 101st Congress, the Chair continued the practice of alternating recognition for one-minute speeches but began a practice of recognizing Members suggested by their party leadership before others in the well (Apr. 19, 1990, p. 7406). From August 8, 1984, through February 23, 1994, the Speaker also followed an announced policy of recognizing Members of the same party within a given category in the order in which their unanimous-consent requests for special orders were granted (Speaker O'Neill, Aug. 8, 1984, p. 22963; Jan. 5, 1993, p. 106). However, on February 24, 1994, the Speaker announced a new policy governing recognition for special-order speeches. With respect to recognition for five-minute special orders, the Speaker announced that the Chair would recognize for speeches of five minutes or less first, before longer speeches, and that Members may not enter requests for five-minute special orders earlier than one week in advance. With respect to recognition for longer special orders, the Speaker announced a policy of recognition that would depend not on orders by unan-

imous consent but, rather, on lists submitted by the respective party Leaders. This policy, the result of bipartisan negotiations, was a departure from the modern practice as described in Deschler, ch. 21, § 7.1 (special-order speeches following legislative business are enabled only by unanimous consent). Under the Speaker's policy: (1) recognition does not extend beyond midnight; (2) recognition for longer speeches occurs after five-minute speeches and is limited (except on Tuesdays) to four hours equally divided between the majority and minority; (3) the first hour for each party is reserved to its respective Leader or his designees; (4) time within each party is allotted in accord with a list submitted to the Chair by the respective Leader; (5) recognition for the first hour alternates between the parties from day to day; (6) the respective Leaders may establish additional guidelines for entering requests; and (7) a Member recognized for a five-minute special order may not be recognized for a longer special order (Feb. 11, 1994, p. 2244; May 23, 1994, p. 1154; June 10, 1994, p. 12684; Jan. 4, 1995, p. 551; Feb. 16, 1995, p. 5096; May 12, 1995, p. 12765; Jan. 21, 1997, p. 460; Jan. 31, 2001, p. 1078).

While the Chair's calculation of time consumed under one-minute speeches is not subject to challenge, the Chair endeavors to recognize majority and then minority Members by allocating time in a nonpartisan manner (Aug. 4, 1982, p. 19319). Before legislative business, the Speaker will traditionally recognize a Member only once by unanimous consent for a one-minute speech, and will not entertain a second request (May 1, 1985, p. 9995). The Chair will not entertain a unanimous-consent request to extend a five-minute special order (Mar. 7, 1995, p. 7152) or to extend a special order beyond midnight (Oct. 7, 1998, p. 24394). The Chair will recognize for subdivisions of the first hour reserved for special orders only on designations (and reallocations) by the leadership concerned (Oct. 2, 1998, p. 23151; Dec. 12, 2001, p. ——). A Member who is recognized to control time during special orders may yield to colleagues for such amounts of time as the Member may deem appropriate but may not yield blocks of time to be enforced by the Chair. Members regulate the duration of their yielding by reclaiming the time when appropriate (Jan. 31, 2001, p. 1078).

§ 951. Morning-hour debates.

Beginning in the second session of the 103d Congress, the House has by unanimous consent agreed (without prejudice to the Speaker's ultimate power of recognition under this rule) to convene early on Mondays and Tuesdays for morning-hour debate (Feb. 11, 1994, p. 2244; May 23, 1994, p. 11459; June 8, 1994, p. 12305; June 10, 1994, p. 12684; Jan. 4, 1995, p. 551; Feb. 16, 1995, p. 5096; Jan. 21, 1997, p. 460; Jan. 19, 1999, p. 602; Jan. 3, 2001, p. 38; Jan. 23, 2002, p. ——; Jan. 7, 2003, p. ——; Jan. 20, 2004, p. ——; Jan. 4, 2005, p. ——). On May 12, 1995, the House extended and modified the above order to accommodate earlier convening times after mid-May of each year. The modified order changes morning-hour debates on Tuesdays after mid-May of each year as follows: (1) the House convenes one

hour early (rather than 90 minutes); (2) time for debate is limited to 25 minutes for each party (rather than 30 minutes); and (3) in no event is morning-hour debate to continue beyond 10 minutes before the House is to convene (May 12, 1995, p. 12765). The House extended such order in a modified form to accommodate early convening times on any Monday or Tuesday (Jan. 20, 2004, p. ——; Jan. 4, 2005, p. ——). The above-cited orders of the House also: (1) postpone the Prayer, approval of the Journal, and the Pledge of Allegiance during morning-hour debates; and (2) require the Chair to recognize Members for not more than five minutes each, alternating between the majority and minority parties in accord with lists supplied by their respective Leaders. Under the customary order of the House establishing morning-hour debate, the Chair does not entertain a unanimous-consent request to extend a five-minute period of recognition (Apr. 28, 1998, p. 6924; Nov. 12, 2002, p. ——). During morning-hour debate it is not in order to request that a name be removed from a list of cosponsors of a bill (Apr. 26, 1994, p. 8544).

§ 952. "Oxford"-style debates.

In the 103d Congress the House agreed by unanimous consent to conduct at a time designated by the Speaker structured debate on a mutually agreeable topic announced by the Speaker, with four participants from each party in a format announced by the Speaker (Feb. 11, 1994, p. 2244; Mar. 11, 1994, p. 4772; May 23, 1994, p. 11459; June 8, 1994, p. 12305; June 10, 1994, p. 12648). Pursuant to that authority the House conducted three "Oxford"-style debates (Mar. 16, 1994, p. 5088; May 4, 1994, p. 9300; July 20, 1994, p. 17245). As a precursor to those structured debates, special-order time was used for a "Lincoln-Douglas"-style debate involving five Members, with one Member acting as "moderator" by controlling the hour under this clause (Nov. 3, 1993, p. 27312).

§ 953. Speaker governed by usage in recognitions.

Although there is no appeal from the Speaker's recognition, he is not a free agent in determining who is to have the floor. The practice of the House establishes rules from which he should not depart. For example, on February 24, 1994, the Speaker announced a policy with respect to recognition for special-order speeches that departed from the established practice of recognition by unanimous consent (Deschler, ch. 21, § 7.1; see § 26, *supra*). The Speaker's new policy was the product of bipartisan negotiations, which justified the departure from the then-established practice. The policy became the new established practice of the House, from which the Speaker should not depart except by unanimous consent. When the order of business brings before the House a certain bill he must first recognize, for motions for its disposition, the Member who represents the committee which has reported it (II, 1447; VI, 306, 514). This is not necessarily the chairman of the committee, for a chairman who, in committee, has opposed the bill, must yield the prior recognition to a member of his committee who has favored the bill (II, 1449). Usually, however, the chairman has charge of the bill and is entitled at all stages to prior recognition for

allowable motions intended to expedite it (II, 1452, 1457; VI, 296, 300). This principle does not, however, apply to the Chairman of the Committee of the Whole (II, 1453). Once the proponent of a pending motion has been recognized for debate thereon, a unanimous-consent request to modify the motion may be entertained only if the proponent yields for that purpose (Jan. 5, 1996, p. 348). The Member who originally introduces the bill which a committee reports has no claims to recognition as opposed to the claims of the members of the committee, but in cases where a proposition is brought directly before the House by a Member the mover is entitled to prior recognition for motions and debate (II, 1446, 1454; VI, 302–305, 417; VIII, 2454, 3231). This principle applies to the makers of certain motions. Thus, the Member on whose motion the enacting clause of a bill is stricken in Committee of the Whole is entitled to prior recognition when the bill is reported to the House (V, 5337; VIII, 2629). Where a Member raised an objection in a joint session to count the electoral vote, and the Houses separated to consider the objection, the Chair first recognized the Member who raised the objection (III, 1956; Jan. 6, 2005, p. ——) or a co-signer of the objection (Jan. 6, 1969, pp. 145–7). But a Member may not, by offering a debatable motion of higher privilege than the pending motion, deprive the Member in charge of the bill of possession of the floor for debate (II, 1460–1463; VI, 290, 297–299; VIII, 2454, 3193, 3197, 3259). The Member in charge of the bill and having the floor may demand the previous question, although another Member may propose to offer a motion of higher privilege (VIII, 2684); but the motion of higher privilege must be put before the previous question (V, 5480; VIII, 2684). The Member who has been recognized to call up a measure in the House has priority of recognition to move the previous question thereon, even over the chairman of the committee reporting that measure (Oct. 1, 1986, p. 27468). The fact that a Member has the floor on one matter does not necessarily entitle him to prior recognition on a motion relating to another matter (II, 1464). It is because the Speaker is governed by these usages that he often asks, when a Member seeks recognition, "For what purpose does the gentleman rise?". By this question he determines whether the Member proposes business or a motion which is entitled to precedence and he may deny recognition (VI, 289–291, 293; Aug. 13, 1982, pp. 20969, 20975–78; Speaker Wright, Feb. 17, 1988, p. 1583; Feb. 27, 1992, p. 3656). For example, a Member's mere revelation that he seeks to offer a motion to adjourn does not suffice to make that motion "pending," and thus the Chair remains able to declare a short recess under clause 12 of rule I (Oct. 28, 1997, p. 23524; June 25, 2003, p. ——). There is no appeal from such denial of recognition (II, 1425; VI, 292; VIII, 2429, 2646, 2762; Feb. 27, 1992, p. 3656). Recognition for parliamentary inquiry lies in the discretion of the Chair (VI, 541), who may take a parliamentary inquiry under advisement (VIII, 2174), especially where not related to the pending proceedings (Apr. 7, 1992, p. 8273).

The Chair may follow a tradition of the House to allow the highest ranking elected leaders (Speaker, Majority Leader, and Minority Leader) addi-

tional time to make their remarks in debate (Dec. 18, 1998, p. 27834; May 18, 2004, p. ——).

§ 954. Loss of right to recognition by Member in charge.

When an essential motion made by the Member in charge of a bill is decided adversely, the right to prior recognition passes to the Member who the Speaker perceives to be leading the opposition to the motion (II, 1465–1468; VI, 308). Under this principle control of a measure passes when the House disagrees to a recommendation of the committee reporting the measure (II, 1469–1472) or when the Committee of the Whole reports the measure adversely (IV, 4897; VIII, 2430). Similarly, this principle applies when a motion for the previous question is rejected (VI, 308). However, a Member who led the opposition to ordering the previous question may be preempted by a motion of higher precedence (Aug. 13, 1982, pp. 20969, 20975–78). On the other hand, the mere defeat of an amendment proposed by the Member in charge does not cause the right to prior recognition to pass to an opponent (II, 1478, 1479).

Rejection of a conference report after the previous question has been ordered thereon does not cause recognition to pass to a Member opposed to the report, and the manager retains control to offer the initial motion to dispose of amendments in disagreement (Speaker Albert, May 1, 1975, p. 12761). Similarly, the invalidation of a conference report on a point of order, which is equivalent to its rejection by the House, does not give the Member raising the question of order the right to the floor (VIII, 3284) and exerts no effect on the right to recognition (VI, 313). In most cases, when the House refuses to order the previous question on a conference report, it then rejects the report (II, 1473–1477; V, 6396). However, control of a Senate amendment reported from conference in disagreement passes to an opponent when the House rejects a motion to dispose thereof (Aug. 6, 1993, p. 19582).

§ 955. Prior right of Members to recognition for debate.

In debate the members of the committee—except the Committee of the Whole (II, 1453)—are entitled to priority of recognition for debate (II, 1438, 1448; VI, 306, 307), but a motion to lay a proposition on the table is in order before the Member entitled to prior recognition for debate has begun his remarks (V, 5391–5395; VI, 412; VIII, 2649, 2650).

In recognizing for debate under general House rules the Chair alternates between those favoring and those opposing the pending matter, preferring members of the committee reporting the bill (II, 1439–1444). When a member of a committee has occupied the floor in favor of a measure the Chair attempts to recognize a Member opposing next, even though he be not a member of the committee (II, 1445). The principle of alternation is not insisted on rigidly where a limited time is controlled by Members, as in the 40 minutes of debate on motions for suspension of the rules and the previous question (II, 1442).

§ 956. Exceptions to the usages constraining the Speaker as to recognitions.

As to motions to suspend the rules, which are in order on Mondays and Tuesdays of each week, the Speaker exercises a discretion to decline to recognize (V, 6791–6794, 6845; VIII, 3402–3404). He also may decline to recognize a Member who desires to ask unanimous consent to set aside the rules in order to consider a bill not otherwise in order, this being the way of signifying his objection to the request. But this authority did not extend to the former Consent Calendar. Where the previous question was ordered to passage of a bill without intervening motion except recommittal, the Chair declined to entertain a unanimous-consent request to further amend the pending bill as an exercise of his discretionary power of recognition under this clause (Feb. 10, 2000, p. 1019). The Chair has declined to entertain a unanimous-consent request to print a separate volume of tributes given in memory of a deceased former Member absent concurrence of the Joint Committee on Printing (Aug. 1, 1996, p. 21247). The Speaker has announced and enforced a policy of conferring recognition for unanimous-consent requests for the consideration of certain legislation only when assured that the majority and minority floor and committee leaderships have no objection (see, *e.g.*, Dec. 15, 1981, p. 31590; May 4, 1982, p. 8613; Nov. 16, 1983, p. 33138; Jan. 25, 1984, p. 354; Jan. 26, 1984, p. 449; Jan. 31, 1984, p. 1063; Oct. 2, 1984, p. 28516; Feb. 4, 1987, p. 2675; Jan. 3, 1989, p. 89; Jan. 3, 1991, p. 64; Jan. 5, 1993, p. 106; Apr. 4, 1995, p. 12097). This policy includes: (1) requests relating to reported bills (July 23, 1993, p. 16820); (2) requests for immediate consideration of matters (separately unreported) comprising a portion of a measure already passed by the House (Dec. 19, 1985, p. 38356); (3) requests to consider a motion to suspend the rules and pass an unreported bill (on a nonsuspension day) (Aug. 12, 1986, p. 21126; Mar. 30, 1998, p. 5153); (4) requests to permit consideration of (nongermane) amendments to bills (Nov. 14, 1991, p. 32083; Dec. 20, 1995, p. 37877; June 27, 2002, p. ——; July 28, 2005, p. ——); (5) requests to permit expedited consideration of measures on subsequent days, as by waiving the requirement that a bill be referred to committee for 30 legislative days before a motion to discharge may be presented under clause 2 of rule XV (formerly clause 3 of rule XXVII) (June 9, 1992, p. 13900); (6) requests relating to Senate-passed bills on the Speaker's table (Oct. 25, 1995, p. 29347; Jan. 3, 1996, p. 58; Aug. 2, 1999, p. 18942), including one identical to a House-passed bill (Feb. 4, 1998, p. 799) and a Senate concurrent resolution to correct an enrollment (Oct. 20, 1998, p. 27358); and (7) requests to dispose of Senate amendments to House bills on the Speaker's table (Jan. 4, 1996, pp. 200, 210; Nov. 22, 2002, p. ——). The Speaker will recognize for an "omnibus" unanimous-consent request (one request disposing of various measures) only when assured that the request, and each constituent part of the request, has been cleared under this policy (Oct. 10, 2002, p. ——; Oct. 16, 2002, p. ——; Nov. 14, 2002, p. ——). The Speaker's enforcement of this policy is not subject to appeal (Apr. 4, 1995, p. 10298). "Floor leadership" in this

context has been construed to apply only to the Minority Leader and not to the entire hierarchy of minority leadership, where the Chair had been assured that the Minority Leader had been consulted (Apr. 25, 1985, p. 9415). It is not a proper parliamentary inquiry to ask the Chair to indicate which side of the aisle has failed under the Speaker's guidelines to clear a unanimous-consent request (Feb. 1, 1996, p. 2260; Nov. 22, 2002, p. ——), but the Chair may indicate his cognizance of a source of objection for the Record (Feb. 4, 1998, p. 799). In addition, with respect to unanimous-consent requests to dispose of Senate amendments to House bills on the Speaker's table, the Chair will entertain such a request only if made by the chairman of the committee with jurisdiction, or by another committee member authorized to make the request (Apr. 26, 1984, p. 10194; Feb. 4, 1987, p. 2675; Jan. 3, 1996, p. 86; Jan. 4, 1996, pp. 200, 210; Deschler, ch. 21, § 1.23). For a discussion of recognition for unanimous-consent requests to vary procedures in the Committee of the Whole governed by a special order adopted by the House, see § 993, *infra*.

§ 957. The hour rule in debate.

2. * * * A Member, Delegate, or Resident Commissioner may not occupy more than one hour in debate on a question in the House or in the Committee of the Whole House on the state of the Union except as otherwise provided in this rule.

This provision (formerly clause 2 of rule XIV) dates from 1841, when the increase of membership had made it necessary to prevent the making of long speeches which sometimes occupied three or four hours each (V, 4978). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2 of rule XIV (H. Res. 5, Jan. 6, 1999, p. 47).

This provision applies to debate on a question of privilege, as well as to debate on other questions (V, 4990; VIII, 2448). When the time for debate has been placed within the control of those representing the two sides of a question, it must be assigned to Members in accordance with this rule (V, 5004, 5005; VIII, 2462). A Member recognized to call up a privileged resolution may yield the floor upon expiration of his hour without moving the previous question, thereby permitting another Member to be recognized for a successive hour (Dec. 18, 1998, p. 27838). Under this clause a Member recognized for one hour for a "special-order" speech in the House may not extend that time, even by unanimous consent (Feb. 9, 1966, p. 2794; July 12, 1971, pp. 24594, 24603; Oct. 23, 1997, p. 23254). The Chair has advised that he will recognize the managers of a measure (as so designated by a special rule governing consideration of the measure) for unanimous-consent requests to enlarge the time for debate (Oct. 8, 2002, p. ——). In the 104th Congress the Speaker announced his intention to strictly enforce

time limitations on debate (Jan. 4, 1995, pp. 457–552). The Chair has announced that he would accommodate as many unanimous-consent requests to insert remarks in debate as necessary provided they comprise a simple, declarative statement of the Member's attitude toward the pending measure; however, any embellishment of such a request with other oratory may become an imposition on the time of the Member who yielded for that purpose (see, *e.g.*, Mar. 24, 1995, p. 9215; June 22, 2002, p. ——; May 9, 2003, p. ——; June 26, 2003, p. ——; July 24, 2003, p. ——; Nov. 21, 2003, p. ——).

For a discussion of morning-hour debates and "Oxford"-style debates, see §§ 951–952, *supra*.

Managing debate

§ 958. The opening and closing of general debate.

3. (a) The Member, Delegate, or Resident Commissioner who calls up a measure may open and close debate thereon. When general debate extends beyond one day, that Member, Delegate, or Resident Commissioner shall be entitled to one hour to close without regard to the time used in opening.

§ 959. Member to speak but once to the same question; right to close controlled debate.

(b) Except as provided in paragraph (a), a Member, Delegate, or Resident Commissioner may not speak more than once to the same question without leave of the House.

(c) A manager of a measure who opposes an amendment thereto is entitled to close controlled debate thereon.

Paragraphs (a) and (c) (formerly clause 3 of rule XIV) were adopted in 1847 and perfected in 1880 (V, 4996). Paragraph (b) (formerly clause 6 of rule XIV) was adopted in 1789, and amended in 1840 (V, 4991). Before the House recodified its rules in the 106th Congress, paragraphs (a) and (c) were found in former clause 3 of rule XIV and paragraph (b) was found in former clause 6 of rule XIV. The recodification also added paragraph (c) to codify modern practice (H. Res. 5, Jan. 6, 1999, p. 47).

In the later practice this right to close may not be exercised after the previous question is ordered (V, 4997–5000). This clause applies to general debate in Committee of the Whole (Mar. 26, 1985, p. 6283). A majority

manager of the bill who represents the primary committee of jurisdiction is entitled to close general debate; for example, as against another manager representing an additional committee of jurisdiction (May 13, 1998, p. 9042, 9050); or as against the subject of a disciplinary resolution (July 24, 2002, p. ——). Where an order of the House divides debate on an unreported measure among four Members, the Chair will recognize for closing speeches in the reverse order of the original allocation (Mar. 24, 1999, p. 5454). Where a special order of the House allocates time for debate, which is further fractionalized under a later order by unanimous consent, the Chair recognizes for closing speeches in the reverse order of their original recognitions, concluding with the Member who opened the debate. This is true even when the manager who opened debate is opposed, as in the case of a measure reported adversely (July 22, 1998, p. 16726; July 27, 1999, p. 18012; June 21, 2000, pp. 11704, 11721; July 26, 2000, p. 16437). In response to a parliamentary inquiry, the Chair advised that time unused by a minority manager in general debate is considered as yielded back upon recognition of the majority manager to close general debate (Feb. 27, 2002, p. ——). For further discussion of management of time for general debate and for debate on amendments in the Committee of the Whole, see § 978, *infra*.

A Member who has spoken once to the main question may speak again to an amendment (V, 4993, 4994). It is too late to make the point of order that a Member has spoken already if no one claims the floor until he has made some progress in his speech (V, 4992). Paragraph (b) is often circumscribed by modern practice and by special orders of business that vest control of debate in designated Members and permit them to yield more than once to other Members (Apr. 5, 2000, p. 4497). For a discussion of the right of a Member to speak more than once under the five-minute rule, see § 981, *infra*. The right to close may not be exercised after the previous question has been ordered (V, 4997–5000). The right to close does not belong to a Member who has merely moved to reconsider the vote on a bill which he did not report (V, 4995). The right of a contestant in an election case to close when he is permitted to speak in the contest has been a matter of discussion (V, 5001).

As codified in paragraph (c), the manager of a bill or other representative of the committee position and not the proponent of an amendment has the right to close debate on an amendment on which debate has been limited and allocated under the five-minute rule in Committee of the Whole (VIII, 2581; July 16, 1981, p. 16043; Apr. 4, 1984, p. 7841; June 5, 1985, p. 14302; July 10, 1985, p. 18496; Oct. 24, 1985, p. 28824; May 2, 1988, p. 9638; May 5, 1988, p. 9961; July 26, 2002, p. ——), including the minority manager (June 29, 1984, p. 20253; Aug. 14, 1986, p. 21660; July 26, 1989, p. 16403; Oct. 27, 1997, p. 23212; July 26, 2002, p. ——) and including the manager of a measure that was reported adversely (Feb. 13, 2002, p. ——). This is so even where the manager is also the proponent of a pending amendment to the amendment (Mar. 16, 1983, p. 5792). The Chair

will assume that the manager of a measure is representing the committee of jurisdiction even where the measure called up is unreported (Apr. 15, 1996, p. 7421; July 24, 1998, p. 17263), where an unreported compromise text is made in order as original text in lieu of committee amendments (Oct. 19, 1995, p. 28650), or where the committee reported the measure without recommendation (Feb. 12, 1997, pp. 2108, 2109). Where the pending text includes a provision recommended by a committee of sequential referral, a member of that committee is entitled to close debate against an amendment thereto (June 15, 1989, pp. 12084–87). Where the rule providing for the consideration of an unreported measure designates managers who do not serve on a committee of jurisdiction, those managers are entitled to close controlled debate against an amendment thereto (Sept. 18, 1997, p. 19325). The majority manager of the bill will be recognized to control time in opposition to an amendment thereto, without regard to the party affiliation of the proponent, where the special order allocated control to "a Member opposed" (May 13, 1998, p. 9110). The right to close debate in opposition to an amendment devolves to a member of the committee of jurisdiction who derived debate time by unanimous consent from a manager who originally had the right to close debate (Sept. 10, 1998, pp. 19961–63). Such right to close may not devolve to the manager of a bill who derived debate time by unanimous consent from a non-committee Member controlling time in opposition because that right may be transferred only where there has been an unbroken line of committee affiliation in opposition to the amendment (July 17, 2003, p. ——). The proponent of a first-degree amendment who controls time in opposition to a second-degree amendment that favors the original bill over the first-degree amendment does not qualify as a "manager" within the meaning of clause 3(c) of rule XVII in opposing (June 15, 2000, pp. 11040, 11047).

Under certain circumstances, however, the proponent of the amendment may close debate where he represents the position of the reporting committee (Aug. 14, 1986, p. 21660); for example, the proponent of a "manager's amendment" may close controlled debate thereon where a member of the committee does not claim time in opposition (May 13, 1998, p. 9092). Similarly, the proponent may close debate where neither a committee representative nor a Member assigned a managerial role by the governing special order oppose the amendment (Aug. 15, 1986, p. 22057; May 6, 1998, pp. 8307, 8316; July 14, 1998, p. 15321; July 17, 2003, p. ——). Where a committee representative is allocated control of time in opposition to an amendment not by recognition from the Chair but by unanimous-consent request of a third Member who was allocated the time by the Chair, then the committee representative is not entitled to close debate as against the proponent (July 24, 1997, pp. 15684, 15685, 15689). Similarly, the proponent of the amendment may close debate where no representative from the reporting committee opposes an amendment to a multijurisdictional bill (Mar. 9, 1995, p. 7467); where the measure is unreported and has no "manager" under the terms of a special rule (Apr. 24, 1985, p. 9206); or where

a measure is being managed by a single reporting committee and the Member controlling time in opposition, though a member of the committee having jurisdiction over the amendment, does not represent the reporting committee (Nov. 9, 1995, p. 31964).

Call to order

§ 960. The call to order for words spoken in debate.

4. (a) If a Member, Delegate, or Resident Commissioner, in speaking or otherwise, transgresses the Rules of the House, the Speaker shall, or a Member, Delegate, or Resident Commissioner may, call to order the offending Member, Delegate, or Resident Commissioner, who shall immediately sit down unless permitted on motion of another Member, Delegate, or the Resident Commissioner to explain. If a Member, Delegate, or Resident Commissioner is called to order, the Member, Delegate, or Resident Commissioner making the call to order shall indicate the words excepted to, which shall be taken down in writing at the Clerk's desk and read aloud to the House.

(b) The Speaker shall decide the validity of a call to order. The House, if appealed to, shall decide the question without debate. If the decision is in favor of the Member, Delegate, or Resident Commissioner called to order, the Member, Delegate, or Resident Commissioner shall be at liberty to proceed, but not otherwise. If the case requires it, an offending Member, Delegate, or Resident Commissioner shall be liable to censure or such other punishment as the House may consider proper. A Member, Delegate, or Resident Commissioner may not be held to answer a

call to order, and may not be subject to the censure of the House therefor, if further debate or other business has intervened.

The first sentence of paragraph (a) and all but the last sentence of paragraph (b) (formerly clause 4 of rule XIV) was adopted in 1789 and amended in 1822 and 1880 (V, 5175). The last sentence of paragraph (a) and the last sentence of paragraph (b) (formerly clause 5 of rule XIV) was adopted in 1837 and amended in 1880, although the practice of writing down objectionable words had been established in 1808. When the House recodified its rules in the 106th Congress, it consolidated former clauses 4 and 5 of rule XIV into a single clause (H. Res. 5, Jan. 6, 1999, p. 47).

§ 961. Words taken down and other calls to order for unparliamentary debate.

Members transgressing the rules of debate and decorum may be called to order by the Speaker (VIII, 2481, 2521, 3479), a Member (II, 1344; V, 5154, 5161–5163, 5175, 5192), or a Delegate (II, 1295). A Member may initiate a call to order either by making a point of order that a Member is transgressing the rules or by formally demanding that words be taken down under this clause (Sept. 12, 1996, pp. 22897, 22899; Sept. 17, 1996, p. 23426; Sept. 18, 1996, p. 23535; Sept. 25, 1996, p. 24759). A Member's comportment in debate may constitute a breach of decorum even though the content of the Member's speech is not, itself, unparliamentary (July 29, 1994, p. 18609). Except for naming the offending Member, the Speaker may not otherwise censure or punish him (II, 1345; VI, 237; Sept. 18, 1996, p. 23535; see also § 366, *supra*). The House may by proper motions under this clause dictate the consequences of a ruling by the Chair that a Member was out of order (May 26, 1983, p. 14048). As an exercise of recognition, the Chair's determination that a Member's time in debate has expired is not subject to appeal (Mar. 22, 1996 p. 6086; see also §§ 622, 629, *supra*). Furthermore, a Member speaking while not under recognition (as when speaking beyond the allotted time) is not entitled to in-House amplification (Mar. 16, 1988, p. 4081; see also § 684, *supra*).

As discussed in § 374, *supra*, it is customary for the Chair to initiate the call to order of a Member who engages in personality in debate with respect to Members of the Senate, including an insertion in the Record (Speaker Albert, Apr. 17, 1975, p. 10458; Oct. 7, 1975, p. 32055; Feb. 27, 1997, pp. 2784, 2785). On the other hand, it is customary for the Chair to await an initiative from the floor to call to order a Member who engages in personality in debate with respect to another Member of the House (June 29, 1987, p. 18072; Jan. 4, 1995, p. 551; Feb. 27, 1997, pp. 2784, 2785). The Chair may take initiative to call to order a Member engaging in verbal outburst either following expiration of his recognition for debate (Mar. 16, 1988, p. 4081) or during recognition of another Member (June 5, 2003, p. ——). He may order the offending Member to take his seat (June 5, 2003, p. ——) or may deny further recognition, subject to the

will of the House on the question of his proceeding in order (Speaker O'Neill, June 16, 1982, p. 13843; July 29, 1994, p. 18609; Sept. 18, 1996, p. 23535). The Chair may admonish a Member for words spoken in debate and request that they be removed from the Record even before a demand that the words be taken down (Sept. 24, 1992, p. 27345).

This clause (formerly clause 5) prohibits the taking down of words after intervening business (V, 5177; VIII, 2536; Sept. 16, 1991, p. 23032; Mar. 28, 1996, p. 6934). However, a Member on his feet and seeking recognition at the appropriate time may yet be recognized to demand that words be taken down even though brief debate may have intervened, and a request that a Member uttering objectionable words yield does not forfeit the right to demand that the words be taken down (VIII, 2528). Action taken by the Chair to determine whether a point of order from the floor is intended as a demand that words be taken down is not such intervening debate or business as would render the demand untimely (Oct. 2, 1984, p. 28522). Similarly, a parliamentary inquiry concerning the propriety of words just spoken in debate does not render untimely a demand that the words be taken down as unparliamentary (May 6, 2004, p. ——). However, an improper parliamentary inquiry concerning the substantive content of the words does render untimely such demand (July 20, 2005, p. ——). Although under this clause a Member may not be held to answer a call to order if further debate or business has intervened, the Chair may under clause 2 of rule I generally admonish Members to preserve proper decorum even after intervening debate (Dec. 5, 2001, p. ——). For instances in which the Chair admonished Members for improper references to the Senate after brief intervening debate, see § 371, supra.

While a demand that a Member's words be taken down is pending, that Member should be seated immediately (July 29, 1994, p. 18609; Jan. 25, 1995, p. 2352), and no Member may engage the Chair until the demand has been disposed of (Nov. 9, 1995, p. 31913; Nov. 14, 1995, p. 32472). Where two Members consecutively demand that each others' words be taken down as unparliamentary, the Chair advises both Members to be seated and then directs the Clerk to report the first words objected to (June 19, 1996, p. 14655). An offending Member may be directed by the Chair to be seated even if a formal demand that the Member's words be taken down is not pending; for example, where a Member declines to proceed in order at the directive of the Chair after points of order have been sustained against unparliamentary references in debate, the Chair may, under rule I and this rule, deny the Member further recognition as a disposition of the question of order, subject to the will of the House on the question of proceeding in order (Sept. 12, 1996, p. 22900; Sept. 17, 1996, p. 23427; Sept. 18, 1996, p. 23535; see also § 366, *supra*).

The Chair may entertain a unanimous-consent request to withdraw or modify words taken down either before (Deschler-Brown, ch. 29, § 51.1) or after (Deschler-Brown, ch. 29, § 51.2) the words have been reported to the House. Unanimous consent is not required for a Member to withdraw

his demand that words be taken down before a ruling by the Chair (June 18, 1986, p. 14232).

The words having been read from the desk, the Chair decides whether they are in order (II, 1249; V, 5163, 5169, 5187), as read by the Clerk and not as otherwise alleged to have been uttered (June 9, 1992, p. 13902). When a Member denies that the words taken down are the exact words used by himself, the question as to the words is put to the House for decision (V, 5179, 5180). Where demands are made to take down words both as spoken in a one-minute speech and as reiterated when the offending Member is permitted by unanimous consent to explain, the Chair may rule simultaneously on both (July 25, 1996, p. 19170). A decision of the Chair on words taken down is subject to appeal (Sept. 28, 1996, p. 25780; Apr. 9, 2003, p. ——).

The rule permits a motion that an offending Member be permitted to explain before the Chair rules on the words taken down, and the Chair has discretion to ask for explanation before ruling on the words (Feb. 1, 1940, p. 954). The Chair also may recognize an offending Member, permitted by unanimous consent, to explain words ruled out of order (Nov. 10, 1971, p. 40442).

If words taken down are ruled out of order, the Member loses the floor (V, 5196–5199; Jan. 25, 1995, p. 2352) and may not proceed on the same day without the permission of the House (Jan. 29, 1946, p. 533; Aug. 21, 1974, p. 29652; Jan. 25, 1995, p. 2352; Apr. 17, 1997, p. 5832), even on yielded time (V, 5147), and may not insert unspoken remarks in the Record (Jan. 25, 1995, p. 2352), but still may exercise his right to vote or to demand the yeas and nays (VIII, 2546). The ruling does not take the issue off the floor, and other Members may proceed to debate the same subject (July 25, 1996, p. 19170). The offending Member will not lose the floor if the House permits the Member to proceed in order (see, *e.g.*, May 10, 1990, p. 9992), which motion may be stated on the initiative of the Chair (Oct. 8, 1991, p. 25757; Mar. 29, 1995, p. 9676; July 25, 1996, p. 1970; June 13, 2002, p. ——) or offered by any Member (July 25, 1996, p. 1970). The motion is not inconsistent with the immediate consequence of the call to order because this clause (formerly clause 4) also permits the House to determine the extent of the sanction for a given breach (Oct. 10, 1991, p. 26102). The motion is debatable within narrow limits of relevance under the hour rule, and consequently also is subject to the motion to lay on the table (Speaker Foley, Oct. 8, 1991, p. 25757).

Where a Member has been called to order not in response to a formal demand that words be taken down but in response to a point of order, the former practice was to test the opinion of the House by a motion "that the gentleman be allowed to proceed in order" (V, 5188, 5189; VIII, 2534). Under the modern practice the Chair either may invite the offending Member to proceed in order (see, *e.g.*, Sept. 12, 1996, p. 22898) or, particularly where admonitions have been ignored, may deny the Member recognition for the balance of the time for which he was recognized, subject to the

will of the House, as by a vote on the question whether the Member should be permitted to proceed in order (Sept. 12, 1996, p. 22899; Sept. 17, 1996, p. 23426; Sept. 18, 1996, p. 23535; Sept. 25, 1996, p. 24759).

Words taken down and ruled out of order by the Chair are subject to a motion that they be stricken or expunged from the Record. This motion has precedence (VIII, 2538–2541; Aug. 21, 1974, p. 29652). Unanimous consent to expunge such words often is granted upon the initiative of the Chair (May 10, 1990, p. 9992; June 13, 2002, p. ——), and is debatable within narrow limits (VIII, 2539; Speaker Martin, June 12, 1947, p. 6896). However, the motion may not be entertained in the Committee of the Whole (Feb. 18, 1941, p. 1126) or offered by the Member called to order (Feb. 11, 1941, pp. 894, 899), although that Member may ask unanimous consent to withdraw his words (VIII, 2528, 2538, 2540, 2543, 2544; July 16, 1998, p. 15827; June 28, 2000, pp. 12771, 12776).

When disorderly words are spoken in the Committee of the Whole, they are taken down and read at the Clerk's desk, and the Committee rises automatically (VIII, 2533, 2538, 2539) and reports them to the House (II, 1257–1259, 1348). Action in the House on words reported from the Committee of the Whole is limited to the words reported (VIII, 2528), and it is not in order as a question of privilege in the House to propose censure of a Member for disorderly words spoken in Committee of the Whole but not reported therefrom (V, 5202). After words reported to the House from Committee of the Whole have been disposed of (by decision of the Chair and any associated action by the House), the Committee resumes its sitting without motion (VIII, 2539, 2541).

The House has censured a Member for disorderly words (II, 1253, 1254, 1259, 1305; VI, 236). The House may proceed to censure or other action although business may have intervened in certain exceptional cases, such as when disorderly words are part of an occurrence constituting a breach of privilege (II, 1657), when a Member's language has been investigated by a committee (II, 1655), when a Member has reiterated on the floor certain published charges (III, 2637), when a Member has uttered words alleged to be treasonable (II, 1252), or when a Member has uttered an attack on the Speaker (II, 1248; Jan. 4, 1995, p. 551; Jan. 19, 1995, p. 1599).

For a discussion of resolving the use of objectional exhibits that are a breach of decorum, see § 622, *supra*; and for a discussion of resolving the use of objectional exhibits that are not necessarily a breach of decorum, see clause 6, § 963, *infra*.

Comportment

§ 962. Decorum of Members in the Hall.

5. When the Speaker is putting a question or addressing the House, a Member, Delegate, or Resident Commissioner may not walk out of or across the Hall. When a

Member, Delegate, or Resident Commissioner is speaking, a Member, Delegate, or Resident Commissioner may not pass between the person speaking and the Chair. During the session of the House, a Member, Delegate, or Resident Commissioner may not wear a hat or remain by the Clerk's desk during the call of the roll or the counting of ballots. A person may not smoke or use a wireless telephone or personal computer on the floor of the House. The Sergeant-at-Arms is charged with the strict enforcement of this clause.

Until the 104th Congress this clause (formerly clause 7 of rule XIV) was made up of provisions adopted in 1789, 1837, 1871, and 1896. In the 104th Congress a reference to the former Doorkeeper was deleted and a prohibition against using any personal electronic office equipment was added (secs. 201 and 223, H. Res. 6, Jan. 4, 1995, pp. 463, 469). However, that prohibition was modified in the 108th Congress to cover only a wireless telephone or personal computer (sec. 2(k), H. Res. 5, Jan. 7, 2003, p. ——). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 7 of rule XIV (H. Res. 5, Jan. 6, 1999, p. 47).

Originally Members wore their hats during sessions, as in Parliament, and the custom was not abolished until 1837 (II, 1136). In the 103d Congress the Speaker announced that the prohibition against Members wearing hats included doffing the hat in tribute to a group (Speaker Foley, June 22, 1993, p. 13569; June 10, 1996, p. 13560). In the 96th Congress the Speaker announced that he considered as proper the customary and traditional attire for Members, including a coat and tie for male Members and appropriate attire for female Members (where thermostat controls had been raised in the summer to conserve energy); the House then adopted a resolution, offered as a question of the privileges of the House, requiring Members to wear proper attire as determined by the Speaker, and denying noncomplying Members the privilege of the floor (July 17, 1979, pp. 19008, 19073). In the 106th Congress Members were reminded of the need to be in proper attire in the Chamber (June 28, 2000, p. 12654), and the Chair has so admonished a Member speaking in debate without his jacket (Apr. 3, 2001, p. 5361). In the 97th Congress, the Speaker announced during a vote by electronic device that Members were not permitted under the traditions of the House to wear overcoats on the House floor (Dec. 16, 1981, p. 31847).

The prohibition against using personal electronic office equipment was affirmed by response to a parliamentary inquiry (Feb. 23, 1995, p. 5639). The Chair announced that the use of cellular telephones was not permitted on the floor of the House or in the gallery (July 13, 1999, p. 15744; Oct. 7, 1999, p. 24415; Jan. 27, 2000, p. 132) and that Members should disable wireless telephones on entering the Chamber (*e.g.,* June 12, 2000, p. 10369; July 19, 2000, p. 15344; Oct. 10, 2000, p. 22021; Oct. 19, 2000, p. 23616; May 13, 2004, p. ——).

Smoking is not permitted in the Hall during sessions of the House (Oct. 15, 1990, p. 29248), nor during sittings of the Committee of the Whole (Aug. 14, 1986, p. 21707); and the prohibition extends to smoking behind the rail (Feb. 23, 1995, p. 5640).

On the opening day of the 101st Congress, the Speaker prefaced his customary announcement of policies concerning such aspects of the legislative process as recognition for unanimous-consent requests and privileges of the floor with a general statement concerning decorum in the House, including particular adjurations against engaging in personalities, addressing remarks to spectators, and passing in front of the Member addressing the Chair (Jan. 3, 1989, p. 88; see also Jan. 5, 1993, p. 105; Jan. 4, 1995, p. 551). In the 104th Congress the Speaker announced: (1) that Members should not traffic, or linger in, the well of the House while another Member is speaking (Feb. 3, 1995, p. 3541; Mar. 3, 1995, p. 6721; Dec. 15, 1995, p. 37111), including Members who may have been invited to the well by the Member speaking (June 12, 2003, p. ——); and (2) that Members should not engage in disruption while another Member is speaking (Dec. 20, 1995, p. 37878). Under this provision the Chair may require a line of Members waiting to sign a discharge petition to proceed to the rostrum from the far right-hand aisle and require the line not to stand between the Chair and Members engaging in debate (Oct. 24, 1997, p. 23293).

Hissing and jeering is not proper decorum in the House (May 21, 1998, p. 10282).

A former Member must observe proper decorum under this clause, and the Chair may direct the Sergeant-at-Arms to assist the Chair in maintaining such decorum (Sept. 17, 1997, p. 19027). In the 105th Congress the House adopted a resolution offered as a question of the privileges of the House alleging indecorous behavior of a former Member and instructing the Sergeant-at-Arms to ban the former Member from the floor, and rooms leading thereto, until the resolution of a contested election to which he was party (H. Res. 233, Sept. 18, 1997, p. 19340).

Exhibits

§ 963. Objections to use of exhibits.

6. When the use of an exhibit in debate is objected to by a Member, Delegate, or Resident Commissioner, the Chair,

in his discretion, may submit the question of its use to the House without debate.

This provision was rewritten in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. 49) to address the use of exhibits in debate rather than the reading from papers. As rewritten in the 103d Congress, an objection to the use of an exhibit automatically triggered a vote by the House on its use. The clause was amended in the 107th Congress to permit the Chair in his discretion to submit the question of its use to the House (sec. 2(o), H. Res. 5, Jan. 3, 2001, p. 25). Before the House recodified its rules in the 106th Congress, this provision was found in former rule XXX (H. Res. 5, Jan. 6, 1999, p. 47).

When the use of an exhibit in debate was objected to before the clause was rewritten in the 107th Congress, the Chair immediately put the question on whether use of the exhibit would be permitted (the Chair was not determining a breach of decorum under clause 2 of rule I) (Nov. 1, 1995, p. 31154; Nov. 10, 1995, p. 20689; July 31, 1996, p. 20689). The Chair put the question without debate, and without requiring the objecting Member to state the basis for the objection (Nov. 10, 1995, p. 20689). As such, an objection under this rule was not a point of order: it could have been resolved by withdrawal of the exhibit; that failing, it amounted to a demand that the Chair put to the House the question whether the exhibit may be used (July 31, 1996, p. 20700).

It is not a proper parliamentary inquiry to ask the Chair to judge the accuracy or authenticity of the content of an exhibit (Nov. 10, 1995, p. 32142; July 11, 2001, p. ——). The Chair has held that a second virtually consecutive invocation of this provision, resulting in a second pair of votes on use of a chart and on reconsideration thereof, was not dilatory under former clause 10 of rule XVI (current clause 1 of rule XVI) or former clause 4(b) of rule XI (current clause 6(b) of rule XIII) (July 31, 1996, p. 20700). It is not in order to request that the voting display be turned on during debate as an exhibit to accompany a Member's debate (Oct. 12, 1998, p. 25770). For a discussion of the Speaker's responsibility to preserve decorum that may require that he disallow the use of exhibits in debate that would be demeaning to the House, or to any Member of the House, or that would be disruptive of the decorum thereof, see § 622, *supra*.

§ 964. History of former rule on reading of papers.

The earlier form of the rule (formerly rule XXX), originally adopted in 1794 and amended in 1802 and 1880 (V, 5257), addressed reading from papers. It recognized the right of a Member under the general parliamentary law to have read the paper on which the House is to vote (V, 5258), but when that paper had been read once, the reading could not be repeated unless by order of the House (V, 5260). The right could be abrogated by suspension of the rules (V, 5278–5284; VIII, 3400); but was not abrogated simply by the fact that the current procedure was taking place under the rule for suspension (V, 5273–5277). On a motion to refer

a report, the reading of it could be demanded as a matter of right, but the latest ruling left to the House to determine whether or not an accompanying record of testimony should be read (V, 5261, 5262). In general the reading of a report was held to be in the nature of debate (V, 5292); but where a report presented facts and conclusions but no legislative proposition, it was read if submitted for action (IV, 4663). Where a paper is offered as involving a matter of privilege it may be read to the House (III, 2597; VI, 606; VIII, 2599), rather than by the Speaker privately (III, 2546), but a Member may not, as a matter of right, require the reading of a book or paper on suggestion that it contains matter infringing on the privileges of the House (V, 5258).

The former rule XXX prohibiting the reading of papers in debate was held to apply to the exhibition of articles as evidence or in exemplification in debate (VIII, 2452, 2453; June 2, 1937, p. 6104; Aug. 5, 1949, p. 10859), and the new form of the rule adopted in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. 49) marks the modern relevance of that application. While Members may use exhibits such as charts during debate subject to this rule, the Speaker may, pursuant to his authority to preserve order and decorum under rule I (see § 622, *supra*), direct the removal of a chart from the well of the House which is not being utilized during debate (Apr. 1, 1982, p. 6304), or which is otherwise disruptive of decorum.

§ 965. Earlier practice.

The reading of papers other than the one on which the vote was about to be taken was usually permitted without question (V, 5258), and the Member in debate usually read such papers as he pleased. However, this privilege was subject to the authority of the House if another Member objected (V, 5285–5291; VIII, 2597, 2602; Dec. 19, 1974, p. 41425; Dec. 10, 1987, p. 34669). This principle applied even to the Member's own written speech (V, 5258; VIII, 2598), to a report which he proposed to have read in his own time or to read in his place (V, 5293), and to excerpts from the Congressional Record (VIII, 2597). After the previous question was ordered, a Member could not ask the decision of the House on a request for the reading of a paper not before the House for action (V, 5296), even though it be the report of the committee (V, 5294, 5295). For further discussion, see §§ 432–436, *supra*. Pursuant to the former form of this rule, the consent of the House for a Member to read a paper in debate only permitted the Member seeking such permission to read as much of the paper as possible in the time yielded or allotted to that Member, and did not necessarily grant permission to read or to insert the entire document (Mar. 1, 1979, p. 3748). Where a Member objected to another's reading from a paper, the Chair put the question without debate. It was not in order under the guise of parliamentary inquiry to debate that question by indicating that the objection was a dilatory tactic (Dec. 10, 1987, p. 34672).

Galleries

§ 966. Gallery occupants not to be introduced.

7. During a session of the House, it shall not be in order for a Member, Delegate, or Resident Commissioner to introduce to or to bring to the attention of the House an occupant in the galleries of the House. The Speaker may not entertain a request for the suspension of this rule by unanimous consent or otherwise.

This clause was adopted April 10, 1933 (VI, 197). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 8 of rule XIV (H. Res. 5, Jan. 6, 1999, p. 47). The Chair enforces this clause on his own initiative (Deschler-Brown, ch. 29, §§ 45.4, 45.7).

Congressional Record

§ 967. Revisions of remarks in debate.

8. (a) The Congressional Record shall be a substantially verbatim account of remarks made during the proceedings of the House, subject only to technical, grammatical, and typographical corrections authorized by the Member, Delegate, or Resident Commissioner making the remarks.

(b) Unparliamentary remarks may be deleted only by permission or order of the House.

§ 968. Standard of conduct.

(c) This clause establishes a standard of conduct within the meaning of clause 3(a)(2) of rule XI.

This clause was adopted in the 104th Congress (sec. 213, H. Res. 6, Jan. 4, 1995, p. 468). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 9 of rule XIV (H. Res. 5, Jan. 6, 1999, p. 47). Under paragraph (a) a unanimous-consent request to revise and extend remarks permits a Member (1) to make technical, grammatical, and typographical corrections to remarks uttered and (2) to include in the Record additional remarks not uttered to appear in a distinctive typeface; however, such a unanimous-consent request does not permit a Member to remove remarks actually uttered (Jan. 4, 1995, p. 541). For example, remarks held irrelevant by the Chair may be removed from the

Record by unanimous consent only (Mar. 20, 2002, p. ——). Remarks uttered while not under recognition (such as when a Member fails to heed the gavel at the expiration of debate time) do not appear in the Record (*e.g.*, May 22, 2003, p. ——; Oct. 2, 2003, p. ——; May 19, 2004, p. ——). Paragraph (a) also applies to statements and rulings of the Chair (Jan. 20, 1995, p. 1866). For a discussion of rules relating to the Congressional Record, see §§ 685–692, *supra*.

Secret sessions

§ 969. Secret session of the House.

9. When confidential communications are received from the President, or when the Speaker or a Member, Delegate, or Resident Commissioner informs the House that he has communications that he believes ought to be kept secret for the present, the House shall be cleared of all persons except the Members, Delegates, Resident Commissioner, and officers of the House for the reading of such communications, and debates and proceedings thereon, unless otherwise ordered by the House.

This provision (formerly rule XXIX), in a somewhat different form, was adopted in 1792, although secret sessions had been held by the House before that date. They continued to be held at times with considerable frequency until 1830. In 1880, at the time of the general revision of the rules, the House concluded to retain the rule, although it had been long in disuse (V, 7247; VI, 434). Before the House recodified its rules in the 106th Congress, this provision was found in former rule XXIX (H. Res. 5, Jan. 6, 1999, p. 47).

The two Houses have legislated in secret session, transmitting their messages also in secrecy (V, 7250); but the House has declined to be bound to secrecy by act of the Senate (V, 7249). Motions to remove the injunction of secrecy should be made with closed doors (V, 7254). In 1843 a confidential message from the President was referred without reading; but no motion was made for a secret session (V, 7255).

The House and not the Committee of the Whole determines whether the Committee may sit in executive session, and an inquiry relative to whether the Committee of the Whole should sit in secret session is properly addressed to the Speaker and not to the Chairman of the Committee of the Whole (May 9, 1950, p. 6746; June 6, 1978, p. 16376; June 20, 1979, p. 15710). A Member seeking to offer the motion that the House resolve itself into secret session must qualify, as provided by the rule, by asserting

that the Member has a secret communication to make to the House (June 6, 1978, p. 16376).

On June 20, 1979, the House adopted by voice vote a motion that the House resolve itself into secret session pursuant to this rule (the first such occasion since 1830), where the Member offering the motion had ensured the Speaker that he had confidential communications to make to the House as required by the rule (pp. 15711–13). The Speaker pro tempore announced on that occasion before the commencement of the secret session that the galleries would be cleared of all persons, that the Chamber would be cleared of all persons except Members and those officers and employees specified by the Speaker whose attendance was essential to the functioning of the secret session, who would be required to sign an oath of secrecy, and that all proceedings in the secret session must be kept secret until otherwise ordered by the House (June 20, 1979, pp. 15711–13). Where the House has concluded a secret session and has not voted to release the transcripts of that session, the injunction of secrecy remains and the Speaker may informally refer the transcripts to appropriate committees for their evaluation and report to the House as to ultimate disposition to be made (June 20, 1979, pp. 15711–13).

The following procedures apply during a secret session. The motion for a secret session is not debatable (June 20, 1979, p. 15711; Mar. 31, 1998, p. 5229). The Member who offers the motion may be recognized for one hour of debate after the House resolves into secret session, and the normal rules of debate, including the principle that no motions would be in order unless he yields for that purpose, apply. The Speaker having found that a Member has qualified to make the motion for a secret session, having confidential communications to make, no point of order lies that the material in question must be submitted to the Members to make that determination (the motion for a secret session having been adopted by the House). No point of order lies in secret session that employees designated by the Speaker as essential to the proceedings, who have signed an oath of secrecy, may not be present. A motion in secret session to make public the proceedings therein is debatable for one hour, within narrow limits of relevancy. At the conclusion of debate in secret session, a Member may be recognized to offer a motion that the session be dissolved (July 17, 1979, pp. 19057–59).

The House conducted another secret session in the 96th Congress to receive confidential communications consisting of classified information in the possession of the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence, which those committees had authorized to be used in a secret session of the House if ordered; on that occasion the Speaker overruled a point of order against the motion for a secret session since the Speaker must rely on the assurance of a Member that he has confidential communications to make to the House, and since the Speaker was aware that the committee with possession of the materials had authorized those materials to be used in a secret session (Feb. 25,

1980, p. 3618). Another secret session was held in the 98th Congress pending consideration of a bill amending the Intelligence Authorization Act to prohibit United States support for military or paramilitary operations in Nicaragua (July 19, 1983, p. 19776).

The House may subsequently by unanimous consent order printed in the Congressional Record proceedings in secret session, with appropriate deletions and revisions agreeable to the committees to which the secret transcript has been referred for review (July 17, 1979, p. 19049).

Under his authority in clause 3 of rule I, the Speaker may convene a classified briefing for Members on the House floor when the House is not in session (*e.g.,* Mar. 18, 1999, p. 4863).

RULE XVIII

THE COMMITTEE OF THE WHOLE HOUSE ON THE STATE OF THE UNION

Resolving into the Committee of the Whole

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

1. Whenever the House resolves into the Committee of the Whole House on the state of the Union, the Speaker shall leave the chair after appointing a Chairman to preside. In case of disturbance or disorderly conduct in the galleries or lobby, the Chairman may cause the same to be cleared.

This provision (formerly clause 1(a) of rule XXIII), adopted in 1880, was made from two older rules dating from 1789 and modified in 1794 to provide for the appointment of the Chairman instead of the inconvenient method of election by the committee (IV, 4704). It was amended in the 103d Congress to permit Delegates and the Resident Commissioner to preside in the Committee of the Whole (H. Res. 5, Jan. 5, 1993, p. 49), but that authority was repealed in the 104th Congress (sec. 212(b), H. Res. 6, Jan. 4, 1995, p. 468). Delegates presided in two instances during the 103d Congress (Oct. 6, 1994, p. 28533; Oct. 7, 1994, p. 29167). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1(a) of rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47).

§ 971. Functions of the Chairman of the Committee of the Whole.

The Sergeant-at-Arms attends the sittings of the Committee of the Whole and, under direction of the Chairman, maintains order (I, 257). The Chairman recognizes for debate (V, 5003). Like the Speaker, the Chairman is forbidden to recognize for requests to suspend the rule of admission to the floor (V, 7285).

The Chairman decides questions of order arising in the Committee independently of the Speaker (V, 6927, 6928) but has declined to consider a question that had arisen in the House just before the Committee began to sit (IV, 4725, 4726) or a question that may arise in the House in the future (June 21, 1995, p. 16682). For example, the Chairman does not respond to a parliamentary inquiry relating to possible proceedings in the House on a motion to recommit (Feb. 27, 2002, p. ——). The Chairman does not take cognizance of a "point of order" against the legislative schedule, its announcement being the prerogative of the Leadership (Nov. 10, 1999, p. 29537).

Decisions of the Chairman on questions of order may be appealed. In stating the appeal the question is put as in the House: "Shall the decision of the Chair stand as the judgment of the Committee?" The Committee of the Whole may not postpone a vote on an appeal of a ruling of the Chair (even by unanimous consent); and an appeal of a ruling of the Chair may be withdrawn in the Committee of the Whole as a matter of right (June 8, 2000, p. 9954). An appeal is debatable in the Committee of the Whole under the five-minute rule (June 24, 2003, p. ——). A majority vote sustains the ruling (Aug. 1, 1989, p. 17159).

He may direct the Committee to rise when the hour previously fixed for adjournment of the House arrives, or when the hour previously fixed by the House for consideration of other business arrives, in which case he reports in the regular way (IV, 4785; VIII, 2376; Aug. 22, 1974, p. 30077). However, if the Committee happens to be in session at the hour fixed for the meeting of the House on a new legislative day, it rests with the Committee and not with the Chairman to determine whether or not the Committee shall rise (V, 6736, 6737). In rare cases wherein the Chairman has been defied or insulted, he has directed the Committee to rise, left the chair and, on the chair being taken by the Speaker, has reported the facts to the House (II, 1350, 1651, 1653).

Although the Committee of the Whole does not control the Congressional Record, the Chairman may direct the exclusion of disorderly words spoken by a Member after he has been called to order (V, 6987), but may not determine the privileges of a Member under general "leave to print" (V, 6988). Although arguments on a point of order may not be revised, extended, or inserted, the Committee of the Whole by unanimous consent has allowed a Member to insert remarks about a point of order to follow the ruling thereon (July 13, 2000, p. 14095).

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

2. (a) Except as provided in paragraph (b) and in clause 6 of rule XV, the House resolves into the Committee of the Whole House on the state of the Union by motion. When such a motion is entertained, the Speaker shall put the question without debate: "Shall the House resolve itself into the Committee of the Whole House on the state of the Union for consideration of this matter?", naming it.

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

Paragraph (a) was adopted when the House recodified its rules in the 106th Congress to codify the form of the motion to resolve into the Committee of the Whole (H. Res. 5, Jan. 6, 1999, p. 47). A conforming change to paragraph (a) was effected in the 109th Congress (sec. 2(f), H. Res. 5, Jan. 4, 2005, p. ——). Paragraph (b) was added in the 98th Congress (H. Res. 5, Jan. 3, 1983, p. 34). Before the House recodified its rules in the 106th Congress, paragraph (b) was found in former clause 1(b) of rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47).

Measures requiring initial consideration in the Committee of the Whole

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

3. All public bills, resolutions, or Senate amendments (as provided in clause 3 of rule XXII) involving a tax or charge on the people, raising revenue, directly or indirectly making appropriations of money or property or requiring such appropriations to be made, authorizing payments out of appropriations already made, releasing any liability to the United States for money or property, or referring a claim to the Court of Claims, shall be first considered in the Committee of the Whole House on the state of the Union. A bill, resolution, or Senate amendment that fails to comply with this clause is subject to a point of order against its consideration.

The first form of this rule was adopted in 1794 and was perfected by amendments in 1874 and 1896 (IV, 4792). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 3 of rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47). A technical correction to this clause was effected in the 108th Congress (sec. 2(u), H. Res. 5, Jan. 7, 2003, p. ——).

To require consideration in Committee of the Whole, a bill must show on its face that it falls within the requirements of the rule (IV, 4811–4817; VIII, 2391). Where the expenditure is a mere matter of speculation (IV, 4818–4821; VIII, 2388), or where the bill might involve a charge but does not necessarily do so (IV, 4809, 4810), the rule does not apply. However, where a bill sets in motion a train of circumstances destined ultimately to involve certain expenditures, it must be considered in Committee of the Whole (IV, 4827; VIII, 2399), as must bills ultimately authorizing officials in certain contingencies to part with property belonging to the United States (VIII, 2399). In passing upon the question as to whether a proposition involves a charge upon the Treasury, the Speaker is confined to the provisions of the text and may not take into consideration personal knowledge not directly deducible therefrom (VIII, 2386, 2391). The requirements of the rule apply to amendments as well as to bills (IV, 4793, 4794; VIII, 2331), and also to any portion of a bill requiring an appropriation, even though it be merely incidental to the bill's main purpose (IV, 4825).

The House may consider in Committee of the Whole subjects not specified in the rule (IV, 4822); for example, major amendments to the Rules of the House have been considered in Committee of the Whole pursuant to special orders (H. Res. 988, Committee Reform Amendments of 1974, considered in Committee of the Whole pursuant to H. Res. 1395, Sept. 30, 1974, p. 32953; H.R. 17654, Legislative Reorganization Act of 1970, considered in Committee of the Whole pursuant to H. Res. 1093, July 13, 1970, p. 23901). Although conference reports were formerly considered in Committee of the Whole, they may not be sent there as a result if a point of order that they contain matter ordinarily requiring consideration therein (V, 6559–6561).

When a bill is granted a special order for its consideration in the House by special rule (IV, 3216–3224) or by unanimous consent (IV, 4823; VIII, 2393), the effect is to discharge the Committee of the Whole. If the special order so dictates, the bill is before the full House for consideration (IV, 3216; VII, 788). Otherwise, the bill is considered in the House as in the Committee of the Whole (VIII, 2393). For a discussion of the modern practice of the House, under which a special order reported from the Committee on Rules that makes in order no amendments, or only one amendment, normally provides for consideration of a measure on the Union Calendar in the House, see House Practice, ch. 12, § 3.

When a bill once considered in Committee of the Whole is recommitted, it is not, when again reported, necessarily subject to the point of order that it must be considered in Committee of the Whole (IV, 4828, 4829; V, 5545, 5546, 5591).

Resolutions reported by the Committee on House Administration appropriating from the contingent fund (now referred to as "applicable accounts of the House described in clause 1(j)(1) of rule X") of the House are considered in the House (VIII, 2415, 2416). Authorizations of expenditures from the contingent fund, under the later ruling (IV, 4862–4867) do not fall within the specifications of the rule (IV, 4868). A bill providing for an expenditure which is to be borne otherwise than by the Government (IV, 4831; VIII, 2400), or relating to money held in the Treasury in trust for a nongovernmental entity (IV, 4835, 4836, 4853; VIII, 2413), is not governed by the rule.

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

Order of business

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

4. (a) Subject to subparagraph (b) business on the calendar of the Committee of the Whole House on the state of the Union may be taken up in regular order, or in such order as the Committee may determine, unless the measure to be considered was determined by the House at the time of resolving into the Committee of the Whole.

(b) Motions to resolve into the Committee of the Whole for consideration of bills and joint resolutions making general appropriations have precedence under this clause.

The early practice left the order of taking up bills to be determined entirely by the Committee, but in 1844 the House began by rule to regulate the order, and in 1880 adopted the present rule (IV, 4729). When the House recodified its rules in the 106th Congress, this provision was transferred from former clause 4 of rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47). At that time references in this provision to revenue bills and rivers and harbors bills were deleted to conform it to changes made to the rules of the House by the Committee Reform Amendments of 1974 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), which revoked the privilege to report such bills at any time.

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

Reading for amendment

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

5. (a) Before general debate commences on a measure in the Committee of the Whole House on the state of the Union, it shall be read in full. When general debate is concluded or closed by order of the House, the measure under consideration shall be read for amendment. 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 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, 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.

(b) 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 cloakroom and at least one copy to the minority cloakroom.

A rule of 1789 provided that bills should be read and debated in Committee of the Whole and in the House by clauses. Although that rule has

disappeared, the practice continues in Committee of the Whole but not in the House. Originally there was unlimited debate in Committee of the Whole both as to the bill generally and also as to any amendment. However, in 1841 the rule that no Member should speak more than an hour was applied both to the Committee of the Whole and the House. At the same time another rule was adopted to prevent indefinite prolongation of debate in Committee of the Whole by permitting the House by majority vote to order the discharge of the Committee of the Whole from the consideration of a bill after acting, without debate, on pending amendments and any other amendments that might be offered. The effect of this was to empower the House to close general debate at any time after it had actually begun in the Committee and thereby require amendments to be voted on without debate. In 1847 a rule provided that any Member proposing an amendment should have five minutes in which to explain it, and in 1850 an amendment to the rule also permitted five minutes in opposition and guarded against abuse by forbidding the withdrawal of an amendment once offered (V, 5221). Paragraph (b), placing the responsibility for providing copies of amendments on the Clerk, was part of the Legislative Reorganization Act of 1970 (sec. 124; 84 Stat. 1140) and was added to the rule in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5(a) of rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47). The recodification also conformed paragraph (a) to the recodified clause 8 of rule XVI to reflect the modern practice of first and second readings (H. Res. 5, Jan. 6, 1999, p. 47).

General debate must close before amendments, or motions for disposition of the bill, may be offered (IV, 4744, 4778; V, 5221). General debate is closed by the fact that no Member desires to participate further (IV, 4745). Where no member of a committee designated to control time is present at the appropriate time during general debate in Committee of the Whole, the Chair may presume the time to have been yielded back (June 11, 1984, p. 15744). Time unused by a minority manger in general debate will be considered as yielded back upon recognition of the majority manager to close general debate (Feb. 27, 2002, p. ——). In the 104th Congress the Speaker announced his intention to strictly enforce time limitations on debate (Jan. 4, 1995, p. 457). The Chair manages the sequence in which committees use their time for general debate under a special rule as a matter of recognition and may recognize any member of the committee who is filling the role of chairman or ranking minority member under the governing special rule (Mar. 9, 2005, p. ——). For a further discussion of management of time for general debate and debate on amendments in the Committee of the Whole, see § 959, *supra*.

A simple motion to rise is in order during general debate if offered by a Member managing time or a Member to whom a manager yields for that purpose (June 10, 1999, p. 12522; Sept. 4, 2003, p. ——, p. ——, p. ——). However, a Member may not, in time yielded to him for general

debate, move that the Committee rise (May 25, 1967, p. 14121) or yield to another for such motion (Feb. 22, 1950, p. 2178; May 17, 2000, p. 8200).

§979. Motion to close general debate in Committee of the Whole.

The motion to close general debate in Committee of the Whole, successor in the practice to the motion to discharge provided by the rule of 1841, is made in the House pending the motion that the House resolve itself into Committee, and not after the House has voted to go into Committee (V, 5208). Though the motion is not debatable, the previous question is sometimes ordered on it to prevent amendment (V, 5203). Where the previous question is ordered, the 40 minutes debate under clause 1(a) of rule XIX (formerly clause 2 of rule XXVII) is not allowed (VIII, 2555, 2690). General debate must have already begun in Committee of the Whole before the motion to limit debate it is in order in the House (V, 5204–5206). The motion may not apply to a series of bills (V, 5209) and must be offered to apply to the whole and not to a part of a bill (V, 5207). A proposition for a division of time may not be made as a part of it (V, 5210, 5211). The motion may not be made in Committee of the Whole (V, 5217; VIII, 2548); but, in absence of an order by the House, the Committee of the Whole may by unanimous consent determine as to general debate (V, 5232; VIII, 2553). Where the House has fixed the time, the Committee may not, even by unanimous consent, extend it (V, 5212–5216; VIII, 2321, 2550; Mar. 27, 1984, p. 6599; June 17, 1999, pp. 13437, 13442).

§980. Reading and amendment under the five-minute rule.

The second reading was originally instituted by the rule of 1789 and has continued, although the rule was eliminated, undoubtedly by inadvertence, in the codification of 1880 (V, 5221). The recodification of the 106th Congress conformed paragraph (a) to reflect the modern practice of first and second readings (H. Res. 5, Jan. 6, 1999, p. 47).

Revenue, general appropriation, lighthouse, and river and harbor bills are generally read by paragraphs. Other bills are read by sections (IV, 4738, 4740). Absent an order of the House to the contrary, the matter is in the discretion of the Chair (VIII, 2341, 2344, 2346), although the Committee of the Whole has overruled his decision (VIII, 2347). A Senate amendment, however, is read in its entirety, and not by either paragraphs or sections (V, 6194). An amendment in the nature of a substitute offered from the floor also must be read in its entirety and is then open to amendment at any point. Where a special order of business provides that an amendment inserting a provision in a bill be considered as adopted in the House and in the Committee of the Whole, the text thereby inserted in the bill is not read for amendment in the Committee of the Whole (May 23, 2002, p. ——).

A bill (or the remainder of a bill) may be considered as having been read and open to amendment by unanimous consent but not by motion (June 18, 1976, p. 19296). A unanimous-consent request in Committee of the Whole that an amendment in the nature of a substitute offered from

the floor be read by sections for amendment is not in order (Mar. 25, 1975, p. 8490). The Chairman of the Committee of the Whole normally looks to the manager of a general appropriation bill for any request to accelerate the reading by paragraph, although the Chair may recognize a Member seeking unanimous consent to offer an amendment to a portion of a bill not yet read (July 26, 2001, p. ——).

To a bill read by paragraph, a motion to strike an entire title, encompassing multiple paragraphs, is not in order (Aug. 5, 1998, p. 18928). Where a bill is considered as read and open to amendment at any point, adoption of an amendment adding a new section at the end of the bill does not preclude subsequent amendments to previous sections of the bill (Apr. 17, 1986, p. 7861). Where a bill is considered by title, the offering of an amendment inserting a new title precludes subsequent amendment to the pending title (Sept. 14, 2005, p. ——; see also Deschler-Brown, ch. 27, § 10.13).

When a paragraph or section has been passed, it is not in order to return thereto (IV, 4742, 4743) except by unanimous consent (IV, 4746, 4747; Deschler, ch. 26, § 2.26) or when, the reading of the bill being concluded and a motion to rise being decided in the negative, the Committee on motion votes to return (IV, 4748). By unanimous consent, the Committee of the Whole permitted a Member to withdraw an amendment and to reserve her right to reoffer it at a later time, even though that portion of the bill would have been passed in the reading (June 28, 2001, p. ——). The chairman may direct a return to a section whereon, by error, no action was had on a pending amendment (IV, 4750).

Points of order against a paragraph (or other portion of the bill then open to amendment) should be made before the next paragraph (or portion of the bill) is read or before an amendment is offered thereto (V, 6931; VIII, 2351; June 16, 2004, p. ——). The paragraph or section having been read, and an amendment offered, the right to explain or oppose that amendment has precedence of a motion to amend the amendment (IV, 4751).

The Member recognized during five-minute debate may not yield time (V, 5035–5037; May 8, 1987, p. 11832; Dec. 10, 1987, p. 34686) unless he remains on his feet (June 10, 1998, p. 11976); and he must confine himself to the subject (V, 5240–5256; VIII, 2591). Where debate on an amendment is limited or allocated by special order to a proponent and an opponent, the Members controlling the debate may yield and reserve time, whereas debate time on amendments under the five-minute rule cannot be reserved (Aug. 1, 1990, p. 21425). A Member recognized under the five-minute rule may not yield to another Member to offer an amendment (Dec. 12, 14, 1973, pp. 41171, 41716; Sept. 8, 1976, p. 29243; Mar. 7, 1995, p. 7107). For a further discussion of management of time for debate on amendments in the Committee of the Whole, see § 959, *supra*.

Where the Chair recognizes the proponent of an amendment to propound a unanimous-consent request to modify the text of the amendment before commencing debate thereon, the Chair does not charge time consumed

under a reservation of objection against the proponent's time for debate on the amendment (Feb. 3, 1993, p. 1978; May 27, 1993, p. 11931).

The Chair endeavors to alternate recognition to offer amendments between majority and minority Members (giving priority to committee members) (July 20, 2000, p. 15735). Recognition of Members to offer amendments in the Committee of the Whole under the five-minute rule is within the discretion of the Chair and cannot be challenged on a point of order (Deschler-Brown, ch. 29, § 9.6). The Chair does not anticipate the order in which amendments may be offered nor does he declare in advance the order in which he will recognize Members proposing amendments (Deschler-Brown, ch. 29, § 21.3).

The Committee of the Whole may not, even by unanimous consent, prohibit the offering of an amendment otherwise in order under the five-minute rule (July 31, 1984, p. 21701; Mar. 7, 1995, p. 11931). The fact that copies of an amendment have not been made available as required in this clause is not grounds for a point of order against the amendment (June 21, 1974, p. 20609; Mar. 25, 1976, p. 7997). An amendment that has been disposed of in the Committee of the Whole may not be withdrawn (June 17, 2004, p. ——).

§ 981. Pro forma amendments under the five-minute rule.

The pro forma amendment to "strike out the last word" has long been used for purposes of debate or explanation where an actual amendment is not contemplated (V, 5778; VIII, 2591). Unless a special rule precludes any amendment except pro forma amendments for the purpose of debate, a pro forma amendment may be voted on unless withdrawn (VIII, 2874). A Member who has occupied five minutes on a pro forma amendment to debate a pending substantive amendment may not lengthen this time by making another pro forma amendment (V, 5222; VIII, 2560), may not offer another pro forma amendment after intervening debate on a pending amendment, even on a subsequent day (July 14, 1998, p. 15298; May 23, 2002, p. ——), and may not extend debate time by offering a substantive amendment while other Members are seeking recognition (July 28, 1965, p. 18631). A Member recognized to offer a pro forma amendment under the five-minute rule may not during that time offer a substantive amendment but must be separately recognized for that purpose by the Chair (Nov. 19, 1987, p. 32880). A Member may speak in opposition to a pending amendment and subsequently offer a pro forma amendment and debate that (June 30, 1955, p. 9614); a Member may offer a second degree amendment and then offer a pro forma amendment to debate the underlying first degree amendment (June 28, 1995, p. 17633); and a Member who has debated a substantive amendment may thereafter rise in opposition to a pro forma amendment thereto (July 20, 1951, p. 8566). A Member who has offered a substantive amendment and then debated it for five minutes may not extend his time by offering a pro forma amendment, as it is not in order for the offeror of an amendment to amend his own amendment except by unanimous consent (Oct. 14, 1987, p. 27898). A pro

forma amendment may be offered after a substitute has been adopted and before the vote on the amendment, as amended, by unanimous consent only, since the amendment has been amended in its entirety and no further amendments, including pro forma amendments, are in order (Oct. 18, 1983, p. 28185; June 28, 1995, p. 17633). A Member recognized on a pro forma amendment may not allocate or reserve time, though he may in yielding indicate to the Chair when he intends to reclaim his time (May 19, 1987, p. 12811; July 13, 1994, p. 16438). The Chair endeavors to alternate recognition to offer pro forma amendments between majority and minority Members (giving priority to committee members) rather than between sides of the question (Mar. 21, 1994, p. 5730).

Quorum and voting

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

6. (a) A quorum of a Committee of the Whole House on the state of the Union is 100 Members. The first time that a Committee of the Whole finds itself without a quorum during a day, the Chairman shall invoke the procedure for a quorum call set forth in clause 2 of rule XX, unless he elects to invoke an alternate procedure set forth in clause 3 or clause 4(a) of rule XX. If a quorum appears, the Committee of the Whole shall continue its business. If a quorum does not appear, the Committee of the Whole shall rise, and the Chairman shall report the names of absentees to the House.

(b)(1) The Chairman may refuse to entertain a point of order that a quorum is not present during general debate.

(2) After a quorum has once been established on a day, the Chairman may entertain a point of order that a quorum is not present only when the Committee of the Whole House on the state of the Union is operating under the five-minute

rule and the Chairman has put the pending proposition to a vote.

(3) Upon sustaining a point of order that a quorum is not present, the Chairman may announce that, following a regular quorum call under paragraph (a), the minimum time for electronic voting on the pending question shall be five minutes.

(c) When ordering a quorum call in the Committee of the Whole House on the state of the Union, the Chairman may announce an intention to declare that a quorum is constituted at any time during the quorum call when he determines that a quorum has appeared. If the Chairman interrupts the quorum call by declaring that a quorum is constituted, proceedings under the quorum call shall be considered as vacated, and the Committee of the Whole shall continue its sitting and resume its business.

(d) A quorum is not required in the Committee of the Whole House on the state of the Union for adoption of a motion that the Committee rise.

It was the early practice for the Committee of the Whole to rise on finding itself without a quorum (IV, 2977), and it was not until 1847 that a rule (formerly clause 2(a) of rule XXIII) was adopted. The rule was amended in 1880, again in 1890 (which included the concept that a quorum in the Committee should be one hundred rather than a quorum of the House (IV, 2966)), and in 1971 (Jan. 22, 1971, p. 144). On October 13, 1972 (H. Res. 1123, p. 36012) the rule was amended to reflect the installation of the electronic voting system in the House Chamber. The clause was amended in the 93d Congress to permit the Chair to vacate proceedings under the call in his discretion when a quorum appears (H. Res. 998, Apr. 9, 1974, pp. 10195–99). In the 95th Congress the clause was substantially changed to allow quorum calls only under the five-minute rule where the Chairman has put the question on a pending proposition, after a quorum of the Committee of the Whole has been once established on that day (H. Res. 5, Jan. 4, 1977, pp. 53–70). The clause was amended again in the

96th Congress to permit the Committee to continue its business following the appearance of a quorum so that the Speaker need not take the chair to receive the Committee's report of absentees as in previous practice, and to enable the Chairman to reduce to five minutes the period for a recorded vote immediately following a regular quorum call (H. Res. 5, Jan. 15, 1979, pp. 7–16). In the 97th Congress (H. Res. 5, Jan. 5, 1981, p. 98) the clause was amended to allow the Chairman the discretion whether or not to entertain a point of order of no quorum during general debate only. Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(a) of rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47).

The Chairman of the Committee of the Whole must entertain a point of order of no quorum during the five-minute rule if a quorum has not yet been established in the Committee on the bill then pending (and the fact that a quorum of the Committee has previously been established on another bill on that day is irrelevant during consideration (Sept. 19, 1984, p. 26082)). Where a recorded vote on a prior amendment or motion during the five-minute rule on that bill on that day has established a quorum, a subsequent point of no quorum during debate is precluded (June 3, 1992, p. 13336), although a subsequent call of the Committee may be ordered by unanimous consent (May 10, 1984, p. 11869; Dec. 17, 1985, p. 37469; June 25, 1986, p. 15551). A vote by division is not such intervening business as would preclude a five-minute vote under clause 6(b)(3) (July 22, 1994, p. 17609).

The Speaker interpreted clause 6(c) to permit the Chairman of the Committee of the Whole to announce in advance, at the time that the absence of a quorum is ascertained, that he will vacate proceedings when a quorum appears, and to convert to a regular quorum call if a quorum does not appear at any time during the call (May 13, 1974, p. 14148). The Chair need not convert to a regular quorum call precisely at the expiration of 15 minutes if 100 Members have not responded on a "notice" quorum call but may continue to exercise his discretion to vacate proceedings at any time during the entire period permitted for the conduct of the call by clause 2 of rule XX (July 17, 1974, p. 23673).

Before the installation of the electronic system, a quorum in the Committee was established by a call of the roll. At one time the roll was called but once (IV, 2967); but in the later practice it was called twice as on other roll calls (VI, 668). Under the modern practice the Chairman normally directs that Members record their presence by electronic device. The Chair may however, in his discretion, order that Members respond by the alternative procedures in clause 3 of rule XX (alphabetical call of the roll) or clause 4(a) of rule XX (clerk tellers) (for the use of clerk tellers for a "notice" quorum call in Committee of the Whole, see July 13, 1983, p. 18858).

Where the Committee has risen to report the absence of a quorum, it resumes its session by direction of the Speaker on the appearance of a quorum (IV, 2968; VI, 674). The quorum which must appear to permit

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

§ 983. Rising and reports of Committee of the Whole.

Under clause 6(d), the presence of a quorum is not necessary for adoption of a motion that the Committee of the Whole rise (IV, 2975, 2976, 4914; Mar. 5, 1980, p. 4801; Oct. 3, 1985, p. 26096; May 21, 1992, p. 12394; July 21, 2004, p. ——).

A simple motion that the Committee of the Whole rise is privileged (VIII, 2369), takes precedence over a motion to amend (May 21, 1992, p. 12394), and is not debatable (May 17, 2000, p. 8203). However, the motion cannot interrupt a Member who has the floor (VIII, 2370, 2371) and may be ruled out when dilatory (VIII, 2800). For a further discussion of the motion to rise, see § 334, *supra*. For a point of order against the motion to rise and report an appropriation bill to the House where the bill, as proposed to be amended, exceeds an applicable allocation of new budget authority under section 302(b) of the Congressional Budget Act of 1974, and setting forth procedures in the Committee of the Whole in the event that the point of order is sustained, see § 1044b, *infra*.

A point of order of no quorum may not be entertained, on a day on which a quorum has been established, during the period after the Committee of the Whole has risen after completing its consideration of a bill or resolution and before the Chairman of the Committee has reported the bill or resolution back to the House. The Chairman having announced the absence of a quorum in Committee of the Whole, a motion to rise is in order and, if a quorum develops on the vote by which the motion is rejected, the roll is not called and the Committee proceeds with its business (VIII, 2369). The passage of a bill by the House is not invalidated by the fact that the Committee of the Whole reported it on an erroneous supposition that a recorded vote had disclosed a quorum (IV, 2972).

(e) In the Committee of the Whole House on the state of the Union, the Chairman shall order a recorded vote on a request supported by at least 25 Members.

This provision was adopted in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(b) of rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47).

§ 984. Five-minute votes in Committee of the Whole.

(f) In the Committee of the Whole House on the state of the Union, the Chairman may reduce to five minutes the minimum time for electronic voting without any intervening business or debate on any or all pending amendments after a record vote has been taken on the first pending amendment.

(g) 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 elec-

tronic voting on the first in any series of questions shall be 15 minutes.

Paragraph (f) was added in the 102d Congress (H. Res. 5, Jan. 3, 1991, p. 39). Before the House recodified its rules in the 106th Congress, paragraph (f) was found in former clause 2(c) of rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47). A vote by division is not such intervening business as would preclude a five-minute vote under this paragraph (July 22, 1994, p. 17609).

Paragraph (g) was added in the 107th Congress (H. Res. 5, Jan. 3, 2001, p. 25). Before the adoption of paragraph (g), the Chairman of the Committee of the Whole could not entertain a unanimous-consent request to reduce below 15 minutes the minimum time for recorded votes (June 18, 1987, p. 16764) or to postpone and cluster votes on amendments (July 13, 1995, p. 18871; Sept. 27, 1995, p. 26611; July 14, 1998, p. ——). Special rules of the House before adoption of paragraph (g) commonly provided the Chairman of the Committee of the Whole authority to postpone and cluster requests for recorded votes. Where a special rule provided such authority: (1) use of that authority, and the order of clustering, was entirely within the discretion of the Chair (*e.g.,* Aug. 5, 1998, p. 18950); (2) an amendment pending as unfinished business where proceedings on a request for a recorded vote had been postponed could be modified by unanimous consent on the initiative of its proponent (Mar. 30, 2000, p. 4037; July 19, 2005, p. ——); (3) a request for a recorded vote on an amendment on which proceedings had been postponed could be withdrawn by unanimous consent before proceedings resumed on the request as unfinished business, in which case the amendment stood disposed of by the voice vote thereon (May 16, 2000, p. 7994); (4) it did not permit the Chair to postpone a vote on an appeal of a ruling of the Chair (even by unanimous consent) (June 8, 2000, p. 9954); (5) the Committee of the Whole by unanimous consent could vacate postponed proceedings, thereby permitting the Chair to put the question de novo (June 20, 2000, p. 11526); and (6) the Committee of the Whole could resume proceedings on unfinished business consisting of a "stack" of amendments even while another amendment was pending (July 10, 2000, p. 13615).

Pursuant to this clause, where the Speaker has announced that he will postpone a request for a recorded vote that was made pending a point of order of no quorum, the point of order is considered as withdrawn because the question is no longer pending after the Speaker's announcement (see § 1026, *infra*). The offering of a pro forma amendment to discuss the legislative program, or an extended one-minute speech by a Member to express gratitude to the Members on a personal matter, is considered intervening business such as to preclude a five-minute vote under this authority except by unanimous consent (June 22, 2000, p. 12087; June 27, 2000, p. 12586). A request for a record vote under this paragraph may be withdrawn by unanimous consent before proceedings resume on the request as unfinished business, in which case the amendment stands disposed of

by the voice vote thereon (*e.g.,* Sept. 17, 1998, p. ——, June 25, 2004, p. ——) unless the request proposes that the Chair put the question de novo (Sept. 22, 2004, p. ——).

§ 985. Former provision for de novo vote where Delegates decisive.

When the 103d Congress enabled voting by the Delegates and the Resident Commissioner in the Committee of the Whole, it also added a paragraph (d) to former clause 2 of rule XXIII to provide for immediate reconsideration in the House of questions resolved in the Committee of the Whole House on the state of the Union by a margin within which the votes of Delegates and the Resident Commissioner have been decisive (H. Res. 5, Jan. 5, 1993, p. 49). When the 104th Congress repealed the authority for the Delegates and the Resident Commissioner to vote in the Committee of the Whole, it also repealed former clause 2(d) (sec. 212(c), H. Res. 6, Jan. 4, 1995, p. 468).

Under the former paragraph (d), whether the votes cast by the delegates were decisive was determined by a "but for" test, the question being whether the result would have been different if their votes were not counted (May 19, 1993, p. 10409). An amendment adopted by immediate proceedings de novo in the House under the former paragraph (d) did not disturb the sequence of a "king-of-the-hill" procedure established by a special rule waiving all points of order against subsequent amendments (Mar. 17, 1994, p. 5388).

Dispensing with the reading of an amendment

§ 986. Motion to dispense with reading.

7. 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 by 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.

This provision was added in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113) to permit a motion to dispense with the reading of certain amendments in the Committee of the Whole. Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5(b) of rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47).

Closing debate

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

8. (a) Subject to paragraph (b) at any time after the Committee of the Whole House on the state of the Union has begun five-minute debate on amendments to any portion of a bill or resolution, it shall be in order to move that the Committee of the Whole close all debate on that portion of the bill or resolution or on the pending amendments only. Such a motion shall be decided without debate. The adoption of such a motion does not preclude further amendment, to be decided without debate.

(b) 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.

(c) Material submitted for printing in the Congressional Record under this clause 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.

This clause (formerly clause 6 of rule XXIII) was adopted in 1860, with amendments in 1880 and 1885 (V, 5221, 5224). Paragraph (b), permitting 10 minutes for debate on an amendment that has been printed in the Record even after the Committee of the Whole closes debate, was inserted in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144) following the enactment of an identical provision in section 119 of the Legislative Reorganization Act of 1970 (84 Stat. 1140). In the 105th Congress that provision was amended to accommodate the printing of amendments to measures not yet reported (H. Res. 5, Jan. 7, 1997, p. 121). The third sentence, relating to the procedure for submitting and printing of amendments, was added in the 93d Congress (H. Res. 1387, Nov. 25, 1974, p. 37270). The last sentence, relating to the numbering of printed amendments, was added in the 104th Congress (sec. 217, H. Res. 6, Jan. 4, 1995, p. 468). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6 of rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47). A clerical correction was effected to paragraph (c) in the 107th Congress (sec. 2(x), H. Res. 5, Jan. 3, 2001, p. 26).

The Speaker announced that amendments to be printed in the Record pursuant to this clause must be deposited in a separate box at the Rostrum or with the Official Reporters of Debates within 15 minutes following adjournment, and must bear the Member's original signature (Nov. 25, 1974, p. 37270). Although ordinarily the expiration of time for debate on a bill and all amendments thereto precludes debate on amendments offered thereafter (July 18, 1968, p. 22110), debate on an amendment printed in the Record may nevertheless proceed for 10 minutes under this clause (Aug. 2, 1973, p. 27715). Printing an amendment in the Record under this clause permits debate notwithstanding a limitation of debate only if the amendment has been properly offered, and does not permit the offering of an amendment not otherwise in order under the rules (Apr. 23, 1975, p. 11491); and the guaranteed five minutes may be claimed only if the offeror of the amendment is the Member who caused it to be printed under the rule (June 1, 1976, p. 16044; June 29, 1989, p. 13928; June 19, 1991, p. 15473). The guaranteed time applies to an amendment offered as a substitute for another amendment, rather than as a primary amendment, if offered in the precise form printed (June 26, 1979, p. 16682), but where such a substitute amendment has not been printed in the Record it may

not be debated unless time is yielded within the original 10 minutes (Dec. 10, 1987, p. 34710). Where a special order requires amendments to be printed in the Record to qualify during the consideration of a bill under the five-minute rule, but makes no designation concerning offerors, any printed amendment may be offered by any Member (Mar. 22, 1990, p. 5017); but only the Member causing the amendment to be printed is entitled to the time for debate guaranteed by this clause.

The motion to close five-minute debate is not in order until such debate has begun (V, 5225; VIII, 2567), which means after one five-minute speech (V, 5226; VIII, 2573). The motion to strike the enacting clause under clause 9 (formerly clause 7) is preferential to the motion to close debate (June 28, 1995, p. 17647; July 13, 1995, p. 18872). Although any Member may move, or request unanimous consent, to limit debate under the five-minute rule, the manager of the bill has priority in recognition for such purpose (June 19, 1984, p. 17055). The House, as well as the Committee of the Whole, may close five-minute debate after it has begun (V, 5229, 5231), but rarely exercises this right. The motion to close debate, while not debatable (Apr. 23, 1975, p. 11534; June 5, 1975, p. 17187, July 14, 1998, p. 15304), may be amended (V, 5227; VIII, 2578). A time limitation imposed by the Committee of the Whole under this clause may be rescinded or modified only by unanimous consent (Sept. 17, 1975, p. 28904). While the Committee of the Whole may limit debate on amendments, it may not restrict the offering of amendments in contravention of a special order adopted by the House (June 25, 1985, p. 17201). The Committee of the Whole by unanimous consent may limit and allocate control of time for debate on amendments not yet offered (May 6, 1998, p. 8348). The motion may be ruled out when dilatory (V, 5734).

The closing of debate on the last section of a bill does not preclude debate on a substitute for the whole text (V, 5228). Where there is a time limitation on debate on a pending amendment in the nature of a substitute and all amendments thereto, but not on the underlying original text, debate on perfecting amendments to the original text proceeds under the five-minute rule absent another time limitation (Apr. 13, 1983, p. 8402). Where the time for debate on a pending amendment in the form of a motion to strike and all amendments thereto has been limited, a subsequently offered perfecting amendment considered as preferential to (rather than as an amendment to) the motion to strike remains separately debatable outside the limitation (July 20, 1995, p. 19788). Where five-minute debate has been limited to a certain number of minutes without reference to a time certain, the time consumed by reading of amendments, quorum calls, points of order and votes does not reduce the amount of time remaining for debate (Oct. 3, 1969, p. 28459; Nov. 9, 1971, p. 40060). However, where debate has been limited to a time certain, such activities as reading and voting consume time otherwise available for debate (May 6, 1970, p. 14452; Oct. 7, 1976, p. 26305). Unlike time placed under a Member's control, five-minute debate (or time derived therefrom under a limitation) may not be

reserved or yielded in blocks except by unanimous consent (Mar. 2, 1976, p. 4992; May 11, 1976, p. 13416; June 14, 1977, p. 18833). A motion to limit debate on a pending amendment may neither allocate the time proposed to remain nor vary the order of recognition to close debate, though the Committee of the Whole may do either separately by unanimous consent (July 12, 1988, p. 17767). The Committee of the Whole may by motion: (1) limit debate on a pending committee amendment in the nature of a substitute (considered as read) and on all amendments thereto to a time certain; and then (2) separately limit debate on each perfecting amendment as it is offered (Mar. 16, 1983, p. 5794).

Under a limitation on debate the Chair may, in his discretion, choose among the following: (1) permit continued debate under the five-minute rule; (2) divide the remaining time among those desiring to speak; or (3) divide the remaining time between a proponent and an opponent to be yielded by them to other Members (May 25, 1982, p. 11672; May 10, 2000, p. 7515). The Chair also may, in his discretion, give priority in recognition under a limitation to those Members seeking to offer amendments, over other Members standing at the time the limitation was agreed to (May 26, 1977, pp. 16950–52). Where time for debate has been limited on a bill and all amendments thereto to a time certain several hours away, the Chair may, in his discretion, continue to proceed under the five-minute rule until he desires to allocate remaining time on possible amendments, and may then divide that time among proponents of anticipated amendments and committee members opposing those amendments (*e.g.*, July 16, 1981, p. 16044; Feb. 28, 1995, pp. 6306–08). The Chair has discretion to reallocate time to conform to the limit set by unanimous consent of the Committee of the Whole (Mar. 16, 1995, p. 8115).

As codified in clause 3(c) of rule XVII (and except as indicated in § 959, *supra*) a manager of the bill controlling time in opposition to an amendment, and not the proponent of the pending amendment, has the right to close debate on the amendment (July 16, 1981, p. 16043), even where he is the proponent of a pending amendment to the amendment (Mar. 16, 1983, p. 5792).

Striking the enacting clause

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

9. A motion that the Committee of the Whole House on the state of the Union rise and report a bill or resolution to the House with the recommendation that the enacting or resolving clause be stricken shall have precedence of a motion to amend, and, if carried in the House, shall constitute a rejection of the bill or resolution. When-

ever a bill or resolution is reported from the Committee of the Whole with such adverse recommendation and the recommendation is rejected by the House, the bill or resolution shall stand recommitted to the Committee of the Whole without further action by the House. Before the question of concurrence is submitted, it shall be in order to move that the House refer the bill or resolution to a committee, with or without instructions. If a bill or resolution is so referred, then when it is again reported to the House it shall be referred to the Committee of the Whole without debate.

The practice of rejecting a bill by striking out the enacting words dates from a time as early as 1812, but the first rule on the subject was not adopted until 1822. By amendments in 1860, 1870, and 1880 the rule has been brought into its present form (V, 5326). The rule before 1880 applied in the House as well as in Committee of the Whole. In the revision of 1880, it was classified among the rules relating to the Committee of the Whole, but there is nothing to indicate that this change was intended to limit the scope of the motion. It was probably a recognition merely of the fact that the motion was used most frequently in Committee of the Whole (V, 5326, 5332). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 7 of rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47). The motion must be in writing and in the proper form (July 24, 1986, p. 17641; Aug. 15, 1986, p. 22071; Sept. 12, 1986, p. 23178).

§ 989. Practice as to use of the motion to strike out the enacting clause.

The motion may not be made until the first section of the bill has been read (V, 5327; VIII, 2619). Having precedence of a motion to amend, it may be offered while an amendment is pending (V, 5328–5331; VIII, 2622, 2624, 2627). The motion takes precedence over the motion to amend and therefore over the motion to rise and report at the end of the reading of a general appropriation bill for amendment under clause 2(d) of rule XXI (July 24, 1986, p. 17641). The motion also takes precedence over a motion to limit debate on pending amendments (June 28, 1995, p. 17647; July 13, 1995, p. 18874). Where a special order provides that a bill shall be open to amendment in Committee of the Whole, a motion to strike out the enacting words is in order (VII, 787); contra (IV, 3215), but after the stage of amendment has been passed the motion to strike out the enacting words is not in order (IV, 4782; VIII, 2368). Where a bill is being considered under a special order which permits only committee

amendments and no amendments thereto, a motion that the Committee rise and report with the recommendation that the enacting clause be stricken is not in order where no committee amendments are in fact offered (Apr. 16, 1970, p. 12092).

The motion is debatable as to the merits of the bill, but may not go beyond its provisions (V, 5336). The debate on the motion is governed by the five-minute rule (V, 5333–5335; VIII, 2618, 2628–2631); only two five-minute speeches are in order (V, 5335; VIII, 2629), and time may not be reserved (May 22, 1991, p. 11830); thus where a Member recognized for five minutes in opposition to the motion yields back his time another Member may not claim the unused portion thereof (Mar. 3, 1988, p. 3241). Members of the committee managing the bill have priority in recognition for debate in opposition to the motion (May 5, 1988, p. 9955; June 26, 1991, p. 16436). The Chair will not announce in advance the Member to be recognized in opposition to the motion (July 17, 1996, p. 17543). The motion is not debatable after the expiration of time for debate on the pending bill and all amendments thereto (July 9, 1965, p. 16280; July 19, 1973, p. 24961; June 19, 1975, p. 19785). However, it is debatable where the limitation is only on an amendment in the nature of a substitute being read as an original bill for the purpose of amendment under a special order and not on the bill, itself, as well (June 20, 1975, p. 19966). For more concerning debate on the motion, see Deschler, ch. 19, § 13.

A second motion to strike out the enacting clause is not entertained on the same legislative day in the absence of any material modification of the bill (VIII, 2636), but the motion may be repeated on a subsequent legislative day without change in the bill (May 6, 1950, p. 6571). The rejection of a proposed amendment to the bill does not qualify as a modification of the bill (June 21, 1962, p. 11369), nor does the adoption of an amendment to a proposed amendment to the bill. However, adoption of an amendment to an amendment in the nature of a substitute read as an original bill pursuant to a special order does qualify as a modification of the bill (June 20, 1975, p. 19970). A motion that is withdrawn by unanimous consent rather than voted on by the Committee does not preclude the offering of another motion on the same day without a material modification of the bill (May 9, 1996, p. 10758).

A point of order against the motion should be made before debate thereon has begun (V, 6902; VIII, 3442; May 6, 1950, p. 6571), and when challenged the Member offering the motion must qualify as being opposed to the bill (Mar. 13, 1942, p. 2439; May 6, 1950, p. 6571; June 14, 1979, p. 14995; Jan. 26, 1995, p. 2521). When a bill is reported from the Committee of the Whole with the recommendation that the enacting words be stricken out, the motion to strike out is debatable (V, 5337–5340), but a motion to lay on the table is not in order (V, 5337). The previous question may be moved on the motion to concur without applying to further action on the bill (V, 5342). When the House disagrees to the action of the Committee in striking out the enacting words and does not refer it under the provisions

of the rule, it goes back to the Committee of the Whole, where it becomes unfinished business (V, 5326, 5345, 5346; VIII, 2633). Notwithstanding that consideration of the pending bill was governed by a "modified-closed" rule permitting only specified amendments, pending the concurrence of the House with a recommendation of the Committee of the Whole that the enacting clause be stricken, the House could by instructions in a motion to refer under this clause direct the Committee of the Whole to consider additional germane amendments (Apr. 14, 1994, p. 7452). When the enacting words of a bill are stricken out, the bill is rejected (V, 5326). When the enacting clause of a Senate measure is stricken, the bill is rejected (V, 5326); and the Senate is so informed (IV, 3423; VIII, 2638; June 20, 1946, p. 7211; Oct. 4, 1972, p. 33787).

When, on Calendar Wednesday, the House disagrees to the recommendation of the Committee of the Whole that the enacting words be stricken out, the House automatically resolves itself into Committee of the Whole for its further consideration (VII, 943).

Concurrent resolution on the budget

§ 990. Reading concurrent resolution on budget for amendment.

10. (a) At the conclusion of general debate in the Committee of the Whole House on the state of the Union on a concurrent resolution on the budget under section 305(a) of the Congressional Budget Act of 1974, the concurrent resolution shall be considered as read for amendment.

(b) It shall not be in order in the House or in the Committee of the Whole House on the state of the Union to consider an amendment to a concurrent resolution on the budget, or an amendment thereto, unless the concurrent resolution, as amended by such amendment or amendments—

(1) would be mathematically consistent except as limited by paragraph (c); and

(2) would contain all the matter set forth in paragraphs (1) through (5) of section 301(a) of the Congressional Budget Act of 1974.

(c)(1) Except as specified in subparagraph (2), it shall not be in order in the House or in the Committee of the Whole House on the state of the Union to consider an amendment to a concurrent resolution on the budget, or an amendment thereto, that proposes to change the amount of the appropriate level of the public debt set forth in the concurrent resolution, as reported.

(2) Amendments to achieve mathematical consistency under section 305(a)(5) of the Congressional Budget Act of 1974, if offered by direction of the Committee on the Budget, may propose to adjust the amount of the appropriate level of the public debt set forth in the concurrent resolution, as reported, to reflect changes made in other figures contained in the concurrent resolution.

Paragraph (a) (first sentence of former clause 8 of rule XXIII) was added on January 4, 1977 (H. Res. 5, 95th Cong., pp. 53–70). Paragraph (b) (second sentence of former clause 8 of rule XXIII) was adopted in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16). In the 96th Congress paragraph (b) was amended further and paragraph (c) (third sentence of former clause 8 of rule XXIII) was added by Public Law 96–78 (93 Stat. 589) and was originally intended to apply to concurrent resolutions on the budget for fiscal years beginning on or after October 1, 1980. However, in the 96th Congress the provisions of that public law amending the Rules of the House were made applicable to the third concurrent resolution on the budget for fiscal year 1980 as well as the first concurrent resolution on the budget for fiscal year 1981 (H. Res. 642, Apr. 23, 1980, p. 8789). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 8 of rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47).

Unfunded mandates

§ 991. Unfunded mandates.

11. (a) In the Committee of the Whole House on the state of the Union, an amendment proposing only to strike

an unfunded mandate from the portion of the bill then open to amendment, if otherwise in order, may be precluded from consideration only by specific terms of a special order of the House.

(b) In this clause the term "unfunded mandate" means a Federal intergovernmental mandate the direct costs of which exceed the threshold otherwise specified for a reported bill or joint resolution in section 424(a)(1) of the Congressional Budget Act of 1974.

This provision (formerly clause 5(c) of rule XXIII) was added by the Unfunded Mandates Reform Act of 1995 (sec. 107(a), P.L. 104–4; 109 Stat. 63). It was amended later in the 104th Congress to effect a technical correction (H. Res. 254, Nov. 30, 1995, p. 35077), and in the 105th Congress to clarify that it applies to intergovernmental mandates (H. Res. 5, Jan. 7, 1997, p. 121). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5(c) of rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47). An amendment has been admitted under this clause to a bill being considered under a modified-closed rule that did not specifically preclude such amendment (Apr. 21, 2005, p. ——).

Applicability of Rules of the House

§ 992. Application of Rules of House to the Committee of the Whole.

12. The Rules of the House are the rules of the Committee of the Whole House on the state of the Union so far as applicable.

This clause was adopted in 1789 (IV, 4737). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 9 of rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47).

§ 993. Modification of special orders.

The Chair may not entertain a unanimous-consent request in the Committee of the Whole if its effect is to materially modify procedures required by a special rule or order adopted by the House. For example, the following unanimous-consent requests may not be entertained in the Committee of the Whole: (1) to permit a perfecting amendment to be offered to the underlying bill where a special rule permitted its consideration only as a perfecting amendment to a committee amendment (Aug. 2, 1977, p. 26161); (2) to permit a substitute to be read by section for amendment where the special rule did not so provide (Dec. 12, 1973, p. 41153); (3) to extend the time limitation for consideration of amendments beyond that set by a special order requir-

ing the Chair to put the question on the pending amendments at the expiration of certain hours of consideration (Apr. 10, 1986, p. 7079; Oct. 30, 1991, p. 29213; Aug. 3, 1999, p. 19218; Oct. 21, 1999, p. 26492); (4) to restrict "en blocking" authority granted in a special order (Sept. 11, 1986, p. 22871; June 21, 1989, p. 12744); (5) to change the scheme for control (Oct. 9, 1986, p. 29984) or duration (Aug. 1, 1989, p. 17143; Mar. 12, 1991, p. 5799; Mar. 17, 1993, p. 5385; June 17, 1999, pp. 13437, 13442; Feb. 9, 2005, p. —— (Chair corrected himself)) of general debate specified by the House, including a "wrap up" debate following the amendment process (Mar. 25, 2004, p. ——); (6) to preempt the Chair's discretion (granted by a special order) to postpone and cluster votes or to schedule further consideration of a pending measure to a subsequent day (June 4, 1992, p. 13625; July 13, 1995, p. 18872); (7) to postpone a vote on an appeal of a ruling of the Chair (June 8, 2000, p. 9954); (8) to permit an amendment offered by another Member to an amendment rendered unamendable by a special order or to permit a subsequent amendment changing such unamendable amendment already adopted (Nov. 18, 1987, p. 32643; July 26, 1989, p. 16411; July 24, 1996, p. 18907); (9) to permit consideration of an amendment out of the order specified in a special rule (May 25, 1988, p. 12275; Oct. 3, 1990, p. 27354; Oct. 31, 1991, p. 29359; Nov. 19, 1993, p. 30472; June 10, 1998, p. 11914; July 29, 1999, p. ——); (10) to permit consideration of an additional amendment or to authorize a supplemental report from the Committee on Rules in lieu of the original report referred to in the special order (July 28, 1988, p. 19491; Speaker Wright, Aug. 11, 1988, p. 22105; June 10, 1998, p. 11914; June 24, 2005, p. ——); (11) to permit another to offer an amendment vested in a specified Member (May 1, 1990, p. 9030); (12) to permit a division of the question on an amendment rendered indivisible by a special order (July 16, 1996, p. 17318); (13) to preclude procedural votes (where the order of the House refrained from precluding any form of motion to rise) (July 26, 2001, p. ——); (14) to preclude further amendment except as specified (Apr. 3, 2003, p. ——); (15) to permit the offering of a pro forma amendment to an amendment when the special order governing consideration occupied the field by permitting pro forma amendments to the bill only (July 7, 2004, p. ——).

Unanimous-consent requests have been entertained in Committee of the Whole: (1) to permit the modification of a designated amendment made in order by a special rule, once offered, if the request is propounded by the proponent of the amendment (*e.g.*, Sept. 1, 1976, p. 28877; Nov. 19, 1993, p. 30472; July 24, 1996, p. 18906; Mar. 29, 2000, p. 4017; Mar. 13, 2002, p. ——), including as unfinished business where proceedings on a request for a recorded vote have been postponed (Mar. 30, 2000, p. 4037); (2) to permit a page reference to be included in a designated amendment made in order as printed where the printed amendment did not include that reference (Apr. 1, 1976, p. 9091); (3) to permit a supporter of an amendment to claim debate time allocated by special order to an opponent, where

no opponent seeks recognition (May 23, 1990, p. 11988); (4) to shorten the time set by special order for debate on a particular amendment (Aug. 1, 1990, p. 21510; Mar. 29, 1995, p. 9742); (5) to lengthen the time set by special order for debate on a particular amendment under terms of control congruent with those set by the order of the House (May 11, 1988, p. 10495; May 21, 1991, p. 11646; Mar. 22, 1995, p. 8769; June 27, 1995, p. 17329; Nov. 2, 1995, p. 31376; Mar. 25, 2004, p. ——); (6) to permit en bloc consideration of several amendments under a "modified-closed" special order providing for the sequential consideration of designated separate amendments (Aug. 10, 1994, p. 20768); (7) to permit one of two committees controlling time for general debate pursuant to a special order to yield control of its time to the other (Aug. 18, 1994, p. 23118); (8) to permit the offering of pro forma amendments for the purpose of debate under a "modified-closed" special order limiting both amendments and debate thereon (July 17, 1996, p. 17563; July 24, 1996, p. 18896); (9) to reach ahead in the reading of a general appropriation bill to consider one amendment without prejudice to others earlier in the bill under a special order of the House contemplating that each remaining amendment be offered only at the "appropriate point in the reading of the bill" (Mar. 29, 2000, p. 3980); and (10) to permit the reading of an amendment that already was considered as read under the special order of the House (June 13, 2000, p. 10546; July 10, 2002, p. ——).

By unanimous consent the House may delegate to the Committee of the Whole authority to entertain unanimous-consent requests to change procedures contained in an adopted special order (Aug. 11, 1986, p. 20633). The Member offering an amendment in the Committee of the Whole pursuant to a special order of the House has the burden of proving that it meets the description of the amendment made in order (July 17, 1996, p. 17553). The Chair advised the Committee that an amendment made in order was described by subject matter rather than by prescribed text and that the pending amendment fit such description (July 20, 2000, p. 15751). For a description of the authority under clause 6(g) for the Chairman of the Committee of the Whole to postpone and cluster requests for recorded votes on amendments (which, before the adoption of that clause, was commonly provided by special orders of the House), and the Chair's interpretation thereof, see § 984, *supra*.

RULE XIX

MOTIONS FOLLOWING THE AMENDMENT STAGE

Previous question

§ 994. The previous question.

1. (a) There shall be a motion for the previous question, which, being ordered, shall have the effect of cutting off all debate and bringing the House to a direct vote on the immediate question or questions on which it has been ordered. Whenever the previous question has been ordered on an otherwise debatable question on which there has been no debate, it shall be in order to debate that question for 40 minutes, equally divided and controlled by a proponent of the question and an opponent. The previous question may be moved and ordered on a single question, on a series of questions allowable under the rules, or on an amendment or amendments, or may embrace all authorized motions or amendments and include the bill or resolution to its passage, adoption, or rejection.

The House adopted a rule for the previous question in 1789, but did not turn it into an instrument for closing debate until 1811. The history of the motion for the previous question is discussed in V, 5443, 5446; VIII, 2661. In 1880 the previous question rule was amended to apply to single motions or a series of motions as well as to amendments, and the motion to commit pending the motion for the previous question or after the previous question is ordered to passage was added (V, 5443). From 1880 to 1890, the previous question could only be ordered to the engrossment and third reading, and then again ordered on passage, but in 1890 the rule was changed to permit ordering the previous question to final passage (V, 5443). When the House recodified its rules in the 106th Congress, it consolidated former clause 1 of rule XVII and a provision included in former clause 2 of rule XXVII, permitting 40 minutes debate on which the previous question has been ordered without there having been debate under this clause. The 106th Congress also transferred the provision addressing the

motion to commit from clause 1 of rule XVII to clause 2 of this rule (H. Res. 5, Jan. 6, 1999, p. 47).

The previous question is the only motion used for closing debate in the House itself (V, 5456; VIII, 2662). It is not in order in Committee of the Whole (IV, 4716; Apr. 25, 1990, p. 8257) but is in order in the House as in Committee of the Whole (VI, 639). The motion may not include a provision that it shall take effect at a certain time (V, 5457).

§ 996. Application of the previous question.

The provisions of the rule define the application of the previous question with considerable accuracy. It may not be moved on more than one bill, or on motions to agree to a conference report while also to dispose of differences not included in the report, except by unanimous consent (V, 5461–5465). When ordered on a motion to send to conference, it applies to that motion alone and does not extend to a subsequent motion to instruct conferees (VIII, 2675). It may apply to the main question and a pending motion to refer (V, 5466; VI, 373; VIII, 2678), or to a pending resolution and a pending amendment thereto (Sept. 25, 1990, p. 25575; July 16, 1998, p. 15793). When a bill is reported from the Committee of the Whole with the recommendation that the enacting words be stricken out, it may be applied to the motion to concur without covering further action on the bill (V, 5342). During consideration "in the House as in Committee of the Whole" it may be demanded while Members still desire to offer amendments (IV, 4926–4929; VI, 639), but it may not be moved on a single section of a bill (IV, 4930). When ordered on a resolution with a preamble there is doubt of its application to the preamble, unless the motion specifies (V, 5469, 5470). It may be moved on a series of resolutions, but this does not preclude a division of the resolutions on the vote (V, 5468), although where two propositions on which the previous question is moved are related, as in the case of a special order reported from the Committee on Rules and a pending amendment thereto, a division is not in order (Sept. 25, 1990, p. 25575). The previous question is often ordered on nondebatable propositions to prevent amendment (V, 5473, 5490), but may not be moved on a motion that is both nondebatable and unamendable (IV, 3077). It applies to questions of privilege as to other questions (II, 1256; V, 5459, 5460; VIII, 2672).

§ 997. The right to move the previous question.

The Member in charge of the bill and having the floor may demand the previous question although another Member may propose a motion of higher privilege (VIII, 2684), but the motion of higher privilege must be put first (V, 5480; VIII, 2609, 2684), and if the Member in charge of the bill claims the floor in debate another Member may not demand the previous question (II, 1458); but having the floor, unless yielded to for debate only, any Member may make the motion although the effect may be to deprive the Member in charge of the bill (V, 5476; VIII, 2685). The Member who has called up a measure in the House has priority of recognition to move the previous question thereon, even over the chairman

of the reporting committee (Oct. 1, 1986, p. 27468). If, after debate, the Member in charge of the bill does not move the previous question, another Member may (V, 5475); but where a Member intervenes on a pending proceeding to make a preferential motion, such as the motion to recede from a disagreement with the Senate, he may not move the previous question on that motion as against the rights of the Member in charge (II, 1459), and the Member in charge is entitled to recognition to move the previous question even after he has surrendered the floor in debate (VIII, 2682, 3231). Where a Member controlling the time on a bill or resolution in the House yields for the purpose of amendment (or offers an amendment himself), another Member may move the previous question before the Member offering the amendment is recognized to debate it (Deschler, ch. 23, § 18.3; July 24, 1979, p. 20385). Where under a rule of the House debate time on a motion or proposition is equally divided and controlled by the majority and the minority, or between those in favor and those opposed (see, *e.g.*, clauses 2 and 6 of rule XV), or where a block of time for debate has been yielded by the manager, the previous question may not be moved until the other side has used or yielded back its time; and the Chair may vacate the adoption of the previous question where it was improperly moved while the other side was still seeking time (Oct. 3, 1989, p. 22842). The previous question may not be demanded on a proposition against which a point of order is pending (VIII, 3433).

§ 998. Relation of the previous question to motions.

The motion to lay on the table may not be applied to the previous question (V, 5410, 5411); and it may not be applied to the main question after the previous question has been ordered (V, 5415–5422; VIII, 2655), or after the yeas and nays have been ordered on the demand for the previous question (V, 5408, 5409).

The motion to postpone may not be applied to the main question after the previous question has been ordered (V, 5319–5321; VIII, 2617). The previous question may be applied both to the main question and a pending motion to refer (V, 5342; VI, 373). The motion to adjourn is not available when the previous question has been ordered by special rule to final passage without intervening motion (IV, 3211–3213, June 14, 2001, p. ——; Apr. 18, 2002, p. ——).

§ 999. The 40 minutes of debate on undebated propositions.

This clause allows 40 minutes of debate when the previous question is ordered on an otherwise debatable proposition on which there has been no debate (V, 6821; VIII, 2689; Sept. 13, 1965, p. 23602; Mar. 22, 1990, p. 4996). However, any previous debate on the merits of the main proposition precludes the 40 minutes (V, 5499–5502). The demand for 40 minutes of debate must come before the vote is taken on the main question (V, 5496). It is not available: (1) when the question on which the previous question is ordered is otherwise nondebatable, such as the motion to close debate (VIII, 2555, 2690); (2) on an undebated amendment where the motion for the previous question covers both the amend-

ment and the original proposition, which has been debated (V, 5504) (although when the previous question is ordered merely on an amendment that has not been debated, the 40 minutes are allowed (V, 5503)); (3) on incidental motions (V, 5497–5498); (4) on propositions previously debated in Committee of the Whole (V, 5505); (5) on conference reports accompanying measures that were debated before being sent to conference (V, 5506–5507); (6) on ancillary measures, such as a concurrent resolution to correct an enrolled bill (V, 5508). Debate allowed under this provision is equally divided and controlled between the person demanding the time and a Member representing the opposition (V, 5495; Sept. 13, 1965, pp. 23602–06; May 8, 1985, p. 11073). Priority in recognition for time in opposition is accorded to a Member truly opposed (VIII, 2689).

§ 1000. Questions of order pending the motion for the previous question.

(b) Incidental questions of order arising during the pendency of a motion for the previous question shall be decided, whether on appeal or otherwise, without debate.

This provision was adopted in 1837 to prevent delay by debate on points of order after the demand for the previous question (V, 5448). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 3 of rule XVII (H. Res. 5, Jan. 6, 1999, p. 47). Under the present practice, the Chair may recognize and respond to a parliamentary inquiry although the previous question may have been demanded (Mar. 27, 1926, p. 6469).

A question of privilege relating to the integrity of action of the House itself has been distinguished from ordinary questions of order and has been thrown open to debate after the ordering of the previous question (III, 2532).

Recommit

§ 1001. Recommit.

2. (a) After the previous question has been ordered on passage or adoption of a measure, or pending a motion to that end, it shall be in order to move that the House recommit (or commit, as the case may be) the measure, with or without instructions, to a standing or select committee. For such a motion to recommit, the Speaker shall give preference in recognition to a Member, Delegate, or Resi-

dent Commissioner who is opposed to the measure.

(b) Except as provided in paragraph (c), if a motion that the House recommit a bill or joint resolution on which the previous question has been ordered to passage includes instructions, it shall be debatable for 10 minutes equally divided between the proponent and an opponent.

(c) On demand of the floor manager for the majority, it shall be in order to debate the motion for one hour equally divided and controlled by the proponent and an opponent.

The motion to commit or recommit described in paragraph (a) was added to the previous question rule (formerly clause 1 of rule XVII) in 1880 (V, 5443). The portion of paragraph (a) that gives preference in recognition to one opposed to the measure was added to former clause 4 of rule XVI in the 61st Congress (Mar. 15, 1909, pp. 22–34). Paragraphs (b) and (c), relating to debate on the motion to recommit with instructions were added to former clause 4 of rule XVI by section 123 of the Legislative Reorganization Act of 1970 and made a part of the standing rules in the 92d Congress (H. Res. 5, Jan. 21, 1971, p. 14). That provision was also amended in the 99th Congress to provide that on the demand of the majority floor manager of a bill or joint resolution, the 10 minutes of debate on a motion to recommit with instructions, the previous question having been ordered, may be extended to one hour, equally divided and controlled (H. Res. 7, Jan. 3, 1985, p. 393). When the House recodified its rules in the 106th Congress, it consolidated the last sentence of former clause 1 of rule XVII and provisions of former clause 4 of rule XVI, addressing the motion to recommit, under this clause (H. Res. 5, Jan. 6, 1999, p. 47). For a general discussion of the motion to refer see § 916, *supra*.

§ 1002. Application of motion.

The motion to commit under this rule applies to resolutions of the House alone as well as to bills (V, 5572, 5573; VIII, 2742), and to a motion to amend the Journal (V, 5574). It does not apply to a report from the Committee on Rules providing a special order of business (V, 5593–5601; VIII, 2270, 2750), or to a pending amendment to a proposition in the House (V, 5573). A motion to commit under this clause, with instructions to report forthwith with an amendment, has been allowed after the previous question has been ordered on a motion to dispose of Senate amendments before the stage of disagreement (V, 5575; VIII, 2744, 2745). However, a motion to commit under this clause does not apply to a motion disposing of Senate amend-

ments after the stage of disagreement where utilized to displace a pending preferential motion (Speaker Albert, Sept. 16, 1976, p. 30887).

The motion to commit may be made pending the demand for the previous question on passage (or adoption), whether a bill or resolution is under consideration (V, 5576). However, when the demand covers all stages of the bill to passage, the motion to commit is made only after the third reading and is not in order pending the demand or before third reading (V, 5578–5581). When separate motions for the previous question are made, respectively, on the third reading and on passage of a bill, the motion to commit should be made only after the previous question is ordered on passage (V, 5577). When the House refuses to order a bill to be engrossed and read a third time, the motion to commit may not be made (V, 5602, 5603). When the previous question has been ordered on a simple resolution (as distinguished from a joint resolution) and a pending amendment, the motion to commit should be made after the vote on the amendment (V, 5585–5588). A motion to commit has been entertained after ordering of the previous question even before the adoption of rules at the beginning of a Congress (VIII, 2755; Jan. 5, 1981, p. 111).

When a special order declares that at a certain time the previous question shall be considered as ordered on a bill to final passage, it has usually, but not always, been held that a motion to commit is precluded (IV, 3207–3209). Under clause 6(c) of rule XIII (formerly clause 4(b) of rule XI) the Committee on Rules is prohibited from reporting a special order that precludes the motion to recommit as provided in clause 2 of rule XIX (VIII, 2260, 2262–2264; see also § 1001, *supra*). That provision was amended in the 104th Congress to further prohibit the Committee on Rules from denying the Minority Leader or his designee the right to include proper amendatory instructions in a motion to recommit except with respect to a Senate measure for which the text of a House-passed measure has been substituted (sec. 210, H. Res. 6, Jan. 4, 1995, p. 460). Where a special order providing for consideration of a matter in the House provides that the previous question shall be considered as ordered thereon without intervening motion and does not simply state that the previous question be considered as ordered after debate, the previous question is considered as ordered from the beginning of the debate, precluding the consideration of any intervening motion (Mar. 12, 1980, pp. 5387–93; June 14, 2001, p. ——).

Where a bill is recommitted under this motion the previous question being pending but not ordered on final passage and, having been reported again, is again amended and subjected to the previous question, another motion to commit is in order after the engrossment and third reading (V, 5591).

§ 1002a. Consideration of motion.

When the previous question is ordered on a bill to final passage, debate on a straight motion to recommit under this clause is no longer in order and only a motion to recommit with instructions is debatable for the 10 minutes specified

in the rule (June 22, 1995, p. 16844). Before the amendment of this clause in the 92d Congress, no debate was permitted on a motion to recommit with instructions after the previous question was ordered (V, 5561, 5582–5584; VIII, 2741). The 10 minutes of debate provided under this clause on motions to recommit with instructions does not apply to a motion to recommit with instructions of a simple or concurrent resolution or conference report, since the clause limits its applicability to bills and joint resolutions (Nov. 15, 1973, p. 37151; Mar. 29, 1976, p. 8444; Speaker O'Neill, June 19, 1986, p. 14698). The manager of a bill or joint resolution, if opposed, and not the proponent of a motion to recommit with instructions has the right to close controlled debate on a motion to recommit (Speaker Wright, Dec. 3, 1987, p. 34066). The Member recognized for five minutes in favor of the motion may not reserve time (Speaker Wright, June 29, 1988, p. 16510; June 29, 1989, p. 13938). Although time for debate on a motion to recommit with instructions is not "controlled," and therefore Members may not reserve or yield blocks of time, a Member under recognition may yield to another while remaining on his feet (Feb. 27, 2002, p. ——).

Although the ordering of the previous question on a bill and all amendments to final passage precludes debate (other than that specified in clause 2 of rule XIX) on a motion to recommit, it does not exclude amendments to such motion (V, 5582; VIII, 2741); and, unless the previous question is ordered on a motion to recommit with instructions, the motion is open to amendment germane to the bill (see V, 6888; VIII, 2711). An amendment to a motion to recommit is read in full (unless the reading is dispensed with by unanimous consent) (Feb. 27, 2002, p. ——). An amendment to a motion to recommit is not debatable (Feb. 27, 2002, p. ——). An amendment striking out all of the proposed instructions and substituting others cannot be ruled out as interfering with the right of the minority to move recommitment (VIII, 2698, 2759). The Member offering a motion to recommit a bill with instructions may, at the conclusion of the 10 minutes of debate thereon, yield to another Member to offer an amendment to the motion if the previous question has not been ordered on the motion to recommit (Speaker Albert, July 19, 1973, p. 24967).

The motion may be withdrawn in the House at any time before action or decision thereon (VIII, 2764). The motion may not be laid on the table after the previous question has been ordered (V, 5412–5414).

§ 1002b. Instructions with motion.

The simple motion to recommit and the motion to recommit with instructions are of equal privilege and have no relative precedence (VIII, 2714, 2758, 2762; Nov. 25, 1970, p. 38997). It has been a practice to permit a motion to recommit with instructions that the committee report "forthwith," in which case the chairman makes report at once without awaiting action by the committee (V, 5545–5547; VIII, 2730), and the bill is before the House for immediate consideration (V, 5550; VIII, 2735).

It is not in order to propose as instructions anything that might not be proposed directly as an amendment such as: (1) to propose an amendment that is not germane (V, 5529–5541, 5834, 5889; VIII, 2705, 2707, 2708); (2) to amend or eliminate an amendment adopted by the House (unless permitted by special order) (V, 5531; VIII, 2712, 2714, 2715, 2720–2724); (3) to propose an amendment in violation of clauses 2, 4, or 5 of rule XXI (V, 5533–5540; Sept. 1, 1976, p. 28883; Sept. 19, 1983, p. 24646; Speaker Foley, Aug. 1, 1989, p. 17159, and Aug. 3, 1989, p. 18546, each time sustained by tabling of appeal; July 1, 1992, p. 17294; June 22, 1995, p. 16844); or (4) to change the Rules of the House by authorizing a committee to report at any time (V, 5543) or directing a committee to report by a date certain (V, 5549). However, it has been held in order to reoffer an amendment rejected by the House (VIII, 2728). A waiver of all points of order against consideration of a bill does not inure to the motion to recommit (May 9, 2003, p. ——).

Where a special rule providing for the consideration of a bill prohibited the offering of amendments to a certain title of the bill (at any point during consideration), it was held not in order to offer a motion to recommit with instructions to amend the restricted title (Jan. 11, 1934, pp. 479–83). However, that precedent should be read in light of clause 6(c)(2) of rule XIII, which precludes the Rules Committee from reporting a rule that would prevent a motion to recommit from including amendatory instructions (see § 857, *supra*).

In cases where amendatory instructions are not in order, the motion has directed a committee to study an issue and to report "promptly" its recommendations (Mar. 29, 1990, p. 1834). Instructions must be germane to the bill regardless of whether they directly propose an amendment thereto (Sept. 23, 1992, p. 27178). Unlike the case of a motion to recommit with instructions to report back "forthwith" (the adoption of which occasions an immediate report on the floor), the adoption of a motion to recommit with instructions to report back "promptly" sends the bill to committee, whose eventual report (if any) would not be immediately before the House (Deschler, ch. 23, § 32.25; May 24, 2000, p. 9151).

Only one motion to commit is in order (V, 5577, 5582, 5585; VIII, 2763). If one motion to recommit is ruled out, a proper motion is admissible (VIII, 2736, 2760, 2761, 2763; June 22, 2005, p. ——). Similarly, if the House votes pursuant to section 426(b)(3) of the Congressional Budget Act of 1974 not to consider a motion to recommit against which a Member has made a point of order under section 425(a) of that Act, a proper motion to recommit remains available (Mar. 28, 1996, p. 6932).

A motion to recommit with instructions was ruled out of order before the entire motion had been read as a matter of form where a special order of business precluded instructions (May 6, 2004, p. ——).

When a bill is recommitted, it is before the committee as a new subject (IV, 4557; V, 5558), but the committee must confine itself to the instructions if there be any (IV, 4404; V, 5526). Where the House has recommitted

a bill to a committee with instructions to report it back forthwith with certain amendments, the amendments must be adopted by the House after the report by the committee (VIII, 2734).

The motion to recommit may not be accompanied by preamble or otherwise include argument, explanation, or other matter in the nature of debate (V, 5589; VIII, 2749). Thus, a motion to recommit a bill to a standing committee with recommendations for producing legislation that the President could sign was held inadmissible in both form and content (Feb. 27, 1992, p. 3778).

§ 1002c. Recognition to offer motion.

Before former clause 4 of rule XVI was amended in 1909 to give priority in recognition for the motion to recommit to an opponent of a bill or joint resolution pending final passage, it was held that the opponents of a bill had no claim to prior recognition (II, 1456). Although the provision as amended in 1909 applied only to bills and joint resolutions, the principle embodied in that provision was applied also to motions to recommit simple or concurrent resolutions or conference reports under former clause 1 of rule XVII (VIII, 2764; Nov. 28, 1979, p. 33914). When the House consolidated the last sentence of former clause 1 of rule XVII and provisions of former clause 4 of rule XVI, addressing the motion to recommit, under this clause (H. Res. 5, Jan. 6, 1999, p. 47), the sentence conferring prior recognition to the opposition was formally applied to all measures. However, precedents under former clause 1 of rule XVII still dictate that recognition to offer a motion to commit a resolution offered from the floor as a privileged matter without having been referred to committee does not depend on opposition to the resolution or on party affiliation (Speaker Albert, Feb. 19, 1976, p. 3920).

When applying this rule the Speaker looks first to the Minority Leader or his designee (as imputed by the form of former clause 4(b) of rule XI adopted in the 104th Congress (current clause 6(c) of rule XIII)). If the Minority Leader is not seeking recognition, the Speaker looks to minority members of the committee reporting the bill, in order of their rank on the committee (Speaker Garner, Jan. 6, 1932, p. 1396; Speaker Byrns, July 2, 1935, p. 10638), then to other Members on the minority side (Speaker Rayburn, Aug. 16, 1950, p. 12608). Until a qualifying minority Member has had his motion read by the Clerk, he is not entitled to the floor so as to prevent another, senior qualifying minority member from the reporting committee from seeking recognition to offer the motion to recommit (Speaker O'Neill, Apr. 24, 1979, p. 8360). If no Member of the minority qualifies, a majority Member who is opposed to the bill may be recognized (Speaker Garner, Apr. 1, 1932, p. 7327). The Chair does not assess the degree of a Member's opposition (Oct. 23, 1991, p. 28258). A Member who is opposed to the bill "in its present form" (*i.e.*, in the form before the House when the motion is made) qualifies to offer the motion (Speaker Martin, Apr. 15, 1948, p. 4547; Speaker McCormack, Mar. 12, 1964, p. 5147). In response to a parliamentary inquiry, the Chair requested all

Members to reflect on the importance of the Chair's being able to rely on the veracity of a Member's assertion, when qualifying to offer a motion to recommit, that he is opposed to the bill; and he recited to the Members the following apology by the ranking minority member of the Committee on Appropriations in 1979: "The honorable, if not technical, duty of a Member offering a motion to recommit is to vote against the bill on final passage" (Speaker Hastert, June 23, 2005, p. ——, quoting from Deschler-Brown, ch. 29, § 23.49).The priority of recognition of a Member of the minority who is opposed is not diminished by the fact that the minority party may have successfully led the opposition to the previous question on the special order governing consideration of the bill and offered a "modified-closed" rule permitting only minority Members to offer perfecting amendments to the majority text (June 26, 1981, p. 14740). However, although the motion to recommit is the prerogative of the minority if opposed, a Member who in the Speaker's determination led the opposition to the previous question on the motion to recommit, such as the chairman of the committee reporting the bill, is entitled to offer an amendment to the motion to recommit, regardless of party affiliation (June 26, 1981, pp. 14791–93). The right to offer a motion to recommit a House bill with a Senate amendment belongs to a Member who is opposed to the whole bill in preference to a Member who is merely opposed to the Senate amendment (VIII, 2772). Where the previous question has been ordered on both the pending resolution and its preamble, a Member may qualify to offer a motion to recommit on the basis of his opposition to the preamble, even though it is not otherwise subject to separate vote or amendment (Feb. 12, 1998, p. 1333). A Member rising in opposition to a motion to recommit must likewise qualify as opposed to the motion (Apr. 29, 1998, p. 7156).

Reconsideration

§ 1003. The motion to reconsider.

3. When 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. The entry of such a motion shall take precedence over all other questions except the consideration of a conference report or a motion to adjourn, and may not be withdrawn after such succeeding day without the consent of the House. Once entered, a motion may be called up for consideration by any Member. During the last six days of a ses-

sion of Congress, such a motion shall be disposed of when entered.

The motion to reconsider used in the Continental Congress and in the House of Representatives from its first organization, in 1789, was first made the subject of a rule in 1802; and at various times this rule has been perfected by amendments (V, 5605). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1 of rule XVIII (H. Res. 5, Jan. 6, 1999, p. 47).

The motion is not used in Committee of the Whole (IV, 4716–4718; VIII, 2324, 2325), but is in order in the House as in Committee of the Whole (VIII, 2793). It is not in order in the House during the absence of a quorum when the vote proposed to be reconsidered requires a quorum (V, 5606). However, on votes incident to a call of the House the motion to reconsider may be entertained and also laid on the table, although a quorum may not be present (V, 5607, 5608).

§ 1004. Maker of the motion to reconsider.

The mover of a proposition is entitled to prior recognition to move to reconsider (II, 1454). A Member may make the motion at any time without thereby abandoning a prior motion made by himself and pending (V, 5610). A Delegate or the Resident Commissioner may not make the motion in the House (rule III; II, 1292; VI, 240). The provision of the rule that the motion may be made by any Member of the majority is construed, in case of a tie vote, to mean any Member of the prevailing side (V, 5615, 5616), and the same construction applies in case of a two-thirds vote (II, 1656; V, 5617, 5618; VIII, 2778–2780). Where the yeas and nays have not been ordered recorded in the Journal, any Member, irrespective of whether he voted with the majority or not, may make the motion to reconsider (V, 5611–5613, 5689; VIII, 2775, 2785; Sept. 23, 1992, p. 27196); but a Member who was absent (V, 5619), or who was paired in favor of the majority contention and did not vote, may not make the motion (V, 5614; VIII, 2774). When proxy voting was permitted in committee, it was generally held that a member who was not present at a vote, but cast his vote by proxy, did not qualify to make the motion to reconsider thereon. Any Member may object to the Chair's statement that by unanimous consent the motion to reconsider a vote is laid on the table, and the objecting Member need not have voted on the prevailing side, but if objection is made, the Chair's statement is ineffective and only a Member who voted on the prevailing side may offer the motion to reconsider the vote (Aug. 15, 1986, p. 22139). The Chair, having voted on the prevailing side, may offer the motion to reconsider by stating the pendency of the motion (Oct. 9, 1997, p. 22017).

§ 1005. Precedence of the motion to reconsider.

The precedence given the motion by the rule permits it to be made even after the previous question has been demanded (V, 5656) or while it is operating (V, 5657–5662; VIII, 2784). The motion to reconsider the vote on the engrossment of a bill may be admitted after the previous ques-

tion has been moved on a motion to postpone (V, 5663), and a motion to reconsider the vote on the third reading may be made and acted on after a motion for the previous question on the passage has been made (V, 5656). It also takes precedence of the motion to go into Committee of the Whole to consider an appropriation bill (VIII, 2785), or even of a demand that the House return to Committee after the appearance of a quorum (IV, 3087). However, in a case wherein the House had passed a bill and disposed of a motion to reconsider the vote on its passage, it was held to be too late to reconsider the vote sustaining the decision of the Chair which brought the bill before the House (V, 5652), and that a motion to vacate those proceedings was not in order (Speaker O'Neill, Dec. 17, 1985, pp. 37472–74). After a conference has been agreed to and the managers for the House appointed, it is too late to move to reconsider the vote whereby the House acted on the amendments in disagreement (V, 5664). Although the motion has high privilege for entry, it may not be considered while another question is before the House (V, 5673–5676; July 2, 1980, p. 18354), or while the House is dividing (VIII, 2791). A motion to reconsider a secondary motion to postpone that has previously been offered and rejected is highly privileged, even after the manager of the main proposition has yielded time to another Member and before that Member has begun his remarks (May 29, 1980, p. 12663). When it relates to a bill belonging to a particular class of business, consideration of the motion is in order only when that class of business is in order (V, 5677–5681; VIII, 2786). It may then be called up at any time; but is not the regular order until called up (V, 5682; VIII, 2785, 2786). When once entered it may remain pending indefinitely, even until a succeeding session of the same Congress (V, 5684). The motion to reconsider is subject to the question of consideration (VIII, 2437), and may be laid on the table (VIII, 2652, 2659). The motion to reconsider an action taken on a bill on Tuesday may be entered but may not be considered on Calendar Wednesday (VII, 905).

The motion to reconsider is in order in the procedure of standing committees and may be made on the same day on which the action is taken to which it is proposed to be applied, or on the next day thereafter on which the committee convenes with a quorum present at a properly scheduled meeting at which business of that class is in order (VIII, 2213). In a committee reconsideration of an amendment may require that the motion to report first be reconsidered, and then the ordering of the previous question on the measure, before a motion can be offered to reconsider the amendment (*Cf.* VIII, 2789).

§ 1006. Application of the motion to reconsider.

A motion to reconsider may be entertained, although the bill or resolution to which it applies may have gone to the other House or the President (V, 5666–5668). However, unanimous consent is required to initiate reconsideration of a measure passed by both Houses (IV, 3466–3469). The Senate may not reconsider the confirmation of a nomination after a commission has been issued by the President to a nominee and the latter has

taken the oath and entered upon the duties of his office (U.S. *v.* Smith, 286 U.S. 6 (1932)). The fact that the House had informed the Senate that it had agreed to a Senate amendment to a House bill was held not to prevent a motion to reconsider the vote on agreeing (V, 5672). When a motion is made to reconsider a vote on a bill that has gone to the Senate, a motion to recall the bill is privileged (V, 5669–5671). The motion to reconsider may be applied once only to a vote ordering the previous question (V, 5655; VIII, 2790), and may not be applied to a vote ordering the previous question that has been partially executed (V, 5653, 5654); but a vote agreeing to an order of the House has been reconsidered, although the execution of the order had begun (III, 2028; V, 5665). The vote ordering the previous question on a special order reported from the Committee on Rules may be reconsidered and is not dilatory under clause 6(b) of rule XIII (formerly clause 4(b) of rule XI) (Sept. 25, 1990, p. 25575).

The motion may not be applied to negative votes on motions to adjourn (V, 5620–5622), or for a recess (V, 5625), or to go into Committee of the Whole (V, 5641). The motion to reconsider may be applied however to an affirmative vote on the motion to resolve into the Committee of the Whole while the Speaker is still in the chair (V, 5368; Apr. 20, 1978, p. 10990). A motion to reconsider the vote by which the House had decided a question of parliamentary procedure was held not to be in order (VIII, 2776). Motions to reconsider negative votes on motions to fix the day to which the House shall adjourn have been the subject of conflicting rulings (V, 5623, 5624). It is in order to reconsider a vote postponing a bill to a day certain (V, 5643; May 29, 1980, p. 12663). It is not in order to reconsider a negative decision of the question of consideration (V, 5626, 5627), although it is in order to reconsider an affirmative vote on the question of consideration (Oct. 4, 1994, p. 27644). It is not in order to reconsider a negative vote on the motion to suspend the rules (V, 5645, 5646; VIII, 2781; Sept. 28, 1996, p. 25796), although it is in order to reconsider an affirmative vote on that motion (Sept. 28, 1996, p. 25795). It is not in order to reconsider a vote on reconsideration of a bill returned with the objections of the President (VIII, 2778). A vote whereby a second is ordered may be reconsidered (V, 5642). The motion to reconsider a vote on a proposition having been once agreed to, and the said vote having again been taken, a second motion to reconsider may not be made unless the nature of the proposition has been changed by amendment (V, 5685–5688; VIII, 2788; Sept. 20, 1979, p. 25512). After disposition of a conference report and amendments reported from conference in disagreement, it is in order on the same day to move to reconsider the vote on a motion disposing of one of the amendments; but laying on the table a motion to reconsider the vote whereby the House has amended a Senate amendment does not preclude the House from acting on a subsequent Senate amendment to that House amendment, or considering any other proper motion to dispose of an amendment that might remain in disagreement after further Senate action (Oct. 5, 1983,

p. 27323). For a discussion of the application of the motion to reconsider in committees, see § 416, *supra*.

§ 1007. Effect of the motion to reconsider.

A bill is not considered passed or an amendment agreed to if a motion to reconsider is pending, the effect of the motion being to suspend the original proposition (V, 5704); and the Speaker declines to sign an enrolled bill until a pending motion to reconsider has been disposed of (V, 5705). However, when the Congress expires leaving undisposed a motion to reconsider the vote whereby a simple resolution of the House has been agreed to, it is probable that the resolution would be operative; and where a bill has been enrolled, signed by the Speaker, and approved by the President, it is undoubtedly a law, even though a motion to reconsider may not have been disposed of (V, 5704, note). A Member-elect may not take the oath until a motion to reconsider the vote determining his title is disposed of (I, 335); but when, in such a case, the motion is disposed of, the right to be sworn is complete (I, 622). When the motion to reconsider is decided in the affirmative the question immediately recurs on the question reconsidered (V, 5703). When a vote whereby an amendment has been agreed to is reconsidered the amendment becomes simply a pending amendment (V, 5704). When the vote ordering the previous question is reconsidered, it is in order to withdraw the motion for the previous question, the "decision" having been nullified (V, 5357). When the previous question has been ordered on a series of motions and its force has not been exhausted, the reconsideration of the vote on one of the motions does not throw it open to debate (V, 5493). Under the earlier practice, when a vote taken under the operation of the previous question was reconsidered, the main question stood divested of the previous question, and was debatable and amendable without reconsideration separately of the motion for the previous question (V, 5491–5492, 5700). However, under the modern practice, where the House adopts a motion to reconsider a vote on a question on which the previous question has been ordered, the question to be reconsidered is neither debatable nor amendable (unless the vote on the previous question is separately reconsidered) (July 2, 1980, p. 18355). It is in order to move to reconsider the ordering of the yeas and nays on a question before the question has been finally decided (V, 5689–5691, 6029; VIII, 2790; Sept. 24, 1997, p. 19946); but where the House had voted to reconsider the vote whereby it had rejected a bill but had not separately reconsidered the ordering of a record vote, the Speaker put the question de novo and entertained a new demand for a record vote (Sept. 20, 1979, p. 25512).

§ 1008. The vote on the motion to reconsider.

The motion to reconsider is agreed to by majority vote, even when the vote reconsidered requires two-thirds for affirmative action (II, 1656; V, 5617, 5618; VIII, 2795), or when only one-fifth is required for affirmative action, as in votes ordering the yeas and nays (V, 5689–5692, 6029; VIII, 2790). However, one motion to reconsider the yeas and nays having been acted on, another motion to reconsider is not in order (V, 6037).

§ 1009. Relation of the motion to reconsider to the motion to lay on the table.

A vote on the motion to lay on the table may be reconsidered whether the decision be in the affirmative (V, 5628, 5695, 6288; VIII, 2785) or in the negative (V, 5629). It is in order to reconsider the vote laying an appeal on the table (V, 5630), although during proceedings under a call of the House this motion was once ruled out (V, 5631). The motion to reconsider may not be applied to the vote whereby the House has laid another motion to reconsider on the table (V, 5632–5640; June 20, 1967, p. 16497); and a motion to reconsider may be laid on the table only before the Chair has put the question on the motion to a vote (Sept. 20, 1979, p. 25512).

§ 1010. Debate on the motion to reconsider.

A motion to reconsider is debatable only if the motion proposed to be reconsidered was debatable (V, 5694–5699; VIII, 2437, 2792; Sept. 13, 1965, p. 23608); so the motion to reconsider a vote ordering the previous question is not debatable (Sept. 25, 1990, p. 25575) and the application of the previous question makes a motion to reconsider nondebatable (V, 5701; VIII, 2792; Sept. 20, 1979, p. 25512; July 2, 1980, p. 18355). Where a resolution providing for the order of business was agreed to without adoption of the previous question, the Speaker advised that a motion to reconsider would be debatable and that the Member moving the reconsideration would be recognized to control the one hour of debate (Speaker McCormack, Sept. 13, 1965, p. 23608).

4. A bill, petition, memorial, or resolution referred to a committee, or reported therefrom for printing and recommitment, may not be brought back to the House on a motion to reconsider.

§ 1011. Application of motion to reconsider to bills in committees.

This clause (formerly clause 2 of rule XVIII) was first adopted in 1860, and amended in 1872, to prevent a practice of using the privilege of the motion to reconsider to secure consideration of bills otherwise not in order (V, 5647). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2 of rule XVIII, and in recodification a provision requiring written reports was deleted as redundant of the requirement contained in clause 2 of rule XIII (H. Res. 5, Jan. 6, 1999, p. 47). There is a question as to whether or not the rule applies to a case wherein the House, after considering a bill, recommits it (V, 5648–5650). After a committee has reported a bill it is too late to reconsider the vote by which it was referred (V, 5651).

RULE XX

VOTING AND QUORUM CALLS

§ 1012. Voting viva voce, by division, by electronic device.

1. (a) The House shall divide after the Speaker has put a question to a vote by voice as provided in clause 6 of rule I if the Speaker is in doubt or division is demanded. Those in favor of the question shall first rise from their seats to be counted, and then those opposed.

(b) If a Member, Delegate, or Resident Commissioner requests a recorded vote, and that request is supported by at least one-fifth of a quorum, the vote shall be taken by electronic device unless the Speaker invokes another procedure for recording votes provided in this rule. A recorded vote taken in the House under this paragraph shall be considered a vote by the yeas and nays.

This provision (formerly clause 5(a) of rule I) was adopted in 1789 and its present form reflects the revisions and amendments of 1860, 1880 (II, 1311), 1972 (H. Res. 1123, Oct. 13, 1972, pp. 36005–08), and 1993 (H. Res. 5, Jan. 5, 1993, p. 49). From January 22, 1971 (when H. Res. 5 of the 92d Congress was adopted incorporating provisions in the Legislative Reorganization Act of 1970, 84 Stat. 1140), until October 13, 1972, this rule provided a two-step procedure for ordering "tellers with clerks" before installation of the electronic voting system, and for the first time permitted Members to be recorded on votes in Committee of the Whole. The last two sentences of this paragraph permitting a single-step "recorded vote" and voting by means of electronic device installed in the Chamber in 1972, were contained in a House resolution adopted on October 13, 1972, and were made effective by adoption of the rules of the 93d Congress (H. Res. 6, Jan. 3, 1973, p. 26). The general provision for demanding a vote by tellers was repealed in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. 49). The provision providing that a recorded vote taken pursuant thereto shall be considered a vote by the yeas and nays was added in the 105th Congress (H. Res. 5, Jan. 7, 1997, p. 121). Before the House recodified its rules

in the 106th Congress, this provision was found in former clause 5(a) of rule I (H. Res. 5, Jan. 6, 1999, p. 47).

The former right to demand tellers was not precluded by the fact that the yeas and nays had been refused (V, 5998; VIII, 3103), that a point of no quorum had been made against a division vote on the question on which tellers were requested (VIII, 3104), by a point of no quorum and a call of the House following a division vote on the question on which tellers were demanded (Sept. 25, 1969, p. 27041), or by the intervention of a quorum call following the refusal of the Committee of the Whole to order a recorded vote (Feb. 27, 1974, p. 4447).

One of the suppositions on which parliamentary law is founded is that the Speaker will not betray his duty to make an honest count on a division (V, 6002) and the integrity of the Chair in counting a vote should not be questioned in the House (VIII, 3115; July 11, 1985, p. 18550). A vote by division takes no cognizance of Members present but not voting, and consequently the number of votes counted by division has no tendency to establish a lack of a quorum (June 29, 1988, p. 16504). Only one demand for a vote by division on a pending question is in order (July 26, 1984, p. 21259; June 29, 1994, p. 15206). However, where a division vote is demanded on a proposition in the House and the vote thereon is then postponed pursuant to paragraph (b) of this clause, a division may again be demanded when the question is put de novo on the proposition as unfinished business (since a demand for a division may be made by any Member) (Mar. 18, 1980, p. 5739).

In a full House (total membership of 435), a recorded vote is ordered by one-fifth of a quorum (44), but in Committee of the Whole a recorded vote is ordered by 25 (clause 6(e) of rule XVIII), rather than 20 in both cases as in prior practice (V, 5986; Dec. 20, 1974, p. 41793). The Chair's count of Members demanding a recorded vote is not appealable (June 24, 1976, p. 20390).

Only one request for a recorded vote on a pending question is in order (Jan. 21, 1976, p. 508). The request may not be renewed where the absence of a quorum is disclosed immediately following the refusal to order a recorded vote (June 6, 1979, p. 13648; Oct. 25, 1983, p. 29227). However, while a request for a recorded vote once denied may not be renewed, the request remains pending where the Chair interrupts the count of Members standing in favor of the request in order to count for a quorum pursuant to a point of order that a quorum is not present (Aug. 5, 1982, pp. 19658, 19659; July 22, 2003, p. ——). A recorded vote may be had in the House on a separate vote on an amendment adopted in the Committee of the Whole on which a recorded vote had been refused (May 13, 1998, p. 9134). A demand for the yeas and nays if refused by the House may not be renewed, even when the question is put de novo as unfinished business (Deschler-Brown, ch. 30, § 55.5).

A demand for a record vote cannot interrupt a vote by division which is in progress (June 10, 1975, p. 18048). Where both a division vote and

a recorded vote are requested, the Chair will count for a recorded vote (July 22, 2003, p. ——). Recognition by the Chair for a parliamentary inquiry, or remarks uttered without recognition, immediately following the Chair's announcement of a voice vote on an amendment is not such intervening business as to prevent a demand for a recorded vote thereon where the Chair has not announced the final disposition of the amendment (May 23, 1984, p. 13928; July 26, 1984, p. 21249; June 10, 1998, p. 11856).

§ 1013. Former ordering of tellers and taking of the vote.

Under the precedents recorded before the abolition of tellers, it was the duty of the Member to serve as teller when appointed by the Chair (V, 5987); but when Members of one side had declined, the second teller was appointed from the other side (V, 5988) or the position was left vacant (V, 5989). A Delegate could have been appointed teller (II, 1302). Where there was doubt as to the count by tellers, the Chair could have ordered the vote taken again (V, 5991; July 19, 1946, p. 9466), but this must have been done before the result was announced (V, 5993–5995; VIII, 3098). The Chair could have been counted without passing between the tellers (V, 5996, 5997; VIII, 3100, 3101).

(c) In case of a tie vote, a question shall be lost.

This provision was adopted in 1789. Before the House recodified its rules in the 106th Congress, it was found in former clause 6 of rule I (H. Res. 5, Jan. 6, 1999, p. 47).

§ 1014. Use of electronic equipment in recording roll calls.

2. (a) Unless the Speaker directs otherwise, the Clerk shall conduct a record vote or quorum call by electronic device. In such a case the Clerk shall enter on the Journal and publish in the Congressional Record, in alphabetical order in each category, the names of Members recorded as voting in the affirmative, the names of Members recorded as voting in the negative, and the names of Members answering present as if they had been called in the manner provided in clause 3. Except as otherwise permitted under clause 8 or 9 of this rule or under clause 6 of rule XVIII, the minimum time for a record vote

or quorum call by electronic device shall be 15 minutes.

The permissive use of an electronic voting system was incorporated in the Legislative Reorganization Act of 1970 (sec. 121; 84 Stat. 1140) and was made a part of the standing rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). The clause in its essential form was adopted the next year (formerly clause 5(a) of rule XV) (H. Res. 1123, Oct. 13, 1972, p. 36012). A technical correction to paragraph (a) was effected in the 108th Congress (sec. 2(u), H. Res. 5, Jan. 7, 2003, p. ——). The electronic system was first utilized in the House on January 23, 1973 (p. 1793).

The Speaker inserted in the Record a detailed statement describing procedures to be followed during votes and quorum calls by electronic device and by the backup procedures therefor (Jan. 15, 1973, pp. 1054–57). The Speaker may direct that a call of the House be conducted by an alphabetical call of the roll by the Clerk where, in his discretion, he does not utilize the electronic voting device (Mar. 7, 1973, p. 6699), and pursuant to this clause and clause 6 (formerly clause 4 of rule XV) the Speaker may, in his discretion, direct the Clerk to call the roll, in lieu of taking the vote by electronic device, where a quorum fails to vote on any question and objection is made for that reason (May 16, 1973, p. 15850).

A request that the voting display be turned on during debate is not in order (Oct. 12, 1998, p. 25770).

At the end of a 15-minute vote, after the electronic voting stations are closed but before the Speaker's announcement of the result, a Member may cast an initial vote or change a vote by ballot card in the well (Speaker Albert, Sept. 23, 1975, p. 29850; Speaker Wright, Oct. 29, 1987, p. 30239). In 1975 Speaker Albert announced that changes could no longer be made at the electronic stations but would have to be made by ballot card in the well (Speaker Albert, Sept. 17, 1975, p. 28903). In 1976 Speaker Albert announced that changes could be made electronically during the first 10 minutes of a 15-minute voting period, but changes during the last 5 minutes would have to be made by ballot card in the well (Speaker Albert, Mar. 22, 1976, p. 7394). In 1977 Speaker O'Neill announced that changes could be made electronically at any time during a vote reduced to five minutes under the rules (Speaker O'Neill, Jan. 4, 1977, pp. 53–70).

The Speaker declines to entertain unanimous-consent requests to correct the Journal and Record on votes taken by electronic device (Apr. 18, 1973, p. 13081; May 10, 1973, p. 15282; June 17, 1986, p. 14038), unless the request is to delete a vote that was not actually cast (June 26, 2000, p. 12371). A recorded vote or quorum call may not be reopened once the Chair has announced the result (June 15, 2000, p. 11098). However, the Speaker may announce a change in the result of a vote taken by electronic device where required to correct an error in identifying a signature on a voting card submitted in the well (June 11, 1981).

On a call of the House, or a vote, conducted by electronic device, Members are permitted a minimum of 15 minutes to respond, but it is within the discretion of the Chair, following the expiration of 15 minutes, to allow additional time for Members to record their presence, or vote, before announcing the result (June 6, 1973, p. 18403; Oct. 9, 1997, p. 22016; Sept. 8, 2003, p. ——; Mar. 30, 2004, p. ——; July 8, 2004, p. ——; July 9, 2004, p. ——). When an emergency recess under clause 12(b) of rule I occurred during an electronic vote, the Chair extended the period of time in which to cast a vote by 15 additional minutes (May 11, 2005, p. ——; June 29, 2005, p. ——). A resolution alleging intentional misuse of House practices and customs in holding a vote open for approximately three hours for the sole purpose of circumventing the will of the House, and directing the Speaker to take such steps as necessary to prevent further abuse, constitutes a question of the privileges of the House (Dec. 8, 2003, p. ——).

Because this clause is incorporated by reference into clause 6 of rule XVIII (formerly clause 2 of rule XXIII), the Chairman of the Committee of the Whole need not convert to a regular quorum call precisely at the expiration of 15 minutes if 100 Members have not appeared on a notice quorum call, but he may continue to exercise his discretion under that clause at any time during the conduct of the call (July 17, 1974, p. 23673).

Because the Chair has the discretion to close the vote and to announce the result at any time after 15 minutes have elapsed, those precedents guaranteeing Members in the Chamber the right to have their votes recorded even if the Chair has announced the result (*e.g.*, V, 6064, 6065; VIII, 2143), which predate the use of an electronic voting system, do not require the Chair to hold open indefinitely a vote taken by electronic device (Mar. 14, 1978, p. 6838). In the 103d Congress the Speaker inserted in the Record his announcement that, in order to expedite the conduct of votes by electronic device, the Cloakrooms were directed not to forward to the Chair individual requests to hold a vote open (Speaker Foley, Jan. 6, 1993, p. 106). In the 104th and 105th Congresses the Speaker announced that each occupant of the Chair would have his full support in striving to close each electronic vote at the earliest opportunity and that Members should not rely on signals relayed from outside the Chamber to assume that votes will be held open until they arrive (Speaker Gingrich, Jan. 4, 1995, p. 552; June 10, 1998, p. 11849); however, the Chair will not close a vote while a Member is in the well attempting to vote (Feb. 10, 1995, p. 4385; June 22, 1995, p. 16814).

§ 1014a. Procedure when electronic voting system inoperable.

(b) When the electronic voting system is inoperable or is not used, the Speaker or Chairman may direct the Clerk to conduct a record vote or quorum call as provided in clause 3 or 4.

When the House recodified its rules in the 106th Congress, this provision was added as a cross reference to the backup procedures found in clauses 3 and 4(a) and to clarify the Chair's discretion to choose either backup procedure (H. Res. 5, Jan. 6, 1999, p. 47).

In the event of a malfunction in the electronic voting system during a record vote, the Chair may vacate the results of the electronic vote and direct that the record vote be conducted by call of the roll under clause 3 of rule XX (May 4, 1988, pp. 9846, 9847; Oct. 6, 1999, p. 24198) or may direct a new electronic vote with a new 15-minute voting period (July 13, 2004, p. ——). The question whether the electronic voting system is functioning reliably is in the discretion of the Chair, who may base a judgment on certification by the Clerk (Oct. 6, 1999, p. 24198). For example, the Speaker continued to use the electronic system, even though the electronic display panels or certain voting stations were temporarily inoperative, while urging Members to verify their votes (Sept. 19, 1985, p. 24245; Feb. 4, 1994, p. 1640; Feb. 10, 2000, p. 1021; Apr. 9, 2002, p. ——; Sept. 19, 2002, p. ——; Sept. 4, 2003, p. ——). Similarly, where the electronic voting system malfunctioned only temporarily, the Chair continued an electronic vote but advised Members to verify that they were recorded correctly (Mar. 25, 2004, p. ——). On the other hand, the Chair vacated the results of an electronic vote and directed that the record vote be taken by call of the roll where there was a malfunction in the electronic display panel and the Chair could not obtain from the Clerk verification that the vote would be recorded with 100 percent accuracy (Oct. 6, 1999, p. 24198). On one occasion, when the electronic voting system became inoperative during a vote, the Chair announced that (1) the vote would be held open until all Members were recorded; (2) the Clerk would retrieve the names of Members already recorded from the electronic display board; (3) the Clerk would combine the names of Members voting electronically and those who signed tally cards to form a valid vote; and (4) the vote would remain open until Members had returned from a memorial service at the National Cathedral (Sept. 14, 2001, p. ——).

§ 1015. Call of the roll for the yea-and-nay vote.

3. The Speaker may direct the Clerk to conduct a record vote or quorum call by call of the roll. In such a case the Clerk shall call the names of Members, alphabetically by surname. When two or more have the same surname, the name of the State (and, if necessary to distinguish among Members from the same State, the given names of the Members) shall be added. After the roll has been called once, the Clerk shall call the

names of those not recorded, alphabetically by surname. Members appearing after the second call, but before the result is announced, may vote or announce a pair.

The first form of this clause (formerly clause 1 of rule XV) was adopted in 1789, and amendments were added in 1870, 1880, 1890 (V, 6046), 1969 (H. Res. 7, 91st Cong., Jan. 3, 1969, p. 35), and 1972 (H. Res. 1123, 92d Cong., Oct. 13, 1972, pp. 36005–012). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1 of rule XV (H. Res. 5, Jan. 6, 1999, p. 47). While this clause permits the announcement of a "live" pair, the practice of general pairs found in former clause 2 of rule VIII was deleted in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47; see § 1031, *infra*).

The names of Members who have not been sworn are not entered on the roll from which the yeas and nays are called for entry on the Journal (V, 6048; VI, 638; VIII, 3122).

Commencing in 1879 the Clerk, in calling the roll, called Members by the surnames with the prefix "Mr." instead of calling the full names (V, 6047), but since the 62d Congress the practice has been discontinued in the interest of brevity (VIII, 3121). The Speaker's name is not on the voting roll and is not ordinarily called (V, 5970). When he votes his name is called at the close of the roll (V, 5965). In case of a tie which is revealed by a correction of the roll, he has voted after intervening business or even on another day (V, 5969, 6061–6063; VIII, 3075). Where the Speaker through an error of the Clerk in reporting the yeas and nays announces a result different from that actually had, the status of the question is governed by the vote as recorded and subsequent announcement by the Speaker of the changed result is authoritative, or he may entertain a motion for correction of the Journal in accordance with the vote as finally ascertained (VIII, 3162).

Under this clause, as under clause 6, the roll is called twice, and those Members appearing after their names are called but before the announcement of the result may vote or announce a "live" pair. Under the former practice, before the amendment adopted on January 3, 1969, a Member who had failed to respond on either the first or second call of the roll could not be recorded before the announcement of the result (V, 6066–6070; VIII, 3134–3150) unless he qualified by declaring that he had been within the Hall, listening, when his name should have been called and failed to hear it (V, 6071–6072; VIII, 3144–3150), and then only on the theory that his name may have been inadvertently omitted by the Clerk (VIII, 3137). Under the former practice where the roll was called by the Clerk, either before announcement of the result (V, 6064) or after such announcement (VIII, 3125), the Speaker could order the vote recapitulated (V, 6049, 6050; VIII, 3128). A Member may not change his vote on recapitu-

lation if the result has been announced (VIII, 3124), but errors in the record of such votes may be corrected (VIII, 3125). A motion that a vote be recapitulated is not privileged (VIII, 3126). The Speaker has declined to order a recapitulation of a vote taken by electronic device (Speaker Albert, July 30, 1975, p. 25841).

§ 1016. Bell system.

The legislative call system was designed to alert Members to certain occurrences on the floor of the House. The Speaker has directed that the bells and lights comprising the system be utilized as follows (Jan. 23, 1979, p. 701):

Tellers—one ring and one light on left. Because the demand for teller votes was discontinued at the beginning of the 103d Congress, this signal is no longer utilized.

Recorded vote, yeas and nays, or automatic record vote taken either by electronic system or by use of tellers with ballot cards—two bells and two lights on left indicate a vote by which Members are recorded by name. Bells are repeated five minutes after the first ring. When by unanimous consent waiving the five-minute minimum set by clause 9 (formerly clause 5(b)(3) of rule I) the House authorized the Speaker to put remaining postponed questions to two-minute electronic votes, two bells were rung (Oct. 4, 1988, pp. 28126, 28148).

Recorded vote, yeas and nays, or automatic record electronic vote to be followed immediately by possible five-minute vote under clauses 8(c) or 9 of rule XX or clauses 6(f) or 6(g) of rule XVIII—two bells rung at beginning of first vote, followed by five bells, indicate that Chair will order five-minute votes if recorded vote, yeas and nays, or automatic vote is ordered immediately thereafter. Two bells repeated five minutes after first ring. Five bells on each subsequent electronic vote.

Recorded vote, yeas and nays, or automatic roll call by call of the roll—two bells, followed by a brief pause, then two bells indicate such a vote taken by a call of the roll in the House. The bells are repeated when the Clerk reaches the "R's" in the first call of the roll.

Regular quorum call—three bells and three lights on left indicate a quorum call either in the House or in Committee of the Whole by electronic system or by clerks. The bells are repeated five minutes after the first ring. Where quorum call is by call of the roll, three bells followed by a brief pause, then three more bells, with the process repeated when the Clerk reaches the "R's" in the first call of the roll, are utilized.

Regular quorum call in Committee of the Whole, which may be followed immediately by five-minute electronic recorded vote—three bells rung at beginning of quorum call, followed by five bells, indicate that Chair will order five-minute vote if recorded vote is ordered on pending question. Three bells repeated five minutes after first ring. Five bells for recorded vote on pending question if ordered.

Notice or short quorum call in Committee of the Whole—one long bell followed by three regular bells, and three lights on left, indicate that the Chair has exercised his discretion under clause 6 of rule XVIII and will

vacate proceedings when a quorum of the Committee appears. Bells are repeated every five minutes unless (a) the call is vacated by ringing of one long bell and extinguishing of three lights, or (b) the call is converted into a regular quorum call and three regular bells are rung.

Adjournment—four bells and four lights on left.

Any five-minute vote—five bells and five lights on left.

Recess of the House—six bells and six lights on left.

Civil Defense Warning—twelve bells, sounded at two-second intervals, with six lights illuminated.

The light on the far right—seven—indicates that the House is in session.

Failure of the signal bells to announce a vote does not warrant repetition of the roll call (VIII, 3153–3155, 3157) nor does such a failure permit a Member to be recorded following the conclusion of the call (June 9, 1938, p. 8662).

§ 1017. Changes and corrections of votes.

Before the result of a vote has been finally and conclusively pronounced by the Chair, but not thereafter, a Member may change his vote (V, 5931–5933, 6093, 6094; VIII, 3070, 3123, 3124, 3160), and a Member who has answered "present" may change it to "yea" or "nay" (V, 6060). However, a vote given by a Member may not be withdrawn without leave of the House (V, 5930).

When a vote actually given fails to be recorded during a call of the roll (V, 6061–6063) the Member may, before the approval of the Journal, demand as a matter of right that correction be made (V, 5969; VIII, 3143). However, statements of other Members as to alleged errors in a recorded vote must be very definite and positive to justify the Speaker in ordering a change of the roll (V, 6064, 6099). The Speaker declines to entertain requests to correct the Journal and Record on votes taken by electronic device, based upon the technical accuracy of the electronic system if properly utilized and upon the responsibility of each Member to correctly cast and verify his vote (Apr. 18, 1973, p. 13081; May 10, 1973, p. 15282). By unanimous consent the House may vacate proceedings on a recorded vote conducted in the Committee of the Whole and require a vote de novo where it is alleged that Members were improperly prevented from being recorded (June 22, 1995, p. 16815).

§ 1018. Interruptions of the roll call.

When once begun the roll call may not be interrupted even by a motion to adjourn (V, 6053; VIII, 3133), a parliamentary inquiry (VIII, 3132), a question of personal privilege (V, 6058, 6059; VI, 554, 564), the arrival of the time fixed for another order of business (V, 6056) or for a recess (V, 6054, 6055; VIII, 3133), or the presentation of a conference report (V, 6443). However, it is interrupted for the reception of messages and by the arrival of the hour fixed for adjournment sine die (V, 6715–6718). A Member-elect may be sworn during a record vote (Jan. 4, 2005, p. ——; Jan. 6, 2005, p. ——; Jan. 25, 2005, p. ——). Incidental questions arising during the roll call, such as the refusal of a Member to vote (V, 5946–5948), are considered after the completion of the call and the announcement of the vote (V, 5947).

The rules do not preclude a Member from announcing after a recorded vote on which he failed to answer, how he would have voted if present (Speaker Rayburn, June 27, 1957, p. 10521; contra VIII, 3151), but neither the rules nor the practice permit a Member to announce after a recorded vote how absent colleagues would have voted if present (VI, 200; Apr. 3, 1933, p. 1139; Apr. 28, 1933, p. 2587; May 20, 1933, p. 3834; Mar. 16, 1934, pp. 4691, 4700; Apr. 14, 1937, pp. 3489, 3490; Apr. 15, 1937, p. 3563).

§ 1019. Quorum call by clerks.

4. (a) The Speaker may direct a record vote or quorum call to be conducted by tellers. In such a case the tellers named by the Speaker shall record the names of the Members voting on each side of the question or record their presence, as the case may be, which the Clerk shall enter on the Journal and publish in the Congressional Record. Absentees shall be noted, but the doors may not be closed except when ordered by the Speaker. The minimum time for a record vote or quorum call by tellers shall be 15 minutes.

This paragraph was adopted as part of the general revision of this rule (formerly rule XV) which was required by the implementation of the electronic voting system (H. Res. 1123, 92d Cong., Oct. 13, 1972, p. 36012). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(b) of rule XV (H. Res. 5, Jan. 6, 1999, p. 47). The Speaker, in his discretion, may direct that the presence of Members be recorded by this procedure in lieu of using the electronic system, or the Chair may, in his discretion, direct that a quorum call be taken by an alphabetical call of the roll (Mar. 7, 1973, p. 6699). The Chairman of the Committee of the Whole also may direct that a quorum call be conducted by depositing quorum tally cards with clerk tellers, rather than by electronic device or a call of the roll (July 13, 1983, p. 18858).

Exercising his authority under this paragraph, the Speaker ordered the doors to the Chamber closed and locked during a call of the House and instructed the Doorkeeper to enforce the rule and let no Members leave the Hall (Deschler, ch. 20, § 6.3). This clause does not give the Speaker the authority to lock the doors during a recorded vote (June 11, 1997, p. 10665). For a discussion of the count to determine a quorum, see House Practice, ch. 43, § 5.

§ 1020. Count of those not voting to make a quorum of record on a roll call.

(b) On the demand of a Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote shall be noted by the Clerk, entered on the Journal, reported to the Speaker with the names of the Members voting, and be counted and announced in determining the presence of a quorum to do business.

This clause was adopted in 1890 (IV, 2905), but it merely formalized a principle already established by a decision of the Chair (IV, 2895). It was much in use in the first years after its adoption (III, 2620; IV, 2905–2907); but with the decline of obstruction in the House and the adoption of clause 6 (formerly clause 4 of rule XV) of this rule the necessity for its use has disappeared to a large extent. Before the House recodified its rules in the 106th Congress, this provision was found in former clause 3 of rule XV (H. Res. 5, Jan. 6, 1999, p. 47). The Speaker may direct the Clerk to note names of Members under this rule even on a vote for which a quorum is not necessary (VIII, 3152). For a discussion of the count to determine a quorum, see House Practice, ch. 43, § 5.

§ 1021. The call of the House.

5. (a) In the absence of a quorum, a majority comprising at least 15 Members, which may include the Speaker, may compel the attendance of absent Members.

(b) Subject to clause 7(b) a majority described in paragraph (a) may order the Sergeant-at-Arms to send officers appointed by him to arrest those Members for whom no sufficient excuse is made and shall secure and retain their attendance. The House shall determine on what condition they shall be discharged. Unless the House otherwise directs, the Members who voluntarily appear shall be admitted immediately to the Hall of the House and shall report their names

to the Clerk to be entered on the Journal as present.

The essential portions of this provision were adopted in 1789 and 1795, with minor amendments in 1888, 1890 (IV, 2982), and 1971 (H. Res. 5, 92d Cong., Jan. 22, 1971, p. 144). Later in the 92d Congress several provisions of this rule, including this clause, were amended to reflect the implementation of the electronic voting system (H. Res. 1123, Oct. 13, 1972, pp. 36005–12). The provisions relating to the call of the roll by the Clerk were deleted. Calls of the House are now taken by the electronic device unless the Speaker, in his discretion orders the use of the alternative procedure in clause 2(b). Together with clause 7 (formerly clause 6(e)(2) of rule XV) this provision was further amended in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16) to conform to the requirement in that provision that further proceedings under the call shall be dispensed with unless the Speaker in his discretion recognizes for a call of the House or a motion to compel attendance under this paragraph. This clause must be read in light of clause 7 (formerly clause 6(e) of rule XV), which prohibits the point of order that a quorum is not present unless the Speaker has put a question to a vote. Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(a) of rule XV (H. Res. 5, Jan. 6, 1999, p. 47). A technical correction to paragraph (b) was effected in the 109th Congress (sec. 2(l), H. Res. 5, Jan. 4, 2005, p. ——).

§ 1022. Ordering and conducting the call.

Under this rule a call may not be ordered by less than 15, and without that number present the motion for a call is not entertained (IV, 2983). It must be ordered by majority vote, and a minority of 15 or more favoring a call on such vote is not sufficient (IV, 2984). A quorum not being present no motion is in order but for a call of the House or to adjourn (IV, 2950, 2988; VI, 680), and at this stage the motion to adjourn has precedence over the motion for a call of the House (VIII, 2642).

While the following precedents predate the use of the electronic voting and recording system, they are retained in the Manual because of their general applicability with respect to calls of the House. A roll call under paragraph (a) may not be interrupted by a motion to dispense with further proceedings under the call (IV, 2992), and a recapitulation of the names of those who appear after their names have been called may not be demanded (IV, 2933). However, during proceedings under the call the roll may be ordered to be called again by those present (IV, 2991).

During a call less than a quorum may revoke leaves of absence (IV, 3003, 3004) and excuse a Member from attendance (IV, 3000, 3001), but may not grant leaves of absence (IV, 3002). The roll is sometimes called for excuses, and motions to excuse are in order during this call (IV, 2997), but neither the motion to excuse nor an incidental appeal are debatable (IV, 2999). After the roll has been called for excuses, and the House has

ordered the arrest of those who are unexcused, a motion to excuse an absentee is in order when he is brought to the bar (IV, 3012).

§ 1023. Arrest of Members.

An order of arrest for absent Members may be made after a single calling of the roll (IV, 3015, 3016), and a warrant issued on direction of those present, such motion having precedence of a motion to dispense with proceedings under the call (IV, 3036). The Sergeant-at-Arms is required to arrest Members wherever they may be found (IV, 3017), and leave for a committee to sit during sessions does not release its Members from liability to arrest (IV, 3020). A motion to require the Sergeant-at-Arms to report progress in securing a quorum is in order during a call of the House (VI, 687). A Member who appears and answers is not subject to arrest (IV, 3019), and in a case where a Member complained of wrongful arrest the House ordered the Sergeant-at-Arms to investigate and amend the return of his warrant (IV, 3021). A Member once arrested having escaped it was held that he might not be brought back on the same warrant (IV, 3022). A privileged motion to compel the attendance of absent Members is in order after the Chair has announced that a quorum has not responded on a negative recorded vote on a motion to adjourn (Nov. 2, 1987, p. 30386).

The former practice of presenting Members at the bar during a call of the House (IV, 3030–3035) is obsolete, and Members now report to the Clerk and are recorded without being formally excused unless brought in under compulsion (VI, 684). Those present on a call may prescribe a fine as a condition of discharge, and the House has by resolution revoked all leaves of absence and directed the Sergeant-at-Arms to deduct from the salary of Members compensation for days absent without leave (VI, 30, 198), but this penalty has been of rare occurrence (IV, 3013, 3014, 3025). Form of resolution for the arrest of Members absent without leave (VI, 686). Having rejected a motion to adjourn, less than a quorum of the House rejected a motion directing the Sergeant-at-Arms to arrest absent Members, rejected a second motion to adjourn, and then adopted a motion authorizing the Speaker to compel the attendance of absent members (Nov. 2, 1987, p. 30387).

The motion to dispense with further proceedings under the call of the House is not in order when a motion to arrest absent Members is pending (IV, 3029, 3037); is not entertained until a quorum responds on the call, but may be agreed to by less than a quorum thereafter (IV, 3038, 3040; VI, 689; Sept. 11, 1968, p. 26453; Dec. 22, 1970, p. 43311); is neither debatable nor subject to amendment, thus the motion to lay it on the table is not in order (Aug. 27, 1962, p. 17653; Dec. 18, 1970, p. 42504).

§ 1024. Motions during a call.

During the call, which in later practice has been invoked only in absence of a quorum, incidental motions may be agreed to by less than a quorum (IV, 2994, 3029; VI, 681), and under clause 7 (formerly clause 6(a)(4) of rule XV) a point of order of no quorum may not be made during the offering, consideration, and disposition of any motion incidental to a call of the House. This includes

motions for the previous question (V, 5458), to reconsider and to lay the motion to reconsider on the table (V, 5607, 5608), to adjourn, which is in order even in the midst of the call of the roll for excuses (IV, 2998) or while the House is dividing on a motion for a call of the House (VIII, 2644), and which takes precedence over a motion to dispense with further proceedings under the call (VIII, 2643), and an appeal from a decision of the Chair (IV, 3010, 3037; VI, 681). The yeas and nays may also be ordered (IV, 3010), but a question of privilege may not be raised unless it be something connected immediately with the proceedings (III, 2545). Motions not strictly incidental to the call are not admitted, as for a recess (IV, 2995, 2996), to excuse a Member from voting even when otherwise in order (IV, 3007), to enforce the statute relating to deductions of pay of Members for absence (IV, 3011; VI, 682), to construe a rule or make a new rule (IV, 3008), or to order a change of a Journal record (IV, 3009). A motion for a call of the House is not debatable (VI, 683, 688). The motion to compel the attendance of absent Members, being neither debatable nor amendable, is not subject to a motion to lay on the table (Speaker Wright, Nov. 2, 1987, p. 30389).

§ 1024a. "Provisional quorum."

(c)(1) If the House should be without a quorum due to catastrophic circumstances, then—

(A) until there appear in the House a sufficient number of Representatives to constitute a quorum among the whole number of the House, a quorum in the House shall be determined based upon the provisional number of the House; and

(B) the provisional number of the House, as of the close of the call of the House described in subparagraph (3)(C), shall be the number of Representatives responding to that call of the House.

(2) If a Representative counted in determining the provisional number of the House thereafter ceases to be a Representative, or if a Representative not counted in determining the provisional number of the House thereafter appears in the

House, the provisional number of the House shall be adjusted accordingly.

(3) For the purposes of subparagraph (1), the House shall be considered to be without a quorum due to catastrophic circumstances if, after a motion under clause 5(a) of rule XX has been disposed of and without intervening adjournment, each of the following occurs in the stated sequence:

(A) A call of the House (or a series of calls of the House) is closed after aggregating a period in excess of 72 hours (excluding time the House is in recess) without producing a quorum.

(B) The Speaker—

(i) with the Majority Leader and the Minority Leader, receives from the Sergeant-at-Arms (or his designee) a catastrophic quorum failure report, as described in subparagraph (4);

(ii) consults with the Majority Leader and the Minority Leader on the content of that report; and

(iii) announces the content of that report to the House.

(C) A further call of the House (or a series of calls of the House) is closed after aggregating a period in excess of 24 hours (excluding time the House is in recess) without producing a quorum.

(4)(A) For purposes of subparagraph (3), a catastrophic quorum failure report is a report advising that the inability of the House to estab-

lish a quorum is attributable to catastrophic circumstances involving natural disaster, attack, contagion, or similar calamity rendering Representatives incapable of attending the proceedings of the House.

(B) Such report shall specify the following:

(i) The number of vacancies in the House and the names of former Representatives whose seats are vacant.

(ii) The names of Representatives considered incapacitated.

(iii) The names of Representatives not incapacitated but otherwise incapable of attending the proceedings of the House.

(iv) The names of Representatives unaccounted for.

(C) Such report shall be prepared on the basis of the most authoritative information available after consultation with the Attending Physician to the Congress and the Clerk (or their respective designees) and pertinent public health and law enforcement officials.

(D) Such report shall be updated every legislative day for the duration of any proceedings under or in reliance on this paragraph. The Speaker shall make such updates available to the House.

(5) An announcement by the Speaker under subparagraph (3)(B)(iii) shall not be subject to appeal.

(6) Subparagraph (1) does not apply to a proposal to create a vacancy in the representation from any State in respect of a Representative

not incapacitated but otherwise incapable of attending the proceedings of the House.

(7) For purposes of this paragraph:

(A) The term "provisional number of the House" means the number of Representatives upon which a quorum will be computed in the House until Representatives sufficient in number to constitute a quorum among the whole number of the House appear in the House.

(B) The term "whole number of the House" means the number of Representatives chosen, sworn, and living whose membership in the House has not been terminated by resignation or by the action of the House.

This paragraph was added in the 109th Congress (sec. 2(h), H. Res. 5, Jan. 4, 2005, p. ——). In extraordinary circumstances, section 8 of title 2, United States Code, prescribes special election rules to expedite the filling of vacancies in representation of the House.

§ 1024b. Accounting for vacancies.

(d) Upon the death, resignation, expulsion, disqualification, removal, or swearing of a Member, the whole number of the House shall be adjusted accordingly. The Speaker shall announce the adjustment to the House. Such an announcement shall not be subject to appeal. In the case of a death, the Speaker may lay before the House such documentation from Federal, State, or local officials as he deems pertinent.

This paragraph was added in the 108th Congress (sec. 2(l), H. Res. 5, Jan. 7, 2003, p. ——). In the 109th Congress it was redesignated from paragraph (c) to paragraph (d) and the Speaker's responsibility to announce an adjustment was extended to the swearing of a Member (sec. 2(h), H. Res. 5, Jan. 4, 2005, p. ——).

§ 1025. The call of the House in the new form.

6. (a) When a quorum fails to vote on a question, a quorum is not present, and objection is made for that cause (unless the House shall adjourn)—

(1) there shall be a call of the House;

(2) the Sergeant-at-Arms shall proceed forthwith to bring in absent Members; and

(3) the yeas and nays on the pending question shall at the same time be considered as ordered.

(b) The Clerk shall record Members by the yeas and nays on the pending question, using such procedure as the Speaker may invoke under clause 2, 3, or 4. Each Member arrested under this clause shall be brought by the Sergeant-at-Arms before the House, whereupon he shall be noted as present, discharged from arrest, and given an opportunity to vote; and his vote shall be recorded. If those voting on the question and those who are present and decline to vote together make a majority of the House, the Speaker shall declare that a quorum is constituted, and the pending question shall be decided as the requisite majority of those voting shall have determined. Thereupon further proceedings under the call shall be considered as dispensed with.

(c) At any time after Members have had the requisite opportunity to respond by the yeas and nays, but before a result has been announced, a motion that the House adjourn shall be in order if seconded by a majority of those present, to be ascertained by actual count by the Speaker. If

the House adjourns on such a motion, all proceedings under this clause shall be considered as vacated.

This clause (formerly clause 4 of rule XV) was adopted in 1896 (IV, 3041; VI, 690); and amended in 1972 to make its provisions subject to clause 2 (formerly clause 5) of this rule (H. Res. 1123, 92d Cong., p. 36012). In the 108th Congress paragraph (c) was amended to clarify the privileged nature of the motion to adjourn during the call (sec. 2(m), H. Res. 5, Jan. 7, 2003, p. ——). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 4 of rule XV (H. Res. 5, Jan. 6, 1999, p. 47).

Where objection is raised to a vote in the House on the ground that a quorum is not present, and a quorum is in fact not present, the Speaker may direct that the call of the House be taken by electronic device under clause 2 (formerly clause 5), or may, in his discretion, direct the Clerk to call the roll pursuant to this clause (May 16, 1973, p. 15860).

It applies only to votes wherein a quorum is required, and hence does not apply to an affirmative vote on a motion to adjourn (July 25, 1949, p. 10092; Nov. 4, 1983, p. 30946), or motions incidental to a call of the House which may be agreed to by less than a quorum (IV, 2994, 3029; VI, 681), or to a call when there is no question pending (IV, 2990). While a quorum is not required to adjourn, a point of no quorum on a negative vote on adjournment, if sustained, precipitates a call of the House under the rule (VI, 700; June 4, 1951, pp. 6097, 6098; June 15, 1951, p. 6621). Where less than a quorum rejects a motion to adjourn, the House may not consider business but may dispose of motions to compel the attendance of absent Members (Nov. 2, 1987, p. 30387).

When a Member objects to a vote on the ground that a quorum is not present and makes the point of order under this clause, the Speaker may count the House and determine the presence of a quorum and is not required to announce his actual count under the first sentence of this clause (Sept. 30, 1981, p. 22456). Where the Speaker ascertains the presence of a quorum by actual count following an objection to a vote under this clause, or on a rejected demand for the yeas and nays and a division vote is then had on the pending question, the division vote is intervening business (see VIII, 2804) permitting another objection to the lack of a quorum, and the Speaker must again count the House (Mar. 17, 1976, p. 6792; Aug. 2, 1979, p. 22006). However, where the announced absence of a quorum has resulted in a record vote under this clause (on the Speaker's approval of the Journal), the House may not, even by unanimous consent, vacate the vote in order to conduct another voice vote in lieu of the record vote, since no business, including a unanimous-consent agreement, is in order in the announced absence of a quorum (July 13, 1983, p. 18844; Feb. 24, 1988, p. 2450). The House having authorized the Speaker to compel the attendance of absent Members, the Speaker announced that the Sergeant-at-Arms

would proceed with necessary and efficacious steps, and that pending the establishment of a quorum no further business, including unanimous-consent requests for recess authority, could be entertained (Nov. 2, 1987, p. 30389).

§ 1026. Conduct of the call in the new form.

Under this clause the roll is called over twice, and those appearing after their names are called may vote (IV, 3052). A motion to adjourn may be made before the call begins (IV, 3050). After the roll has been called, and while the proceedings to obtain a quorum are going on, motions to excuse Members are in order (IV, 3051).

The Sergeant-at-Arms is required to detain those who are present and bring in absentees (IV, 3045–3048), and he does this without the authority of a resolution adopted by those present (IV, 3049). There is doubt as to whether or not a warrant is necessary but it is customary for the Speaker to issue one on the authority of the rule (IV, 3043; VI, 702). When arrested, Members are arraigned at the bar, and either vote or are noted as present, after which they are discharged (IV, 3044).

When a quorum fails to vote on a yea-and-nay vote on a motion which requires a quorum to be present, and a quorum is not present, the Chair takes notice of the fact, and unless the House adjourns, a call of the House is ordered by the Chair under this rule, and the vote is taken on the question de novo (IV, 3045, 3052; VI, 679). If the House does adjourn, the question is put de novo the next meeting day (Oct. 10, 1940, p. 13535).

An automatic roll call results under this rule when the objection that a quorum is not present and voting is made after a viva voce vote (VI, 697). An automatic roll call under this rule is not in order in Committee of the Whole (Aug. 2, 1966, p. 17844). Pursuant to clause 8, if a vote is objected to under this clause, further proceedings may be postponed, in which case the question is put de novo when that vote recurs as unfinished business. Furthermore, when such proceedings are postponed, the point of order that a quorum is not present is considered as withdrawn because no longer in order (a question not being put after the Speaker's announcement of postponement) (see clause 7, *infra*).

§ 1027. Quorum; when not required.

7. (a) The Speaker may not entertain a point of order that a quorum is not present unless a question has been put to a vote.

§ 1028. Speaker's discretion to recognize for motion for call of House.

(b) Subject to paragraph (c) the Speaker may recognize a Member, Delegate, or Resident Commissioner to move a call of the House at any time. When a quorum is established pursuant to a call of the

House, further proceedings under the call shall be considered as dispensed with unless the Speaker recognizes for a motion to compel attendance of Members under clause 5(b).

(c) A call of the House shall not be in order after the previous question is ordered unless the Speaker determines by actual count that a quorum is not present.

§ 1029. Relation of previous question to failure of a quorum.

Paragraphs (a) and (b) were adopted in the 93d Congress (H. Res. 998, Apr. 9, 1974, pp. 10195–99) and amended in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70) and in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16) to dispense with further proceedings under any call of the House when a quorum appears unless the Speaker at his discretion recognizes for a motion. Paragraph (c) (formerly clause 2 of rule XVII) was adopted in 1860 (V, 5447). Before the House recodified its rules in the 106th Congress, paragraphs (a) and (b) were found in former clause 6 of rule XV and paragraph (c) was found in former clause 2 of rule XVII. The 106th Congress also transferred former clause 6(b) of rule XV to clause 6(d) of rule XVIII (H. Res. 5, Jan. 6, 1999, p. 47).

Under this clause the Speaker may not entertain a point of order of no quorum when he has not put a question to a vote in the House (Speaker O'Neill, Jan. 11, 1977, p. 891; Jan. 31, 1977, p. 2640; Sept. 30, 1997, p. 20837; July 21, 1998, p. 16342; June 14, 2001, p. ——). The Chair may not entertain a point of order of no quorum pending a request that a committee be permitted to sit under the five-minute rule, because the Chair has not put the question on a pending proposition to a vote (June 18, 1980, p. 15316). However, under this clause the Speaker may at any time in his discretion recognize a Member of his choice to move a call of the House (Speaker O'Neill, Jan. 19, 1977, p. 1719; Jan. 31, 1977, p. 2640; Aug. 6, 1986, p. 19370), or may choose not to do so (Sept. 30, 1997, p. 20837), even, for example, before the call of the Private Calendar, which is in order after approval of the Journal and disposition of business on the Speaker's table (July 8, 1987, p. 18972). For precedents addressing timeliness in raising a point of order of no quorum, see Deschler, ch. 20, § 13.

The Speaker's refusal to entertain a point of order of no quorum when a pending question has not been put to a vote is not subject to an appeal, since the clause contains an absolute and unambiguous prohibition against entertaining such a point of order (Sept. 16, 1977, p. 29562). During debate on a measure in the House the Speaker will not respond to an inquiry as to the number of Members present in the Chamber, because a point

of no quorum is not admissible unless he has put the pending question to a vote (Oct. 28, 1987, p. 29682).

In adopting this rule, the House has presumably determined that the mere conduct of debate in the House, where the Chair has not put the pending motion or proposition to a vote, is not such business as requires a quorum under the Constitution (art. I, sec. 5, cl. 1), and neither a point of order of no quorum during debate only nor a point of order against the enforcement of this clause lies independently under the Constitution (Sept. 8, 1977, p. 28114; Sept. 12, 1977, p. 28800; Feb. 27, 1986, p. 3060). Clause 7(c) of rule XX provides that after the previous question is ordered a call of the House shall only be in order if the Speaker determines by actual count of the House that a quorum is not present.

Postponement of proceedings

§ 1030. Postponing record votes on passage.

8. (a)(1) When a recorded vote is ordered, or the yeas and nays are ordered, or a vote is objected to under clause 6—

(A) on any of the questions specified in subparagraph (2), the Speaker may postpone further proceedings to a designated place in the legislative schedule within two additional legislative days; and

(B) on the question of agreeing to the Speaker's approval of the Journal, the Speaker may postpone further proceedings to a designated place in the legislative schedule on that legislative day.

(2) The questions described in subparagraph (1) are as follows:

(A) The question of passing a bill or joint resolution.

(B) The question of adopting a resolution or concurrent resolution.

(C) The question of agreeing to a motion to instruct managers on the part of the House (except that proceedings may not resume on such a motion under clause 7(c) of rule XXII

if the managers have filed a report in the House).

(D) The question of agreeing to a conference report.

(E) The question of ordering the previous question on a question described in subdivision (A), (B), (C), or (D).

(F) The question of agreeing to a motion to suspend the rules.

(G) The question of agreeing to a motion to reconsider or the question of agreeing to a motion to lay on the table a motion to reconsider.

(H) The question of agreeing to an amendment reported from the Committee of the Whole.

(b) At the time designated by the Speaker for further proceedings on questions postponed under paragraph (a), the Speaker shall resume proceedings on each postponed question.

(c) The Speaker may reduce to five minutes the minimum time for electronic voting on a question postponed under this clause, or on a question incidental thereto, that follows another electronic vote without intervening business, so long as the minimum time for electronic voting on the first in any series of questions is 15 minutes.

(d) If the House adjourns on a legislative day designated for further proceedings on questions postponed under this clause without disposing of such questions, then on the next legislative day the unfinished business is the disposition of such questions.

This provision (formerly clause 5(b) of rule I) was added in the 96th Congress (H. Res. 5, Jan. 15, 1979, p. 7), and paragraph (a) was amended in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113) to consolidate most authority for the postponing of further proceedings on certain questions into this paragraph. This consolidation was accomplished with the addition of the authority to postpone further proceedings on reports from the Committee on Rules and motions to suspend the rules. The Speaker was granted additional authority to postpone further proceedings as follows: (1) the Speaker's approval of the Journal until later that legislative day in the 98th Congress (H. Res. 5, Jan. 3, 1983, p. 34); (2) motions to instruct conferees under clause 7(c) of rule XXII in the 101st Congress (H. Res. 5, Jan. 3, 1989, p. 72); (3) the original motion to instruct conferees in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47); (4) ordering the previous question on another question that is, itself, susceptible of postponement (and the list was reordered) in the 104th Congress (sec. 223(a), H. Res. 6, Jan. 4, 1995, p. 469); (5) certain questions during consideration of bills called from the Corrections Calendar in the 105th Congress (H. Res. 5, Jan. 7, 1997, p. 121), but that provision was stricken in the 109th Congress when the Corrections Calendar was repealed (sec. 2(f), H. Res. 5, Jan. 4, 2005, p. ——); (6) questions incidental to a postponed question (and to permit the first postponed vote in a series to be a five-minute vote if it immediately follows a 15-minute vote) in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. ——); and (7) the question of agreeing to the motion to reconsider, the question of agreeing to the motion to lay on the table a motion to reconsider, and the question of agreeing to an amendment reported from the Committee of the Whole in the 109th Congress (sec. 2(i), H. Res. 5, Jan. 4, 2005, p. ——). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5(b) of rule I (H. Res. 5, Jan. 6, 1999, p. 47). Technical corrections to paragraphs (a), (b), and (d) of clause 8 were effected in the 108th Congress (sec. 2(u), H. Res. 5, Jan. 7, 2003, p. ——). The House by unanimous consent authorized the Speaker to postpone further proceedings on a specified class of record votes to a date certain beyond the two legislative days permitted under this clause (*e.g.*, Sept. 17, 2003, p. ——).

In the 108th Congress clause 9 was expanded to include the authority described in clause 8(c) (sec. 2(n), H. Res. 5, Jan. 7, 2003, p. ——). Clause 9 permits the Speaker to reduce to five minutes a record vote on any question arising without intervening business after an electronic vote on another question if notice of possible five-minute voting was properly issued.

The Speaker first exercised his authority to postpone a record vote on the approval of the Journal on November 10, 1983 (p. 32097). That authority includes the power to postpone a division vote on the approval of the Journal that is objected to under clause 6 of rule XX (formerly clause 4 of rule XV) (Sept. 21, 1993, p. 21820). On questions not enumerated in this paragraph, such as the initial motion to instruct conferees before the

106th Congress, unanimous consent was required to permit the Speaker to postpone such record votes (Oct. 6, 1986, p. 28704).

Pursuant to clause 7 of rule XX (formerly clause 6(e) of rule XV), prohibiting a point of order of no quorum unless the Speaker has put the pending proposition to a vote, the Speaker announces, after postponing a vote on a motion to suspend the rules where objection has been made to the vote on the grounds that a quorum is not present, that the point of order is considered as withdrawn, since the Chair is no longer putting the question (May 16, 1977, p. 14785). At the conclusion of debate on all motions to suspend the rules on a legislative day, the Speaker announces that he will put the question on each motion on which further proceedings have been postponed—either de novo if objection to the vote has been made under clause 6 of rule XX (formerly clause 4 of rule XV) or for a "yea and nay" or recorded vote if previously ordered by the House in the order in which the motions had been entered (June 4, 1974, pp. 17521–47). Clause 8(a) of rule XX (formerly clause 5(b) of rule I) does not require the Chair's customary announcement at the beginning of consideration of motions to suspend the rules that the Chair intends to postpone possible record votes (Feb. 23, 1993, p. 3281; Nov. 14, 1995, p. 32385).

Under the authority to postpone further proceedings on a specified question to a designated time within two legislative days, the Speaker may simultaneously designate separate times for the resumption of proceedings on separate postponed questions (Mar. 3, 1992, p. 4072). Once the Speaker has postponed record votes to a designated place in the legislative schedule, he may subsequently redesignate the time when the votes will be taken within the appropriate period (June 6, 1984, p. 15080; Oct. 3, 1988, pp. 27782, 27878). When the House adjourns on the second legislative day after postponement of a question under this clause without resuming proceedings thereon, the question remains unfinished business on the next legislative day (Oct. 1, 1997, p. 20922).

Following the first postponed vote on motions to suspend the rules, the Speaker may in his discretion reduce to not less than five minutes the time for taking votes on any or all of the subsequent motions on which votes have been postponed (June 4, 1974, p. 17547). Having clustered record votes on motions to suspend the rules and then having clustered record votes on passage of other measures considered immediately after debate on the suspension motions, the Speaker may, pursuant to this clause, conduct all the postponed votes in one sequence and reduce to five minutes the time for all electronic votes after the first suspension vote (May 17, 1983, p. 12508; Oct. 2, 1989, p. 22724). However, the Chair may decline, in his discretion, to recognize for a unanimous-consent request to reduce to five minutes the first vote in the series, since the bell and light system would not give adequate notice of the initial five-minute vote (Oct. 8, 1985, p. 26666; see also § 1032, *infra*). However, before the 106th Congress, where a series of votes had been postponed pursuant to this clause to occur following a 15-minute vote on another measure not a part

of that series, the vote on the first postponed measure could have been reduced to five minutes only by unanimous consent (May 24, 1983, p. 13595; July 22, 1996, p. 18410). By unanimous consent waiving the five-minute minimum set by paragraph (c) (formerly clause 5(b)(3) of rule I), the House has authorized the Speaker to put remaining postponed questions to two-minute electronic votes (Oct. 4, 1988, pp. 28126, 28148). The Speaker may "cluster" postponed votes on a motion to suspend the rules and on adoption of a resolution in the order in which those questions were considered on the preceding day (July 19, 1983, p. 19774). The requirement that the Speaker put each question on motions to suspend the rules in the order in which postponed, does not prevent the Speaker from entertaining a unanimous-consent request for the consideration of a similar Senate measure following passage of a House bill and before the next postponed vote (Feb. 15, 1983, p. 2175). Since a resolution raising a question of the privileges of the House takes precedence over a motion to suspend the rules, it may be offered and voted on between motions to suspend the rules on which the Speaker has postponed record votes until after debate on all suspensions (May 17, 1983, p. 12486). Proceedings may not resume on a postponed question of agreeing to a 20-day motion to instruct conferees after the managers have filed a conference report in the House (Oct. 19, 1999, p. 25961).

For several years before the 107th Congress, special rules adopted by the House commonly provided the Chairman of the Committee of the Whole authority to postpone and cluster requests for recorded votes on amendments. In the 107th Congress that authority was given to the Chairman in the standing rules by adoption of a new clause 6(g) of rule XVIII. For a discussion of such authority, see § 984, *supra*.

§ 1031. Former pairs.

Former clause 2 of rule VIII was adopted in 1880, although the practice of pairing had then existed in the House for many years (V, 5981). The language of the clause was slightly altered by amendment in 1972 to reflect the installation of electronic voting in the 93d Congress (H. Res. 1123, Oct. 13, 1972, pp. 36005–12). It was amended in the 94th Congress (H. Res. 5, Jan. 14, 1975, p. 20) to permit pairs to be announced in the Committee of the Whole. Former clause 2 of rule VIII was deleted in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). "Live" pairs still may be announced under clause 3 of rule XX (§ 1015, *supra*).

Before the 106th Congress, pairs were not announced at a time other than that prescribed by the former rule (V, 6046), and the voting intentions of an absent Member were not otherwise announced by a colleague (VIII, 3151). Before the 94th Congress pairs were not permitted in Committee of the Whole (V, 5984; Speaker Albert, Jan. 15, 1973, p. 1054). The House did not consider questions arising out of the breaking of a pair (V, 5982, 5983, 6095; VIII, 3082, 3085, 3087–3089, 3093), or permit a Member to vote after the call on the plea that he had refrained because of misunderstanding as to a pair (V, 6080, 6081). Discussion of the origin of the practice

of pairing in the House and Senate (VIII, 3076). On questions requiring a two-thirds majority Members were paired two in the affirmative against one in the negative (VIII, 3088; Nov. 15, 1983, p. 32685). For Speaker Clark's interpretation of the rule and practice of the House of Representatives as to pairs, see VIII, 3089.

Five-minute votes

§ 1032. "15-and-5" voting.

9. The Speaker may reduce to five minutes the minimum time for electronic voting on any question arising without intervening business after an electronic vote on another question if notice of possible five-minute voting for a given series of votes was issued before the preceding electronic vote.

The Speaker's authority to reduce record votes to five minutes, provided the first vote in any series is a 15-minute vote, gradually expanded over the years as follows: (1) on a bill, resolution, or conference report following a vote on a motion to recommit as first added in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16); (2) on amendments reported from the Committee of the Whole following a vote on the first such amendment, as added in the 101st Congress (H. Res. 5, Jan. 3, 1989, p. 72); (3) on adoption of a special order of business following a vote on ordering the previous question thereon as added in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. 49), and expanded to any underlying question following a vote on ordering the previous question in the 104th Congress (sec. 223(e), H. Res. 6, Jan. 4, 1995, p. 469); (4) on any incidental question under this clause as added in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47); and (5) finally (the present language of the rule), on any question arising without intervening business after an electronic vote on another question in the 108th Congress (sec. 2(n), H. Res. 5, Jan. 7, 2003, p. ——). The 106th Congress, when the House recodified its rules, transferred this provision from former clause 5(b) of rule XV (H. Res. 5, Jan. 6, 1999, p. 47).

Five-minute votes are now permitted at the discretion of the Chair in the following circumstances: (1) under clause 9 on any question arising without intervening business after an electronic vote on another question if notice of possible five-minute voting was properly issued (which includes the authority also granted under clause 8(c)); (2) under clause 6(b)(3) of rule XVIII, on a pending question immediately following a regular quorum call in Committee of the Whole; (3) under clause 6(f) of rule XVIII, on any or all pending amendments immediately following a 15-minute recorded vote on the first such pending amendment in Committee of the Whole; and (4) under clause 6(g) of rule XVIII, on a postponed question on adoption of an amendment that immediately follows another electronic

vote. This clause does not give the Chair the authority to reduce to five minutes the vote on a motion to recommit occurring immediately after a recorded vote on an amendment reported from the Committee of the Whole (June 29, 1994, p. 15107). The Chair will not entertain a unanimous-consent request to reduce a vote to five minutes where Members have not been given sufficient notice (*e.g.*, July 14, 1999, p. 16008; June 23, 2004, p. ——; Sept. 15, 2005, p. ——). However, the Chair will permit such request with sufficient notice (June 24, 2005, p. ——).

Where five-minute voting is interrupted by a one-minute speech, unanimous consent is required to continue five-minute voting (June 25, 2002, p. ——). A voice vote on the question of adoption of a resolution following a 15-minute vote on ordering the previous question was not construed as "intervening business" such as would preclude five-minute votes on certain postponed questions (Sept. 26, 2002, p. ——). In the 95th Congress, the Speaker announced that changes could be made electronically at any time during a vote reduced to five minutes under the rules (Speaker O'Neill, Jan. 4, 1977, pp. 53–70).

Automatic yeas and nays

§ 1033. Yeas and nays ordered on certain questions.

10. The yeas and nays shall be considered as ordered when the Speaker puts the question on passage of a bill or joint resolution, or on adoption of a conference report, making general appropriations, or increasing Federal income tax rates (within the meaning of clause 5 of rule XXI), or on final adoption of a concurrent resolution on the budget or conference report thereon.

This clause was adopted in the 104th Congress (sec. 214, H. Res. 6, Jan. 4, 1995, p. 468). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 7 of rule XV (H. Res. 5, Jan. 6, 1999, p. 47). The Chair announced the ordering of the yeas and nays under this clause on passage of a joint resolution not only further continuing appropriations for the current fiscal year but also enacting by reference six general appropriation bills (Oct. 21, 2003, p. ——).

Ballot votes

§ 1034. Elections by ballot.

11. In a case of ballot for election, a majority of the votes shall be necessary to an election. When there is not such a

majority on the first ballot, the process shall be repeated until a majority is obtained. In all balloting blanks shall be rejected, may not be counted in the enumeration of votes, and may not be reported by the tellers.

This rule was first adopted in 1789 and was amended in 1837 (V, 6003). It was renumbered January 3, 1953 (p. 24). The last election by ballot seems to have occurred in 1868 (V, 6003).

RULE XXI

RESTRICTIONS ON CERTAIN BILLS

Reservation of certain points of order

§ 1035. Reservation of points of order.

1. At the time a general appropriation bill is reported, all points of order against provisions therein shall be considered as reserved.

This clause was added in the 104th Congress (sec. 215(e), H. Res. 6, Jan. 4, 1995, p. 468), rendering unnecessary the former practice that a Member reserve points of order when a general appropriation bill was referred to the calendar of the Committee of the Whole House on the state of the Union, in order that provisions in violation of rule XXI could be stricken in the Committee of the Whole (see § 1044, *infra*). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 8 of rule XXI (H. Res. 5, Jan. 6, 1999, p. 47).

General appropriation bills and amendments

§ 1036. Unauthorized appropriations in reported general appropriation bills or amendments thereto.

2. (a)(1) 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 are already in progress.

§ 1037. Reappropriations prohibited.

(2) A reappropriation of unexpended balances of appropriations may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, except to continue appropriations for public works and objects that are already in progress. This subparagraph does not apply to transfers of unexpended balances within the department or agency for which they were originally appropriated that are reported by the Committee on Appropriations.

§ 1038. Legislation in reported general appropriation bills; exceptions.

(b) A provision changing existing law may not be reported in a general appropriation bill, including a provision making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation, except germane provisions that retrench expenditures by the reduction of amounts of money covered by the bill (which may include those recommended to the Committee on Appropriations by direction of a legislative committee having jurisdiction over the subject matter) and except rescissions of appropriations contained in appropriation Acts.

§ 1039. Legislation or limitations in amendments to general appropriation bills.

(c) An amendment to a general appropriation bill shall not be in order if changing existing law, including an amendment making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation. Except as provided in paragraph (d), an amend-

ment proposing a limitation not specifically contained or authorized in existing law for the period of the limitation shall not be in order during consideration of a general appropriation bill.

§ 1040. Motion to rise and report as preferential to amendments.

(d) After a general appropriation bill has been read for amendment, a motion that the Committee of the Whole House on the state of the Union rise and report the bill to the House with such amendments as may have been adopted shall, if offered by the Majority Leader or a designee, have precedence over motions to amend the bill. If such a motion to rise and report is rejected or not offered, amendments proposing limitations not specifically contained or authorized in existing law for the period of the limitation or proposing germane amendments that retrench expenditures by reductions of amounts of money covered by the bill may be considered.

§ 1041. Designated emergencies in reported appropriation bills.

(e) A provision other than an appropriation designated an emergency under section 251(b)(2) or section 252(e) of the Balanced Budget and Emergency Deficit Control Act, a rescission of budget authority, or a reduction in direct spending or an amount for a designated emergency may not be reported in an appropriation bill or joint resolution containing an emergency designation under section 251(b)(2) or section 252(e) of such Act and may not be in order as an amendment thereto.

§ 1042. Offsetting amendments en bloc to appropriation bills.

(f) During the reading of an appropriation bill for amendment in the Committee of the Whole House on the state of the Union, it shall be in order to consider en bloc amendments proposing only to transfer appropriations among objects in the bill without increasing the levels of budget authority or outlays in the bill. When considered en bloc under this paragraph, such amendments may amend portions of the bill not yet read for amendment (following disposition of any points of order against such portions) and are not subject to a demand for division of the question in the House or in the Committee of the Whole.

§ 1043. History of clause 2 of rule XXI.

The 25th Congress in 1837 was the first to adopt a rule prohibiting appropriations in a general appropriation bill or amendment thereto not previously authorized by law, in order to prevent delay of appropriation bills because of contention over propositions of legislation. In 1838 that Congress added the exception to permit unauthorized appropriations for continuation of works in progress and for contingencies for carrying on departments of the Government. The rule remained in that form until the 44th Congress in 1876, when William S. Holman of Indiana persuaded the House to amend the rule to permit germane legislative retrenchments. In 1880, the 46th Congress dropped the exception which permitted unauthorized appropriations for contingencies of Government departments, and modified the "Holman Rule" to define retrenchments as the reduction of the number and salary of officers of the United States, the reduction of compensation of any person paid out of the Treasury of the United States, or the reduction of the amounts of money covered by the bill. That form of the retrenchment exception remained in place until the 49th Congress in 1885, when it was dropped until the 52d Congress in 1891, and then reinserted through the 53d Congress until 1894. It was again dropped in the 54th Congress from 1895 until reinserted in the 62d Congress in 1911 (IV, 3578; VII, 1125).

The clause remained unamended until January 3, 1983, when the 98th Congress restructured it in the basic form of paragraphs (a)–(d). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress, including a change to clause 2(a)(2) to clarify that the point of order lies against the offending provision in the text and not against consideration of the entire bill. At that time former clause 6 was

transferred to clause 2(a)(2) and former clause 2(a) became clause 2(a)(1) (H. Res. 5, Jan. 6, 1999, p. 47).

Paragraph (a)(1) (formerly paragraph (a)) retained the prohibition against unauthorized appropriations in general appropriation bills and amendments thereto except in continuation of works in progress.

Paragraph (a)(2) (formerly clause 6), from section 139(c) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190f(c)), was made part of the standing rules in the 83d Congress (Jan. 3, 1953, p. 24). Previously, a reappropriation of an unexpended balance for an object authorized by law was in order on a general appropriation bill (IV, 3591, 3592; VII, 1156, 1158). This provision was amended in the 99th Congress by section 228(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177) to permit the Committee on Appropriations to report transfers of unexpended balances within the department or agency for which originally appropriated.

Paragraph (b) narrowed the "Holman Rule" exception from the prohibition against legislation to cover only retrenchments reducing amounts of money included in the bill as reported, and permitted legislative committees with proper jurisdiction to recommend such retrenchments to the Appropriations Committee for discretionary inclusion in the reported bill. The last exception in paragraph (b), permitting the inclusion of legislation rescinding appropriations in appropriation Acts, was added in the 99th Congress by the Balanced Budget and Emergency Deficit Control Act of 1985 (sec. 228(a), P.L. 99–177). The latter feature of the paragraph does not extend to a rescission of budget authority provided by a law other than an appropriation Act (see, § 1052, *infra*). In the 105th Congress paragraph (b) was amended to treat as legislation a provision reported in a general appropriation bill that makes funding contingent on whether circumstances not made determinative by existing law are "known" (H. Res. 5, Jan. 7, 1997, p. 121).

Paragraph (c) retained the prohibition against amendments changing existing law but permitted limitation amendments during the reading of the bill by paragraph only if specifically authorized by existing law for the period of the limitation. In the 105th Congress paragraph (c) was amended to treat as legislation an amendment to a general appropriation bill that makes funding contingent on whether circumstances not made determinative by existing law are "known" (H. Res. 5, Jan. 7, 1997, p. 121).

Paragraph (d) provided a new procedure for consideration of retrenchment and other limitation amendments only when the reading of a general appropriation bill has been completed and only if the Committee of the Whole does not adopt a motion to rise and report the bill back to the House (H. Res. 5, Jan. 3, 1983, p. 34). In the 104th Congress paragraph (d) was amended to limit the availability of its preferential motion to rise and report to the Majority Leader or his designee (sec. 215(a), H. Res. 6, Jan. 4, 1995, p. 468). In the 105th Congress it was further amended to make

the motion preferential to any motion to amend at that stage (H. Res. 5, Jan. 7, 1997, p. 121).

Paragraphs (e) and (f) were added in the 104th Congress (sec. 215, H. Res. 6, Jan. 4, 1995, p. 468). However, paragraph (e) is no longer effective with respect to discretionary spending because under section 275 of the Balanced Budget and Emergency Deficit Control Act section 251 expired on September 30, 2002. A technical correction to paragraph (f) was effected in the 109th Congress (sec. 2(l), H. Res. 5, Jan. 4, 2005, p. ——).

§ 1044. Points of order on general appropriation bills generally.

As the rule applies only to general appropriation bills, which are not enumerated or defined in the rules (VII, 1116), bills appropriating only for one purpose have been held not to be "general" within the meaning of this clause (VII, 1122). The following have been held not to be "general appropriation bills" within the purview of this clause: (1) a joint resolution providing an appropriation for a single Government agency (Jan. 31, 1962, p. 1352); (2) a joint resolution only containing continuing appropriations for diverse agencies to provide funds until regular appropriation bills are enacted (Sept. 21, 1967, p. 26370); (3) a joint resolution providing an appropriation for a single Government agency and permitting a transfer of a portion of those funds to another agency (Oct. 25, 1979, p. 29627); (4) a joint resolution transferring funds already appropriated from one specific agency to another (Mar. 26, 1980, p. 6716); (5) a joint resolution transferring unobligated balances to the President to be available for specified purposes but containing no new budget authority (Mar. 3, 1988, p. 3239).

A point of order under this rule does not apply to a special order reported from the Committee on Rules "self-executing" the adoption in the House of an amendment changing existing law (July 27, 1993, p. 17117). By unanimous consent the Committee of the Whole may vacate proceedings under specified points of order (June 7, 1991, p. 13973). A point of order may be withdrawn as a matter of right (in the Committee of the Whole as well as in the House) before action thereon (May 19, 2000, p. 8600).

As all bills making or authorizing appropriations require consideration in Committee of the Whole, it follows that the enforcement of the rule must ordinarily occur during consideration in Committee of the Whole, where the Chair, in response to a point of order, may rule out any portion of the bill in conflict with the rule (IV, 3811; Sept. 8, 1965, pp. 23140, 23182). Portions of the bill thus stricken are not reported back to the House. Before the adoption of clause 1 (formerly clause 8) in the 104th Congress (see § 1035, *supra*), it was necessary that some Member reserve points of order when a general appropriation bill was referred to the calendar of the Committee of the Whole House on the state of the Union, in order that provisions in violation of the rule could be stricken in the Committee (V, 6921–6925; VIII, 3450; Feb. 6, 1926, p. 3456). Where points of order had been reserved pending a unanimous-consent request that the committee be permitted to file its report when the House would not be in

session, it was not necessary that they be reserved again when the report ultimately was presented as privileged when the House was in session, as the initial reservation carried over to the subsequent filing (Mar. 1, 1983, p. 3241). In an instance where points of order were not reserved against an appropriation bill when it was reported to the House and referred to the Committee of the Whole, points of order in the Committee of the Whole against a proposition in violation of this clause were overruled on the ground that the Chairman of the Committee of the Whole lacked authority to pass upon the question (Apr. 8, 1943, p. 3150, 3153).

The enforcement of the rule also occurs in the House in that a motion to recommit a general appropriation bill may not propose an amendment containing legislation (Sept. 1, 1976, p. 28883) or a limitation not considered in the Committee of the Whole (Speaker Foley, Aug. 1, 1989, p. 17159; Aug. 3, 1989, p. 18546); and such amendment is precluded whether the Committee of the Whole has risen and reported automatically pursuant to a special rule or, instead, by a motion at the end of the reading for amendment (June 22, 1995, p. 16844).

Points of order against unauthorized appropriations or legislation on general appropriation bills may be made as to the whole or only a portion of a paragraph (IV, 3652; V, 6881). The fact that a point of order is made against a portion of a paragraph does not prevent another point of order against the whole paragraph (V, 6882; July 31, 1985, p. 21895), nor does it prevent another Member from demanding that the original point of order be extended to the entire paragraph (*e.g.*, July 16, 1998, p. 15806; Sept. 4, 2003, p. ——, p. ——; Sept. 14, 2004, p. ——; June 29, 2005, p. ——). If a portion of a proposed amendment is out of order, it is sufficient for the rejection of the whole amendment (V, 6878–6880). If a point of order is sustained against any portion of a package of amendments considered en bloc, all the amendments are ruled out of order and must be reoffered separately, or those which are not subject to a point of order may be considered en bloc by unanimous consent (Sept. 16, 1981, pp. 20735–38; June 21, 1984, p. 17687; July 26, 2001, p. ——). Where a point of order is sustained against the whole of a paragraph the whole must go out, but it is otherwise when the point of order is made only against a portion (V, 6884, 6885).

General appropriation bills are read "scientifically" only by paragraph headings and appropriation amounts, and points of order against a paragraph must be made before an amendment is offered thereto or before the Clerk reads the next paragraph heading and amount (Deschler, ch. 26, § 2.26). A point of order against a paragraph under this clause may be made only after that paragraph has been read by the Clerk, and not before its reading pending consideration of an amendment inserting language immediately prior thereto (June 6, 1985, pp. 14605, 14609). Where the reading of a paragraph of a general appropriation bill has been dispensed with by unanimous consent, the Chair inquires whether there are points of order against the paragraph before entertaining amendments or

directing the Clerk to read further, but he does not make such an inquiry where the Clerk has actually read the paragraph (May 31, 1984, p. 14608). Where a portion of the bill is considered as having been read and open to amendment by unanimous consent, points of order against provisions in that portion must be made before amendments are offered, and may not be reserved (Dec. 1, 1982, p. 28175; May 19, 2000, p. 8595; July 26, 2003, p. ——). Where a chapter is considered as read by unanimous consent and open to amendment at any point, no amendments are offered and the Clerk begins to read the next chapter, it is too late to make a point of order against a paragraph in the preceding chapter (June 11, 1985, p. 15181). It is too late to rule out the entire paragraph after points of order against specific portions have been sustained and an amendment to the paragraph has been offered (June 27, 1974, pp. 21670–72).

The fact that legislative jurisdiction over the subject matter of an amendment may rest with the Committee on Appropriations does not immunize the amendment from the application of clause 2(c) of rule XXI (July 17, 1996, p. 17550; July 24, 1996, p. 18898). The "works in progress exception" under clause 2(a) of rule XXI is a defense to a point of order against an unauthorized appropriation reported in a general appropriation bill and is not a defense to a point of order under clause 2(c) of rule XXI that an amendment to an appropriation bill constitutes legislation (July 24, 1996, p. 18898).

For a discussion of perfecting amendments to unauthorized appropriations or legislation permitted to remain in a general appropriation bill by failure to raise or by waiver of a point of order, see § 1057, *infra*.

§ 1044a. Points of order on general appropriation bills, deliberation of.

To resolve an ambiguity when ruling on a point of order, the Chair may: (1) examine legislative history established during debate on an amendment against which a point of order has been reserved (June 14, 1978, p. 17651); (2) inquire after its author's intent (Oct. 29, 1991, p. 28818); (3) examine the accompanying report to determine the intent of the section (June 25, 2004, p. ——).

In the administration of the rule, it is the practice that those upholding an item of appropriation should have the burden of showing the law authorizing it (IV, 3597; VII, 1179, 1233, 1276; June 23, 2000, p. 12123). Thus, the burden of proving the authorization for appropriations carried in a bill, or that the language in the bill constitutes a valid limitation which does not change existing law, falls on the proponents and managers of the bill (May 28, 1968, p. 15357; Nov. 30, 1982, p. 28062; June 25, 2004, p. ——). By the same token, the proponent of an amendment has the burden of proof to show that an appropriation contained in an amendment is authorized by law (*e.g.*, May 11, 1971, p. 14471; Oct. 29, 1991, p. 28791; July 26, 1995, p. 20567; July 27, 1995, pp. 20808, 20811; July 31, 1995, p. 21207) or that the amendment constitutes a valid limitation (July 17, 1975, p. 23239; June 16, 1976, p. 18666; July 18, 1995, p. 19357; June 24, 2003, p. ——). For example, the proponent of a provision in the bill

or of an amendment, as the case may be, has the burden to show the following: (1) that any duties imposed by a limitation are merely ministerial or already required under existing law (July 16, 1998, p. 15829); (2) in the case of language proposing a double-negative, that the object of the double-negative is specifically contemplated by existing law (July 23, 2003, p. ——, p. ——; see § 1053, *infra*); (3) that the amendment does not increase levels of budget authority or outlays within the meaning of clause 2(f) (*e.g.*, Oct. 11, 2001, p. ——; July 13, 2004, p. ——, p. ——, where the chair sustained the point of order in part because the manager's averment that the amendment increased outlays went unchallenged); (4) if the language is susceptible to more than one interpretation, that it merits the construction that it does not violate the rule (Deschler, ch. 26, § 22.26), although that burden may be met by a showing that only the requirements of existing law, and not any new requirements, are recited in the language (Sept. 23, 1993, p. 22206).

The mere recitation in an amendment that a determination is to be made pursuant to existing laws and regulations, absent a citation to the law imposing such responsibility, is not sufficient proof by the proponent of an amendment to overcome a point of order that the amendment constitutes legislation (Sept. 16, 1980, p. 25606).

The Chair may overrule a point of order that appropriations for a certain agency are unauthorized upon citation to an organic statute creating the agency, absent any showing that the organic law has been overtaken by a scheme of periodic reauthorization; the Chair may hear further argument and reverse his ruling, however, where existing law not previously called to the Chair's attention would require the ruling to be reversed (VIII, 3435; June 8, 1983, p. 14854, where a law amending the statute creating the Bureau of the Mint with the express purpose of requiring annual authorizations was subsequently called to the Chair's attention). Reported provisions in a general appropriation bill described in the accompanying report as directly or indirectly changing the application of existing law are presumably legislation, absent rebuttal by the committee (May 31, 1984, p. 14591).

§ 1044b. Motion to rise and report.

Where the reading of a general appropriation bill for amendment has been completed (or dispensed with), including the last paragraph of the bill containing the citation to the short title (July 30, 1986, p. 18214), the Chair (under the former form of the rule, which made the preferential motion available to any Member) might first inquire whether any Member sought to offer an amendment (formerly, one not prohibited by clauses 2(a) or (c)) before recognizing Members to offer limitation or retrenchment amendments (June 2, 1983, p. 14317; Sept. 22, 1983, p. 25406; Oct. 27, 1983, p. 29630), including pro forma amendments (Aug. 2, 1989, p. 18126). Pursuant to clause 2(d), a motion that the Committee rise and report the bill to the House with such amendments as may have been adopted is not debatable (Apr. 23, 1987, p. 9613) and takes precedence over any amendment (formerly only over a limitation or retrenchment amendment) (July 30, 1985, p.

21534; July 23, 1986, p. 17431; Apr. 23, 1987, p. 9613), but only after completion of the reading and disposition of amendments not otherwise precluded (June 30, 1992, p. 17135). Thus a motion that the Committee rise and report the bill to the House with the recommendation that it be recommitted, with instructions to report back to the House (forthwith or otherwise) with an amendment proposing a limitation, does not take precedence over the motion to rise and report the bill to the House with such amendments as may have been adopted (Sept. 19, 1983, p. 24647 (sustained on appeal)). An amendment not only reducing an amount in a paragraph of an appropriation bill but also limiting expenditure of those funds on a particular project (*i.e.*, a limitation not contained in existing law) was held not in order during the reading of that paragraph but only at the end of the bill under clause 2(d) (July 23, 1986, p. 17431; June 15, 1988, p. 14719). Where language of limitation was stricken from a general appropriation bill on a point of order that it changed existing law, an amendment proposing to reinsert the limitation without its former legislative content was held not in order before completion of the reading for amendment (June 18, 1991, p. 15214; Sept. 23, 1993, p. 22214). A motion that the Committee of the Whole rise and report to the House with the recommendation that the enacting clause be stricken out takes precedence over the motion to amend under clause 9 of rule XVIII (formerly clause 7 of rule XXIII) and also over the motion to rise and report under clause 2(d) (July 24, 1986, p. 17641).

The 109th Congress adopted a resolution creating a point of order against the motion to rise and report an appropriation bill to the House where the bill, as proposed to be amended, exceeds an applicable allocation of new budget authority under section 302(b) of the Congressional Budget Act of 1974, and setting forth procedures in the Committee of the Whole in the event that the point of order is sustained (sec. 2, H. Res. 248, Apr. 28, 2005, p. ——), to wit:

SEC. 2. (a) During the One Hundred Ninth Congress, except as provided in subsection (c), a motion that the Committee of the Whole rise and report a bill to the House shall not be in order if the bill, as amended, exceeds an applicable allocation of new budget authority under section 302(b) of the Congressional Budget Act of 1974, as estimated by the Committee on the Budget.

(b) If a point of order under subsection (a) is sustained, the Chair shall put the question: 'Shall the Committee of the Whole rise and report the bill to the House with such amendments as may have been adopted notwithstanding that the bill exceeds its allocation of new budget authority under section 302(b) of the Congressional Budget Act of 1974?'. Such question shall be debatable for 10 minutes equally divided and controlled by a proponent of the question and an opponent but shall be decided without intervening motion.

(c) Subsection (a) shall not apply—

(1) to a motion offered under clause 2(d) of rule XXI; or

(2) after disposition of a question under subsection (b) on a given bill.

(d) If a question under subsection (b) is decided in the negative, no further amendment shall be in order except—

(1) one proper amendment, which shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole; and

(2) pro forma amendments, if offered by the chairman or ranking minority member of the Committee on Appropriations or their designees, for the purpose of debate.

§ 1045. Authorization of law for appropriations.

A treaty may provide the authorization by existing law required in the rule to justify appropriations if it has been ratified by the contracting parties (IV, 3587); however, where existing law authorizes appropriations for the U.S. share of facilities to be recommended in an agreement with another country containing specified elements, an agreement in principle with that country predating the authorization law and lacking the required elements is insufficient authorization (June 28, 1993, p. 14421). An Executive Order does not constitute sufficient authorization in law absent proof of its derivation from a statute enacted by Congress authorizing the order and expenditure of funds (June 15, 1973, p. 19855; June 25, 1974, p. 21036). Thus a Reorganization Plan submitted by the President pursuant to 5 U.S.C. 906 has the status of statutory law when it becomes effective and is sufficient authorization to support an appropriation for an office created by Executive Order issued pursuant to the Reorganization Plan (June 21, 1974, p. 20595). A constitutional guarantee of just compensation for a governmental taking of private property for public use does not itself constitute sufficient authorization by law for appropriations in a general appropriation bill for compensation of particular private property owners (July 18, 2001, p. ——).

A resolution of the House has been held sufficient authorization for an appropriation for the salary of an employee of the House (IV, 3656–3658) even though the resolution may have been agreed to only by a preceding House (IV, 3660). Previous enactment of items of appropriation unauthorized by law does not justify similar appropriations in subsequent bills (VII, 1145, 1150, 1151) unless if through appropriations previously made, a function of the Government has been established which would bring it into the category of continuation of works in progress (VII, 1280), or unless legislation in a previous appropriation act has become permanent law (May 20, 1964, p. 11422). The omission to appropriate during a series of years for an object authorized by law does not repeal the law, and consequently an appropriation when proposed is not subject to the point of order (IV, 3595).

The law authorizing each head of a department to employ such numbers of clerks, messengers, copyists, watchmen, laborers, and other employees as may be appropriated for by Congress from year to year is held to authorize appropriations for those positions not otherwise authorized by law (IV, 3669, 3675, 4739); but this law does not apply to offices not within departments or not at the seat of Government (IV, 3670–3674). A permanent law authorizing the President to appoint certain staff, together with legislative provisions authorizing additional employment contained in an appropriation bill enacted for that fiscal year, constituted sufficient authorization for a lump sum supplemental appropriation for the White House for the same fiscal year (Nov. 30, 1973, p. 38854). By a general provision of law, appropriations for investigations and the acquisition and diffusion of information by the Agriculture Department on subjects related to agriculture are generally in order in the agricultural appropriation bill (IV, 3649). It has once been held that this law would also authorize appropriations for the instrumentalities of such investigations (IV, 3615); but these would not include the organization of a bureau to conduct the work (IV, 3651). The law does not authorize general investigations by the department (IV, 3652), or cooperation with State investigations (IV, 3650; VII, 1301, 1302), or the investigation of foods in relation to commerce (IV, 3647, 3648; VII, 1298), or the compiling of tests at an exposition (IV, 3653).

A paragraph appropriating funds for matching grants to States was held unauthorized where the authorizing law did not require State matching funds (June 28, 1993, p. 14418). A paragraph funding a project from the Highway Trust Fund was held unauthorized where such funding was authorized only from the general fund (Sept. 23, 1993, p. 22175; June 26, 2001, p. ——; Nov. 28, 2001, p. ——) or from the Airport and Airway Trust Fund (*e.g.,* Sept. 14, 2004, p. ——; June 29, 2005, p. ——). A paragraph providing funds for the President to meet "unanticipated needs" was held unauthorized (July 16, 1998, p. 15808). The authorization must be enacted before the appropriation may be included in an appropriation bill; thus delaying the availability of an appropriation pending enactment of an authorization does not protect the item of appropriation against a point of order under this clause (Apr. 26, 1972, p. 14455). Similarly, an amendment limiting funds to the extent provided in authorizing legislation on or after the date of enactment of the pending appropriation bill is not in order (May 19, 2005, p. ——).

The failure of Congress to enact into law separate legislation specifically modifying eligibility requirements for grant programs under existing law does not necessarily render appropriations for those programs subject to a point of order, where more general existing law authorizes appropriations for all of the programs proposed to be modified by new legislation pending before Congress (June 8, 1978, p. 16778). However, whether organic statutes or general grants of authority in law constitute sufficient authorization to support appropriations depends on whether the general laws applicable to the function or department in question require specific or annual

authorizations (June 14, 1978, pp. 17616, 17622, 17626, 17630) or on whether a periodic authorization scheme has subsequently occupied the field (Sept. 9, 1997, p. 18197). An authorization of "such sums as may be necessary" is sufficient to support any dollar amount, but has no tendency to relieve other conditions of the authorization law (June 28, 1993, p. 1442). Where existing law authorizes certain appropriations from a particular trust fund without fiscal year limitation, language that such an appropriation remain available until expended does not constitute legislation (July 15, 1993, p. 15848).

An amendment to a general appropriation bill providing that "not less than" (or "not to exceed") a certain amount be made available to a program requires an authorization (June 21, 1988, p. 15440; July 12, 2000, p. 14070; July 13, 2000, p. 14084).

Pursuant to clause 11(i) of rule X (formerly clause 9 of rule XLVIII), no funds may be appropriated to certain agencies carrying out intelligence and intelligence-related activities, unless such funds have been authorized by law for the fiscal year in question.

§ 1046. Authorization for claims and salaries.

Judgments of courts certified to Congress in accordance with law or authorized by treaty (IV, 3634, 3635, 3644) and audited under authority of law have been held to be authorization for appropriations for the payment of claims (IV, 3634, 3635). However, unadjudicated claims (IV, 3628), even though ascertained and transmitted by an executive officer (IV, 3625–3640), and findings filed under the Bowman Act do not constitute authorization (IV, 3643).

An appropriation for an object not otherwise authorized does not constitute authorization to justify a continuance of the appropriation another year (IV, 3588, 3589; VII, 1128, 1145, 1149, 1191), and the mere appropriation for a salary does not create an office so as to justify appropriations in succeeding years (IV, 3590, 3672, 3697), it being a general rule that propositions to appropriate for salaries not established by law or to increase salaries fixed by law are out of order (IV, 3664–3667, 3676–3679). An exception to these general principles is found in the established practice that in the absence of a general law fixing a salary the amount appropriated in the last appropriation bill has been held to be the legal salary (IV, 3687–3696). A law having established an office and fixed a salary, it is not in order to provide for an unauthorized office and salary in lieu of it (IV, 3680).

§ 1047. Authorizations for public works.

An appropriation for a public work in excess of a fixed limit of cost (IV, 3583, 3584; VII, 1133), or for extending a service beyond the limits assigned by an executive officer exercising a lawful discretion (IV, 3598), or by actual law (IV, 3582, 3585), or for purposes prohibited by law are out of order (IV, 3580, 3581, 3702), as is an appropriation from the Highway Trust Fund where the project is specifically authorized from the general fund (Sept. 23, 1993, p. 22175). However, the mere appropriation of a sum to complete a work

does not fix a limit of cost such as would exclude future appropriations (IV, 3761). A declaration of policy in an act followed by specific provisions conferring authority upon a governmental agency to perform certain functions was construed not to authorize appropriations for purposes germane to the policy but not specifically authorized by the act (VII, 1200). A point of order will not lie against an amendment proposing to increase a lump sum for public works projects where language in the bill limits use of the lump sum appropriation to projects as authorized by law (Deschler, ch. 26, § 19.6), but where language in the bill limits use of the lump sum both to projects "authorized by law" and "subject, where appropriate, to enactment of authorizing legislation," that paragraph constitutes an appropriation in part for some unauthorized projects and is not in order (June 6, 1985, p. 14617). Language in an appropriation bill precluding funds for projects not authorized by law or beyond the amount authorized was held to limit expenditures to authorized projects and was not legislation (Deschler, ch. 25, § 2.18).

§ 1048. Continuation of a public work by appropriations.

The provision excepting public works and objects that are already in progress from the requirement that appropriations be authorized by existing law (IV, 3578) has historically been applied only in cases of general revenue funding (Sept. 22, 1993, p. 22140; Sept. 23, 1993, p. 22173). An appropriation in violation of existing law or to extend a service beyond a fixed limit is not in order as the continuance of a public work (IV, 3585, 3702–3724; VII, 1332; Sept. 23, 1993, p. 22173; Deschler, ch. 26, § 8.9). The "works in progress" exception may not be invoked to fund a project governed by a lapsed authorization and may not be invoked to fund a project that is not yet under construction (July 31, 1995, p. 21207). Where existing law (40 U.S.C. 606) specifically prohibits the making of an appropriation to construct or alter any public building involving more than $500,000 unless approved by the House and Senate Public Works Committees, an appropriation for such purposes not authorized by both committees is out of order notwithstanding the "works in progress" exemption, since the law specifically precludes the appropriation from being made (June 8, 1983, p. 14855). An appropriation from the Highway Trust Fund for an ongoing project was held not in order under the "works in progress" exception where the Internal Revenue Code "occupied the field" with a comprehensive authorization scheme not embracing the specified project (Sept. 22, 1993, p. 22140; Sept. 23, 1993, p. 22173). Interruption of a work does not necessarily remove it from the privileges of the rule (IV, 3705–3708); but the continuation of the work must not be so conditioned in relation to place as to become a new work (IV, 3704). It has been held that a work has not been begun within the meaning of the rule when an appropriation has been made for a site for a public building (IV, 3785), or when a commission has been created to select a site or when a site has actually been selected for a work (IV, 3762, 3763), or when a survey has been made (IV, 3782–3784). By "public works and objects already in progress" are

meant tangible matters like buildings, roads, etc., and not duties of officials in executive departments (IV, 3709–3713), or the continuance of a work indefinite as to completion and intangible in nature like the gauging of streams (IV, 3714, 3715). A general system of roads on which some work has been done, or an extension of an existing road (Sept. 22, 1993, p. 22140), may not be admitted as a work in progress (VII, 1333). Concerning reappropriation for continuation of public works in progress, see § 1031, *supra*.

§ 1049. Examples illustrating the continuation of a public work.

Thus the continuation of the following works has been admitted: A topographical survey (IV, 3796, 3797; VII, 1382), a geological map (IV, 3795), marking of a boundary line (IV, 3717), marking graves of soldiers (IV, 3788), a list of claims (IV, 3717), and recoinage of coins in the Treasury (IV, 3807); but the following works have not been admitted: Investigation of materials, like coal (IV, 3721), scientific investigations (IV, 3719; VII, 1345), duties of a commission (IV, 3720; VII, 1344), extension of foreign markets for goods (IV, 3722), printing of a series of opinions indefinite in continuance (IV, 3718), free evening lectures in the District of Columbia (IV, 3789), certain ongoing projects from the Highway Trust Fund (Sept. 22, 1993, pp. 22140; Sept. 23, 1993, p. 22173), extension of an existing road (Sept. 22, 1993, p. 22140), continuation of an extra compensation for ordinary facility for carrying the mails (IV, 3808), although the continuation of certain special mail facilities has been admitted (IV, 3804–3806). However, appropriations for rent and repairs of buildings or Government roads (IV, 3793, 3798) and bridges (IV, 3803) have been admitted as in continuation of a work (IV, 3777, 3778), although it is not in order as such to provide for a new building in place of one destroyed (IV, 3606). It is not in order to repair paving adjacent to a public building but in a city street, although it may have been laid originally by the Government (IV, 3779). The purchase of adjoining land for a work already established has been admitted under this principle (IV, 3766–3773) and also additions to existing buildings in cases where no limits of cost have been shown (IV, 3774, 3775). However, the purchase of a separate and detached lot of land is not admitted (IV, 3776). The continuation of construction at the Kennedy Library, a project owned by the United States and funded by a prior year's appropriation, has been admitted notwithstanding the absence of any current authorization (June 14, 1988, p. 14335). A provision of law authorizing Commissioners of the District of Columbia to take over and operate the fish wharves of the city of Washington was held insufficient authority to admit an appropriation for reconstructing the fish wharf (VII, 1187).

§ 1050. New buildings at existing institutions as in continuance of a public work.

Appropriations for new buildings at Government institutions have sometimes been admitted (IV, 3741–3750) when intended for the purposes of the institution (IV, 3747); but later decisions, in view of the indefinite extent of the practice made possible by the early decisions, have ruled out propositions to appropriate for new buildings in navy

yards (IV, 3755–3759) and other establishments (IV, 3751–3754). Appropriations for new schoolhouses in the District of Columbia (IV, 3750; VII, 1358), for new Army hospitals (IV, 3740), for new lighthouses (IV, 3728), armor-plate factories (IV, 3737–3739), and for additional playgrounds for children in the District of Columbia (IV, 3792) have also been held not to be in continuation of a public work.

§ 1051. New vessel for naval and other services as in continuation of a public work.

By a former broad construction of the rule an appropriation of a new and not otherwise authorized vessel of the Navy had been held to be a continuance of a public work (IV, 3723, 3724); but this line of decisions has been overruled (VII, 1351; Jan. 22, 1926, p. 2621). While appropriations for new construction and procurement of aircraft and equipment for the Navy are not in order, appropriations for continuing experiments and development work on all types of aircraft are in order (Jan. 22, 1926, p. 2623). This former interpretation was confined to naval vessels, and did not apply to vessels in other services, like the Coast and Geodetic Survey or Lighthouse Service (IV, 3725, 3726), or to floating or stationary drydocks (IV, 3729–3736). The construction of a submarine cable in extension of one already laid was held not to be the continuation of a public work (IV, 3716), but an appropriation for the Washington-Alaska military cable has been held in order (VII, 1348).

§ 1052. Legislation generally.

A provision changing existing law is construed to mean the enactment of law where none exists (IV, 3812, 3813). For example, the following provisions have been held out of order: (1) permitting funds to remain available until expended or beyond the fiscal year covered by the bill where existing law does not permit such availability (Aug. 1, 1973, p. 27288); (2) permitting funds to be available immediately upon enactment before the fiscal year covered by the bill (July 29, 1986, p. 17981; June 28, 1988, p. 16255); (3) permitting funds to be available to the extent provided in advance in appropriation Acts but not explicitly beyond the fiscal year in question (July 21, 1981, p. 16687); or (4) setting a floor on spending that is not established by existing law (July 23, 2003, p. ——).

Although clause 2(b) permits the Committee on Appropriations to report rescissions of appropriations, an amendment proposing a rescission constitutes legislation under clause 2(c) (May 26, 1993, p. 11319), as does a provision proposing a rescission of budget authority provided in law other than appropriations acts, such as contract authority (*e.g.,* Sept. 22, 1993, p. 22138; May 15, 1997, p. 8510; July 23, 1997, p. 15353; July 29, 1998, p. 17956) or a loan guarantee program (July 13, 2004, p. ——). Similarly, a provision canceling funds under the Farm Security and Rural Investment Act of 2002 was held to be legislation (June 16, 2004, p. ——). A provision constituting congressional disapproval of a deferral of budget authority proposed by the President pursuant to the Impoundment Control Act of 1974 is not in order if included in a general appropriation bill rather than

in a separate resolution of disapproval under that Act (July 29, 1982, pp. 18625, 18626).

A proposal to amend existing law to provide for automatic continuation of appropriations in the absence of timely enactment of a regular appropriation bill constitutes legislation in contravention of clause 2(c) (July 17, 1996, p. 17550; July 24, 1996, p. 18898). A proposal to designate an appropriation as "emergency spending" within the meaning of the budget-enforcement laws (or so designated under provisions of a budget resolution) is fundamentally legislative in character (*e.g.,* Sept. 8, 1999, pp. 20900; June 19, 2000, p. —— (sustained on appeal); June 20, 2001, p. ——; Oct. 16, 2003, p. ——; Mar. 15, 2005, p. —— (sustained on appeal)). Similarly, a provision containing an averment necessary to qualify for certain scorekeeping under the Budget Act was conceded to be legislation (July 20, 1989, p. 15374), even though the Budget Act contemplates that expenditures may be mandated to occur before or following a fiscal period if the law making those expenditures specifies that the timing is the result of a "significant" policy change (July 20, 1989, p. 15374).

Language in an appropriation bill precluding funds for projects not authorized by law or beyond the amount authorized has been held in order as simply limiting expenditures to authorized projects (Deschler, ch. 25, § 2.18). However, an amendment limiting funds to the extent provided for in authorizing legislation on or after the date of enactment of the pending appropriation bill is not in order (May 19, 2005, p. ——).

Although the object to be appropriated for may be described without violating the rule (IV, 3864), an amendment proposing an appropriation under a heading that indicates an unauthorized purpose as its object has been ruled out (Oct. 29, 1991, p. 28814). For example, an amendment proposing to make certain funds available for a specified report not contemplated by existing law was held to constitute legislation in violation of clause 2(c) (June 13, 2000, p. 10509). The fact that a legislative item has been carried in appropriation bills for many years does not exempt it from a point of order (VII, 1445, 1656). The reenactment from year to year of a law intended to apply during the year of its enactment only is not relieved, however, from the point that it is legislation (IV, 3822). Limits of cost for public works may not be made or changed (IV, 3761, 3865–3867; VII, 1446), or contracts authorized (IV, 3868–3870; May 14, 1937, p. 4595).

An amendment to a general appropriation bill stating a legislative position constitutes legislation (July 24, 2001, p. ——).

§ 1053. Limitations on appropriations generally.

Although the rule forbids a provision "changing existing law," the House, by practice, has established the principle that certain "limitations" may be admitted. Just as the House may decline to appropriate for a purpose authorized by law, so may it by limitation prohibit the use of the money for part of the purpose while appropriating for the remainder of it (IV, 3936; VII, 1595). Paragraph (c) prohibits consideration of limitation amend-

ments during the reading of the bill by paragraph unless specifically authorized by existing law for the period of the limitation, even if the amendment is expanding a limitation already in the bill (July 23, 2003, p. ——).

The language of the limitation provides that some or all of the appropriation under consideration may not be used for a certain designated purpose (IV, 3917–3926; VII, 1580). This designated purpose may reach the question of qualifications, for while it is not in order to legislate as to the qualifications of the recipients of an appropriation (Deschler, ch. 26, §§ 53, 57.15), the House may specify that no part of the appropriation may go to recipients lacking certain qualifications (IV, 3942–3952; VII, 1655; June 4, 1970, p. 18412; June 27, 1974, p. 21662; Oct. 9, 1974, p. 34712; June 9, 1978, p. 16990).

A limitation amendment prohibiting the use of funds for the construction of certain facilities unless such construction were subject to a project agreement was held not in order during the reading of the bill, even though existing law directed Federal officials to enter into such project agreements, on the ground that limitation amendments are in order during the reading only where existing law requires or permits the inclusion of limiting language in an appropriation Act, and not merely where the limitation is alleged to be "consistent with existing law" (June 28, 1988, p. 16267).

A limitation may place some minimal, incidential duties on Federal officials, who must determine the effect of such a limitation on appropriated funds. However, a provision may not impose additional duties not required by law, either explicitly or implicitly, or make the appropriation contingent upon the performance of such duties (VII, 1676; June 11, 1968, p. 16712; July 31, 1969, pp. 21631–33; May 28, 1968, p. 15350; July 26, 1985, p. 20807; see § 1054, *infra*). The fact that a limitation may indirectly interfere with an executive official's discretionary authority by denying the use of funds (June 24, 1976, p. 20408) or may impose certain incidental burdens on executive officials (Aug. 25, 1976, p. 27737) does not destroy the character of the limitation as long as it does not otherwise amend existing law and is descriptive of functions and findings already required to be undertaken by existing law. For example, a limitation precluding funds for specified Federal departments to file certain motions in specified civil actions (all matters of public record in the litigation and therefore available to responsible intervening Federal officials) was held to be a proper limitation (July 18, 2001, p. ——).

The limitation must apply solely to the money of the appropriation under consideration (VII, 1597, 1600, 1720; Feb. 26, 1958, p. 2895). For example, a limitation on funds: (1) may not apply to money appropriated in other Acts (IV, 3927, 3928; VII, 1495, 1525; June 28, 1971, p. 22442; June 27, 1974, pp. 21670–72; May 13, 1981, p. 9663); (2) may not require funds available to an agency in any future fiscal year for a certain purpose to be subject to limitations specified in advance in appropriations Acts (May 8, 1986, p. 10156). The tendency of a limitation to change existing law is measured against the state of existing law "for the period of the limita-

tion," such that the presence of the same limitation in the annual bill for the previous fiscal year does not justify its inclusion in the pending annual bill (Sept. 22, 1983, p. 25406, June 26, 2000, p. 12355).

A restriction on authority to incur obligations is legislative in nature and not a limitation on funds (July 13, 1987, p. 19507; Sept. 23, 1993, p. 22204; July 15, 2004, p. ——). For example, a limitation on the authority of the Commodity Credit Corporation to purchase sugar is legislative in nature and not a limitation on funds (June 29, 2000, p. 13109).

In construing a proposed limitation, the Chair may examine whether the purpose of the limitation is legislative. For example, a limitation accompanied by language stating a legislative motive or purpose is not in order (Aug. 8, 1978, p. 24969; July 22, 1980, p. 19087; Sept. 16, 1980, p. 25604; Sept. 22, 1981, p. 21577). Similarly, where existing law and the Constitution require a census to be taken of all persons, an amendment that seeks to preclude the use of funds to exclude another class "known" to the Secretary is not in order (Aug. 1, 1989, p. 17156). However, language may, by negatively refusing to include funds for all or part of an authorized executive function, thereby affect policy and restrict executive discretion to the extent of its denial of availability of funds (IV, 3968–3972; VII, 1583, 1653, 1694; Sept. 14, 1972, p. 30749; June 21, 1974, p. 20601; Oct. 9, 1974, p. 34716). For example, an appropriation may be withheld from a designated object by a negative limitation on the use of funds, notwithstanding that contracts may be left unsatisfied thereby (IV, 3987; July 10, 1975, pp. 22006–07).

The Chair has stated that a limitation amendment that comprises a textual "double-negative" (the coupling of a denial of an appropriation with a negative restriction on official duties) is suspect and may result in an affirmative direction or an affirmative statement of intent that constitutes legislation and is therefore not in order (VII, 1690–1692; Deschler, ch. 26, § 51.15 (note); July 23, 2003, p. ——). In order to carry the burden of proof on an amendment proposing a double-negative, a Member must be able to show that the object of the double-negative is specifically contemplated by existing law (July 23, 2003, p. ——, p. ——). For example, the following have been held out of order for using a double-negative: (1) a provision to limit funds to prohibit the obligation of funds up to a specified amount for an unauthorized transportation project (effectively authorizing an unauthorized project) (Sept. 23, 1993, p. 22209); (2) an amendment to limit funds to prohibit projects that promote the participation of women in international peace efforts, such promotion not specifically contemplated by law (July 23, 2003, p. ——); (3) an amendment to limit funds to prohibit the establishment of an independent commission not contemplated by existing law (July 23, 2003, p. ——).

It is not in order, even by language in the form of a limitation, to restrict not the use or amount of appropriated funds but the discretionary authority conferred by law to administer their expenditure, such as by limiting the percentage of funds that may be apportioned for expenditure within a cer-

tain period of time (Deschler, ch. 26, § 51.23), or by precluding the obligation of certain funds until funds provided by another Act have been obligated (Deschler, ch. 26, § 48.8). The burden is on the proponent to show that such a proposal does not change existing law by restricting the timing of the expenditure of funds rather than their availability for specified objects (Deschler, ch. 26, §§ 64.23, 80.5).

As long as a limitation merely restricts the expenditure of Federal funds carried in the bill without changing existing law, the limitation is in order, even if the Federal funds in question are commingled with non-Federal funds that would have to be accounted for separately in carrying out the limitation (Aug. 20, 1980, p. 22171).

The fact that existing law authorizes funds to be available until expended or without regard to fiscal year limitation does not prevent the Committee on Appropriations from limiting their availability to the fiscal year covered by the bill unless existing law mandates availability beyond the fiscal year (June 25, 1974, p. 21040; see also Deschler, ch. 26, § 32). The fact that a provision would constitute legislation for only a year does not make it a limitation in order under the rule (IV, 3936).

A proposition to construe a law may not be admitted (IV, 3936–3938, see § 1055, *infra*). Care also should be taken that the language of limitation be not such as, when fairly construed, would change existing law (IV, 3976–3983) or justify an executive officer in assuming an intent to change existing law (IV, 3984; VII, 1706).

Although the Committee on Appropriations may include in a general appropriation bill language not in existing law limiting the use of funds in the bill, if such language also constitutes an appropriation it must be authorized by law (June 21, 1988, p. 15439). An amendment placing a limitation on funds for activities unrelated to the functions of departments and agencies addressed by the bill is not germane under clause 7 of rule XVI (July 10, 2000, p. 13605).

§ 1054. New duties or determinations; executive discretion.

Propositions to establish affirmative directions for executive officers (IV, 3854–3859; VII, 1443; July 31, 1969, p. 21675; June 18, 1979, p. 15286; July 1, 1987, pp. 18654, 18655; June 27, 1994, p. 14572), even in cases where they may have discretion under the law so to do (IV, 3853; June 4, 1970, p. 18401; Aug. 8, 1978, p. 24959), or to affirmatively take away an authority or discretion conferred by law (IV, 3862, 3863; VII, 1975; Mar. 30, 1955, p. 4065; June 21, 1974, p. 20600; July 31, 1985, p. 21909), are subject to a point of order.

A limitation may not: (1) be applied directly to the official functions of executive officers (IV, 3957–3966; VII, 1673, 1678, 1685), (2) directly interfere with discretionary authority in law by establishing a level of funding below which expenditures may not be made (VII, 1704; July 20, 1978, p. 21856), (3) require a judgment as to whether racial imbalance had been overcome (July 31, 1969, pp. 21653, 21675); (4) condition the availability of funds or the exercise of contract authority upon an interpretation of

local law where that interpretation is not required by existing law (July 17, 1981, p. 16327); (5) require new determinations of full Federal compliance with mandates imposed upon States (July 22, 1981, p. 16829); (6) require the evaluation of the theoretical basis of a program (July 22, 1981, p. 16822); (7) require new determinations of propriety or effectiveness (Oct. 6, 1981, p. 23361; May 25, 1988, p. 12275), or satisfactory quality (Aug. 1, 1986, p. 18647); (8) incorporate by reference determinations already made in administrative processes not affecting programs funded by the bill (Oct. 6, 1981, p. 23361); (9) require new determinations of rates of interest payable (July 29, 1982, p. 18624; Dec. 9, 1982, p. 29691); (10) a determination of whether the Office of Management and Budget interfered with the rulemaking authority of a regulatory agency (Nov. 30, 1982, p. 28062); (11) authorize the President to reduce each appropriation in the bill by not more than 10 percent (May 31, 1984, p. 14617; June 6, 1984, p. 15120); (12) apply standards of conduct to foreign entities where existing law requires such conduct only by domestic entities (July 17, 1986, p. 16951); (13) require the enforcement of a standard where existing law only requires inspection of an area (July 30, 1986, p. 18189); (14) prohibit the availability of funds for the purchase of "nondomestic" goods and services (Sept. 12, 1986, p. 23178); (15) mandate contractual provisions (May 18, 1988, p. 11389); (16) authorize the adjustment of wages of Government employees (June 21, 1988, p. 15451; Apr. 26, 1989, p. 7525) or permit an increase in Members' office allowances only "if requested in writing" (Oct. 21, 1990, p. 31708); (17) convert an existing legal prerequisite for the issuance of a regulatory permit into a prerequisite for even the preliminary processing of such a permit (July 22, 1992, p. 18825); (18) mandate reductions in various appropriations by a variable percentage calculated in relation to "overhead" (Deschler, ch. 26, § 5.6; June 24, 1992, p. 16110); (19) require an agency to investigate and determine whether private airports are collecting certain fees for each enplaning passenger (Sept. 23, 1993, p. 22213); (20) require an agency to investigate and determine whether a person or entity entering into a contract with funds under the pending bill is subject to a legal proceeding commenced by the Federal Government and alleging fraud (Sept. 17, 1997, p. 19045); (21) require an agency to determine whether building services are "usually" provided through the Federal Building Fund to an agency not paying a level of assessment specified elsewhere (and not necessarily applicable) (July 16, 1998, p. 15816); (22) require a determination of "successor agency" status (Sept. 26, 1997, p. 20347); (23) require a determination whether a delegate or envoy to the United Nations has "advocated" the adoption of a certain convention (June 26, 2000, p. 12355); (24) require tests or reports not required under existing law (May 19, 2000, p. 8616) or require all quarterly and annual reports required by law in accordance with standards for reports under a specified law not otherwise applicable (Sept. 9, 2003, p. ——); (25) impose a new duty to tally violations of law by contractors where existing law required information on violations but not on the number thereof (June

7, 2000, p. 9849); (26) require an investigation of the conscription requirements of other nations (July 13, 2000, p. 14121); (27) require a determination whether "efforts" have been made to change any nation's laws regarding abortion, family planning, or population control (July 13, 2000, p. 14130); (28) impose a new duty to calculate the "total amount" of payments under a Federal program paid to a husband and wife (to determine whether an exception to an otherwise valid limitation would apply) (July 11, 2001, p. ——); (29) require an investigation into the extent to which World Trade Organization challenges against foreign laws and policies promote access to certain pharmaceuticals (July 18, 2001, p. ——); (30) require an investigation into whether an applicant for immigration has been involved in the harvesting of organs (July 18, 2001, p. ——); (31) require the Inspector General to opine on audited financial statements of certain components of the Department of Defense where the issuance of such opinion was not shown to be required by existing law (June 27, 2002, p. ——); (32) require the examination of certain legislative reports to determine whether an entity is specifically identified by name (July 17, 2002, p. ——); (33) require several agencies to process certain information where current law required only one specific agency to process that information (June 24, 2003, p. ——); (34) in the case of a limitation with respect to certain roads on public land, require a determination of the precise nature of those roads including their ownership and the types of vehicles allowed to travel on them (July 17, 2003, p. ——); (35) require a determination that certain trade agreements achieved generic undefined policy goals that were not set forth in existing law (July 23, 2003, p. ——); (36) require a determination that a drug has been prescribed "for the purpose of relieving or managing pain" (July 7, 2004, p. ——); (37) require a determination as to the date on which various road construction projects in a National Forest were commenced within the periods in which they were authorized to commence (May 19, 2005, p. ——); (38) require the Food and Drug Administration to examine a registry of clinical trials maintained by a the National Institutes of Health, a different entity (June 8, 2005, p. ——); (39) require a determination regarding a specific type of employment behavior before initiating an employment investigation (June 8, 2005, p. ——); (40) require a determination as to whether a local educational agency had obtained parental consent before providing military recruiters student information (June 24, 2004, p. ——); (41) in the case of a limitation on the enforcement of a regulation against a specified class, require a determination as to whether a person is a member of that class (June 30, 2005, p. ——). The fact that an executive official may have been directed by an Executive Order to consult another executive official before taking an action does not permit inclusion of language directing the official being consulted to make determinations not specifically required by law (July 22, 1980, p. 19087).

On the other hand, the following limitations have been held in order as not placing new duties on Federal officials: (1) denying the use of funds to pay the salaries of Federal officials who perform certain functions under

existing law if the description of those duties precisely follows existing law and does not require them to perform new duties (June 24, 1976, p. 20373); (2) denying the use of funds to a Federal official not in compliance with an existing law that he is charged with enforcing (Sept. 10, 1981, p. 20110); (3) reducing the availability of funds for trade adjustment assistance by amounts of unemployment insurance entitlements where the law establishing trade adjustment assistance already required the disbursing agency to take into consideration levels of unemployment insurance in determining payment levels (June 18, 1980, p. 15355); (4) denying the use of funds to carry out (or pay the salaries of persons who carry out) tobacco crop and insurance programs (July 20, 1995, p. 19798); (5) denying the use of funds for any transit project exceeding a specified cost-effectiveness index where the Chair was persuaded that the limitation applied to projects for which indexes were already required by law (Sept. 23, 1993, p. 22206); (6) denying the use of funds to enforce FAA regulations to require domestic air carriers to surrender more than a specified number of "slots" at a given airport in preference of international air carriers where the Chair was persuaded that existing regulations already required the FAA to determine the origin of withdrawn slots (Sept. 23, 1993, p. 22212); (7) denying the use of funds for troops "except in time of war" (Deschler, ch. 26, § 70.1) or "except in time of emergency" (VII, 1657, which was the basis for the preceding ruling); (8) denying the use of funds to implement any sanction imposed by the United States on private commercial sales of agricultural commodities, medicine, or medical supplies to Cuba except for a sanction imposed pursuant to agreement with one or more other countries (July 20, 2000, p. 15751); (9) denying the use of funds by the Forest Service to construct roads or prepare timber sales in certain roadless areas where the executive was already charged by law with ongoing responsibility to maintain a comprehensive and detailed inventory of all land and renewable resources of the National Forest System (July 18, 1995, p. 19357); (10) denying the use of funds to eliminate an existing legal requirement for sureties on custom bonds (June 27, 1984, p. 19101); (11) denying the use of funds by any Federal official in any manner that would prevent a provision of existing law from being enforced (relating to import restrictions) (June 27, 1984, p. 19101); (12) denying the use of funds for any reduction in the number of Customs Service regions or for any consolidation of Customs Service offices (June 27, 1984, p. 19102); (13) denying the use of funds for specified Federal departments to file certain motions in specified civil actions (all matters of public record in the litigation and therefore available to responsible intervening Federal officials) (July 18, 2001, p. ——); (14) denying the use of funds in contravention of a cited statute (May 17, 2005, p. ——).

A paragraph prohibiting the use of funds to perform abortions except where the mother's life would be endangered if the fetus were carried to term (or where the pregnancy was a result of rape or incest) is legislation, since requiring Federal officials to make new determinations and judg-

ments not required of them by law, regardless of whether private or State officials administering the funds in question commonly make such determinations (June 17, 1977, p. 1969; June 30, 1993, p. 14871; July 16, 1998, p. 15828). The fact that such a provision relating to abortion funding may have been included in appropriation Acts in prior years applicable to funds in those laws does not permit the inclusion of similar language requiring such determinations, not required by law, with respect to funds for the fiscal year in question (Sept. 22, 1983, p. 25406); and where the provision, applicable to Federal funds, was permitted to remain in a bill (no point of order having been made), an amendment striking the word "Federal," and thereby broadening the provision to include District of Columbia funds as well, was ruled out (Nov. 15, 1989, p. 29004). However, to such a provision permitted to remain in a general appropriation bill, an amendment "merely perfecting" the exemption to address cases where the health of the mother would be endangered if the fetus were carried to term was held not to constitute further legislation by requiring a different or more onerous determinations (June 27, 1984, p. 19113). An amendment providing that no Federal funds provided in the District of Columbia general appropriation bill be used to perform abortions is not legislation, since Federal officials have the responsibility to account for all appropriations for the annual Federal payment and for disbursement of all taxes collected by the District of Columbia, pursuant to the D.C. Code (July 17, 1979, p. 19066).

An exception to a limitation on funds for the Office of Personnel Management to enter contracts for health benefit plans that required determinations of "equivalence" of benefits was held to impose new duties (July 16, 1998, p. 15829). However, an exception to a similar limitation that merely excepted certain specified coverage and plans was held not to impose new duties (July 16, 1998, p. 15841). Similarly, a limitation denying the use of funds in an appropriation bill for the General Services Administration to dispose of Federally owned "agricultural" land declared surplus was held to impose new duties since the determination whether surplus lands are "agricultural" was not required by law (Aug. 20, 1980, pp. 22156–58). However, a limitation denying the use of funds for any transit project exceeding a specified cost-effectiveness index was held not to impose new duties where the Chair was persuaded that the limitation applied to projects for which indexes were already required by law (Sept. 23, 1993, p. 22206).

Over a period dating from 1908, the House had developed a line of precedent to the effect that language restricting the availability of funds in a general appropriation bill could be a valid limitation if, rather than imposing new duties on a disbursing official or requiring new determinations of that official, it passively addressed the state of knowledge of the official (VII, 1695; *cf.* Aug. 1, 1989, p. 17156, and June 22, 1995, p. 16844 (limitations in recommittal ruled out on basis of form rather than of legislative content)). This reasoning culminated in a ruling in the 104th Congress

admitting as a valid limitation an amendment prohibiting the use of funds in the bill to execute certain accounting transactions when specified conditions were "made known" to the disbursing official (July 17, 1996, p. 17542). In the 105th Congress this entire line of precedent was overtaken by changes in paragraphs (b) and (c) of this clause that treat as legislation a provision that makes funding contingent on whether circumstances not determinative under existing law are "known" (H. Res. 5, Jan. 7, 1997, p. 121; July 15, 1997, p. 14493; July 24, 1997, p. 15758).

§ 1055. Contingencies and congressional actions.

An amendment making an appropriation contingent upon a recommendation (June 27, 1979, p. 17054) or action not specifically required by law is legislation; such as a provision limiting the use of funds in a bill "unless" or "until" an action contrary to existing law is taken (Deschler, ch. 26, § 47.1; July 24, 1996, p. 18888). Where existing law requires an agency to furnish certain information to congressional committees upon request, without a subpoena, it is not in order to make funding for that agency contingent upon its furnishing information to subcommittees upon request (July 29–30, 1980, p. 20475), or contingent upon submission of an agreement by a Federal official to Congress and congressional review thereof (July 31, 1986, p. 18370). Similarly, it is not in order to condition funds on legal determinations to be made by a Federal court and an executive department (June 28, 1988, p. 16261; see Deschler, ch. 26, § 47.2).

Provisions making the availability of funds contingent upon subsequent congressional action have, under the most recent precedents, been ruled out as legislation (June 30, 1942, p. 5826; May 15, 1947, p. 5378; June 27, 1994, p. 14613). However, a limitation on the use of funds to buy real estate or establish new offices except where Congress had approved and funded such activity (June 18, 1991, p. 15218) was held in order.

The following provisions have been ruled out as legislation: (1) making the availability of certain funds contingent upon subsequent congressional action on legislative proposals resolving the policy issue (Nov. 18, 1981, p. 28064); (2) making the availability of funds contingent upon subsequent enactment of legislation containing specified findings (Nov. 2, 1983, p. 30503); and (3) changing a permanent appropriation in existing law to restrict its availability until all general appropriation bills are presented to the President (June 29, 1987, p. 18083). A section in a general appropriation bill directly contravening existing law to subject the use of local funds to congressional approval was held to constitute legislation where it was shown that some local (District of Columbia) funds deriving from interest accounts were available to the Financial Control Board without subsequent congressional approval (Aug. 6, 1998, p. 19079).

Two rulings upholding the admissibility of amendments making the availability of funds contingent upon subsequent congressional action have been superseded by the precedents cited above (June 11, 1968, p. 16692; Sept. 6, 1979, p. 23360).

The following provisions also have been held to be legislation as they required: (1) a congressional committee to promulgate regulations to limit the use of an appropriation (June 13, 1979, p. 14670), or otherwise to direct the activities of a committee (June 24, 1992, p. 16087); (2) a substantive determination by a State or local government official or agency that is not otherwise required by existing law (July 25, 1985, p. 20569); (3) the Selective Service Administration to issue regulations to bring its classifications into conformance with a Supreme Court decision (July 20, 1989, p. 15405); (4) a change in a rule of the House (IV, 3819); (5) an agency to submit all quarterly and annual reports required by law in accordance with standards for reports under a specified law not otherwise applicable (Sept. 9, 2003, p. ——).

§ 1056. Construing or amending existing law.

A provision proposing to construe existing law is itself legislative and therefore not in order (IV, 3936–3938; May 2, 1951, p. 4747; July 26, 1951, p. 8982). However, an official's general responsibility to construe the language of a limitation on the use of funds, absent imposition of an affirmative direction not required by law, does not destroy the validity of a limitation (June 27, 1974, pp. 21687–94).

Where it is asserted that duties ostensibly occasioned by a limitation are already imposed by existing law, the Chair may take cognizance of judicial decisions and rule the limitation out on the basis that the case law is not uniform, current, or finally dispositive (June 16, 1977, pp. 19365–74; June 7, 1978, p. 16676). For example, a limitation prohibiting the use of funds for an inspection conducted by a regulatory agency without a search warrant has been held out of order as imposing a new duty not uniformly required by case law (June 16, 1977, pp. 19365–74). Similarly, an amendment denying the use of funds for an agency to apply certain provisions of law under court decisions in effect on a prior date has been held out of order as requiring the official to apply noncurrent case law (June 7, 1978, p. 16655).

A provision prescribing a rule of construction is legislation (Deschler, ch. 26, § 25.15). For example, a provision prescribing a prospective rule of construction for possible (future) tax enactments was held to constitute legislation (June 21, 2000, p. 11773). Similarly, a provision construing a limitation in a bill by affirmatively declaring the meaning of the prohibition is legislation (May 17, 1988, p. 11305); and a provision prescribing definitions for terms contained in a limitation may be legislation (Deschler, ch. 26, §§ 25.7, 25.11). Language excepting certain appropriations from the sweep of a broader limitation may be in order (Deschler, ch. 26, § 25.2). It also has been held in order to except from the operation of a specific limitation on expenditures certain of those expenditures that are authorized by law by prohibiting a construction of the limitation in a way that would prevent compliance with that law (Deschler, ch. 26, § 25.10; June 18, 1991, p. 15218). Similarly, a limitation on certain payments to persons in "excess of $500," but stating that the limitation would not be "construed

to deprive any share renter of payments" to which he might otherwise be entitled was held in order (Deschler, ch. 26, § 66.1);

The mere recitation in an amendment that a determination is to be made pursuant to existing laws and regulations, absent a citation to the law imposing such responsibility, is not sufficient proof by the proponent of an amendment to overcome a point of order that the amendment constitutes legislation (Sept. 16, 1980, p. 25606; May 8, 1986, p. 10156). A limitation denying the use of funds to apply certain provisions of the Internal Revenue Code other than under regulations in effect on a prior date is legislation since requiring an official to apply regulations no longer current in order to render an appropriation available (June 7, 1978, p. 16655; Aug. 19, 1980, pp. 21978–80). However, an exception to a limitation on the use of funds for designated Federal activities that were already authorized by law in more general terms, was held in order as not containing legislation (June 27, 1979, pp. 17033–35).

Language waiving provisions of an existing law that did not specifically permit inclusion of such a waiver in an appropriation bill has been ruled out (*e.g.*, Nov. 13, 1975, p. 36271; June 20, 1996, p. 14847; May 19, 2000, p. 8600), as has language identical to that contained in an authorization bill previously passed by the House but not yet signed into law (Aug. 4, 1978, p. 24436), or a proposition for repeal of existing law (VII, 1403).

Existing law may be repeated verbatim without violating the rule (IV, 3814, 3815), but the slightest change of the text renders it liable to a point of order (IV, 3817; VII, 1391, 1394; June 4, 1970, p. 18405). It is in order to include language descriptive of authority provided in law for the operation of Government agencies and corporations so long as the description is precise and does not change that authority in any respect (June 15, 1973, p. 19843; Aug. 3, 1978, p. 24249); although language merely reciting the applicability of current law to the use of earmarked funds is permitted, a provision that elevates existing guidelines to mandates for spending has been ruled out (July 12, 1989, p. 14432).

It is in order by way of limitation to deny the use of funds for implementation of the following: (1) an Executive Order, which was precisely described in the amendment (Mar. 16, 1977, p. 7748); (2) a regulation, which was promulgated pursuant to court order and constitutional provisions—the authority for the regulation being an argument on the merits of the amendment and not rendering it legislative in nature (Aug. 19, 1980, pp. 21981–84); (3) a ruling of the Internal Revenue Service that taxpayers are not entitled to certain charitable deductions because merely descriptive of an existing ruling already promulgated and not requiring any new determinations as to the applicability of the limitation to other categories of taxpayers (July 16, 1979, pp. 18808–10); (4) any changes to a set of overtime compensation regulations in existence on a given date (with a certain nonlegislative exception) because not requiring the Department to administer superseded regulations (Sept. 4, 2004, p. ——).

An amendment proposing to increase budget authority and to offset that increase by proposing a change in the application of the Internal Revenue Code of 1986 was held to constitute legislation (see, *e.g.*, Sept. 8, 1999, pp. 20896–98; June 24, 2003, p. —— (sustained on appeal); July 10, 2003, p. ——).

§ 1057. Mandating expenditures.

A provision that mandates a distribution of funds in contravention of an allocation formula in existing law is legislation (July 29, 1982, pp. 18637, 18638; Oct. 5, 1983, p. 27335; Aug. 2, 1989, p. 18123; July 24, 1995, p. 20141), as is an amendment that by such a mandate interferes with an executive official's discretionary authority (Mar. 12, 1975, p. 6338), as in an amendment requiring not less than a certain sum to be used for a particular purpose where existing law does not mandate such expenditure (June 18, 1976, p. 19297; July 29, 1982, p. 18623), or where an amendment earmarks appropriated funds to the arts to require their expenditure pursuant to standards otherwise applicable only as guidelines (July 12, 1989, p. 14432). Where existing law directed a Federal official to provide for sale of certain Government property to a private organization in "necessary" amounts, an amendment providing that no such property be withheld from distribution from qualifying purchasers was legislation, since requiring disposal of all property and restricting discretionary authority to determine "necessary" amounts (Aug. 7, 1978, p. 24707). An amendment directing the use of funds to assure compliance with an existing law, where existing law does not so mandate, also is legislation (June 24, 1976, p. 20370). So-called "hold-harmless" provisions that mandate a certain level of expenditure for certain purposes or recipients, where existing law confers discretion or makes ratable reductions in such expenditures, also constitute legislation (Apr. 16, 1975, p. 10357; June 25, 1976, p. 20557). A transfer of available funds from one department to another with directions as to the use to which those funds must be put is legislation (and also a reappropriation in violation of clause 2(a)(2) of this rule) (Dec. 8, 1982, p. 29449). A provision requiring States to match funds provided in an appropriation bill was held to constitute legislation where existing law contained no such requirement (June 28, 1993, p. 14418). Where existing law prescribes a formula for the allocation of funds among several categories, an amendment merely reducing the amount earmarked for one of the categories is not legislation, so long as it does not textually change the statutory formula (July 24, 1995, p. 20133).

§ 1058. Waivers; amending legislation permitted to remain.

The House may, by agreeing to a report from the Committee on Rules or by adopting an order under suspension of the rules, allow legislation on general appropriation bills (IV, 3260–3263, 3839–3845). Where an unauthorized appropriation or legislation is permitted to remain in a general appropriation bill by waiver or by failure to raise a point of order, an amendment merely changing that amount and not adding legislative language or earmarking separate funds for another unauthorized purpose

is in order (IV, 3823–3835, 3838; VII, 1405, 1413–1415; June 9, 1954, p. 5963; July 27, 1954, p. 12287; Oct. 1, 1975, p. 31058; June 8, 1977, p. 17941; July 17, 1985, p. 19435; Sept. 11, 1985, p. 23398; June 14, 1988, p. 14341). However, this does not permit an amendment that adds additional legislation (IV, 3836, 3837, 3862; VII, 1402–1436; Dec. 9, 1971, p. 4595; Aug. 1, 1973, p. 27291; June 10, 1977, p. 1802; July 30, 1985, p. 21532; July 23, 1986, p. 17446; June 26, 1987, p. 17655; June 28, 1988, pp. 16203, 16213; Aug. 2, 1989, p. 18172; Nov. 15, 1989, p. 29004, June 23, 1998, p. 13475; July 13, 2000, p. 14093), proposes a new unauthorized purpose (Dec. 8, 1971, p. 45487; Aug. 7, 1978, pp. 24710–12; May 25, 1988, p. 12256), earmarks for unauthorized purposes (July 17, 1985, p. 19435; July 17, 1986, p. 16918; July 26, 1995, p. 20528; June 5, 1996, p. 13120), earmarks by directing a new use of funds not required by law (July 26, 1985, pp. 20811, 20813), or increases an authorized amount above the authorized ceiling (Aug. 4, 1999, p. 19513).

An amendment adding a new paragraph indirectly increasing an unauthorized amount contained in a prior paragraph permitted to remain is subject to a point of order because the new paragraph is adding a further unauthorized amount not merely perfecting (July 12, 1995, p. 18628; July 16, 1997, pp. 14746; Sept. 9, 1997, p. 19121; Sept. 17, 1998, p. 20818). However, a new paragraph indirectly reducing an unauthorized amount permitted to remain in a prior paragraph passed in the reading is not subject to a point of order because it is not adding a further unauthorized amount (July 16, 1997, p. 14747). Where by unanimous consent an amendment is offered en bloc to a paragraph containing an unauthorized amount not yet read for amendment, the amendment increasing that unauthorized figure is subject to a point of order since at that point it is not being offered to a paragraph that has been read and permitted to remain (June 21, 1984, p. 17687). As required by clause 2(f), the Chair will query for points of order against the provisions of an appropriation bill not yet reached in the reading but addressed by an amendment offered en bloc under that clause as budget authority and outlay neutral (July 22, 1997, p. 15250).

The Chair examined an entire legislative provision permitted to remain when ruling that an amendment to a portion of the provision was merely perfecting (July 15, 1999, pp. 16284, 16291). An amendment to a general appropriation bill is not subject to a point of order as adding legislation for restating, verbatim, a legislative provision already contained in the bill and permitted to remain (Aug. 27, 1980, p. 23519).

To a legislative provision permitted to remain conferring assistance on a certain class of recipients, an amendment adding another class is further legislation and is not merely perfecting (June 22, 1983, p. 16851). For example, the following amendments to legislative provisions permitted to remain have been held to propose additional legislation: (1) an amendment striking text that resulted in extending the legislative reach of the pending bill (July 17, 1996, p. 17533); (2) an amendment extending a legislative provision that placed certain restrictions on recipients of a defined set of Federal

payments and benefits to persons benefiting from a certain tax status determined on wholly unrelated criteria (Aug. 3, 1995, p. 21967); (3) an amendment adding an additional nation to a legislative provision addressing sanctions against one nation (July 13, 2000, p. 14092).

On the other hand, to a legislative provision permitted to remain, an amendment particularizing a definition in the language was held not to constitute additional legislation where it was shown that the definition being amended already contemplated inclusion of the covered class (Aug. 5, 1998, p. 18934). To a legislative provision permitted to remain that excepted from a denial of funds for abortions cases where the life of the mother would be endangered if a fetus were carried to term, an amendment excepting instead cases where the health of the mother would be endangered if the fetus were carried to term was held not to constitute further legislation, since determinations on the endangerment of life necessarily subsume determinations on the endangerment of health; and the amendment did not therefore require any different or more onerous determinations (June 27, 1984, p. 19113).

To a paragraph permitted to remain though containing a legislative proviso restricting the obligation of funds until a date within the fiscal year, an amendment striking the delimiting date, thus applying the restriction for the entire year, was held to be perfecting (July 30, 1990, p. 20442); but striking the date and inserting a new trigger (the enactment of other legislation), was held to be additional legislation (July 30, 1990, p. 20442).

§ 1059. Senate amendments.

The principle seems to be generally well accepted that the House proposing legislation on a general appropriation bill should recede if the other House persists in its objection (IV, 3904–3908), and clause 5 of rule XXII (§ 1076, *infra*) prohibits House conferees from agreeing to a Senate amendment that proposes legislation on an appropriation bill without specific authority from the House. However, where a Senate amendment proposing legislation on a general appropriation bill is, pursuant to the edict of clause 5 of rule XXII, reported back from conference in disagreement, a motion to concur in the Senate amendment with a further amendment is in order, even if the proposed amendment adds legislation to that contained in the Senate amendment, and the only test is whether the proposed amendment is germane to the Senate amendment reported in disagreement (IV, 3909; VIII, 3188, 3189; Speaker McCormack, Dec. 15, 1970, p. 41504; Aug. 1, 1979, pp. 22007–11; Speaker O'Neill, Dec. 12, 1979, p. 35520; June 30, 1987, p. 18308).

"HOLMAN RULE" ON RETRENCHING EXPENDITURES

§ 1062. Legislation reducing expenditures.

Decisions under the so-called "Holman Rule" in clause 2 of rule XXI have been rare in the modern practice of the House. The trend in construing language in general appropriation bills or amendments thereto has been to minimize the importance of the "Holman Rule" in those cases

where the decision can be made on other grounds. The practice of using limitations in appropriation bills has been perfected in recent years so that most modern decisions by the Chair deal with distinctions between such limitations and matters that are considered to be legislation (see §§ 1053–1057, *supra*). Under the modern practice, the "Holman Rule" only applies where an obvious reduction is achieved by the provision in question and does not apply to limiting language unaccompanied by a reduction of funds in the bill (July 16, 1979, pp. 18808–10). It has no application to an amendment to an appropriation bill that does not legislate but is merely a negative limitation citing but not changing existing law (June 18, 1980, p. 15355).

A paragraph containing legislation reported in an appropriation bill to be in order must on its face show a retrenchment of a type that conforms to the requirements of the rule (Mar. 17, 1926, p. 5804).

The reduction of expenditure must appear as a necessary result, in order to bring an amendment or provision within the exception to the rule. It is not sufficient that such reduction would probably, or would in the opinion of the Chair, result therefrom (IV, 3887; VII, 1530–1534). Thus, an amendment to a general appropriation bill providing that appropriations made in that act are hereby reduced by $7 billion, though legislative in form, was held in order under the "Holman Rule" exception (Apr. 5, 1966, p. 7689), but an amendment providing for certain reductions of appropriations carried in the bill based on the President's budget estimates was held not to show a reduction on its face and to provide merely speculative reductions (Deschler, ch. 26, § 5.6; June 24, 1992, p. 16110). An amendment authorizing the President to reduce each appropriation in the bill by not more than 10 percent was ruled out as legislation conferring new authority on the President (May 31, 1984, p. 14617; June 6, 1984, p. 15120). An amendment reducing an unauthorized amount permitted to remain in a general appropriation bill is in order as a retrenchment under this clause (Oct. 1, 1975, p. 31058). An amendment to a general appropriation bill denying the availability of funds to certain recipients but which requires Federal officials to make additional determinations as to the qualifications of recipients is legislation and is not a retrenchment of expenditures where it is not apparent that the prohibition will reduce the amounts covered by the bill (June 26, 1973, p. 21389).

The amendment must not only show on its face an attempt to retrench but also must be germane to some provision in the bill even though offered by direction of the committee having jurisdiction of the subject matter of the amendment (VII, 1549; Dec. 16, 1911, p. 442). An amendment providing that appropriations "herein and heretofore made" shall be reduced by $70 million through the reduction of Federal employees as the President determines was held to be legislative and not germane to the bill, since it went to funds other than those carried therein, and was therefore not within the "Holman Rule" exception (Oct. 18, 1966, p. 27425).

An amendment reducing an amount in an appropriation bill for the Postal Service and prohibiting the use of funds therein to implement special bulk third-class rates for political committees was held in order since not specifically requiring a new determination and since constituting a retrenchment of expenditures even if assumed to be legislative (July 13, 1979, pp. 18453–55).

As long as an amendment calls for an obvious reduction at some point in time during the fiscal year, the amendment is in order under the "Holman Rule" even if the reduction takes place in the future in an amount actually determined when the reduction takes place (for example, by formula) (VII, 1491, 1505; July 30, 1980, pp. 20499–20503). To an amendment that is in order under the "Holman Rule," containing legislation but retrenching expenditures by formula for every agency funded by the bill, an amendment exempting from that reduction several specific programs does not add further legislation and is in order (July 30, 1980, pp. 20499–20503).

A motion to recommit the District of Columbia appropriation bill with instructions to reduce the proportion of the fund appropriated from the Public Treasury from one-half, as provided in the bill, to one-fourth of the entire appropriation is in order, since the effect of the amendment if adopted would reduce the expenditure of public money although not reducing the amount of the appropriation (VII, 1518).

The term "retrenchment" means the reduction of the amount of money to be taken out of the Federal Treasury by the bill, and therefore a reduction of the amount of money to be contributed toward the expenses of the District of Columbia is in order as a retrenchment (VII, 1502).

An amendment proposed to an item for the recoinage of uncurrent fractional silver, which amendment struck out the amount appropriated and added a provision for the coinage of all the bullion in the Treasury into standard silver dollars, the cost of such coinage and recoinage to be paid out of the Government's seigniorage, was held not to be in order under the rule; first, because not germane to the subject matter of the bill (the sundry civil); second, because it did not appear that any retrenchment of expenditure would result, the seigniorage being the property of the Government as other funds in the Treasury (VII, 1547).

To an item of appropriation for inland transportation of mails by star routes an amendment was offered requiring the Postmaster General to provide routes and make contracts in certain cases, with the further provision "and the amount of appropriation herein for star routes is hereby reduced to $500." A point of order made against the first or legislative part of the amendment was sustained, which decision was, on appeal, affirmed by the committee (VII, 1555).

To a clause appropriating for the foreign mail service an amendment reducing the appropriation, and in addition repealing the act known as the "subsidy act," was held not in order because the repealing of this act

was not germane to the appropriation bill; and that to be in order both branches of the amendment must be germane to the bill (VII, 1548).

A provision in the agricultural appropriation bill transferring the supervision of the importation of animals from the Treasury to the Department of Agriculture is out of order, being a provision changing law and not retrenching expenditure (IV, 3886).

Where a paragraph containing new legislation provides in one part for a discharge of employees, which means a retrenchment, and in another part embodies legislation to bring about the particular retrenchment which in turn shows on its face an expenditure the amount of which is not apparent, the Chair is unable to hold that the net result will retrench expenditures. However, where the additional legislation does not show on its face an additional expenditure, the Chair will not speculate as to a possible expenditure under the additional legislation (VII, 1500).

As explained in the annotation in § 1043, *supra*, the amendment of clause 2(b) in the 98th Congress narrowed the "Holman Rule" exception to the general prohibition against legislation to cover only retrenchments reducing amounts of money covered by the bill, and not retrenchments resulting from reduction of the number and salary of officers of the United States or of the compensation of any person paid out of the U.S. Treasury. Accordingly, the Chair held out of order an amendment mandating the reduction of certain Federal salaries and expenses as not confined to a reduction of funds in the bill (June 17, 1994, p. 13422). Paragraph (b) also eliminated separate authority conferred upon legislative committees or commissions with proper jurisdiction to report amendments retrenching expenditures, and permitted legislative committees to recommend such retrenchments by reduction of amounts covered by the bill to the Appropriations Committee for discretionary inclusion in the reported bill. Paragraph (d) as added in the 98th Congress provides a new procedure for consideration of all retrenchment amendments only when reading of the bill has been completed and only if the Committee of the Whole does not adopt a motion to rise and report the bill back to the House. Other decisions which involved interpretation of the "Holman Rule," but which do not reflect the current form or interpretation of that rule, are found in IV, 3846, 3885–3892; VII, 1484, 1486–1492, 1498, 1500, 1515, 1563, 1564, 1569; June 1, 1892, p. 4920.

§ 1063. Reappropriations.

This provision from section 139(c) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190f(c)) was made part of the standing rules in the 83d Congress (Jan. 3, 1953, p. 24). Previously, a reappropriation of an unexpended balance for an object authorized by law was in order on a general appropriation bill (IV, 3591, 3592; VII, 1156, 1158). This clause was amended in the 99th Congress by section 228(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177) to permit the Committee on Appropriations to report certain transfers of unexpended balances. Consistent with clause 2 of rule XXI, and as codified in the 106th Congress (H. Res.

5, Jan. 6, 1999, p. 47), violations of this clause are enforced only against specific provisions in general appropriation bills containing reappropriations rather than against consideration of the bill (see Deschler, ch. 25, § 3).

A provision in a general appropriation bill, or an amendment thereto, providing that funds for a certain purpose are to be derived by continuing the availability of funds previously appropriated for a prior fiscal year is in violation of clause 2(a)(2) (formerly clause 6 of rule XXI) (Aug. 20, 1951, p. 10393; Mar. 29, 1960, p. 6862; June 17, 1960, p. 13138; June 20, 1973, p. 20530; July 29, 1982, p. 18625; June 28, 1988, p. 16255), and a reappropriation of unexpended prior year balances prohibited by this clause is not in order under the guise of a "Holman Rule" exception to clause 2 of rule XXI (Oct. 18, 1966, p. 27424). An amendment to a general appropriation bill making any appropriations which are available for the current fiscal year available for certain new purposes was held out of order under clause 2(a)(2) since it was not confined to the funds in the bill and would permit reappropriation of unexpended balances (Oct. 1, 1975, p. 31090). That appropriations may be authorized in law for a specified object does not permit an amendment to a general appropriation bill to include legislative language mandating the reappropriation of funds from other Acts (July 28, 1992, p. 19652).

This rule, however, is not applicable when the reappropriation language is identical to legislative authorization language enacted subsequent to the adoption of the rule, since the law is a more recent expression of the will of the House (Sept. 5, 1961, p. 18133), nor when a measure transferring unobligated balances of previously appropriated funds contains legislative provisions and rules changes but no appropriation of new budget authority and is neither in the form of an appropriation bill nor the subject of a privileged report by the Committee on Appropriations under rule XIII (Mar. 3, 1988, p. 3239).

The return of an unexpended balance to the Treasury is in order (IV, 3594).

A provision in a general appropriation bill that authorizes an official to transfer funds among appropriation accounts in the bill changes existing law in violation of clause 2 of rule XXI by including language conferring new authority (Deschler, ch 26 § 29.2). However, direct transfers of appropriations within the confines of the same bill normally are considered in order (VII, 1468) as a "within-bill" transfer rather than a transfer of unexpended balances of the kind addressed by clause 2(a)(2).

§ 1063a. Offsetting en bloc amendments.

To invoke the protection of clause 2(f), an amendment must not increase the levels of budget authority or outlays carried in the bill (Aug. 4, 1999, p. 19513; July 12, 2000, p. 14071; July 13, 2004, pp. ——, ——); and the proponent of an amendment carries the burden of so proving (see § 1044a, *supra*). An amendment otherwise in order under this paragraph may nevertheless be in violation of clause 2(a)(1) if increasing an appropriation above the

authorized amount contained in the bill (Aug. 4, 1999, p. 19513). The Chair will query for points of order against provisions of a bill addressed by an offsetting amendment but not yet read (*e.g.*, May 17, 2005, p. ——).

Transportation obligation limitations

§ 1064. Transportation obligation limitations.

3. It shall not be in order to consider a bill, joint resolution, amendment, or conference report that would cause obligation limitations to be below the level for any fiscal year set forth in section 8003 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as adjusted, for the highway category or the mass transit category, as applicable. For purposes of this clause, any obligation limitation relating to surface transportation projects under section 1602 of the Transportation Equity Act for the 21st Century and section 1702 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users shall be assumed to be administered on the basis of sound program management practices that are consistent with past practices of the administering agency permitting States to decide High Priority Project funding priorities within State program allocations.

The Transportation Equity Act for the 21st Century (sec. 8101(e), P.L. 105–178; 2 U.S.C. 901 note) added this provision as a new clause 9 of rule XXI. In the 106th Congress, this provision was transferred to clause 3 (H. Res. 5, Jan. 6, 1999, p. 47). In the 109th Congress the first sentence of this clause was amended to conform the rule to the current law authorizing funds for highway and transit programs, and a second sentence was added (sec. 8004, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), P.L. 109–59; 2 U.S.C. 901 note). The second sentence was derived from the following provision of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (sec. 108, div. C, P.L. 105–277; 112 Stat. 2681–586): "Sec. 108. For the purpose of any Rule of the House of Representatives, notwithstanding any other provision of law, any obligation limitation relating to

surface transportation projects under section 1602 of P.L. 105–178 shall be assumed to be administered on the basis of sound program management practices that are consistent with past practices of the administering agency permitting States to decide High Priority Project funding priorities within state program allocations." Section 8005 of SAFETEA–LU states as follows: "For purposes of clauses 2 and 3 of rule XXI of the House of Representatives, it shall be in order to transfer funds, in amounts specified in annual appropriation Acts to carry out the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (including the amendments made by that Act), from the Federal Transit Administration's administrative expenses account to other mass transit budget accounts under section 250(c)(4)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985."

§ 1064a. Funding for aviation programs.

Section 48114 of title 49 (a provision first added by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (sec. 106, P.L. 106–181), and extended to 2007 by its reenactment in title 49 (sec. 104, P.L. 108–176)) provides a point of order to enforce guarantees of total budget resources in a fiscal year for certain aviation investment programs as follows:

SEC. 48114. FUNDING FOR AVIATION PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) AIRPORT AND AIRWAY TRUST FUND GUARANTEE.—

(A) IN GENERAL.—The total budget resources made available from the Airport and Airway Trust Fund each fiscal year through fiscal year 2007 pursuant to sections 48101, 48102, 48103, and 106(k) of title 49, United States Code, shall be equal to the level of receipts plus interest credited to the Airport and Airway Trust Fund for that fiscal year. Such amounts may be used only for aviation investment programs listed in subsection (b).

(B) GUARANTEE.—No funds may be appropriated or limited for aviation investment programs listed in subsection (b) unless the amount described in subparagraph (A) has been provided.

(2) ADDITIONAL AUTHORIZATIONS OF APPROPRIATIONS FROM THE GENERAL FUND.—In any fiscal year through fiscal year 2007, if the amount described in paragraph (1) is appropriated, there is further authorized to be appropriated from the general fund of the Treasury such sums as may be necessary for the Federal Aviation Administration Operations account.

(b) DEFINITIONS.—In this section, the following definitions apply:

(1) TOTAL BUDGET RESOURCES.—The term "total budget resources" means the total amount made available from the Airport and Airway Trust Fund for the sum of obligation limitations and budget authority made available for a fiscal year for the following budget accounts that are subject to the obligation limitation on contract authority

provided in this title and for which appropriations are provided pursuant to authorizations contained in this title:

(A) 69–8106–0–7–402 (Grants in Aid for Airports).

(B) 69–8107–0–7–402 (Facilities and Equipment).

(C) 69–8108–0–7–402 (Research and Development).

(D) 69–8104–0–7–402 (Trust Fund Share of Operations).

(2) LEVEL OF RECEIPTS PLUS INTEREST.—The term "level of receipts plus interest" means the level of excise taxes and interest credited to the Airport and Airway Trust Fund under section 9502 of the Internal Revenue Code of 1986 for a fiscal year as set forth in the President's budget baseline projection as defined in section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177) (Treasury identification code 20–8103–0–7–402) for that fiscal year submitted pursuant to section 1105 of title 31, United States Code.

(c) ENFORCEMENT OF GUARANTEES.—

(1) TOTAL AIRPORT AND AIRWAY TRUST FUND FUNDING.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause total budget resources in a fiscal year for aviation investment programs described in subsection (b) to be less than the amount required by subsection (a)(1)(A) for such fiscal year.

(2) CAPITAL PRIORITY.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that provides an appropriation (or any amendment thereto) for any fiscal year through fiscal year 2007 for Research and Development or Operations if the sum of the obligation limitation for Grants-in-Aid for Airports and the appropriation for Facilities and Equipment for such fiscal year is below the sum of the authorized levels for Grants-in-Aid for Airports and for Facilities and Equipment for such fiscal year.

The chairmen of the Committee on Rules and the Committee on Transportation and Infrastructure inserted in the Record correspondence concerning points of order established in this section (Mar. 15, 2000, p. 2805).

Appropriations on legislative bills

§ 1065. Restriction of power to report appropriations.

4. A bill or joint resolution carrying an appropriation may not be reported by a committee not having jurisdiction to report appropriations, and an amendment proposing an appropriation shall not be in order during the consideration of a bill or joint resolution reported by a committee not hav-

ing that jurisdiction. A point of order against an appropriation in such a bill, joint resolution, or amendment thereto may be raised at any time during pendency of that measure for amendment.

This portion of the rule was adopted June 1, 1920 (VII, 2133). When the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47), this clause was returned to clause 4 where it had been until moved to former clause 5(a) of rule XXI in the 93d Congress (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470).

A point of order under this rule cannot be raised against a motion to suspend the rules (VIII, 3426), against a motion to discharge a nonappropriating committee from consideration of a bill carrying an appropriation (VII, 2144), or against a Senate amendment to an appropriation bill (VII, 1572). However, it may be directed against an item of appropriation in a Senate bill (VII, 2136, 2147; July 30, 1957, pp. 13056, 13181). If the House deletes a provision in a Senate bill under this rule, the bill is messaged to the Senate with the deletion in the form of an amendment. The point of order may be made against an appropriation in a Senate bill that, although not reported in the House, is considered in lieu of a reported House "companion bill" (VII, 2137; Mar. 29, 1933, p. 988). This clause applies to an amendment proposed to a Senate amendment to a House bill not reported from the Committee on Appropriations (Oct. 1, 1980, pp. 28638–42). The rule does not apply to private bills since the committees having jurisdiction of bills for the payment of private claims may report bills making appropriations within the limits of their jurisdiction (VII, 2135; Dec. 12, 1924, p. 538). The point of order under this rule does not apply to an appropriation in a bill which has been taken away from a nonappropriating committee by a motion to discharge (VII, 1019a). The point of order under this rule does not apply to a special order reported from the Committee on Rules "self-executing" the adoption in the House to a reported bill of an amendment containing an appropriation, since the amendment is not separately before the House during consideration of the special order (Feb. 24, 1993, p. 3542).

The provision in this clause that a point of order against an amendment containing an appropriation to a legislative bill may be made "at any time" has been interpreted to require that the point of order be raised during the pendency of the amendment under the five-minute rule (Mar. 18, 1946, p. 2365; Apr. 28, 1975, p. 12043), and a point of order will lie against an amendment during its pendency, even in its amended form, although the point of order is against the amendment as amended by a substitute and no point of order was raised against the substitute before its adoption (Apr. 23, 1975, pp. 11512–13). However, the point of order must be raised during the initial consideration of the bill or amendment under the five-

minute rule, and a point of order against similar language permitted to remain in the House version and included in a conference report on a bill will not lie, since the only rule prohibiting such inclusion (clause 5 of rule XXII) is limited to language originally contained in a Senate amendment where the House conferees have not been specifically authorized to agree thereto (May 1, 1975, p. 12752). Where the House has adopted a resolution waiving points of order against certain appropriations in a legislative bill, a point of order may nevertheless be raised against an amendment to the bill containing an identical provision, since under this rule a point of order may be raised against the amendment "at any time" (Apr. 23, 1975, p. 11512). A point of order against a direct appropriation in a bill initially reported from a legislative committee and then sequentially referred to and reported adversely by the Committee on Appropriations was conceded and sustained as in violation of this clause (Nov. 10, 1975, p. 35611). The point of order should be directed to the item of appropriation in the bill and not to the act of reporting the bill (VII, 2143), and cannot be directed to the entire bill (VII, 2142; Apr. 28, 1975, p. 12043).

The term "appropriation" in the rule means the payment of funds from the Treasury, and the words "warranted and make available for expenditure for payments" are equivalent to "is hereby appropriated" and therefore not in order (VII, 2150). The words "available until expended," making an appropriation already made for one year available for ensuing years, are not in order (VII, 2145).

The point of order provided for in this clause is not applicable to the following provisions: (1) authorizing the Secretary of the Treasury to use proceeds from the sale of bonds under the Second Liberty Bond Act (public debt transactions) for the purpose of making loans, since such loans do not constitute "appropriations" within the purview of the rule (June 28, 1949, pp. 8536–38; Aug. 2, 1950, p. 11599); (2) exempting loan guarantees in a legislative bill from statutory limitations on expenditures (July 16, 1974, p. 23344); (3) authorizing the availability of certain loan receipts where it can be shown that the actual availability of those receipts remains contingent upon subsequent enactment of an appropriation act (Sept. 10, 1975, p. 28300); (4) increasing the duties of a commission (VII, 1578); (5) authorizing payment from an appropriation to be made (Jan. 31, 1923, p. 2794).

Language reappropriating, making available, or diverting an appropriation or a portion of an appropriation already made for one purpose to another (VII, 2146; Mar. 29, 1933, p. 988; Aug. 10, 1988, p. 21719), or for one fiscal year to another (Mar. 26, 1992, p. 7223), is not in order. For example, the following provisions have been held out of order: (1) expanding the definition in existing law of recipients under a Federal subsidy program as permitting a new use of funds already appropriated (May 11, 1976, pp. 13409–11); (2) authorizing the use, without a subsequent appropriation, of funds directly appropriated by a previous statute for a new purpose (Oct. 1, 1980, pp. 28637–40). However, a modification of such a provision

making payments for such new purposes "effective only to the extent and in such amounts as are provided in advance in appropriation acts" does not violate this clause (Oct. 1, 1980, pp. 28638–42).

The following provisions have also been held to be in violation of this clause: (1) directing a departmental officer to pay a certain sum out of unexpended balances (VII, 2154); (2) authorizing the use of funds of the Shipping Board (VII, 2147); (3) directing payments out of Indian trust funds (VII, 2149); (4) making excess foreign currencies immediately available for a new purpose (Aug. 3, 1971, p. 29109); (5) authorizing the collection of fees or user charges by Federal agencies and making the revenues collected therefrom available without further appropriation (June 17, 1937, pp. 5915–18; Mar. 29, 1972, pp. 10749–51); (6) transferring existing Federal funds into a new Treasury trust fund to be immediately available for a new purpose (June 20, 1974, pp. 20273–75); (7) transferring unexpended balances of appropriations from an existing agency to a new agency created therein (Apr. 9, 1979, p. 7774); (8) making a direct appropriation to carry out a part of the Energy Security Act (Oct. 24, 1985, p. 28812); (9) requiring the diversion of previously appropriated funds in lieu of the enactment of new budget authority if a maximum deficit amount under the Deficit Control Act of 1985 is exceeded, though its stated purpose may be to avoid the sequestration of funds (Aug. 10, 1988, p. 21719).

Section 401(a) of the Congressional Budget Act of 1974 (88 Stat. 317) prohibits consideration in the House of any bill or resolution or amendment which provides new spending authority (as that term is defined in that section) unless that measure also provides that such new spending authority is to be available only to the extent provided in appropriation act (see § 1127, *supra*). See also Deschler, ch. 25, § 4 for a discussion of appropriations on legislative bills generally.

Tax and tariff measures and amendments

§ 1066. Restriction on bills and amendments carrying taxes or tariffs.

5. (a)(1) A bill or joint resolution carrying a tax or tariff measure may not be reported by a committee not having jurisdiction to report tax or tariff measures, and an amendment in the House or proposed by the Senate carrying a tax or tariff measure shall not be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A point of order against a tax or tariff measure in such a bill, joint resolution, or amendment thereto

may be raised at any time during pendency of that measure for amendment.

(2) For purposes of paragraph (1), a tax or tariff measure includes an amendment proposing a limitation on funds in a general appropriation bill for the administration of a tax or tariff.

Subparagraph (1) was added in the 98th Congress (H. Res. 5, Jan. 3, 1983, p. 34). Subparagraph (2) was added in the 108th Congress (sec. 2(o), H. Res. 5, Jan. 7, 2003, p. ——). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5(b) of rule XXI (H. Res. 5, Jan. 6, 1999, p. 47).

A point of order under this paragraph against a provision in a bill is in order at any time during consideration of the bill for amendment in Committee of the Whole (Aug. 1, 1986, p. 18649). On October 4, 1989, the Chairman of the Committee of the Whole, before ruling on several points of order under this paragraph, enunciated several guidelines to distinguish taxes and tariffs on the one hand and user or regulatory fees and other forms of revenue on the other (p. 23260). On the opening day of the 102d Congress, Speaker Foley inserted in the Congressional Record the following statement of jurisdictional concepts underlying those same distinctions and indicated his intention to exercise his referral authority under rule X in a manner consistent with this paragraph (Jan. 3, 1991, p. 64 (reiterated at the beginning of each Congress, *e.g.*, Jan. 4, 1995, p. 551; Jan. 3, 2001, p. 39)):

> Clause 5(b) (current clause 5(a)) of rule XXI prohibits the reporting of a tax or tariff matter by any committee not having that jurisdiction. Most of the questions of order arising under this clause since its adoption in 1983 have related to provisions that clearly affected the operation of the Internal Revenue Code or the customs laws. From time to time, however, such a question has related to a provision drafted as a user or regulatory fee levied on members of a class that occasions or avails itself of a particular governmental activity, typically to generate revenue in support of that activity. In order to provide guidance concerning the referral of bills, to assist committees in staying within their appropriate jurisdictions under rule X, to assist committees without jurisdiction over tax or tariff measures in complying with clause 5(b) of rule XXI, and to protect the constitutional prerogative of the House to originate revenue bills, the Speaker will make the following statement: Standing committees of the House (other than the Committees on Appropriations and Budget) have jurisdiction to consider user, regulatory and other fees, charges, and assessments levied on a class directly availing itself of, or directly subject to, a governmental service, program, or activity, but not on the general public, as measures to be utilized solely to sup-

port, subject to annual appropriations, the service, program, or activity (including agency functions associated therewith) for which such fees, charges, and assessments are established and collected and not to finance the costs of Government generally. The fee must be paid by a class benefiting from the service, program or activity, or being regulated by the agency; in short, there must be a reasonable connection between the payors and the agency or function receiving the fee. The fund that receives the amounts collected is not itself determinative of the existence of a fee or a tax. The Committee on Ways and Means has jurisdiction over "revenue measures generally" under rule X. That committee is entitled to an appropriate referral of broad-based fees and could choose to recast such fees as excise taxes. A provision only reauthorizing or amending an existing fee without fundamental change, or creating a new fee generating only a de minimis aggregate amount of revenues, does not necessarily require a sequential referral to the Committee on Ways and Means. The Chair intends to coordinate these principles with the Committee on the Budget and the Congressional Budget Office, especially in the reconciliation process, so that budget scorekeeping does not determine, and reconciliation directives and their implementation will not be inconsistent with, committee jurisdiction. Further, it should be emphasized that the constitutional prerogative of the House to originate revenue measures will continue to be viewed broadly to include any meaningful revenue proposal that the Senate may attempt to originate.

The adoption of subparagraph (2) in the 108th Congress established a different standard for determining a violation of this clause by an amendment to a reported general appropriation bill than for a provision in the appropriation bill itself. Before its adoption, a Member raising a point of order under this paragraph against a provision in, *or an amendment to*, a general appropriation bill affecting the use of funds therein (otherwise traditionally in order if admissible under clause 2 of rule XXI), carried the burden of showing a necessary, certain, and inevitable change in revenue collections or tax statuses or liabilities (Sept. 12, 1984, pp. 25108, 25109, 25120; July 26, 1985, p. 20806; Aug. 1, 1986, p. 18649; July 13, 1990, p. 17473; June 18, 1991, p. 15189). The intent of the rules change, as expressed during debate on the change, was "to ease the burden on the maker of a point of order [*against an amendment*] from having to show a necessary, certain and inevitable change in revenue collections, tax statuses, or liability as previous precedents required, to one of showing a textual relationship between the amendment and the administration of the Internal Revenue or tariff laws" (Jan. 7, 2003, p. ——). Under that standard the following amendments to a general appropriation bill have been held to impose a limitation on funds in violation of this clause: (1) a limitation on funds to assess or collect any tax liability attributable to the inclusion of certain economic assistance in the taxpayer's gross income

(Sept. 9, 2003, p. ——); (2) a limitation on funds to process the importation of any product from Iran (June 18, 2004, p. ——).

The precedents developed under this clause before its change in the 108th Congress still apply to the Chair's determination whether a limitation in a general appropriation bill (rather than an amendment thereto) constitutes a tax or tariff measure proscribed by this paragraph. Prior precedents addressing amendments are still viable for that determination. The Chair will consider argument as to whether the limitation effectively and inevitably changes revenue collections and tax status or liability (Aug. 1, 1986, p. 18649). For example, in determining whether an amendment to a general appropriation bill proposing a change in IRS funding priorities constituted a tax measure proscribed by this paragraph, the Chair considered argument as to whether the change would necessarily or inevitably result in a loss or gain in tax liability and in tax collection (June 18, 1991, p. 15189).

A limitation on the use of funds contained in a general appropriation bill was held to violate this paragraph by denying the use of funds by the Customs Service to enforce duty-free entry laws with respect to certain imported commodities, thereby requiring the collection of revenues not otherwise provided for by law (Oct. 27, 1983, p. 29611). Similar rulings were issued: (1) where it was shown that the imposition of the restriction on IRS funding for the fiscal year would effectively and inevitably preclude the IRS or the Customs Service from collecting revenues otherwise due and owing by law or require collection of revenue not legally due or owing (July 26, 1985, p. 20806; Aug. 1, 1986, pp. 18649, 18650; July 17, 1996, p. 17563); and (2) where a provision in a general appropriation bill prohibited the use of funds to impose or assess certain taxes due under specified portions of the Internal Revenue Code (July 13, 1990, p. 17473). In the 98th Congress, the Chair sustained points of order under this paragraph against motions to concur in three Senate amendments to a general appropriation bill (not reported by the Committee on Ways and Means): (1) an amendment denying the use of funds in that or any other Act by the IRS to impose or assess any tax due under a designated provision of the Internal Revenue Code, thereby rendering the tax uncollectable through the use of any funds available to the agency (Sept. 12, 1984, p. 25108); (2) an amendment directing the Secretary of the Treasury to admit free of duty certain articles imported by a designated organization (Sept. 12, 1984, p. 25109); and (3) an amendment to the Tariff Act of 1930 to expand the authority of the Customs Service to seize and use the proceeds from the sale of contraband imports to defray operational expenses, and to offset owed customs duties under one section of that law (Sept. 12, 1984, p. 25120). An amendment to a general appropriation bill proposing to divert an increase in funding for the IRS from spot-checks to targeted audits was held not to constitute a tax within the meaning of this paragraph because it did not necessarily affect revenue collection levels or tax liabilities (June 18, 1991, p. 15189).

In the 99th Congress, the following provisions in a reconciliation bill reported from the Budget Committee were ruled out as tax measures not reported from the Committee on Ways and Means: (1) a recommendation from the Committee on Education and Labor (now Education and the Workforce) excluding certain interest on obligations from the Student Loan Marketing Association from application of the Internal Revenue Code, affecting interest deductions against income taxes (Oct. 24, 1985, pp. 28776, 28827); and (2) a recommendation from the Committee on Merchant Marine and Fisheries expanding tax benefits available to shipowners through a capital construction fund (Oct. 24, 1985, pp. 28802, 28827). In the 101st Congress, the following provisions in an omnibus budget reconciliation bill were ruled out: (1) a fee per passenger on cruise vessels, with revenues credited as proprietary receipts of the Coast Guard to be used for port safety, security, navigation, and antiterrorism activities (Oct. 4, 1989, p. 23260); (2) a per acre "ocean protection fee" on oil and gas leaseholdings in the Outer Continental Shelf, with receipts to be used to offset costs of various ocean protection programs (Oct. 4, 1989, p. 23261); (3) an amendment to the Internal Revenue Code relating to the tax deductibility of pension fund contributions (Oct. 4, 1989, p. 23262); (4) a fee incident to termination of employee benefit plans, with receipts to be applied to enforcement and administration of plans remaining with the system (Oct. 4, 1989, p. 23262); and (5) a fee incident to the filing of various pension benefit plan reports required by law, with revenues to be transferred to the Department of Labor for the enforcement of that law (Oct. 5, 1989, p. 23328).

To a bill reported from the Committee on Education and Labor (now Education and the Workforce) authorizing financial assistance to unemployed individuals for employment opportunities, an amendment providing instead for tax incentives to stimulate employment was held to be a tax measure in violation of this paragraph (Sept. 21, 1983, p. 25145). A provision in a bill reported from the Committee on Foreign Affairs (now International Relations) imposing a uniform fee at ports of entry to be collected by the Customs Service as a condition of importation of a commodity was held to constitute a tariff within the meaning of this paragraph (June 4, 1985, p. 14009), as was an amendment to a bill reported from that committee amending the tariff schedules to deny "most favored nation" trade treatment to a certain nation (July 11, 1985, p. 18590). A provision in a general appropriation bill creating a new tariff classification was held to constitute a tariff under this paragraph (June 15, 1994, p. 13103). A motion to concur in a Senate amendment constituting a tariff measure (imposing an import ban on certain dutiable goods) to a bill reported by a committee not having tariff jurisdiction was ruled out under this paragraph (Sept. 30, 1988, p. 27316). A proposal to increase a fee incident to the filing of a securities registration statement, with the proceeds to be deposited in the general fund of the Treasury as offsetting receipts, was held to constitute a tax within the meaning of this paragraph because the amount of revenue derived and the manner of its deposit indicated

a purpose to defray costs of Government, generally (Oct. 23, 1990, p. 32650). To a bill reported by the Committee on Transportation and Infrastructure, an amendment increasing a user fee was ruled out as a tax measure where the fee overcollected to offset a reduction in another fee, thus attenuating the relationship between the amount of the fee and the cost of the Government activity for which it was assessed (May 9, 1995, p. 12180). To a bill reported by the Committee on Science, Space, and Technology (now Science), an amendment proposing sundry changes in the Federal income tax by direct amendments to the Internal Revenue Code of 1986 was ruled out of order as carrying a tax measure in violation of this paragraph (Sept. 16, 1992, p. 25205).

Passage of tax rate increases

§ 1067. Three-fifths vote to increase income tax rates.

(b) A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present. In this paragraph the term "Federal income tax rate increase" means any amendment to subsection (a), (b), (c), (d), or (e) of section 1, or to section 11(b) or 55(b), of the Internal Revenue Code of 1986, that imposes a new percentage as a rate of tax and thereby increases the amount of tax imposed by any such section.

This provision was added in the 104th Congress (sec. 106(a), H. Res. 6, Jan. 4, 1995, p. 463), and in the 105th Congress it was amended to clarify the definition of "Federal income tax rate increase" as limited to a specific amendment to one of the named subsections (H. Res. 5, Jan. 7, 1997, p. 121). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5(c) of rule XXI (H. Res. 5, Jan. 6, 1999, p. 47). On one occasion the Chair held that a provision repealing a ceiling on total tax liability attributable to a net capital gain was not subject to the original version of this paragraph (Apr. 5, 1995, p. 10614). This paragraph does not apply to a concurrent resolution (Speaker Gingrich, May 18, 1995, p. 13499). A resolution reported from the Rules Committee waiving this paragraph may be adopted by majority vote (Oct. 26, 1995, p. 29477). The Speaker rules on the applicability of this paragraph

only pending the question of final passage of a measure alleged to carry a Federal income tax rate increase, and not in advance upon adoption of a special order waiving that provision (Oct. 26, 1995, p. 29477).

Consideration of retroactive tax rate increases

§ 1068. Prohibition against retroactive income tax rate increase.

(c) It shall not be in order to consider a bill, joint resolution, amendment, or conference report carrying a retroactive Federal income tax rate increase. In this paragraph—

(1) the term "Federal income tax rate increase" means any amendment to subsection (a), (b), (c), (d), or (e) of section 1, or to section 11(b) or 55(b), of the Internal Revenue Code of 1986, that imposes a new percentage as a rate of tax and thereby increases the amount of tax imposed by any such section; and

(2) a Federal income tax rate increase is retroactive if it applies to a period beginning before the enactment of the provision.

This paragraph was added in the 104th Congress (sec. 106(b), H. Res. 6, Jan. 4, 1995, p. 463), and it was amended in the 105th Congress to clarify the definition of "Federal income tax rate increase" (H. Res. 5, Jan. 7, 1997, p. 121). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5(d) of rule XXI (H. Res. 5, Jan. 6, 1999, p. 47).

Designation of public works

§ 1068a. Restriction on designation of public works.

6. It shall not be in order to consider a bill, joint resolution, amendment, or conference report that provides for the designation or redesignation of a public work in honor of an individual then serving as a Member, Delegate, Resident Commissioner, or Senator.

This clause was adopted in the 107th Congress (sec. 2(q), H. Res. 5, Jan. 3, 2001, p. 25).

RULE XXII

HOUSE AND SENATE RELATIONS

Senate amendments

§ 1069. Motion for conference.

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

This provision (proviso in former clause 1 of rule XX), added by the 89th Congress (H. Res. 8, Jan. 4, 1965, p. 21), provides a method whereby bills can be sent to conference by majority vote. As contained in section 126(a) of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and adopted as part of the Rules of the House in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144), this clause included language relating to separate votes on nongermane Senate amendments that was, in the 93d Congress, modified and transferred to former clause 5 of rule XXVIII (current clause 10 of rule XXII) (H. Res. 998, Apr. 9, 1974, pp. 10195–99). Before the House recodified its rules in the 106th Congress, clauses 1 and 3 of this rule occupied a single clause (formerly clause 1 of rule XX) (H. Res. 5, Jan. 6, 1999, p. 47). Technical changes were effected in the 108th Congress (sec. 2(u), H. Res. 5, Jan. 7, 2003, p. ——).

§ 1070. Motion for conference.

The motion to send a bill to conference under this clause is in order notwithstanding the fact that the stage of disagreement has not been reached (Aug. 1, 1972, p. 26153). On a bill that has been initially referred and reported in the House, the motion must be authorized by all committees reporting thereon (Sept. 26, 1978, p. 31623). This clause was recodified in the 106th Congress to reflect this practice (H. Res. 5, Jan. 6, 1999, p. 47). However, a committee receiving sequential referral of a bill or not reporting thereon need not authorize the motion (Oct. 4, 1994, p. 27643). On a Senate bill with a House amendment consisting of the text of two corresponding House bills

that were previously reported to the House, the motion must be authorized by the committees reporting those corresponding bills (Oct. 1, 1998, p. 22944). Where such a motion has been rejected by the House, it may be repeated if the committee having jurisdiction over the subject matter again authorizes its chairman to make the motion (Deschler-Brown, ch. 33, § 2.13). The motion to send to conference is in order only if the Speaker in his discretion recognizes for that purpose, and the Speaker will not recognize for the motion where he has referred a nongermane Senate amendment in question to a House committee with jurisdiction and they have not yet had the opportunity to consider the amendment (June 28, 1984, p. 19770). Under clause 2(a)(2) of rule XI, a committee may adopt a rule providing that the chairman be directed to offer a motion under this clause whenever the chairman considers it appropriate (§ 791, *supra*).

§ 1071. Privilege of certain Senate amendments.

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

This provision was adopted in 1890 (IV, 3089) as part of the rule governing disposal of business on the Speaker's table (formerly clause 2 of rule XXIV). When the House recodified its rules in the 106th Congress, former clause 2 of rule XXIV was transferred to clause 2 of rule XIV, except this provision (H. Res. 5, Jan. 6, 1999, p. 47). For a discussion of referral of Senate amendments at the Speaker's table see § 873, *supra*.

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

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

This provision was adopted in 1880 to prevent Senate amendments of the class described from escaping consideration in Committee of the Whole (IV, 4796). Before the House recodified its rules in the 106th Congress, clauses 1 and 3 of this rule occupied a single clause (formerly clause 1 of rule XX) (H. Res. 5, Jan. 6, 1999, p. 47).

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

While a Senate amendment that is merely a modification of a House proposition, like the increase or decrease of the amount of an appropriation, and does not involve new and distinct expenditure, may not be required to be considered in Committee of the Whole (IV, 4797–4806; VIII, 2382–2385), where the question was raised against a Senate amendment which on its face apparently placed a charge upon the Treasury the Speaker held it devolved upon those opposing the point of order to cite proof to the contrary (VIII, 2387). When in the House an amendment is offered to provide an appropriation for another purpose than that of the Senate amendment, the House goes into Committee of the Whole to consider it (IV, 4795). When an amendment is referred, the entire bill goes to the Committee of the Whole (IV, 4808), but the committee considers only the Senate amendment (V, 6192). It usually considers all the amendments, although they may not all be within the rule requiring such consideration (V, 6195). In Committee of the Whole a Senate amendment, even though it be very long, is considered as an entirety and not by paragraphs or sections (V, 6194). When reported from the Committee of the Whole, Senate amendments are voted on en bloc and only those amendments are voted on severally on which a separate vote is demanded (VIII, 3191). It has been held that each amendment is subject to general debate and amendment under the five-minute rule (V, 6193, 6196). The requirement of this clause that certain Senate amendments be considered in Committee of the Whole applies only before the stage of disagreement has been reached on the Senate amendment, and it is too late to raise a point of order that Senate amendments should have been considered in Committee of the Whole after the House has disagreed thereto and the amendments have been reported from conference in disagreement (Oct. 20, 1966, p. 28240; Dec. 4, 1975, p. 38714). The Committee on Rules may recommend a special order of business providing that a Senate amendment pending at the Speaker's table and otherwise requiring consideration in Committee of the Whole under this clause be "hereby" adopted, which special order, if adopted, would obviate the requirement of this clause (Deschler, ch. 21, § 16.11; Feb. 4, 1993, p. 2500).

§ 1074. Stage of disagreement between Houses.

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

House amendment with a further amendment, the matter was privileged in the House for further disposition since the House had communicated its insistence and request for a conference to the Senate (Speaker Albert, Sept. 16, 1976, p. 30868).

§ 1075. Privilege when stage of disagreement reached.

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

This provision was adopted when the House recodified its rules in the 106th Congress to codify the privilege of a motion to dispose of an amendment after the stage of disagreement has been reached (a practice described in § 1074, *supra*) (H. Res. 5, Jan. 6, 1999, p. 47).

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

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

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

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

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

This clause was adopted on June 1, 1920 (pp. 8109, 8120). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2 of rule XX. The recodification also extended the rule to Senate amendments containing reappropriations of unexpended balances now referenced in clause 2(c) of rule XXI (H. Res. 5, Jan. 6, 1999, p. 47).

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

In the event an appropriation bill with Senate amendments in violation of clause 2 of rule XXI is sent to conference by unanimous consent, such procedure does not thereby prevent a point of order being sustained against the conference report should the managers on the part of the House violate the provisions of this clause (VII, 1574). But where a special rule in the House waives points of order against portions of an appropriation bill that are unauthorized by law, and the bill passes the House with those provisions included therein and goes to conference, the conferees may report back their agreement to those provisions even though they remain unauthorized, since the waiver in the House of points of order under this clause carries over to the consideration of the same provisions when the conference report is before the House (Dec. 20, 1969, pp. 40445–48, consideration of conference report; Dec. 9, 1969, p. 37948, adoption of special rule waiving points of order against the bill in the House). The rule is a restriction upon the managers on the part of the House only, and does not provide for a point of order against a Senate amendment when it comes up for action by the House (VII, 1572). Managers may be authorized to agree to an appropriation by a resolution reported from the Committee on Rules (VII, 1577). House managers may include in their report a modification of a Senate amendment that eliminates the appropriation in that amendment (June 8, 1972, p. 20280); and the prohibition in this clause applies

only to language in Senate amendments. Thus the conferees may without violating this clause agree to language in a Senate bill which was sent to conference (Speaker Albert, Jan. 25, 1972, pp. 1076, 1077; June 30, 1976, pp. 21632–34) or agree to language in a House bill which was permitted to remain and which constitutes an appropriation on a legislative bill (Speaker Albert, May 1, 1975, p. 12752).

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

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

This provision was adopted when the House recodified its rules in the 106th Congress to reiterate the prohibition found in clause 5(a) of rule XXI against a bill or joint resolution carrying a tax or tariff measure not reported by the Committee on Ways and Means (H. Res. 5, Jan. 6, 1999, p. 47).

Conference reports; amendments reported in disagreement

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

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

The practice of giving conference reports privilege dates from 1850, having had its origin in a temporary rule. This practice was continued by rulings of the Chair until this rule was adopted in 1880 (V, 6443–6446, 6454). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1(a) of rule XXVIII (H. Res. 5, Jan.

6, 1999, p. 47). For the requirement of a tax complexity analysis in either the joint statement or the Record, see clause 11 of this rule.

Under the language of the rule, a conference report may be presented: (1) while a Member is occupying the floor in debate (V, 6451; VIII 3294); (2) while a bill is being read (V, 6448); (3) after the yeas and nays have been ordered (V, 6457); (4) after a vote by tellers and pending the question of ordering the yeas and nays, although it may not be presented while the House is dividing (V, 6447); (5) after the previous question has been demanded or ordered (V, 6449, 6450); (6) during a call of the House if a quorum be present (V, 6456); and (7) on Calendar Wednesday (VII, 907), but consideration of such reports yields to Calendar Wednesday business (VII, 899). It takes precedence of: (1) a motion to adjourn (V, 6451–6453), although as soon as the report is presented the motion to adjourn may be put (V, 6451–6453); (2) a report from the Committee on Rules (V, 6449), and has been permitted to intervene when a special order provides that the House shall consider a certain bill "until the same is disposed of" (V, 6454); (3) the motion to reconsider (V, 5605); (4) the motion to go into the Committee of the Whole for consideration of general appropriation bills (VIII, 3291); (5) consideration of District of Columbia business on Monday (VIII, 3292); (6) unfinished business (Speaker O'Neill, Oct. 4, 1978, p. 33473). The consideration of a conference report may be interrupted, even in the midst of the reading of the statement, by the arrival of the hour previously fixed for a recess (V, 6524). Of course, a question of privilege which relates to the integrity of the House as an agency for action may not be required to yield precedence to a matter entitled to priority merely by the rules relating to the order of business (V, 6454).

The question of consideration under clause 3 of rule XVI may be demanded against a conference report before points of order against the report are raised (VIII, 2439; Speaker Albert, Sept. 28, 1976, p. 33019). The motion to lay on the table may not be applied to a conference report (V, 6540). The Chair will not recognize for a unanimous-consent request to correct a conference report, including the joint statement of managers, as it is a joint report to the two Houses (Oct. 3, 2000, p. 20560).

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

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

§ 1078. Time for debate on motions to instruct.

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

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

This paragraph was added in the 101st Congress (H. Res. 5, Jan. 3, 1989, p. 72). Before the House recodified its rules in the 106th Congress, it was found in former clause 1(b) of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. 47). The division of debate time specified in this clause does not apply to an amendment to a motion after defeat of the previous question thereon, and the proponent of such an amendment is recognized for one hour under clause 2 of rule XVII (formerly clause 2 of rule XIV) (Oct. 3, 1989, p. 22863; July 14, 1993, p. 15668; Aug. 1, 1994, p. 18868). The proponent of a motion to instruct conferees has the right to close debate (July 28, 1994, p. 18405; July 26, 1996, p. 19450).

§ 1079. Motions privileged after 20 calendar days and 10 legislative days of conference.

(c)(1) A motion to instruct managers on the part of the House, or a motion to discharge all managers on the part of the House and to appoint new conferees, shall be privileged after a conference committee has been appointed for 20 calendar days and 10 legislative days without making a report, but only on the day after the calendar day on which the Member, Delegate, or Resident Commissioner offering the motion an-

nounces to the House his intention to do so and the form of the motion.

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

(3) During the last six days of a session of Congress, a motion under subparagraph (1) shall be privileged after a conference committee has been appointed for 36 hours without making a report and the motion meets the notice requirement in subparagraph (1).

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

Paragraph (c) (formerly clause 1(c) of rule XXVIII) was adopted December 8, 1931 (VIII, 3225). The notice requirement was added on January 3, 1989 (H. Res. 5, 101st Cong., p. 72), and amended on January 5, 1993 (H. Res. 5, 103d Cong., p. 49) to clarify that both the motion to discharge conferees and appoint new conferees and the motion to instruct conferees after the requisite time in conference are subject to one day's notice, and to authorize the Speaker to designate a time in that day's legislative schedule for the consideration of a noticed motion to discharge or instruct conferees. Paragraph (c) was amended again in the 108th Congress to permit the motion to be offered after not only 20 calendar days *but also* after 10 legislative days, measured concurrently (sec. 2(p), H. Res. 5, Jan. 7, 2003, p. ——); and a technical amendment to paragraph (c)(3) was effected in the 109th Congress (sec. 2(l), H. Res. 5, Jan. 4, 2005, p. ——). Before the House recodified its rules in the 106th Congress, paragraph (c) was found in former clause 1(c) of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. 47). Recodification resulted in certain unintended changes to paragraph (c), and the paragraph was restored to its original intent in the 107th Congress (sec. 2(r), H. Res. 5, Jan. 3, 2001, p. 25). Paragraph (d) was added in the 107th Congress (sec. 2(r), H. Res. 5, Jan. 3, 2001, p. 25).

The motion to instruct conferees under this clause may be repeated notwithstanding prior disposition of an identical motion to instruct, because any number of proper motions to instruct are in order after conferees have not reported within the requisite time (Speaker Albert, July 22, 1974, p. 24448; July 10, 1985, p. 18440), and the motion remains available when a conference report, filed after the requisite time, is recommitted by the

first House to act thereon, since the conferees are not discharged and the original conference remains in being (June 28, 1990, p. 16156). A motion under this clause may instruct House conferees to insist on holding conference sessions under just and fair conditions, and in executive session if desirable (Aug. 1, 1935, p. 12272), and may instruct House conferees to meet with Senate conferees (May 2, 1984, p. 10732). The motion to instruct conferees under this clause is of equal privilege with the motion to suspend the rules on a suspension day (Mar. 1, 1988, pp. 2749, 2751, 2754). The motion to adjourn is in order while a motion to instruct under this paragraph is pending (Sept. 30, 1997, p. 20886), and, if such a motion to adjourn is adopted, the motion to instruct is rendered unfinished business on the next day without need for further notice under this paragraph (Oct. 1, 1997, p. 20894). Under clause 8(a)(2)(C) of rule XX, proceedings may not resume on a postponed question of agreeing to a 20-day motion to instruct conferees after the managers have filed a conference report in the House (Oct. 19, 1999, p. 25961; Nov. 20, 2003, p. ——; May 19, 2004, p. ——).

§ 1080. The statement accompanying a conference report.

(e) Each conference report to the House shall be printed as a report of the House. Each such report shall be accompanied by a joint explanatory statement prepared jointly by the managers on the part of the House and the managers on the part of the Senate. The joint explanatory statement shall be sufficiently detailed and explicit to inform the House of the effects of the report on the matters committed to conference.

The original rule requiring the submission of a statement was adopted in 1880 (V, 6443) and remained in effect through the 91st Congress. The precedents carried in this annotation are in interpretation of that earlier rule, which required only that the statement be signed by a majority of the House managers (V, 6505, 6506) and did not anticipate a statement jointly prepared by the managers on the part of the House and those on the part of the Senate. The rule was revised in the Legislative Reorganization Act of 1970 (sec. 125(b); 84 Stat. 1140) and made a part of the standing Rules of the House in its present form in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1(d) of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. 47).

The Speaker may require the statement to be in proper form (V, 6513), but it is for the House and not the Speaker to determine whether or not it conforms to the rule in other respects (V, 6511, 6512). A report may

not be received without the accompanying statement (V, 6504, 6514, 6515). A quorum among the managers on the part of the House at a committee of conference is established by their signatures on the conference report and joint explanatory statement (Oct. 4, 1994, p. 27662). When the House by unanimous consent permitted the chairman of a House committee to insert in the Record extraneous material to supplement a joint statement of managers, the Chair announced that the insertion did not constitute a revised joint statement of managers (Oct. 10, 1998, p. 25502).

§ 1081. Unfunded mandates.

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

§ 1082. Layover requirements.

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

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

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

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

The original rule (formerly clause 2(a) of rule XXVIII) requiring that conference reports be printed in the Record was adopted in 1902 (V, 6516). The three-day layover requirement, as well as the provisions relating to the availability of copies of the conference report and the division of time for debate, were added by section 125(b) of the Legislative Reorganization

Act of 1970 and made part of the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). The paragraph was amended again the next year to clarify the manner of counting the three days for the layover period (H. Res. 1153, Oct. 13, 1972, p. 36023). In the 104th Congress it was amended once more to count as a "calendar day" any day on which the House is in session (H. Res. 254, Nov. 30, 1995, p. 35077). The paragraph was amended in the 94th Congress (Feb. 26, 1976, p. 4625) to require copies of conference reports to be available for two hours before consideration and to allow for the immediate consideration of a resolution from the Committee on Rules waiving that requirement (clause 8(e)). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(a) of rule XXVIII. At that time the portion of clause 2(a) permitting immediate consideration of a resolution reported by the Rules Committee only waiving the layover requirement was tranferred to clause 8(e) and the portion of clause 2(a) addressing debate was transferred to clause 8(d) (H. Res. 5, Jan. 6, 1999, p. 47).

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

§ 1083. Consideration of amendments in disagreement.

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

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

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

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

This provision (formerly clause 2(b)(1) of rule XXVIII), relating to the consideration of amendments reported from conference in disagreement, was added in 1972 (H. Res. 1153, Oct. 13, 1972, p. 36023) and became effective at the end of the 92d Congress. In the 94th Congress the provision was amended to require copies of amendments reported from conference in disagreement to be available for two hours before consideration and to allow for the immediate consideration of a resolution from the Committee on Rules waiving that requirement (H. Res. 868, Feb. 26, 1976, p. 4625). In the 104th Congress the provision was amended to count as a "calendar day" any day on which the House is in session (H. Res. 254, Nov. 30, 1995, p. 35077). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(b)(1) of rule XXVIII. At that time the portion of clause 2(b)(1) addressing debate was transferred to clause 8(d) of rule XXII, and the portion of clause 2(b)(1) permitting immediate consideration of a resolution reported by the Rules Committee only waiving the layover requirement was transferred to clause 8(e) of this rule (H. Res. 5, Jan. 6, 1999, p. 47).

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

§ 1084. Certain motions to insist as preferential.

(3) During consideration of a Senate amendment reported in disagreement by a conference committee on a general appropriation bill, a motion to insist on disagreement to the Senate amendment shall be preferential to any other motion to dispose of that amendment if the original motion offered by the floor manager proposes to change existing law and the motion to insist is offered before debate on the original motion by the chairman of the committee having jurisdiction of the subject matter of the amendment or a designee. Such a preferential motion shall be separately debatable for one hour equally divided between its proponent and the proponent of the original motion. The previous question shall be considered as or-

dered on the preferential motion to its adoption without intervening motion.

This provision was added in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. 49) to make preferential and separately debatable a motion to insist on disagreement to a Senate amendment to a general appropriation bill, if: (1) the Senate amendment has been reported from conference in disagreement; (2) the original motion to dispose of the Senate amendment proposes to change existing law; and (3) the motion to insist is timely offered by the chairman of a committee of jurisdiction or a designee. Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(b)(2) of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. 47). The Committee on Post Office and Civil Service (now Government Reform) has jurisdiction under clause 1 of rule X over the subject of a Senate legislative amendment entitling Forest Service employees to separation pay, enabling the chairman of that committee to offer a preferential motion to insist under this clause (Oct. 20, 1993, p. 25589).

§ 1085. Certain conference reports considered as read.

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

Paragraph (c) was added in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(c) of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. 47).

§ 1086. Debate.

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

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

who opposes the conference report or motion on demand of that Member, Delegate, or Resident Commissioner.

This provision was adopted in the 99th Congress as former clauses 2(a) and 2(b)(1) of rule XXVIII (H. Res. 7, Jan. 3, 1985, p. 393). When the House recodified its rules in the 106th Congress, those provisions addressing debate in clause 2(a) and 2(b)(1) were consolidated into this provision (H. Res. 5, Jan. 6, 1999, p. 47).

Recognition of one Member in opposition does not depend upon party affiliation and is within the discretion of the Speaker (Dec. 11, 1985, p. 36069; Dec. 16, 1985, p. 36716; Oct. 15, 1986, p. 31631), who accords priority in recognition to a member of the conference committee (Speaker Wright, Dec. 21, 1987, pp. 37093, 37516). The Chair will assume that the minority manager supports a conference report if the manager signed the report and is not immediately present to claim the contrary (Oct. 12, 1995, p. 27795). Where the time is divided three ways, the right to close debate falls to the majority manager calling up the conference report (May 2, 2002, p. ——), preceded by the minority manager, preceded in turn by the Member in opposition—*i.e.*, the reverse order of the recognition to begin debate (Aug. 4, 1989, p. 19301).

Following rejection of a conference report on a point of order, debate on a motion to dispose of the Senate amendment remaining in disagreement is evenly divided between the majority and minority under the rationale contained in this provision (Sept. 30, 1976, pp. 34074–34100). Following vitiation of a conference report held to violate clause 9 of rule XXII, debate on a motion to recede and concur in a Senate amendment with an amendment also is evenly divided. (Nov. 14, 2002, p. ——).

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

Member from the other party from controlling half the debate and from offering a proper preferential motion to dispose of the Senate amendment (July 2, 1980, p. 18360). The right to close the debate on a motion to dispose of an amendment where the time is divided three ways falls to the manager offering the motion (Nov. 21, 1989, p. 30814).

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

§ 1087. Waiver.

(e) Under clause 6(a)(2) of rule XIII, a resolution proposing only to waive a requirement of this clause concerning the availability of reports to Members, Delegates, and the Resident Commissioner may be considered by the House on the same day it is reported by the Committee on Rules.

This provision was adopted in the 94th Congress to former clauses 2(a) and 2(b)(1) of rule XXVIII (Feb. 26, 1976, p. 4625). When the House recodified its rules in the 106th Congress, those provisions in former clauses 2(a) and 2(b)(1) permitting immediate consideration of a resolution from the Committee on Rules only waiving the layover requirement were consolidated into this provision (H. Res. 5, Jan. 6, 1999, p. 47).

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

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

specific matter committed to the conference committee by either or both Houses if that modification is beyond the scope of that specific matter as committed to the conference committee.

This provision (formerly clause 3 of rule XXVIII) is derived from section 135(a) of the Legislative Reorganization Act of 1946 (60 Stat. 812) and originally was made a part of the standing rules on January 3, 1953 (p. 24). The clause was revised on January 22, 1971 (p. 144) following the passage of the Legislative Reorganization Act of 1970 (84 Stat. 1140) which carried a similar provision in section 125(b). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 3 of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. 47).

Where one House strikes out of a bill of the other all after the enacting clause and inserts a new text, House managers, under the restrictions of this clause, may not agree to the deletion of certain language committed to conference if the effect of such deletion results in broadening the scope of the matter in disagreement (Dec. 14, 1971, p. 46779). Where one House authorizes certain funds for a fiscal year and the other House authorizes a lesser amount for that year as well as additional funds for the subsequent year, and neither version contains an overall amount, House managers do not exceed their authority under this rule by including in the report the amount authorized by one House for the first year and the other House for the subsequent year, even though the total authorization resulting from this compromise exceeds that possible under either version (June 8, 1972, p. 20281). Where a House version authorized endowment payments for certain colleges and the Senate version conferred land-grant college status on those institutions and contained a higher endowment figure, House conferees remained within their authority under this clause by accepting the Senate provision on land-grant status and the lower House figure for endowment payments (Speaker Albert, June 8, 1972, p. 20280). Where the House version of a bill contained provisions for local funding of merit schools, but neither version contained a provision for State funding, a motion to recommit to conference with instructions to provide State funding for merit schools was held to exceed the scope of the differences committed to conference (Sept. 30, 1992, p. 29126). A conference report containing a provision that the joint statement of managers described as having no counterpart in either the House bill or Senate amendment was held to exceed scope (Nov. 14, 2002, p. ——).

While the scope of differences committed to conference—where one House has amended an existing law and the other House has implicitly taken the position of existing law by remaining silent on the subject—may properly be measured between those issues presented in the amending language and comparable provisions of existing law, the inclusion in a conference report of new matter not specifically contained in the amending

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

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

Before the revision of this clause in 1971, where one House struck out of a bill of the other all after the enacting clause and inserted a new text, conferees could discard language occurring both in the bill and substitute

(VIII, 3266) and exercise broad discretion in incorporating germane amendments (VIII, 3263–3265), even to the extent of reporting a new bill germane to the subject (V, 6421, 6423, 6424; VIII, 3248). However, the present language of the rule prohibits the inclusion in a conference report or in a motion to instruct House conferees of additional topics not committed to conference by either House or beyond the scope of the differences committed to conference; and the precedents predating the adoption of this clause in 1971 must be read in light of the explicit restrictions now contained in the clause (Sept. 27, 1976, p. 32719). As such, a conference report may not include a new topic or issue that, although germane, was not committed to conference by either House (Mar. 25, 1992, p. 6843; Apr. 9, 1992, p. 9022). For example, a motion to instruct conferees on a general appropriation bill may not instruct the conferees to include a funding limitation not contained in the House bill or Senate amendment (Sept. 13, 1994, p. 24402). Similarly, a motion to recommit a conference report may not instruct conferees to expand definitions to include classes not covered under the House bill or Senate amendment (Sept. 29, 1994, p. 26781) or to include provisions not contained in the House bill or Senate amendment (Dec. 21, 1995, p. 38138). A waiver of all points of order against a conference report to accompany a measure and against its consideration does not inure to instructions contained in a motion to recommit such measure to conference (Sept. 29, 1994, p. 26781). Some latitude does remain to House managers to eliminate specific words or phrases contained in either version and add words or phrases not included in either version so long as they remain within the scope of the differences committed to conference and do not incorporate additional topics, issues, or propositions not committed to conference (Speaker Albert, Sept. 28, 1976, pp. 33020–23).

For a discussion of the remedy where managers exceed their authority, see § 547, supra.

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

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

(A) a conference report;

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

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

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

(b) If a point of order under paragraph (a) is sustained, a motion that the House reject the nongermane matter identified by the point of order shall be privileged. Such a motion is debatable for 40 minutes, one-half in favor of the motion and one-half in opposition thereto.

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

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

under subparagraph (2) or (3), as the case may be.

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

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

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

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

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

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

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

(e) If, on a division of the question on a motion described in paragraph (a)(1)(B) or (C), the

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

This provision (formerly clause 4 of rule XXVIII addressing nongermane matter in conference reports) was included as part of the revision of former rules XX and XXVIII that took place effective at the end of the 92d Congress (H. Res. 1153, Oct. 13, 1972, p. 36023). The same resolution repealed the former clause 3 of rule XX, which had been enacted as part of the Legislative Reorganization Act of 1970 to restrict the authority of House conferees to agree without prior permission of the House to Senate amendments that would violate clause 7 of rule XVI if offered in the House. This provision (formerly clause 5 of rule XXVIII addressing nongermane matter in amendments in disagreement) was added on April 9, 1974 (H. Res. 998, 93d Cong., pp. 10195–99) which deleted from clause 1 of rule XX and transferred to former clause 5 of rule XXVIII the procedures concerning disposition of Senate nongermane amendments. The provision was amended on April 9, 1974 (H. Res. 998, 93d Cong., pp. 10195–99) in order to make this clause applicable to provisions originally contained in Senate bills sent to conference, and not merely to Senate amendments to House bills in conference. The provision was further amended in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16) to provide that if the conference report is considered read under this rule, a point of order under this clause must be made immediately upon consideration of the conference report. When the House recodified its rules, it consolidated former clauses 4 and 5 of rule XXVIII under this clause (H. Res. 5, Jan. 6, 1999, p. 47).

§ 1090. Nongermane matter in conference agreements.

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

amendment not rejected as recommended in the conference report and to insist on disagreement to those amendments which have been rejected.

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

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

Where possible, the Speaker rules on points of order against conference reports which if sustained will vitiate the entire conference report (as under clause 9 of this rule or under the Congressional Budget Act of 1974) before entertaining points of order under this clause (Speaker Albert, Sept. 23, 1976, p. 32099).

§ 1091. Nongermane matter in amendments in disagreement.

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

§ 1092. Tax complexity analysis.

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

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

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

The Internal Revenue Service Restructuring and Reform Act of 1998 (sec. 4022, P.L. 105–206) added this provision as a new clause 7 of rule XXVIII. When the House recodified its rules in the 106th Congress, this provision was transferred to clause 11 of rule XXII (H. Res. 5, Jan. 6, 1999, p. 47).

§ 1093. Open conference meetings.

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

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

(b) A point of order that a conference committee failed to comply with paragraph (a) may be raised immediately after the conference report is read or considered as read. If such a point of order is sustained, the conference report

shall be considered as rejected, the House shall be considered to have insisted on its amendments or on disagreement to the Senate amendments, as the case may be, and to have requested a further conference with the Senate, and the Speaker may appoint new conferees without intervening motion.

This clause as originally added to former rule XXVIII on January 14, 1975 (H. Res. 5, 94th Cong., p. 20) provided that conference committee meetings be open except where a majority of the managers of the House or Senate voted to close the meeting, and provided that the clause not become effective until the Senate adopted a similar rule. The Senate adopted an identical rule on November 5, 1975 (p. 35203). The clause was substantially changed on January 4, 1977 (H. Res. 5, 95th Cong., pp. 53–70) to require that conference meetings be open except where the House by record vote determines that a meeting may be closed, to allow a point of order against a conference report where the conferees have violated this clause, and to provide for subsequent disposition of the matter reported from conference should such a point of order be sustained. It was further amended in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16) to provide that if the conference report is considered read under this rule, a point of order under this clause must be made immediately upon consideration of the conference report. Before the House recodified its rules in the 106th Congress, the former version of this provision was found in former clause 6 of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. 47). In the 108th Congress the record vote by which the motion is to be decided was particularized to be by the yeas and nays (sec. 2(u), H. Res. 5, Jan. 7, 2003, p. ——).

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

In response to a parliamentary inquiry, the Chair stated that, under the rules and precedents of the House, a conference report must be the product of an actual meeting of the managers appointed by the two Houses (Oct. 30, 2003, p. ——, p. ——). Although the Chair does not normally look behind signatures of conferees to determine the propriety of conference procedure, if proposed conferees have signed a conference report before

they have been formally appointed in both Houses and do not meet formally in open session after such appointment, the conference report is subject to a point of order under this clause resulting in an automatic request for a further conference (Dec. 20, 1982, p. 32896). Also, conferees on the part of the House are entitled to reasonable notice of and opportunity to attend a meeting of the conference committee (July 20, 2000, p. ——). However, a point of order will not lie against a conference report called up under an order of the House that has waived all points of order against consideration of the conference report (July 20, 2000, p. 15654; Oct. 30, 2003, p. ——).

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

RULE XXIII

CODE OF OFFICIAL CONDUCT

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

§ 1095. Official conduct of Members, officers, or employees of the House.

1. A Member, Delegate, Resident Commissioner, officer, or employee of the House shall conduct himself at all times in a manner that shall reflect creditably on the House.

2. A Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof.

3. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in Congress.

4. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept gifts except as provided by clause 5 of rule XXV.

5. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept an honorarium for a speech, a writing for publication, or other similar activity, except as otherwise provided under rule XXV.

6. A Member, Delegate, or Resident Commissioner—

(a) shall keep his campaign funds separate from his personal funds;

(b) may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures; and

(c) except as provided in clause 1(b) of rule XXIV, may not expend funds from his campaign account that are not attributable to bona fide campaign or political purposes.

7. A Member, Delegate, or Resident Commissioner shall treat as campaign contributions all proceeds from testimonial dinners or other fund-raising events.

8. (a) A Member, Delegate, Resident Commissioner, or officer of the House may not retain an employee who does not perform duties for the offices of the employing authority commensurate with the compensation he receives.

(b) In the case of a committee employee who works under the direct supervision of a member of the committee other than a chairman,

the chairman may require that such member affirm in writing that the employee has complied with clause 8(a) (subject to clause 9 of rule X) as evidence of compliance by the chairman with this clause and with clause 9 of rule X.

(c)(1) Except as specified in subparagraph (2)—

(A) a Member, Delegate, or Resident Commissioner may not retain his spouse in a paid position; and

(B) an employee of the House may not accept compensation for work for a committee on which his spouse serves as a member.

(2) Subparagraph (1) shall not apply in the case of a spouse whose pertinent employment predates the One Hundred Seventh Congress.

9. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not discharge and may not refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the race, color, religion, sex (including marital or parental status), disability, age, or national origin of such individual, but may take into consideration the domicile or political affiliation of such individual.

10. A Member, Delegate, or Resident Commissioner who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from

participation in the business of each committee of which he is a member, and a Member should refrain from voting on any question at a meeting of the House or of the Committee of the Whole House on the state of the Union, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is reelected to the House after the date of such conviction.

11. A Member, Delegate, or Resident Commissioner may not authorize or otherwise allow an individual, group, or organization not under the direction and control of the House to use the words "Congress of the United States," "House of Representatives," or "Official Business," or any combination of words thereof, on any letterhead or envelope.

12. (a) Except as provided in paragraph (b), an employee of the House who is required to file a report under rule XXVI may not participate personally and substantially as an employee of the House in a contact with an agency of the executive or judicial branches of Government with respect to nonlegislative matters affecting any nongovernmental person in which the employee has a significant financial interest.

(b) Paragraph (a) does not apply if an employee first advises his employing authority of a significant financial interest described in paragraph (a) and obtains from his employing authority a written waiver stating that the

participation of the employee in the activity described in paragraph (a) is necessary. A copy of each such waiver shall be filed with the Committee on Standards of Official Conduct.

13. Before a Member, Delegate, Resident Commissioner, officer, or employee of the House may have access to classified information, the following oath (or affirmation) shall be executed:

> "I do solemnly swear (or affirm) that I will not disclose any classified information received in the course of my service with the House of Representatives, except as authorized by the House of Representatives or in accordance with its Rules."

Copies of the executed oath (or affirmation) shall be retained by the Clerk as part of the records of the House. The Clerk shall make signatures a matter of public record, causing the names of each Member, Delegate, or Resident Commissioner who has signed the oath during a week (if any) to be published in a portion of the Congressional Record designated for that purpose on the last legislative day of the week and making cumulative lists of such names available each day for public inspection in an appropriate office of the House.

14. (a) In this Code of Official Conduct, the term "officer or employee of the House" means an individual whose compensation is disbursed by the Chief Administrative Officer.

(b) An individual whose services are compensated by the House pursuant to a consultant contract shall be considered an employee of the House for purposes of clauses 1, 2, 3, 4, 8, 9, and 13 of this rule. An individual whose services are compensated by the House pursuant to a consultant contract may not lobby the contracting committee or the members or staff of the contracting committee on any matter. Such an individual may lobby other Members, Delegates, or the Resident Commissioner or staff of the House on matters outside the jurisdiction of the contracting committee.

This rule was transferred from rule XLIII to rule XXIV when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47). It was redesignated as rule XXIII in the 107th Congress (sec. 2(s), H. Res. 5, Jan. 3, 2001, p. 24). The rule was originally adopted in the 90th Congress (H. Res. 1099, Apr. 3, 1968, p. 8803). The jurisdiction of the Committee on Standards of Official Conduct was redefined in the same resolution. Clause 4 was entirely rewritten (and definitions for the purpose of clause 4 were deleted) in the 104th Congress to reflect the adoption of a Gift Rule (H. Res. 254, Nov. 30, 1995, p. 35077). Prior to the 104th Congress, clause 4 had been amended in the 95th Congress to change the prohibition against acceptance of gifts of "substantial value" (H. Res. 5, Jan. 4, 1975, p. 20) and definitions for purposes of clause 4 were added in the 96th Congress (H. Res. 287, Mar. 2, 1977, pp. 5933–53). Those definitions were amended in the Ethics Reform Act of 1989 to make conforming changes in the definition of "relative" (P.L. 101–194). Clause 4 was also amended: (1) in the 100th Congress to increase from $35 to $50 the value of personal hospitality of an individual that is not to be counted when computing the aggregate amount of gifts per calendar year (H. Res. 5, Jan. 6, 1987, p. 6); and (2) in the Ethics Reform Act of 1989 to revise the rules governing the acceptance of gifts, including value thresholds and waivers (P.L. 101–194). Those threshold and aggregate values were again adjusted by section 314(d) of the Legislative Branch Appropriations Act for fiscal year 1992 (P.L. 102–90). The Ethics Reform Act of 1989 (P.L. 101–194) amended clause 5 to prohibit the acceptance of honoraria. Clause 6 was amended in the 95th Congress to delete from the second sentence the exception "unless specifically provided by law," which had been added in the 94th Congress (H. Res. 5, Jan. 4, 1975, p. 20) and was again amended in the 109th Congress to conform it to the change in clause 1 of rule XXIV to

permit campaign funds to be used to defray certain official expenses (sec. 2(j), H. Res. 5, Jan. 4, 2005, p. ——). Clause 6 was also amended by the Ethics Reform Act of 1989 (P.L. 101–194) to specify that campaign funds be used only for bona fide campaign or political purposes. Clause 7 was amended in the 95th Congress to eliminate an exception permitting sponsors to give notice of purpose (H. Res. 5, Jan. 4, 1975, p. 20). The Ethics Reform Act of 1989 (P.L. 101–194) amended clause 8 to broaden Members' accountability for the pay and performance of staff. Clause 8 was again amended in the 106th Congress to permit telecommuting by House employees (H. Res. 5, Jan. 6, 1999, p. 47). Clause 8(c) was added in the 107th Congress (sec. 2(t), H. Res. 5, Jan. 3, 2001, p. 24). Clause 9 was added in the 94th Congress (H. Res. 5, Jan. 14, 1975, p. 20). Clause 9 was amended in the 100th Congress to prohibit discrimination in employment based upon age (H. Res. 5, Jan. 6, 1987, p. 6) and again the 101st Congress to conform existing staff antidiscrimination rules to the Fair Employment Practices resolution adopted in the 100th Congress (now contained in the Congressional Accountability Act of 1995 (P.L. 104–1; 2 U.S.C. 1301; see § 1101, *infra*)). Clause 10 was added in the 94th Congress (H. Res. 46, Apr. 16, 1975, p. 10340). Clause 11 was added in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16). Clause 12 was added by the Ethics Reform Act of 1989 (P.L. 101–194) to proscribe certain contacts as involving conflicts of interest. Clause 13 was added in the 104th Congress (sec. 220, H. Res. 6, Jan. 4, 1995, p. 468), except the last sentence, which was added in the 107th Congress (sec. 2(t), H. Res. 5, Jan. 3, 2001, p. 24). Clause 14 (which was an undesignated paragraph at the end of the rule before the rules were recodified in the 106th Congress) was amended in the 92d Congress to bring the Delegates and Resident Commissioner within the definition of "Member" (H. Res. 5, Jan. 22, 1971, p. 144; H. Res. 1153, Oct. 13, 1972, pp. 36021–23). It was again amended in the 106th Congress to include consultants among employees covered by certain provisions of the code of conduct (H. Res. 5, Jan. 6, 1999, p. 47) and in the 107th Congress to add the last two sentences of clause 14(b) (sec. 2(v), H. Res. 5, Jan. 3, 2001, p. 24). In the 105th Congress the rule was amended to effect three clerical corrections (H. Res. 5, Jan. 7, 1997, p. 121); in the 106th Congress clerical and stylistic changes were effected when the rules were recodified (H. Res. 5, Jan. 6, 1999, p. 47); and in the 107th Congress conforming changes were made to reflect the redesignation of several rules (sec. 2(s), H. Res. 5, Jan. 3, 2001, p. 24) and a clerical correction to a cross reference in clause 8(b) was effected (sec. 2(x), H. Res. 5, Jan. 3, 2001, p. 26).

For an in-depth discussion of this rule prepared by the Committee on Standards of Official Conduct, see the *House Ethics Manual* (102d Cong., 2d Sess.). The committee also has compiled a complete statement of the rules on gifts and travel, which supersedes Chapter 2 of the 1992 *House Ethics Manual* (*Gifts and Travel,* 106th Cong., 2d Sess.).

It is not a proper parliamentary inquiry to ask the Chair to interpret the application of a criminal statute to a Member's conduct, as it is for

the House and not the Chair to judge the conduct of Members (Nov. 17, 1987, p. 32153). The Committee on Standards of Official Conduct has opined that "conviction" in clause 10 includes a plea of guilty or a certified finding of guilty even though sentencing may occur later (H. Rept. 94–76).

RULE XXIV

LIMITATIONS ON USE OF OFFICIAL FUNDS

Limitations on use of official and unofficial accounts

§ 1096. Limitation on accounts.

1. (a) Except as provided in paragraph (b), a Member, Delegate, or Resident Commissioner may not maintain, or have maintained for his use, an unofficial office account. Funds may not be paid into an unofficial office account.

(b)(1) Except as provided in subparagraph (2), a Member, Delegate, or Resident Commissioner may defray official expenses with funds of his principal campaign committee under the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.).

(2) The funds specified in subparagraph (1) may not be used to defray official expenses for mail or other communications, compensation for services, office space, furniture, or equipment, and any associated information technology services (excluding handheld communications devices).

2. Notwithstanding any other provision of this rule, if an amount from the Official Expenses Allowance of a Member, Delegate, or Resident Commissioner is paid into the House Recording

Studio revolving fund for telecommunications satellite services, the Member, Delegate, or Resident Commissioner may accept reimbursement from nonpolitical entities in that amount for transmission to the Clerk for credit to the Official Expenses Allowance.

3. In this rule the term "unofficial office account" means an account or repository in which funds are received for the purpose of defraying otherwise unreimbursed expenses allowable under section 162(a) of the Internal Revenue Code of 1986 as ordinary and necessary in the operation of a congressional office, and includes a newsletter fund referred to in section 527(g) of the Internal Revenue Code of 1986.

This provision (formerly rule XLV) was adopted in the 95th Congress (H. Res. 287, Mar. 2, 1977, pp. 5933–53). It was amended in the 102d Congress to permit Members to receive reimbursements to their expense allowances for recording studio charges attributable to nonpolitical organizations receiving the transmissions (H. Res. 5, Jan. 3, 1991, p. 39). When the House recodified its rules in the 106th Congress, it consolidated former rules XLV and XLVI under clauses 1 through 9 of rule XXV and the second sentence of former clause 8 of rule I and former clauses 2(n)(5) and 5(e) of rule XI under clause 10 of rule XXV (H. Res. 5, Jan. 6, 1999, p. 47). This rule was redesignated as rule XXIV in the 107th Congress (sec. 2(s), H. Res. 5, Jan. 3, 2001, p. 24). In the 109th Congress clause 1 was amended to permit campaign funds to be used to defray certain official expenses (sec. 2(j), H. Res. 5, Jan. 4, 2005, p. 25).

For an in-depth discussion of this rule prepared by the Committee on Standards of Official Conduct, see the *House Ethics Manual* (102d Cong., 2d Sess.).

Limitations on use of the frank

§ 1097. Limitations on use of frank.

4. A Member, Delegate, or Resident Commissioner shall mail franked mail under section 3210(d) of title 39, United States Code at the most economical rate of postage practicable.

5. Before making a mass mailing, a Member, Delegate, or Resident Commissioner shall submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether the proposed mailing is in compliance with applicable provisions of law, rule, or regulation.

6. A mass mailing that is otherwise frankable by a Member, Delegate, or Resident Commissioner under the provisions of section 3210(e) of title 39, United States Code, is not frankable unless the cost of preparing and printing it is defrayed exclusively from funds made available in an appropriation Act.

7. A Member, Delegate, or Resident Commissioner may not send a mass mailing outside the congressional district from which he was elected.

8. In the case of a Member, Delegate, or Resident Commissioner, a mass mailing is not frankable under section 3210 of title 39, United States Code, when it is postmarked less than 90 days before the date of a primary or general election (whether regular, special, or runoff) in which he is a candidate for public office. If the mail matter is of a type that is not customarily postmarked, the date on which it would have been postmarked, if it were of a type customarily postmarked, applies.

9. In this rule the term "mass mailing" means, with respect to a session of Congress, a mailing of newsletters or other pieces of mail with substantially identical content (whether such pieces

of mail are deposited singly or in bulk, or at the same time or different times), totaling more than 500 pieces of mail in that session, except that such term does not include a mailing—

(a) of matter in direct response to a communication from a person to whom the matter is mailed;

(b) from a Member, Delegate, or Resident Commissioner to other Members, Delegates, the Resident Commissioner, or Senators, or to Federal, State, or local government officials; or

(c) of a news release to the communications media.

This provision (formerly rule XLVI) was adopted in the 95th Congress (H. Res. 287, Mar. 2, 1977, pp. 5933–53). In the 102d Congress it was extensively amended to conform to restrictions on franking and mass mailings included in the legislative branch appropriations acts for fiscal years 1990 and 1991 (P.L. 101–163 and 101–520, respectively) (H. Res. 5, Jan. 3, 1991, p. 39). Clause 7 (formerly clause 4) was rewritten in the 103d Congress to conform to the statutory prohibition against mass mailings outside the congressional district from which a Member was elected. Before the House recodified its rules in the 106th Congress, this provision was found in former rule XLVI (H. Res. 5, Jan. 6, 1999, p. 47). In the 109th Congress clause 8 was amended to expand the window during which a mass mailing is not frankable from 60 days before the date of an election to 90 days, thereby conforming the rule to section 3210 of title 39, United States Code (sec. 2(j), H. Res. 5, Jan. 4, 2005, p. ——).

For an in-depth discussion of this rule prepared by the Committee on Standards of Official Conduct, see the *House Ethics Manual* (102d Cong., 2d Sess.).

Prohibition on use of funds by Members not elected to succeeding Congress

§ 1098. Travel by Members not reelected.

10. Funds from the applicable accounts described in clause 1(j)(1) of rule X, including funds from committee expense resolutions, and funds in any local currencies owned by the United States may

not be made available for travel by a Member, Delegate, Resident Commissioner, or Senator after the date of a general election in which he was not elected to the succeeding Congress or, in the case of a Member, Delegate, or Resident Commissioner who is not a candidate in a general election, after the earlier of the date of such general election or the adjournment sine die of the last regular session of the Congress.

This provision was added in the 95th Congress (H. Res. 287, Mar. 2, 1977, p. 5941). In the 105th and 106th Congresses this clause was amended to update archaic references to the "contingent fund" (H. Res. 5, Jan. 7, 1997, p. 121; H. Res. 5, Jan. 6, 1999, p. 47). When the House recodified its rules in the 106th Congress, it consolidated the second sentence of former clause 8 of rule I and former clauses 2(n)(5) and 5(e) of rule XI under clause 10 of former rule XXV (redesignated as rule XXIV in the 107th Congress) (H. Res. 5, Jan. 6, 1999, p. 47). A conforming change was effected in the 109th Congress (sec. 2(a), H. Res. 5, Jan. 4, 2005, p. ——).

RULE XXV

LIMITATIONS ON OUTSIDE EARNED INCOME AND ACCEPTANCE OF GIFTS

Outside earned income; honoraria

§ 1099. Income limitations.

1. (a) Except as provided by paragraph (b), a Member, Delegate, Resident Commissioner, officer, or employee of the House may not—

(1) have outside earned income attributable to a calendar year that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year; or

(2) receive any honorarium, except that an officer or employee of the House who is paid at a rate less than 120 percent of the minimum rate of basic pay for GS–15 of the General Schedule may receive an honorarium unless the subject matter is directly related to the official duties of the individual, the payment is made because of the status of the individual with the House, or the person offering the honorarium has interests that may be substantially affected by the performance or nonperformance of the official duties of the individual.

(b) In the case of an individual who becomes a Member, Delegate, Resident Commissioner, officer, or employee of the House, such individual may not have outside earned income attributable to the portion of a calendar year that occurs after such individual becomes a Member, Delegate, Resident Commissioner, officer, or employee that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year multiplied by a fraction, the numerator of which is the number of days the individual is a Member, Delegate, Resident Commissioner, officer, or employee during that calendar year and the denominator of which is 365.

(c) A payment in lieu of an honorarium that is made to a charitable organization on behalf of a Member, Delegate, Resident Commissioner, officer, or employee of the House may not be re-

ceived by that Member, Delegate, Resident Commissioner, officer, or employee. Such a payment may not exceed $2,000 or be made to a charitable organization from which the Member, Delegate, Resident Commissioner, officer, or employee or a parent, sibling, spouse, child, or dependent relative of the Member, Delegate, Resident Commissioner, officer, or employee, derives a financial benefit.

2. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not—

(a) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity that provides professional services involving a fiduciary relationship except for the practice of medicine;

(b) permit his name to be used by such a firm, partnership, association, corporation, or other entity;

(c) receive compensation for practicing a profession that involves a fiduciary relationship except for the practice of medicine;

(d) serve for compensation as an officer or member of the board of an association, corporation, or other entity; or

(e) receive compensation for teaching, without the prior notification and approval of the Committee on Standards of Official Conduct.

Copyright royalties

3. (a) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive an advance payment on copyright royalties. This paragraph does not prohibit a literary agent, researcher, or other individual (other than an individual employed by the House or a relative of a Member, Delegate, Resident Commissioner, officer, or employee) working on behalf of a Member, Delegate, Resident Commissioner, officer, or employee with respect to a publication from receiving an advance payment of a copyright royalty directly from a publisher and solely for the benefit of that literary agent, researcher, or other individual.

(b) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive copyright royalties under a contract entered into on or after January 1, 1996, unless that contract is first approved by the Committee on Standards of Official Conduct as complying with the requirement of clause 4(d)(1)(E) (that royalties are received from an established publisher under usual and customary contractual terms).

Definitions

4. (a)(1) In this rule, except as provided in subparagraph (2), the term "officer or employee of the House" means an individual (other than a Member, Delegate, or Resident Commissioner) whose pay is disbursed by the Chief Administrative Officer, who is paid at a rate equal to or

greater than 120 percent of the minimum rate of basic pay for GS–15 of the General Schedule, and who is so employed for more than 90 days in a calendar year.

(2)(A) When used with respect to an honorarium, the term "officer or employee of the House" means an individual (other than a Member, Delegate, or Resident Commissioner) whose salary is disbursed by the Chief Administrative Officer.

(B) When used in clause 5 of this rule, the terms "officer" and "employee" have the same meanings as in rule XXIII.

(b) In this rule the term "honorarium" means a payment of money or a thing of value for an appearance, speech, or article (including a series of appearances, speeches, or articles) by a Member, Delegate, Resident Commissioner, officer, or employee of the House, excluding any actual and necessary travel expenses incurred by that Member, Delegate, Resident Commissioner, officer, or employee (and one relative) to the extent that such expenses are paid or reimbursed by any other person. The amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not so paid or reimbursed.

(c) In this rule the term "travel expenses" means, with respect to a Member, Delegate, Resident Commissioner, officer, or employee of the House, or a relative of such Member, Delegate, Resident Commissioner, officer, or employee, the cost of transportation, and the cost of

lodging and meals while away from his residence or principal place of employment.

(d)(1) In this rule the term "outside earned income" means, with respect to a Member, Delegate, Resident Commissioner, officer, or employee of the House, wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually rendered, but does not include—

(A) the salary of a Member, Delegate, Resident Commissioner, officer, or employee;

(B) any compensation derived by a Member, Delegate, Resident Commissioner, officer, or employee of the House for personal services actually rendered before the adoption of this rule or before he became a Member, Delegate, Resident Commissioner, officer, or employee;

(C) any amount paid by, or on behalf of, a Member, Delegate, Resident Commissioner, officer, or employee of the House to a tax-qualified pension, profit-sharing, or stock bonus plan and received by him from such a plan;

(D) in the case of a Member, Delegate, Resident Commissioner, officer, or employee of the House engaged in a trade or business in which he or his family holds a controlling interest and in which both personal services and capital are income-producing factors, any amount received by the Member, Delegate, Resident Commissioner, officer, or employee, so long as the personal services actually rendered by him in the trade or business do not generate a significant amount of income; or

(E) copyright royalties received from established publishers under usual and customary contractual terms; and

(2) outside earned income shall be determined without regard to community property law.

(e) In this rule the term "charitable organization" means an organization described in section 170(c) of the Internal Revenue Code of 1986.

The rule on outside earned income (formerly rule XLVII) was adopted in the 95th Congress (H. Res. 287, Mar. 2, 1977, pp. 5933–53). It was amended for the first time in the 96th Congress to increase the limit on a single honorarium from $750 to $1000 (H. Res. 5, Jan. 15, 1979, pp. 7–16). The rule was amended further in the 97th Congress to (1) increase the limitation on outside earned income for a calendar year from 15 to 30 percent of a Member's salary; (2) strike the $1000 limitation on a single honorarium; and (3) provide that honoraria shall be attributable to the calendar year in which payment is received (H. Res. 305, Dec. 15, 1981, p. 31529). In the 99th Congress, the rule was amended to delete the 30 percent of aggregate salary limitation on outside earned income and to conform the limitation to that contained in law (2 U.S.C. 31–1 provides that a Member of Congress may not accept honoraria in excess of 40 percent of his aggregate salary) (H. Res. 427, Apr. 22, 1986, p. 8328). The next day, the House adopted a resolution vacating the proceedings by which that resolution had been adopted and laying that resolution on the table (H. Res. 432, Apr. 23, 1986, p. 8474). The Ethics Reform Act of 1989: (1) amended the title of the rule; (2) amended clause 1 to effect for 1991 and future years the elimination of honoraria not assigned to charity and closer restrictions on outside earned income (including limitation to 15 percent of Executive Level II pay); (3) amended clause 2 to effect for 1991 and future years new limits on outside employment; and (4) amended clause 3 to revise certain definitions (P.L. 101–194). That Act also established a civil cause of action against an individual who violates the limitations on outside earned income and employment (5 U.S.C. app. 504). In the 102d Congress clause 2 was further amended to specify that the ban on affiliation with a firm applies only if compensation is received and only with respect to a professional services firm, and clause 3 was further amended to specify the applicability of outside earned income restrictions to officers and employees of the House (H. Res. 5, Jan. 3, 1991, p. 39). In the 104th Congress a new clause was added to prohibit the receipt of advance payments on copyright royalties and the receipt of any payments on copyright royalties under future contracts unless approved in advance by the Committee on Standards of Official Conduct (H. Res. 299, Dec. 22, 1995, p. 38488). In the 106th Congress the rule was amended to permit certain

House employees to receive honoraria; the parenthetical in clause 4(b) was adopted; and, when the House recodified its rules, it consolidated former rules XLI, XLVII, and LI under rule XXVI (H. Res. 5, Jan. 6, 1999, p. 47). This rule was redesignated as rule XXV in the 107th Congress (sec. 2(s), H. Res. 5, Jan. 3, 2001, p. 24). Clause 4(a)(1) (and clause 5(e)) were amended in the 107th Congress to conform the definition of "officer or employee" to rule XXIII (sec. 2(w), H. Res. 5, Jan. 3, 2001, p. 26). Clause 2 was amended in the 108th Congress to except the practice of medicine from the restriction against outside earned income received from providing professional services that involve a fiduciary relationship (sec. 2(q), H. Res. 5, Jan. 7, 2003, p. ——).

For an in-depth discussion of this rule prepared by the Committee on Standards of Official Conduct, see the *House Ethics Manual* (102d Cong., 2d Sess.).

Before its coverage was restricted to the Senate in the Ethics Reform Act of 1989 (sec. 601(b), P.L. 101–194), a separate provision of law (2 U.S.C. 441i) provided criminal penalties for any elected or appointed Federal employee who accepts an honorarium of more than $2000 per speech. A statutory ceiling of $25,000 from honoraria in a calendar year was repealed in 1981 (P.L. 97–51). The Senate repealed its rule on outside earned income in the 97th Congress (S. Res. 512, Dec. 14, 1982, p. 30640).

For provisions of the Federal criminal code restricting postemployment activities, see 18 U.S.C. 207, which was originally enacted in title V of the Ethics in Government Act of 1978 (P.L. 95–521) and most recently amended in the Ethics Reform Act of 1989 (P.L. 101–194) and a related technical corrections Act (P.L. 101–280).

Gifts

§ 1100. Gift rule.

5. (a)(1)(A) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift except as provided in this clause.

(B) A Member, Delegate, Resident Commissioner, officer, or employee of the House may accept a gift (other than cash or cash equivalent) that the Member, Delegate, Resident Commissioner, officer, or employee reasonably and in good faith believes to have a value of less than $50 and a cumulative value from one source during a calendar year of less than $100. A gift having a value of less than $10 does not count to-

ward the $100 annual limit. The value of perishable food sent to an office shall be allocated among the individual recipients and not to the Member, Delegate, or Resident Commissioner. Formal recordkeeping is not required by this subdivision, but a Member, Delegate, Resident Commissioner, officer, or employee of the House shall make a good faith effort to comply with this subdivision.

(2)(A) In this clause the term "gift" means a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(B)(i) A gift to a family member of a Member, Delegate, Resident Commissioner, officer, or employee of the House, or a gift to any other individual based on that individual's relationship with the Member, Delegate, Resident Commissioner, officer, or employee, shall be considered a gift to the Member, Delegate, Resident Commissioner, officer, or employee if it is given with the knowledge and acquiescence of the Member, Delegate, Resident Commissioner, officer, or employee and the Member, Delegate, Resident Commissioner, officer, or employee has reason to believe the gift was given because of his official position.

(ii) If food or refreshment is provided at the same time and place to both a Member, Dele-

gate, Resident Commissioner, officer, or employee of the House and the spouse or dependent thereof, only the food or refreshment provided to the Member, Delegate, Resident Commissioner, officer, or employee shall be treated as a gift for purposes of this clause.

(3) The restrictions in subparagraph (1) do not apply to the following:

(A) Anything for which the Member, Delegate, Resident Commissioner, officer, or employee of the House pays the market value, or does not use and promptly returns to the donor.

(B) A contribution, as defined in section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) that is lawfully made under that Act, a lawful contribution for election to a State or local government office, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

(C) A gift from a relative as described in section 109(16) of title I of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(16)).

(D)(i) Anything provided by an individual on the basis of a personal friendship unless the Member, Delegate, Resident Commissioner, officer, or employee of the House has reason to believe that, under the circumstances, the gift was provided because of his official position and not because of the personal friendship.

(ii) In determining whether a gift is provided on the basis of personal friendship, the

Member, Delegate, Resident Commissioner, officer, or employee of the House shall consider the circumstances under which the gift was offered, such as:

(I) The history of his relationship with the individual giving the gift, including any previous exchange of gifts between them.

(II) Whether to his actual knowledge the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift.

(III) Whether to his actual knowledge the individual who gave the gift also gave the same or similar gifts to other Members, Delegates, the Resident Commissioners, officers, or employees of the House.

(E) Except as provided in paragraph (c)(3), a contribution or other payment to a legal expense fund established for the benefit of a Member, Delegate, Resident Commissioner, officer, or employee of the House that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Standards of Official Conduct.

(F) A gift from another Member, Delegate, Resident Commissioner, officer, or employee of the House or Senate.

(G) Food, refreshments, lodging, transportation, and other benefits—

(i) resulting from the outside business or employment activities of the Member, Delegate, Resident Commissioner, officer, or employee of the House (or other outside activi-

ties that are not connected to his duties as an officeholder), or of his spouse, if such benefits have not been offered or enhanced because of his official position and are customarily provided to others in similar circumstances;

(ii) customarily provided by a prospective employer in connection with bona fide employment discussions; or

(iii) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fundraising or campaign event sponsored by such organization.

(H) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

(I) Informational materials that are sent to the office of the Member, Delegate, Resident Commissioner, officer, or employee of the House in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.

(J) Awards or prizes that are given to competitors in contests or events open to the public, including random drawings.

(K) Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, nonmonetary awards presented in recognition of public service (and associated food, refreshments, and entertain-

ment provided in the presentation of such degrees and awards).

(L) Training (including food and refreshments furnished to all attendees as an integral part of the training) if such training is in the interest of the House.

(M) Bequests, inheritances, and other transfers at death.

(N) An item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute.

(O) Anything that is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

(P) A gift of personal hospitality (as defined in section 109(14) of the Ethics in Government Act) of an individual other than a registered lobbyist or agent of a foreign principal.

(Q) Free attendance at a widely attended event permitted under subparagraph (4).

(R) Opportunities and benefits that are—

(i) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration;

(ii) offered to members of a group or class in which membership is unrelated to congressional employment;

(iii) offered to members of an organization, such as an employees' association or congressional credit union, in which member-

ship is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;

(iv) offered to a group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

(v) in the form of loans from banks and other financial institutions on terms generally available to the public; or

(vi) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

(S) A plaque, trophy, or other item that is substantially commemorative in nature and that is intended for presentation.

(T) Anything for which, in an unusual case, a waiver is granted by the Committee on Standards of Official Conduct.

(U) Food or refreshments of a nominal value offered other than as a part of a meal.

(V) Donations of products from the district or State that the Member, Delegate, or Resident Commissioner represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any single recipient.

(W) An item of nominal value such as a greeting card, baseball cap, or a T-shirt.

(4)(A) A Member, Delegate, Resident Commissioner, officer, or employee of the House may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if—

(i) the Member, Delegate, Resident Commissioner, officer, or employee of the House participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to his official position; or

(ii) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, Delegate, Resident Commissioner, officer, or employee of the House.

(B) A Member, Delegate, Resident Commissioner, officer, or employee of the House who attends an event described in subdivision (A) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual.

(C) A Member, Delegate, Resident Commissioner, officer, or employee of the House, or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for

transportation and lodging may not be accepted in connection with the event unless—

(i) all of the net proceeds of the event are for the benefit of an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;

(ii) reimbursement for the transportation and lodging in connection with the event is paid by such organization; and

(iii) the offer of free attendance at the event is made by such organization.

(D) In this paragraph the term "free attendance" may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. The term does not include entertainment collateral to the event, nor does it include food or refreshments taken other than in a group setting with all or substantially all other attendees.

(5) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept a gift the value of which exceeds $250 on the basis of the personal friendship exception in subparagraph (3)(D) unless the Committee on Standards of Official Conduct issues a written determination that such exception applies. A determination under this subparagraph is not required for gifts given on the basis of the family relationship exception in subparagraph (3)(C).

(6) When it is not practicable to return a tangible item because it is perishable, the item may, at the discretion of the recipient, be given to an appropriate charity or destroyed.

(b)(1)(A) A reimbursement (including payment in kind) to a Member, Delegate, Resident Commissioner, officer, or employee of the House from a private source other than a registered lobbyist or agent of a foreign principal for necessary transportation, lodging, and related expenses for travel to a meeting, speaking engagement, fact-finding trip, or similar event in connection with his duties as an officeholder shall be considered as a reimbursement to the House and not a gift prohibited by this clause, if the Member, Delegate, Resident Commissioner, officer, or employee—

(i) in the case of an employee, receives advance authorization, from the Member, Delegate, Resident Commissioner, or officer under whose direct supervision the employee works, to accept reimbursement; and

(ii) discloses the expenses reimbursed or to be reimbursed and the authorization to the Clerk within 30 days after the travel is completed.

(B) For purposes of subdivision (A), events, the activities of which are substantially recreational in nature, are not considered to be in connection with the duties of a Member, Delegate, Resident Commissioner, officer, or employee of the House as an officeholder.

(2) Each advance authorization to accept reimbursement shall be signed by the Member, Delegate, Resident Commissioner, or officer of the House under whose direct supervision the employee works and shall include—

(A) the name of the employee;

(B) the name of the person who will make the reimbursement;

(C) the time, place, and purpose of the travel; and

(D) a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.

(3) Each disclosure made under subparagraph (1)(A) of expenses reimbursed or to be reimbursed shall be signed by the Member, Delegate, Resident Commissioner, or officer (in the case of travel by that Member, Delegate, Resident Commissioner, or officer) or by the Member, Delegate, Resident Commissioner, or officer under whose direct supervision the employee works (in the case of travel by an employee) and shall include—

(A) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;

(B) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;

(C) a good faith estimate of total meal expenses reimbursed or to be reimbursed;

(D) a good faith estimate of the total of other expenses reimbursed or to be reimbursed;

(E) a determination that all such expenses are necessary transportation, lodging, and related expenses as defined in subparagraph (4); and

(F) in the case of a reimbursement to a Member, Delegate, Resident Commissioner, or officer, a determination that the travel was in connection with his duties as an officeholder and would not create the appearance that the Member, Delegate, Resident Commissioner, or officer is using public office for private gain.

(4) In this paragraph the term "necessary transportation, lodging, and related expenses"—

(A) includes reasonable expenses that are necessary for travel for a period not exceeding four days within the United States or seven days exclusive of travel time outside of the United States unless approved in advance by the Committee on Standards of Official Conduct;

(B) is limited to reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments, including reimbursement for necessary transportation, whether or not such transportation occurs within the periods described in subdivision (A);

(C) does not include expenditures for recreational activities, nor does it include entertainment other than that provided to all

attendees as an integral part of the event, except for activities or entertainment otherwise permissible under this clause; and

(D) may include travel expenses incurred on behalf of a relative of the Member, Delegate, Resident Commissioner, officer, or employee.

(5) The Clerk shall make available to the public all advance authorizations and disclosures of reimbursement filed under subparagraph (1) as soon as possible after they are received.

(c) A gift prohibited by paragraph (a)(1) includes the following:

(1) Anything provided by a registered lobbyist or an agent of a foreign principal to an entity that is maintained or controlled by a Member, Delegate, Resident Commissioner, officer, or employee of the House.

(2) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal on the basis of a designation, recommendation, or other specification of a Member, Delegate, Resident Commissioner, officer, or employee of the House (not including a mass mailing or other solicitation directed to a broad category of persons or entities), other than a charitable contribution permitted by paragraph (d).

(3) A contribution or other payment by a registered lobbyist or an agent of a foreign principal to a legal expense fund established for the benefit of a Member, Delegate, Resi-

dent Commissioner, officer, or employee of the House.

(4) A financial contribution or expenditure made by a registered lobbyist or an agent of a foreign principal relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of Members, Delegates, the Resident Commissioner, officers, or employees of the House.

(d)(1) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal in lieu of an honorarium to a Member, Delegate, Resident Commissioner, officer, or employee of the House are not considered a gift under this clause if it is reported as provided in subparagraph (2).

(2) A Member, Delegate, Resident Commissioner, officer, or employee who designates or recommends a contribution to a charitable organization in lieu of an honorarium described in subparagraph (1) shall report within 30 days after such designation or recommendation to the Clerk—

(A) the name and address of the registered lobbyist who is making the contribution in lieu of an honorarium;

(B) the date and amount of the contribution; and

(C) the name and address of the charitable organization designated or recommended by

the Member, Delegate, or Resident Commissioner.

The Clerk shall make public information received under this subparagraph as soon as possible after it is received.

(e) In this clause—

(1) the term "registered lobbyist" means a lobbyist registered under the Federal Regulation of Lobbying Act or any successor statute;

(2) the term "agent of a foreign principal" means an agent of a foreign principal registered under the Foreign Agents Registration Act; and

(3) the terms "officer" and "employee" have the same meanings as in rule XXIII.

(f) All the provisions of this clause shall be interpreted and enforced solely by the Committee on Standards of Official Conduct. The Committee on Standards of Official Conduct is authorized to issue guidance on any matter contained in this clause.

This provision originally was adopted in the 104th Congress as rule LII (H. Res. 250, Nov. 16, 1995, p. 33433). It was amended in the 106th Congress to permit acceptance of a gift having a value of less than $50 and a cumulative value from any one source in the calendar year of less than $100 (H. Res. 9, Jan. 6, 1999, p. 237). In the 105th Congress it was redesignated as rule LI (H. Res. 5, Jan. 7, 1997, p. 121), and when the House recodified its rules in the 106th Congress, this provision was consolidated with former rule XLI and XLVIII under former rule XXVI (redesignated as rule XXV in the 107th Congress) (H. Res. 5, Jan. 6, 1999, p. 47). Clause 5(e) and clause 4(a)(1) were amended in the 107th Congress to conform the definition of "officer or employee" to rule XXIII (sec. 2(w), H. Res. 5, Jan. 3, 2001, p. 26). In the 108th Congress clause 5(a)(1)(B) was amended to allocate the value of perishable food sent to an office among the individual recipients rather than to the Member (sec. 2(r), H. Res. 5, Jan. 7, 2003, p. ——) and clause 5(a)(4)(C) was amended to permit, under specified circumstances, a Member to be reimbursed for transportation and lodg-

ing to attend a charity event (sec. 2(s), H. Res. 5, Jan. 7, 2003, p. ——). The Committee on Standards of Official Conduct has compiled a complete statement of the rules on gifts and travel, which supersedes Chapter 2 of the 1992 *House Ethics Manual* (*Gifts and Travel,* 106th Cong., 2d Sess.). The history of earlier rules bearing the designation LI or LII follow.

§ 1101. Former rules on employment practices and application of certain laws.

The earliest form of the rule on "employment practices" was designated as rule LI. It grew out of the Fair Employment Practices Resolution first adopted in the 100th Congress (H. Res. 558, Oct. 3, 1988, p. 27840) and renewed in the 101st Congress (H. Res. 15, Jan. 3, 1989, p. 85). The terms of that resolution were incorporated by reference in a standing rule LI in the 102d Congress (H. Res. 5, Jan. 3, 1991, p. 39), and were codified in full text, with certain amendments, in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. 49). The Employment Practices rule was overtaken by the earliest form of "application of certain laws," which was originally designated as LII in the 103d Congress (H. Res. 578, Oct. 7, 1994, p. 29326). The Application of Laws rule, in turn, was overtaken by the Congressional Accountability Act of 1995 (P.L. 104–1; 2 U.S.C. 1301). Certain savings provisions appear in section 506 of that Act (2 U.S.C. 1435). A later form of the rule designated as LII (gift rule) was adopted in the 104th Congress (H. Res. 250, Nov. 16, 1995, p. 33433). In the 105th Congress the Gift Rule was redesignated as rule LI (H. Res. 5, Jan. 7, 1997, p. 121).

Claims against the Government

§ 1102. Officers and employees not to be agents of claims.

6. A person may not be an officer or employee of the House, or continue in its employment, if he acts as an agent for the prosecution of a claim against the Government or if he is interested in such claim, except as an original claimant or in the proper discharge of official duties.

This provision was adopted in 1842 (V, 7227). It was renumbered January 3, 1953 (p. 24). It was amended by the Ethics Reform Act of 1989 to include employees in the prohibition against prosecuting or having an interest in any claim against the Government, to specify the inapplicability of that prohibition to the discharge of official duties, and to delete an obsolete reference to the Committee on House Administration (P.L. 101–194). Before the House recodified its rules in the 106th Congress, this provision was found in former rule XLI (H. Res. 5, Jan. 6, 1999, p. 47).

In addition to rules XXIII through XXVI, several provisions of the Federal criminal code also address the conduct of Members, officers, and em-

ployees with respect to bribery of public officials (18 U.S.C. 201–203), claims against the Government (18 U.S.C. 204, 205, 207(e), 216), and public officials acting as agents of foreign principals (18 U.S.C. 219).

RULE XXVI

FINANCIAL DISCLOSURE

§ 1103. Financial report disclosing certain financial interests.

1. The Clerk shall send a copy of each report filed with the Clerk under title I of the Ethics in Government Act of 1978 within the seven-day period beginning on the date on which the report is filed to the Committee on Standards of Official Conduct. By August 1 of each year, the Clerk shall compile all such reports sent to him by Members within the period beginning on January 1 and ending on June 15 of each year and have them printed as a House document, which shall be made available to the public.

2. For the purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be considered Rules of the House as they pertain to Members, Delegates, the Resident Commissioner, officers, and employees of the House.

The original version of this rule (formerly rule XLIV) was adopted in the 90th Congress, in the same resolution that redefined the jurisdiction of the Committee on Standards of Official Conduct (H. Res. 1099, Apr. 3, 1968, p. 8803). In the 91st Congress the rule was amended, effective for years after 1970, to require public disclosure of: (1) honoraria from a single source totaling $300 or more; and (2) each creditor to whom was owed an unsecured loan or other indebtedness of $10,000 or more outstanding for at least 90 days in the preceding calendar year (H. Res. 796, May 26, 1970, p. 17019). It was further amended in the 92d Congress to bring the Delegates and Resident Commissioner within the definition of "Members" in the final sentence of the rule (H. Res. 5, Jan. 22, 1971, p. 144; H. Res. 1153, Oct. 13, 1972, pp. 36021–23), and was amended in

the 95th Congress to delete an obsolete reference (H. Res. 5, Jan. 4, 1977, pp. 53–70). The rule was completely amended in the 95th Congress, effective July 1, 1977, to: (1) broaden the sources and minimum amounts of income reported; (2) require reports to be filed with the Clerk as well as with the Committee on Standards of Official Conduct; and (3) make reports available to the public as printed House documents rather than having them maintained in the Committee on Standards of Official Conduct (H. Res. 287, Mar. 2, 1977, pp. 5933–53). The rule was again amended in the 96th Congress to incorporate by reference the relevant provisions of title I of the Ethics in Government Act of 1978 as they pertain to Members, officers, and employees of the House of Representatives (H. Res. 5, Jan. 15, 1979, pp. 7–16). Clause 1 was amended by the Ethics Reform Act of 1989 to make conforming changes in certain dates (P.L. 101–194). Before the House recodified its rules in the 106th Congress, this provision was found in former rule XLIV (H. Res. 5, Jan. 6, 1999, p. 47). This rule was redesignated as rule XXVI in the 107th Congress (sec. 2(s), H. Res. 5, Jan. 3, 2001, p. 24).

For an in-depth discussion of this rule prepared by the Committee on Standards of Official Conduct, see the *House Ethics Manual* (102d Cong., 2d Sess.).

Pertinent provisions of title I of the Ethics in Government Act of 1978 (5 U.S.C. App. 101–111) follow:

TITLE I—FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

PERSONS REQUIRED TO FILE

SEC. 101. (a) Within thirty days of assuming the position of an officer or employee described in subsection (f), an individual shall file a report containing the information described in section 102(b) unless the individual has left another position described in subsection (f) within thirty days prior to assuming such new position or has already filed a report under this title with respect to nomination for the new position or as a candidate for the position.

* * *

(c) Within thirty days of becoming a candidate as defined in section 301 of the Federal Campaign Act of 1971, in a calendar year for nomination or election to the Office of President, Vice President, or Member of Congress, or on or before May 15 of that calendar year, whichever is later, but in no event later than 30 days before the election, and on or before May 15 of each successive year an individual continues to be a candidate, an individual other than an incumbent President, Vice President, or Member of Congress shall file a report containing the information described in section 102(b). Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior

calendar years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

(d) Any individual who is an officer or employee described in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 102(a).

(e) Any individual who occupies a position described in subsection (f) shall, on or before the thirtieth day after termination of employment in such position, file a report containing the information described in section 102(a) covering the preceding calendar year if the report required by subsection (d) has not been filed and covering the portion of the calendar year in which such termination occurs up to the date the individual left such office or position, unless such individual has accepted employment in another position described in subsection (f).

(f) The officers and employees referred to in subsections (a), (d), and (e) are— * * *

(9) a Member of Congress as defined under section 109(12);

(10) an officer or employee of the Congress as defined under section 109(13);

* * *

(g)(1) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the supervising ethics office for each branch, but the total of such extensions shall not exceed ninety days. * * *

(h) The provisions of subsections (a), (b), and (e) shall not apply to an individual who, as determined by the designated agency ethics official or Secretary concerned (or in the case of a Presidential appointee under subsection (b), the Director of the Office of Government Ethics), the congressional ethics committees, or the Judicial Conference, is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year, except that if such individual performs the duties of his office or position for more than sixty days in a calendar year—

(1) the report required by subsections (a) and (b) shall be filed within fifteen days of the sixtieth day, and

(2) the report required by subsection (e) shall be filed as provided in such subsection.

(i) The supervising ethics office for each branch may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position less than one hundred and thirty days in a calendar year, but only if the supervising ethics office determines that—

(1) such individual is not a full-time employee of the Government,

(2) such individual is able to provide services specially needed by the Government,

(3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) public financial disclosure by such individual is not necessary in the circumstances.

CONTENTS OF REPORTS

SEC. 102. (a) Each report filed pursuant to section 101 (d) and (e) shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating $200 or more in value and, effective January 1, 1991, the source, date, and amount of payments made to charitable organizations in lieu of honoraria, and the reporting individual shall simultaneously file with the applicable supervising ethics office, on a confidential basis, a corresponding list of recipients of all such payments, together with the dates and amounts of such payments.

(B) The source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds $200 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within:

(i) not more than $1,000,

(ii) greater than $1,000 but not more than $2,500,

(iii) greater than $2,500 but not more than $5,000,

(iv) greater than $5,000 but not more than $15,000,

(v) greater than $15,000 but not more than $50,000,

(vi) greater than $50,000 but not more than $100,000,

(vii) greater than $100,000 but not more than $1,000,000,

(viii) greater than $1,000,000 but not more than $5,000,000, or

(ix) greater than $5,000,000.

(2)(A) The identity of the source, a brief description, and the value of all gifts aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater, received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of $100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

(B) The identity of the source and a brief description (including a travel itinerary, dates, and nature of expenses provided) of reimbursements received from any source aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater, and received during the preceding calendar year.

(C) In an unusual case, a gift need not be aggregated under subparagraph (A) if a publicly available request for a waiver is granted.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a spouse, or by a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse, or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a spouse, or a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse which exceed $10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year exceeds $1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6)(A) The identity of all positions held on or before the date of filing during the current calendar year (and, for the first report filed by an individual, during the two-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This subparagraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

(B) If any person, other than the United States Government, paid a nonelected reporting individual compensation in excess of $5,000 in any of

the two calendar years prior to the calendar year during which the individual files his first report under this title, the individual shall include in the report—

(i) the identity of each source of such compensation; and

(ii) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.

The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(8) The category of the total cash value of any interest of the reporting individual in a qualified blind trust, unless the trust instrument was executed prior to July 24, 1995 and precludes the beneficiary from receiving information on the total cash value of any interest in the qualified blind trust.

(b)(1) Each report filed pursuant to subsections (a), (b), and (c) of section 101 shall include a full and complete statement with respect to the information required by—

(A) paragraph (1) of subsection (a) for the year of filing and the preceding calendar year,

(B) paragraphs (3) and (4) of subsection (a) as of the date specified in the report but which is less than thirty-one days before the filing date, and

(C) paragraphs (6) and (7) of subsection (a) as of the filing date but for periods described in such paragraphs.

(2)(A) In lieu of filling out one or more schedules of a financial disclosure form, an individual may supply the required information in an alternative format, pursuant to either rules adopted by the supervising ethics office for the branch in which such individual serves or pursuant to a specific written determination by such office for a reporting individual.

(B) In lieu of indicating the category of amount or value of any item contained in any report filed under this title, a reporting individual may indicate the exact dollar amount of such item.

(c) In the case of any individual described in section 101(e), any reference to the preceding calendar year shall be considered also to include that

part of the calendar year of filing up to the date of the termination of employment.

(d)(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4), (5), and (8) of subsection (a) are as follows:

(A) not more than $15,000;

(B) greater than $15,000 but not more than $50,000;

(C) greater than $50,000 but not more than $100,000;

(D) greater than $100,000 but not more than $250,000;

(E) greater than $250,000 but not more than $500,000;

(F) greater than $500,000 but not more than $1,000,000;

(G) greater than $1,000,000 but not more than $5,000,000;

(H) greater than $5,000,000 but not more than $25,000,000;

(I) greater than $25,000,000 but not more than $50,000,000; and

(J) greater than $50,000,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(e)(1) Except as provided in the last sentence of this paragraph, each report required by section 101 shall also contain information listed in paragraphs (1) through (5) of subsection (a) of this section respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and the source and amount of any honoraria received by a spouse, except that, with respect to earned income (other than honoraria), if the spouse is self-employed in busi-

ness or a profession, only the nature of such business or profession need be reported.

(B) All information required to be reported in subsection (a)(1)(B) with respect to income derived by a spouse or dependent child from any asset held by the spouse or dependent child and reported pursuant to subsection (a)(3).

(C) In the case of any gifts received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment and a brief description and the value of other gifts.

(D) In the case of any reimbursements received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of each such reimbursement.

(E) In the case of items described in paragraphs (3) through (5) of subsection (a), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse's or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

(F) For purposes of this section, categories with amounts or values greater than $1,000,000 set forth in sections 102(a)(1)(B) and 102(d)(1) shall apply to the income, assets, or liabilities of spouses and dependent children only if the income, assets, or liabilities are held jointly with the reporting individual. All other income, assets, or liabilities of the spouse or dependent children required to be reported under this section in an amount or value greater than $1,000,000 shall be categorized only as an amount or value greater than $1,000,000.

Reports required by subsections (a), (b), and (c) of section 101 shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(f)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections

(a), (b), and (c) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3));

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any dependent child, and

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of; or

(C) an entity described under the provisions of paragraph (8), but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust or other entity under subsection (a)(1)(B) of this section.

(3) For purpose of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any minor or dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

(A)(i) The trustee of the trust and any other entity designated in the trust instrument to perform fiduciary duties is a financial institution, an attorney, a certified public accountant, a broker, or an investment advisor who—

(I) is independent of and not associated with any interested party so that the trustee or other person cannot be controlled or influenced in the administration of the trust by any interested party;

(II) is not and has not been an employee of or affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(III) is not a relative of any interested party.

(ii) Any officer or employee of a trustee or other entity who is involved in the management or control of the trust—

(I) is independent of and not associated with any interested party so that such officer or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(II) is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(III) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1) of this section, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including ob-

taining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office.

(E) For purposes of this subsection, "interested party" means a reporting individual, his spouse, and any minor or dependent child; "broker" has the meaning set forth in section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4)); and "investment adviser" includes any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts.

(F) Any trust qualified by a supervising ethics office before the effective date of title II of the Ethics Reform Act of 1989 shall continue to be governed by the law and regulations in effect immediately before such effective date.

(4)(A) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of any applicable conflict of interest statutes, regulations, or rules of the Federal Government (including section 208 of title 18, United States Code), until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(B)(i) The provisions of subparagraph (A) shall not apply with respect to a trust created for the benefit of a reporting individual, or the spouse, dependent child, or minor child of such a person, if the supervising ethics office for such reporting individual finds that—

(I) the assets placed in the trust consist of a well-diversified portfolio of readily marketable securities;

(II) none of the assets consist of securities of entities having substantial activities in the area of the reporting individual's primary area of responsibility;

(III) the trust instrument prohibits the trustee, notwithstanding the provisions of paragraph (3)(C) (iii) and (iv) of this subsection, from making public or informing any interested party of the sale of any securities;

(IV) the trustee is given power of attorney, notwithstanding the provisions of paragraph (3)(C)(v) of this subsection, to prepare on behalf of any interested party the personal income tax returns and similar returns which may contain information relating to the trust; and

(V) except as otherwise provided in this paragraph, the trust instrument provides (or in the case of a trust established prior to the effective date of this Act which by its terms does not permit amendment, the trustee, the reporting individual, and any other interested party agree in writing) that the trust shall be administered in ac-

cordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A).

* * *

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d) of this section.

This subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (d) of this section.

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of this section of each such asset.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 105 and the provisions of that section shall apply with respect to such documents and lists.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6)(A) A trustee of a qualified blind trust shall not knowingly and willfully, or negligently, (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or (iv) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly and willfully, or negligently, (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) of this subsection or (ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $10,000.

(ii) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(7) Any trust may be considered to be a qualified blind trust if—

(A) the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph;

(B) a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time of approval by the supervising ethics office, including the category of value of each asset as determined under subsection (d) of this section, are filed with such office and made available to the public as provided under paragraph (5)(D) of this subsection; and

(C) the supervising ethics office determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations.

(8) A reporting individual shall not be required to report the financial interests held by a widely held investment fund (whether such fund is a mutual fund, regulated investment company, pension or deferred compensation plan, or other investment fund), if—

(A)(i) the fund is publicly traded; or

(ii) the assets of the fund are widely diversified; and

(B) the reporting individual neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

(h) A report filed pursuant to subsection (a), (d), or (e) of section 101 need not contain the information described in subparagraphs (A), (B), and (C) of subsection (a)(2) with respect to gifts and reimbursements received in a period when the reporting individual was not an officer or employee of the Federal Government.

(i) A reporting individual shall not be required under this title to report—

(1) financial interests in or income derived from—

(A) any retirement system under title 5, United States Code (including the Thrift Savings Plan under subchapter III of chapter 84 of such title); or

(B) any other retirement system maintained by the United States for officers or employees of the United States, including the President, or for members of the uniformed services; or

(2) benefits received under the Social Security Act.

FILING OF REPORTS

SEC. 103. (a) Except as otherwise provided in this section, the reports required under this title shall be filed by the reporting individual with the designated agency ethics official at the agency by which he is employed (or in the case of an individual described in section 101(e), was employed) or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official.

* * *

(g) Each supervising Ethics Office shall develop and make available forms for reporting the information required by this title.

(h)(1) The reports required under this title shall be filed by a reporting individual with—

(A)(i)(I) the Clerk of the House of Representatives, in the case of a Representative in Congress, a Delegate to Congress, the Resident Commissioner from Puerto Rico, an officer or employee of the Congress whose compensation is disbursed by the Clerk of the House of Representatives, an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the Congressional Budget Office, the Government Printing Office, the Library of Congress, or the Copyright Royalty Tribunal (including any individual terminating service, under section 101(e), in any office or position referred to in this subclause), or an individual described in section 101(c) who is a candidate for nomination or election as a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

* * *

(ii) in the case of an officer or employee of the Congress as described under section 101(f)(10) who is employed by an agency or commission established in the legislative branch after the date of the enactment of the Ethics Reform Act of 1989—

(I) the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, as designated in the statute establishing such agency or commission; or

(II) if such statute does not designate such committee, the Secretary of the Senate for agencies and commissions established in even numbered calendar years, and the Clerk of the House of Representatives for agencies and commissions established in odd numbered calendar years;

* * *

(2) The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such committee.

(i) A copy of each report filed under this title by a Member or an individual who is a candidate for the Office of Member shall be sent by the Clerk of the House of Representatives or Secretary of the Senate, as the case may be, to the appropriate State officer designated under section 316(a) of the Federal Election Campaign Act of 1971 of the State represented by the Member or in which the individual is a candidate, as the case may be, within the 30-day period beginning on the day the report is filed with the Clerk or Secretary.

(j)(1) A copy of each report filed under this title with the Clerk of the House of Representatives shall be sent by the Clerk to the Committee on Standards of Official Conduct of the House of Representatives within the 7-day period beginning on the day the report is filed.

* * *

(k) In carrying out their responsibilities under this title with respect to candidates for office, the Clerk of the House of Representatives and the Secretary of the Senate shall avail themselves of the assistance of the Federal Election Commission. The Commission shall make available to the Clerk and the Secretary on a regular basis a complete list of names and addresses of all candidates registered with the Commission, and shall cooperate and coordinate its candidate information and notification program with the Clerk and the Secretary to the greatest extent possible.

FAILURE TO FILE OR FILING FALSE REPORTS

SEC. 104. (a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to

section 102. The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $10,000.

(b) The head of each agency, each Secretary concerned, the Director of the Office of Government Ethics, each congressional ethics committee, or the Judicial Conference, as the case may be, shall refer to the Attorney General the name of any individual which such official or committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported.

(c) The President, the Vice President, the Secretary concerned, the head of each agency, the Office of Personnel Management, a congressional ethics committee, and the Judicial Conference of the United States, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.

(d)(1) Any individual who files a report required to be filed under this title more than 30 days after the later of—

(A) the date such report is required to be filed pursuant to the provisions of this title and the rules and regulations promulgated thereunder; or

(B) if a filing extension is granted to such individual under section 101(g), the last day of the filing extension period, shall, at the direction of and pursuant to regulations issued by the supervising ethics office, pay a filing fee of $200. All such fees shall be deposited in the miscellaneous receipts of the Treasury. The authority under this paragraph to direct the payment of a filing fee may be delegated by the supervising ethics office in the executive branch to other agencies in the executive branch.

(2) The supervising ethics office may waive the filing fee under this subsection in extraordinary circumstances.

CUSTODY OF AND PUBLIC ACCESS TO REPORTS

SEC. 105. (a) Each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall make available to the public, in accordance with subsection (b), each report filed under this title with such agency or office or with the Clerk or the Secretary of the Senate.

* * *

(b)(1) Except as provided in the second sentence of this subsection, each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall, within thirty days after any report is received under this title by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be, permit inspection of such report by or furnish a copy of such report to any person requesting such inspection or copy. With respect to any report required to be filed by May 15 of any year, such report

shall be made available for public inspection within 30 calendar days after May 15 of such year or within 30 days of the date of filing of such a report for which an extension is granted pursuant to section 101(g). The agency, office, Clerk, or Secretary of the Senate, as the case may be may require a reasonable fee to be paid in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(2) Notwithstanding paragraph (1), a report may not be made available under this section to any person nor may any copy thereof be provided under this section to any person except upon a written application by such person stating—

(A) that person's name, occupation and address;

(B) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(C) that such person is aware of the prohibitions on the obtaining or use of the report.

Any such application shall be made available to the public throughout the period during which the report is made available to the public.

(3)(A) This section does not require the immediate and unconditional availability of reports filed by an individual described in section 109(8) or 109(10) of this Act if a finding is made by the Judicial Conference, in consultation with United States Marshall Service, that revealing personal and sensitive information could endanger that individual.

(B) A report may be redacted pursuant to this paragraph only—

(i) to the extent necessary to protect the individual who filed the report; and

(ii) for as long as the danger to such individual exists.

(C) The Administrative Office of the United States Courts shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate an annual report with respect to the operation of this paragraph including—

(i) the total number of reports redacted pursuant to this paragraph;

(ii) the total number of individuals whose reports have been redacted pursuant to this paragraph; and

(iii) the types of threats against individuals whose reports are redacted, if appropriate.

(D) The Judicial Conference, in consultation with the Department of Justice, shall issue regulations setting forth the circumstances under which redaction is appropriate under this paragraph and the procedures for redaction.

(E) This paragraph shall expire on December 31, 2001, and apply to filings through calendar year 2001.

(c)(1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1) of this subsection. The court in which such action is brought may assess against such person a penalty in any amount not to exceed $10,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

(d) Any report filed with or transmitted to an agency or supervising ethics office or to the Clerk of the House of Representatives or the Secretary of the Senate pursuant to this title shall be retained by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be. Such report shall be made available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 101(b) and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 101(c) and was not subsequently elected, such reports shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President, Vice President, or as a Member of Congress, unless needed in an ongoing investigation.

REVIEW OF REPORTS

SEC. 106. (a)(1) Each designated agency ethics official or Secretary concerned shall make provisions to ensure that each report filed with him under this title is reviewed within sixty days after the date of such filing, except that the Director of the Office of Government Ethics shall review only those reports required to be transmitted to him under this title within sixty days after the date of transmittal.

(2) Each congressional ethics committee and the Judicial Conference shall make provisions to ensure that each report filed under this title is reviewed within sixty days after the date of such filing.

(b)(1) If after reviewing any report under subsection (a), the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by the congressional ethics committee, or a person designated by the Judicial Conference, as the case may be, is of the opinion that on the basis of information contained in such report the individual submitting such report is in compliance with

applicable laws and regulations, he shall state such opinion on the report, and shall sign such report.

(2) If the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by the congressional ethics committee, or a person designated by the Judicial Conference, after reviewing any report under subsection (a)—

(A) believes additional information is required to be submitted, he shall notify the individual submitting such report what additional information is required and the time by which it must be submitted, or

(B) is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, afford a reasonable opportunity for a written or oral response, and after consideration of such response, reach an opinion as to whether or not, on the basis of information submitted, the individual is in compliance with such laws and regulations.

(3) If the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by a congressional ethics committee, or a person designated by the Judicial Conference, reaches an opinion under paragraph (2)(B) that an individual is not in compliance with applicable laws and regulations, the official or committee shall notify the individual of that opinion and, after an opportunity for personal consultation (if practicable), determine and notify the individual of which steps, if any, would in the opinion of such official or committee be appropriate for assuring compliance with such laws and regulations and the date by which such steps should be taken. Such steps may include, as appropriate—

(A) divestiture,

(B) restitution,

(C) the establishment of a blind trust,

(D) request for an exemption under section 208(b) of title 18, United States Code, or

(E) voluntary request for transfer, reassignment, limitation of duties, or resignation.

The use of any such steps shall be in accordance with such rules or regulations as the supervising ethics office may prescribe.

(4) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by an individual in a position in the executive branch (other than in the Foreign Service or the uniformed services), appointment to which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

(5) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by a member of the

Foreign Service or the uniformed services, the Secretary concerned shall take appropriate action.

(6) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by any other officer or employee, the matter shall be referred to the head of the appropriate agency, the congressional ethics committee, or the Judicial Conference, for appropriate action; except that in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken.

(7) Each supervising ethics office may render advisory opinions interpreting this title within its respective jurisdiction. Notwithstanding any other provision of law, the individual to whom a public advisory opinion is rendered in accordance with this paragraph, and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any penalty or sanction provided by this title.

CONFIDENTIAL REPORTS AND OTHER ADDITIONAL REQUIREMENTS

SEC. 107. (a)(1) Each supervising ethics office may require officers and employees under its jurisdiction (including special Government employees as defined in section 202 of title 18, United States Code) to file confidential financial disclosure reports, in such form as the supervising ethics office may prescribe. The information required to be reported under this subsection by the officers and employees of any department or agency shall be set forth in rules or regulations prescribed by the supervising ethics office, and may be less extensive than otherwise required by this title, or more extensive when determined by the supervising ethics office to be necessary and appropriate in light of sections 202 through 209 of title 18, United States Code, regulations promulgated thereunder, or the authorized activities of such officers or employees. Any individual required to file a report pursuant to section 101 shall not be required to file a confidential report pursuant to this subsection, except with respect to information which is more extensive than information otherwise required by this title. Subsections (a), (b), and (d) of section 105 shall not apply with respect to any such report.

(2) Any information required to be provided by an individual under this subsection shall be confidential and shall not be disclosed to the public.

(3) Nothing in this subsection exempts any individual otherwise covered by the requirement to file a public financial disclosure report under this title from such requirement.

(b) The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for pur-

poses of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

(c) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law, Executive order, rule, or regulation.

AUTHORITY OF COMPTROLLER GENERAL

SEC. 108. (a) The Comptroller General shall have access to financial disclosure reports filed under this title for the purposes of carrying out his statutory responsibilities.

(b) No later than December 31, 1992, and regularly thereafter, the Comptroller General shall conduct a study to determine whether the provisions of this title are being carried out effectively.

DEFINITIONS

SEC. 109. For the purposes of this title, the term—

(1) "congressional ethics committees" means the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives;

(2) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986;

(3) "designated agency ethics official" means an officer or employee who is designated to administer the provisions of this title within an agency;

* * *

(5) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(D) food and beverages which are not consumed in connection with a gift of overnight lodging;

(E) communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

(F) consumable products provided by home-State businesses to the offices of a reporting individual who is an elected official, if those products are intended for consumption by persons other than such reporting individual;

(6) "honoraria" has the meaning given such term in section 505 of this Act;

(7) "income" means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

* * *

(11) "legislative branch" includes—

(A) the Architect of the Capitol;

(B) the Botanic Gardens;

(C) the Congressional Budget Office;

(D) the General Accounting Office;

(E) the Government Printing Office;

(F) the Library of Congress;

(G) the United States Capitol Police;

(H) the Office of Technology Assessment; and

(I) any other agency, entity, office, or commission established in the legislative branch;

(12) "Member of Congress" means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

(13) "officer or employee of the Congress" means—

(A) any individual described under subparagraph (B), other than a Member of Congress or the Vice President, whose compensation is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives;

(B)(i) each officer or employee of the legislative branch who, for at least 60 days, occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; and

(ii) at least one principal assistant designated for purposes of this paragraph by each Member who does not have an employee who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;

(14) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(15) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(16) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual;

* * *

(18) "supervising ethics office" means—

(A) the Senate Committee on Ethics of the Senate, for Senators, officers and employees of the Senate, and other officers or employees of the legislative branch required to file financial disclosure reports with the Secretary of the Senate pursuant to section 103(h) of this title;

(B) the Committee on Standards of Official Conduct of the House of Representatives, for Members, officers and employees of the House of Representatives and other officers or employees of the legislative branch required to file financial disclosure reports with the Clerk of the House of Representatives pursuant to section 103(h) of this title;

(C) the Judicial Conference for judicial officers and judicial employees; and

(D) the Office of Government Ethics for all executive branch officers and employees; and

(19) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual.

NOTICE OF ACTIONS TAKEN TO COMPLY WITH ETHICS AGREEMENTS

SEC. 110. (a) In any case in which an individual agrees with that individual's designated agency ethics official, the Office of Government Ethics,

a Senate confirmation committee, a congressional ethics committee, or the Judicial Conference, to take any action to comply with this Act or any other law or regulation governing conflicts of interest of, or establishing standards of conduct applicable with respect to, officers or employees of the Government, that individual shall notify in writing the designated agency ethics official, the Office of Government Ethics, the appropriate committee of the Senate, the congressional ethics committee, or the Judicial Conference, as the case may be, of any action taken by the individual pursuant to that agreement. Such notification shall be made not later than the date specified in the agreement by which action by the individual must be taken, or not later than three months after the date of the agreement, if no date for action is so specified.

(b) If an agreement described in subsection (a) requires that the individual recuse himself or herself from particular categories of agency or other official action, the individual shall reduce to writing those subjects regarding which the recusal agreement will apply and the process by which it will be determined whether the individual must recuse himself or herself in a specific instance. An individual shall be considered to have complied with the requirements of subsection (a) with respect to such recusal agreement if such individual files a copy of the document setting forth the information described in the preceding sentence with such individual's designated agency ethics official or the appropriate supervising ethics office within the time prescribed in the last sentence of subsection (a).

ADMINISTRATION OF PROVISIONS

SEC. 111. The provisions of this title shall be administered by * * *

* * *

(2) the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives, as appropriate, with regard to officers and employees described in paragraphs (9) and (10) of section 101(f).

* * *

The General Accounting Office, referred to in § 1190(11)(D), is now designated the Government Accountability Office (31 U.S.C. 702 note).

RULE XXVII

STATUTORY LIMIT ON PUBLIC DEBT

§ 1104. Public debt limit.

1. Upon adoption by Congress of a concurrent resolution on the budget under section 301 or 304 of the Congressional

Budget Act of 1974 that sets forth, as the appropriate level of the public debt for the period to which the concurrent resolution relates, an amount that is different from the amount of the statutory limit on the public debt that otherwise would be in effect for that period, the Clerk shall prepare an engrossment of a joint resolution increasing or decreasing, as the case may be, the statutory limit on the public debt in the form prescribed in clause 2. Upon engrossment of the joint resolution, the vote by which the concurrent resolution on the budget was finally agreed to in the House shall also be considered as a vote on passage of the joint resolution in the House, and the joint resolution shall be considered as passed by the House and duly certified and examined. The engrossed copy shall be signed by the Clerk and transmitted to the Senate for further legislative action.

2. The matter after the resolving clause in a joint resolution described in clause 1 shall be as follows: "That subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof '$_____'.", with the blank being filled with a dollar limitation equal to the appropriate level of the public debt set forth pursuant to section 301(a)(5) of the Congressional Budget Act of 1974 in the relevant concurrent resolution described in clause 1. If an adopted concurrent resolution under clause 1 sets forth different appropriate levels of the public debt for separate peri-

ods, only one engrossed joint resolution shall be prepared under clause 1; and the blank referred to in the preceding sentence shall be filled with the limitation that is to apply for each period.

3. (a) The report of the Committee on the Budget on a concurrent resolution described in clause 1 and the joint explanatory statement of the managers on a conference report to accompany such a concurrent resolution each shall contain a clear statement of the effect the eventual enactment of a joint resolution engrossed under this rule would have on the statutory limit on the public debt.

(b) It shall not be in order for the House to consider a concurrent resolution described in clause 1, or a conference report thereon, unless the report of the Committee on the Budget or the joint explanatory statement of the managers complies with paragraph (a).

4. Nothing in this rule shall be construed as limiting or otherwise affecting—

(a) the power of the House or the Senate to consider and pass bills or joint resolutions, without regard to the procedures under clause 1, that would change the statutory limit on the public debt; or

(b) the rights of Members, Delegates, the Resident Commissioner, or committees with respect to the introduction, consideration, and reporting of such bills or joint resolutions.

5. In this rule the term "statutory limit on the public debt" means the maximum face amount of obligations issued under authority of chapter 31

of title 31, United States Code, and obligations guaranteed as to principal and interest by the United States (except such guaranteed obligations as may be held by the Secretary of the Treasury), as determined under section 3101(b) of such title after the application of section 3101(a) of such title, that may be outstanding at any one time.

This rule was added in the 96th Congress by Public Law 96–78 (93 Stat. 589) and was originally applicable to concurrent resolutions on the budget for fiscal years beginning on or after October 1, 1980 (fiscal 1981). However, in the 96th Congress (H. Res. 642, Apr. 23, 1980, p. 8800), the provisions of that public law amending the Rules of the House were made applicable to the third concurrent resolution on the budget for fiscal year 1980 as well as the first concurrent resolution on the budget for fiscal 1981 (H. Con. Res. 307, June 12, 1980, pp. 14505–19; see H.J. Res. 569 and H.J. Res. 570, June 13, 1980, p. 14609). Conforming changes were made in clauses 2 and 5 of this rule with the codification of title 31, United States Code, by Public Law 97–258 (96 Stat. 1066). The rule was amended in the 98th Congress (H. Res. 241, June 23, 1983, p. 17162) to reflect the enactment into law (P.L. 98–34) of a new permanent, rather than temporary, debt limit. Clause 2 was rewritten, and clause 1 modified, to change the form of the joint resolution engrossed pursuant to the rule in order to delete references to a temporary debt limit and to reflect instead changes in a permanent debt limit. The rules change also provided that where a budget resolution contains more than one public debt limit figure (for the current and the next fiscal year), only one joint resolution be engrossed, containing the debt limit figure for the current fiscal year with a time limitation, and the debt limit figure for the following fiscal year as the permanent limit. Another conforming change in clause 1 was made in the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177, Dec. 12, 1985, p. 36209) to delete reference to a second concurrent resolution on the budget (no longer required under section 310 of the Budget Act). Before the House recodified its rules in the 106th Congress, this provision was found in former rule XLIX. Recodification placed it as rule XXIII (H. Res. 5, Jan. 6, 1999, p. 47). The rule was repealed in the 107th Congress (sec. 2(s), H. Res. 5, Jan. 3, 2001, p. 24) and reinstated in the 108th Congress (sec. 2(t), H. Res. 5, Jan. 7, 2003, p. ——).

This rule has been ordered inapplicable to a conference report on a concurrent resolution on the budget (*e.g.*, H. Res. 131, Mar. 25, 1999, p. 5671; H. Res. 446, Mar. 23, 2000, p. ——). The date of final House action in adopting the conference report on the concurrent resolution on the budget, rather than the date of final Senate action, when later, is the appropriate

date under this rule for deeming the House to have passed the joint resolution (July 14, 1986, p. 16316; Speaker Wright, June 25, 1987, p. 17424).

RULE XXVIII

GENERAL PROVISIONS

§ 1105. Relations of Jefferson's Manual and Legislative Reorganization Act of 1946 to the Rules of the House.

1. The provisions of law that constituted the Rules of the House at the end of the previous Congress shall govern the House in all cases to which they are applicable, and 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.

2. In these rules words importing the masculine gender include the feminine as well.

Clause 1 was adopted in 1837 (V, 6757), and amended January 3, 1953, p. 24, when it was also renumbered. When the House recodified its rules in the 106th Congress, clause 1 was transferred from former rule XLII and was modified to reference all provisions of law comprising House rules at the end of the previous Congress (a compilation of which is included in §§ 1127–1130, *infra*); and clause 2 was added (H. Res. 5, Jan. 6, 1999, p. 47). This rule was redesignated as rule XXVII in the 107th Congress (sec. 2(s), H. Res. 5, Jan. 3, 2001, p. 24) and redesignated as rule XXVIII in the 108th Congress (sec. 2(t), H. Res. 5, Jan. 7, 2003, p. ——). Discussion of the importance of Jefferson's Manual as an authority in congressional procedure (VII, 1029, 1049; VIII, 2501, 2517, 2518, 3330).

LEGISLATIVE REORGANIZATION ACTS
JOINT AND SELECT COMMITTEES
HOUSE OFFICES
EARLY ORGANIZATION OF THE HOUSE

LEGISLATIVE REORGANIZATION ACTS

PROVISIONS OF THE LEGISLATIVE REORGANIZATION ACT OF 1946 APPLICABLE TO BOTH HOUSES

SECTION 132 OF THE LEGISLATIVE REORGANIZATION ACT OF 1946

(2 U.S.C. 198)

§ 1106. Congressional adjournment.

Sec. 132. (a) Unless otherwise provided by the Congress, the two Houses shall—

(1) adjourn sine die not later than July 31 of each year; or

(2) in the case of an odd-numbered year, provide, not later than July 31 of such year, by concurrent resolution adopted in each House by rollcall vote, for the adjournment of the two Houses from that Friday in August which occurs at least thirty days before the first Monday in September (Labor Day) of such year to the second day after Labor Day.

(b) This section shall not be applicable in any year if on July 31 of such year a state of war exists pursuant to a declaration of war by the Congress.

The present form of this section is derived from the Legislative Reorganization Act of 1970 (sec. 461; 84 Stat. 1140). Before that revision, the 1946 Act (60 Stat. 812) provided for adjournment sine die of the two Houses not later than the last day of July each year except during time of war or a national emergency proclaimed by the President. Presidentially declared emergencies of May 8, 1939, May 27, 1941, and December 16, 1950, negated operation of the provision (see Speaker Rayburn, Aug. 1, 1949, p. 10486; Aug. 2, 1949, p. 10591; Aug. 4, 1949, p. 10778).

The Committee on Rules has jurisdiction of matters relative to recesses and final adjournment of Congress (clause 1(n)(2) of rule X).

§ 1106. Not a statutory adjournment sine die.

Under this provision of law, a concurrent resolution providing in an odd-numbered year for an adjournment of the two Houses from the first Friday in August until the second day after Labor Day or until notified to reassemble pursuant to a joint agreement of the Leadership of the two Houses is called

up as privileged and requires a yea and nay vote for adoption (July 30, 1973, p. 26657), and is not debatable (July 31, 1991, p. 20675); but the House may adjourn by simple motion on July 31 to meet on August 1 (July 31, 1991, p. 20677). In even-numbered years, and some odd-numbered years, the House has agreed to concurrent resolutions waiving the provisions of this law to provide that the two Houses shall not adjourn for more than three days or sine die until they have adopted a concurrent resolution to that effect (July 25, 1972, p. 25145; July 24, 1974, p. 25008; July 29, 1982, pp. 18562, 18563; July 30, 1986, p. 18146; July 29, 1994, p. 18615; July 30, 1999, p. 18763). To obviate the necessity to adopt a concurrent resolution waiving the requirement in section 132 of Legislative Reorganization Act of 1946, the House has included the language "in consonance with section 132(a)" in its concurrent resolutions providing for an August recess (*e.g.*, July 31, 1997, p. 17018; July 25, 2003, p. ——).

SECTION 141 OF THE LEGISLATIVE REORGANIZATION ACT OF 1946

(2 U.S.C. 145a)

§ 1107. Preservation of committee hearings.

Sec. 141. The Librarian of the Library of Congress is authorized and directed to have bound at the end of each session of Congress the printed hearings of testimony taken by each committee of the Congress at the preceding session.

This provision became effective on August 2, 1946.

JOINT AND SELECT COMMITTEES

JOINT COMMITTEES

§ 1108. Joint Economic Committee.

The Joint Economic Committee is composed of 10 Members of the Senate and 10 Members of the House, who are appointed by the President of the Senate and the Speaker, respectively. Each appoints six Members from the majority and four from the minority (15 U.S.C. 1024(a)). The committee conducts a continuing study of matters relating to the Economic Report made by the President and studies means of promoting the national policy on employment as outlined in the Employment Act of 1946 (15 U.S.C. 1021). The committee is required to file, not later than March 1 of each year, a report with the Senate and the House containing its findings and recommendations on each of the main recommendations made by the President in the Economic Report. It is authorized to hold hearings and make other reports to the Congress and to issue a monthly publication on economic conditions (15 U.S.C. 1024, 1025). The Full Employment and Balanced Growth Act of 1978 (sec. 302, P.L. 95–523) requires the joint committee to review and analyze the short-term and medium-term goals set forth in the Economic Report and to hold hearings on the Report to hear testimony from Members of Congress and other groups. Within 30 days after receipt of the Report by the Congress, standing committees with legislative jurisdiction and joint committees may submit reports to the joint committee with views and recommendations on matters within their jurisdiction. On or before each March 15, a majority of the members of the joint committee are required to submit a report to the Senate and House Budget Committees, including findings, recommendations, and appropriate analyses with respect to each of the short-term and medium-term goals set forth in the Economic Report.

§ 1109. Joint Committee on Internal Revenue Taxation.

The Joint Committee on Internal Revenue Taxation is composed of five Members of the Senate and five Members of the House. The House Members, three from the majority and two from the minority, are chosen by the Committee on Ways and Means from the membership of that committee. The joint committee investigates the operation and effects of the Federal system of internal revenue taxation. It is authorized to hold hearings at times and places it deems advisable, has subpoena powers, and

reports to the Committee on Ways and Means, and, in its discretion, directly to the House (26 U.S.C. 8001–8023).

§ 1110. Joint Committee of Congress on the Library.

The Joint Committee of Congress on the Library is composed of five Members of the Senate (the chairman and four members of the Committee on Rules and Administration) and six Members of the House. House membership consists of the chairman and four members of the Committee on House Administration (2 U.S.C. 132b).

§ 1111. Joint Committee on Printing.

The Joint Committee on Printing is composed of five Members of the Senate (the chairman and four members of the Committee on Rules and Administration) and five Members of the House (the chairman and four members of the Committee on House Administration) (44 U.S.C. 101). The committee adopts and employs measures necessary to remedy inefficiencies or waste in the public printing, binding, and distribution of Government publications. It has control of the arrangement and style of the Congressional Record (44 U.S.C. 901–910). The joint committee is directed to provide for printing in the Record the legislative program for the day, together with a list of congressional committee meetings and hearings and the place of meeting and subject matter; and to cause a brief resume of congressional activities for the previous day to be incorporated in the Record, together with an index of its contents. Such data is prepared under the supervision of the Secretary of the Senate and the Clerk of the House of Representatives, respectively.

§ 1112. Joint Congressional Committee on Inaugural Ceremonies.

The Joint Congressional Committee on Inaugural Ceremonies is established by concurrent resolution in the second session of the Congress occurring before a Presidential inauguration and reestablished at the beginning of the next Congress. It is composed of three Members of both the Senate and the House. The three House Members are appointed by the Speaker and are traditionally the Speaker, the Majority Leader, and the Minority Leader. The committee is authorized to make the necessary arrangements for the inauguration of the President-elect and Vice President-elect. (see, *e.g.*, S. Con. Res. 47, 104th Cong., Aug. 2, 1996, p. 21405; S. Con. Res. 2, 105th Cong., Jan. 7, 1997, p. 143; S. Con. Res. 89, 106th Cong., Mar. 14, 2000, p. 2720; S. Con. Res. 2, 107th Cong., Jan. 3, 2001, p. 7; S. Con. Res. 94, 108th Cong., Mar. 16, 2004, p. ——; S. Con. Res. 2, 109th Cong., Jan. 4, 2005, p. ——).

SELECT COMMITTEES

§ 1112a. Intelligence.

The The Permanent Select Committee on Intelligence is reestablished by the adoption of clause 11 of rule X each Congress.

§ 1112b. Hurricane Katrina.

In the 109th Congress the House established the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina. The resolution instructed the select committee to report its findings to the House not later than February 15, 2006, and instructed its chairman to consult with the chairman of a Senate committee conducting a parallel investigation (H. Res. 437, Sept. 15, 2005, p. ——).

For a history of select committees in the House, see House Practice, ch. 11, §§ 12, 13. For a discussion of the former Select Committees on Ethics, see § 738, *supra*; and for a discussion of the former Select Committees on Homeland Security, see § 723b, *supra*.

HOUSE AND CONGRESSIONAL OFFICES

§ 1113. House Commission on Congressional Mailing Standards.

Members may send through the mails, under their frank, certain documents and materials as provided by 39 U.S.C. 3210, subject to the limitations prescribed in rule XXIV, *supra*. The House Commission on Congressional Mailing Standards, composed of six Members of the House, provides advice in connection with the mailing of franked mail (sec. 5, P.L. 93–191).

§ 1114. House Office Building Commission.

Rooms in the House Office Buildings are assigned to Members pursuant to the law of May 28, 1908 (2 U.S.C. 2004) and pursuant to regulations of the House Office Building Commission (see regulations promulgated Oct. 7, 1996). The commission also issues regulations governing the House Office Buildings, House garages, and the Capitol Power Plant (see regulations promulgated December, 1995). The commission is composed of the Speaker and two Members of the House (traditionally the Majority and Minority Leaders) (2 U.S.C. 2001).

§ 1115. Government Accountability Office.

The preparation, utilization, and distribution (to committees and Members) of reports by the Government Accountability Office, and its authority to assign its employees to duty with congressional committees, are regulated by the Legislative Reorganization Act of 1970, §§ 231–236 (84 Stat. 1140; 31 U.S.C. 711–720). This office was formerly known as the General Accounting Office (31 U.S.C. 702 note).

§ 1116. Office of Compliance.

The Office of Compliance was established by the Congressional Accountability Act of 1995 (2 U.S.C. 1381). The office is composed of five individuals appointed jointly by the Speaker, the Majority Leader of the Senate, and the Minority Leaders of the House and the Senate. The office has regulatory, enforcement, and educational responsibilities under the Act. The office replaced the Review Panel of the Office of Fair Employment Practices at the beginning of the 105th Congress (see § 1101, *supra*). However, the review panel was reconstituted in the same form as at the end of the 104th Congress to provide for the completion of ongoing proceedings in the 105th Congress (Feb. 25, 1997, p. 2439). Section 1382 provides for a General Counsel to be appointed by the Chair of the Compliance Board to exercise the authorities of the Office of Compliance.

§ 1117. Congressional Research Service.

The organization of the Congressional Research Service of the Library of Congress and its responsibilities to assist Members and committees were provided in the Legislative Reorganization Acts of 1946 and 1970 (60 Stat. 836; 84 Stat. 1140; 2 U.S.C. 166).

§ 1118. Legislative Counsel.

The Office of the Legislative Counsel of the House of Representatives evolved from a single Legislative Drafting Service established for the Congress by the Act of February 24, 1919 (40 Stat. 1057, 1141). The currently applicable provisions of law setting forth the purpose and functions of the Office and providing for its administration are contained in title V of the Legislative Reorganization Act of 1970 (P.L. 91–510; 2 U.S.C. 281) as amended by the Legislative Branch Appropriations Act, 1972 (P.L. 92–51). As stated in section 502 of such title V, the purpose of the Office is to advise and assist the House of Representatives, and its committees and Members, in the achievement of a clear, faithful, and coherent expression of legislative policies.

§ 1119. Congressional Budget Office.

The Congressional Budget Office was established by the Congressional Budget Act of 1974 (2 U.S.C. 601). The office is headed by a director, who is appointed by the Speaker and the President pro tempore. Section 202 of the Act (2 U.S.C. 602) outlines the functions of the office, which include providing assistance to the House and Senate Committees on the Budget and Appropriations and the Senate Committee on Finance in the discharge of matters within their jurisdiction and to other committees to assist them in complying with the provisions of the Act.

§ 1120. Law Revision Counsel.

The Office of the Law Revision Counsel, to develop a codification of the laws of the United States, was authorized in the 93d Congress by the Committee Reform Amendments of 1974 (sec. 205, H. Res. 988, Oct. 8, 1974, p. 34470, made permanent law by P.L. 93–544 (2 U.S.C. 285)).

§ 1121. Technology Assessment.

The Office of Technology Assessment, to assist the Congress in indicating the beneficial and adverse impacts of the application of technology, was authorized by the Technology Assessment Act of 1971 (2 U.S.C. 472). The office received funding for 1996 to conduct an orderly shutdown (tit. I, P.L. 104–53) and has not received any funding since then.

§ 1122. Office of the Parliamentarian.

A Parliamentarian has been appointed by the Speaker in every Congress since 1927. Before 1927 the "Clerk at the Speaker's Table" performed the function of the Parliamentarian. In the 95th Congress the House formally and permanently established an Office of the Parliamentarian to be managed, supervised, and administered by a nonpartisan Parliamentarian appointed by the Speaker (H. Res. 502, Apr. 20, 1977, p. 11415, made permanent law by sec. 115 of P.L. 95–94; see 2 U.S.C. 287). The compilation and prepara-

tion of the precedents of the House of Representatives were authorized in the 93d Congress by the Committee Reform Amendments of 1974 (sec. 208, H. Res. 988, Oct. 8, 1974, p. 34470, made permanent law by P.L. 93–554, 2 U.S.C. 28a), and the printing and distribution of the precedents were authorized by Public Law 94–551 (2 U.S.C. 28b–e). See also 2 U.S.C. 28, 29.

§ 1123. Office of Floor Assistants.

At its organization the 104th Congress established an office to assist the Speaker in the management of legislative activity on the floor of the House (Sec. 223(b), H. Res. 6, 104th Cong., Jan. 4, 1995, p. 469, enacted into permanent law by the Legislative Branch Appropriations Act, 1996 (sec. 103, P.L. 104–53)).

§ 1124. Office of Interparliamentary Affairs.

This Office is responsible for responding to inquiries from, and coordinating visits with, foreign legislative bodies; providing assistance to delegations of Members on official visits to foreign nations; coordinating the activities and responsibilities of the House in connection with participation in various interparliamentary exchanges and organizations; and enabling the House to host meetings with senior government officials and other dignitaries in order to discuss matters relevant to United States relations with other nations (2 U.S.C. 130–2).

§ 1125. House Recording Studio.

The House Recording Studio was established by the Legislative Branch Appropriations Act, 1957 (2 U.S.C. 123b) and provides Members with audio and video recording services. The studio is under the direction and control of the Committee on the House Recording Studio, which consists of three members appointed by the Speaker (2 U.S.C. 123b(c)).

§ 1125a. United States Capitol Preservation Commission.

The United States Capitol Preservation Commission was established in 1988 (2 U.S.C. 2081) to provide improvements in, preservation of, and acquisitions for the Capitol and to provide works of fine art and other property for display in the Capitol. In the 106th Congress the Commission was given responsibility for the planning, engineering, design, and construction of the Capitol Visitor Center (sec. 310, Legislative Branch Appropriations Act, 2000). Membership on the Commission consists of the Speaker, the President pro tempore (co-chairmen), the chairman and vice chairman of the Joint Committee on the Library, the chairmen and ranking minority members of the Committee on Rules and Administration and the Committee on House Administration, the Majority and Minority Leaders of the House and Senate, the chairmen of the Commission on the Bicentennial of the Senate and the Commission of the House of Representatives Bicentenary, two Members of the Senate, and two Members of the House.

§ 1125b. Office of General Counsel.

The General Counsel appointed under clause 8 of rule II is authorized by law to appear in any proceeding before a State or Federal court (except the United States Supreme Court) without compliance with admission requirements of such court (2 U.S.C. 130f(a)). Furthermore, the law requires the Attorney General to notify the General Counsel of its determination not to appeal a court decision affecting the constitutionality of an Act (2 U.S.C 130f(b)).

§ 1125c. Office of Emergency Planning, Preparedness, and Operations.

This Office is responsible for mitigation and preparedness operations, crisis management and response, resource services, and recovery operations (2 U.S.C. 130i). The Speaker, in consultation with the Minority Leader, provides policy direction for, and oversight of, the Office. The Speaker may request the head of any Federal department or agency to detail to the Office, on a reimbursable basis, any of the personnel of the department or agency. The day-to-day operations of the Office are carried out by the Director, under the supervision of a Board, known as the House of Representatives Continuity of Operations Board, comprising the Clerk, the Sergeant-at-Arms, and the Chief Administrative Officer. The Clerk is the Chairman of the Board.

§ 1125d. Office of Attending Physician.

This Office was established in the 70th Congress when the House requested the Secretary of the Navy to detail a medical officer to be in attendance at the Hall of the House during sessions of the House (H. Res. 253, Dec. 5, 1928, p. ——). Currently, the Office provides primary care and emergency, environmental, and occupational health services in direct support of Members of Congress and the Supreme Court, staff, pages, visiting dignitaries, and tourists (*Office of Attending Physician in the U.S. Congress*, CRS, Dec. 12, 2001).

§ 1125e. Office of Architect of the Capitol.

This Office, which dates from 1793, operates and maintains the buildings and grounds of the Capitol complex. For a detailed explanation of the current duties and statutory evolution of the office, see *Architect of the Capitol: Appointment, Duties, and Operations*, CRS, March 17, 2005.

EARLY ORGANIZATION OF THE HOUSE

[FROM THE COMMITTEE REFORM AMENDMENTS OF 1974, MADE PERMANENT LAW IN 2 U.S.C. 29a]

§ 1126. December caucuses.

(a)(1) The majority leader or minority leader of the House of Representatives after consultation with the Speaker may at any time during any even-numbered year call a caucus or conference, to begin on or after the first day of December and conclude on or before the twentieth day of December in such year and to be attended by all incumbent Members of his or her political party who have been reelected to the ensuing Congress and all other Members-elect of such party, for the purpose of taking all steps necessary to achieve the prompt organization of the Members and Members-elect of such party for the ensuing Congress.

(2) If the majority leader or minority leader calls an organizational caucus or conference under paragraph (1), he or she shall file with the Clerk of the House a written notice designating the date upon which the caucus or conference is to convene. As soon as possible after the election of Members to the ensuing Congress, the Clerk shall furnish each Member-elect of the party involved with appropriate written notification of the caucus or conference.

(3) If a vacancy occurs in the office of majority leader or minority leader during any even-numbered year (and has not been filled), the chairman of the caucus or conference of the party involved for the current Congress may call an organizational caucus or conference under paragraph (1) by filing written notice thereof as provided by paragraph (2).

(b)(1)(A) Each Member-elect (other than an incumbent Member reelected to the ensuing Congress) who attends a caucus or conference called under subsection (a), and each incumbent Member reelected to the ensuing Congress who attends any such caucus or conference convening after the adjournment sine die of the Congress in the year involved, shall be paid for one round trip between his or her place

of residence in the district which he or she represents and Washington, District of Columbia, for the purpose of attending such caucus or conference. Payment shall be made through the issuance of a transportation request form to each such Member-elect or incumbent Member by the Finance Office of the House before such caucus or conference.

(B) Each Member-elect (other than an incumbent Member reelected to the ensuing Congress) who attends a caucus or conference called under subsection (a) shall in addition be reimbursed on a per diem or other basis for expenses incurred in connection with his or her attendance at such caucus or conference for a period not to exceed the shorter of the following—

(i) the period beginning with the day before the designated date upon which such caucus or conference is to convene and ending with the day after the date of the final adjournment of such caucus or conference; or

(ii) fourteen days.

(2) Payments and reimbursements to Members-elect under paragraph (1) shall be made as provided (with respect to Members) in the regulations prescribed by the Committee on House Administration with respect to travel and other expenses of committees and Members. Reimbursements shall be paid on special voucher forms prescribed by the Committee on House Administration.

(c) The contingent fund of the House is made available to carry out the purposes of this section.

[FROM H. RES. 10, 94TH CONGRESS, MADE PERMANENT LAW IN 2 U.S.C. 29a]

Resolved, That (a) each Member-elect (other than an incumbent Member reelected to the ensuing Congress) who attends a caucus or conference called under section 202(a) of House Resolution 988, 93d Congress, and each incumbent Member reelected to the ensuing Congress who attends any such caucus or conference convening after the adjournment sine die of the Congress in the year involved, shall be entitled to designate one staff person to be paid for one round trip between that person's place of residence, provided such place of residence is in the district which the Member-elect or incumbent Member represents, and Washington, District of Columbia, for the purpose of accompanying that Member-elect or incumbent Member to such caucus or conference.

(b) Each Member-elect (other than an incumbent Member reelected to the ensuing Congress) who attends a caucus or conference called under such section 202(a) shall be entitled to designate one staff person who shall in addition be reimbursed on a per diem or other basis for expenses incurred in accompanying the Member-elect at the time of such caucus or conference for a period not to exceed the shorter of the following—

(i) the period beginning with the day before the designated date upon which such caucus or conference is to convene and ending with the day after the date of the final adjournment of such caucus or conference; or

(ii) fourteen days.

SEC. 2. (a) Payments and reimbursements to staff persons under the first section of this resolution shall be made as provided (with respect to staff) in the regulations prescribed by the Committee on House Administration with respect to travel and other expenses of staff. Reimbursements shall be paid on special voucher forms prescribed by the Committee on House Administration.

(b) Additional funds, if any, for staff allowances and office space for use by Members-elect (other than an incumbent Member reelected to the ensuing Congress) shall be authorized by the Committee on House Administration.

In recent practice, the House has adopted resolutions providing for the convening of an organizational caucus or conference in November (*e.g.*, H. Res. 666, 106th Cong., Nov. 3, 2000, p. 25993; H. Res. 590, 107th Cong., Oct. 16, 2002, p. ——; H. Res. 824, 108th Cong., Oct. 6, 2004, p. ——).

CONGRESSIONAL BUDGET ACT
BUDGET ENFORCEMENT ACT

CONGRESSIONAL BUDGET ACT

EXCERPTS RELATING TO LEGISLATIVE PROCEDURE FROM THE CONGRESSIONAL BUDGET ACT OF 1974 (2 U.S.C. 601 et seq.)

DECLARATION OF PURPOSES

SEC. 2. The Congress declares that it is essential—

(1) to assure effective congressional control over the budgetary process;

(2) to provide for the congressional determination each year of the appropriate level of Federal revenues and expenditures;

(3) to provide a system of impoundment control;

(4) to establish national budget priorities; and

(5) to provide for the furnishing of information by the executive branch in a manner that will assist the Congress in discharging its duties.

DEFINITIONS

SEC. 3. IN GENERAL.—For purposes of this Act—

(1) The terms "budget outlays" and "outlays" mean, with respect to any fiscal year, expenditures and net lending of funds under budget authority during such year.

(2) BUDGET AUTHORITY AND NEW BUDGET AUTHORITY.—

(A) IN GENERAL.—The term "budget authority" means the authority provided by Federal law to incur financial obligations, as follows:

(i) provisions of law that make funds available for obligation and expenditure (other than borrowing authority), including the authority to obligate and expend the proceeds of offsetting receipts and collections;

(ii) borrowing authority, which means authority granted to a Federal entity to borrow and obligate and expend the borrowed funds, including through the issuance of promissory notes or other monetary credits;

(iii) contract authority, which means the making of funds available for obligation but not for expenditure; and

(iv) offsetting receipts and collections as negative budget authority, and the reduction thereof as positive budget authority.

(B) LIMITATIONS ON BUDGET AUTHORITY.—With respect to the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account, any amount that is precluded from obligation in a fiscal year by a provision of law (such as a limitation or a benefit formula) shall not be budget authority in that year.

(C) NEW BUDGET AUTHORITY.—The term "new budget authority" means, with respect to a fiscal year—

(i) budget authority that first becomes available for obligation in that year, including budget authority that becomes available in that year as a result of a reappropriation; or

(ii) a change in any account in the availability of unobligated balances of budget authority carried over from a prior year, resulting from a provision of law first effective in that year;

and includes a change in the estimated level of new budget authority provided in indefinite amounts by existing law.

(3) The term "tax expenditures" means those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability, and the term "tax expenditures budget" means an enumeration of such tax expenditures.

(4) The term "concurrent resolution on the budget" means—

(A) a concurrent resolution setting forth the congressional budget for the United States Government for a fiscal year as provided in section 301; and

(B) any other concurrent resolution revising the congressional budget for the United States Government for a fiscal year as described in section 304.

(5) The term "appropriation Act" means an Act referred to in section 105 of title 1, United States Code.

(6) The term "deficit" means, with respect to a fiscal year, the amount by which outlays exceeds receipts during that year.

(7) The term "surplus" means, with respect to a fiscal year, the amount by which receipts exceeds outlays during that year.

(8) The term "government-sponsored enterprise" means a corporate entity created by a law of the United States that—

(A)(i) has a Federal charter authorized by law;

(ii) is privately owned, as evidenced by capital stock owned by private entities or individuals;

(iii) is under the direction of a board of directors, a majority of which is elected by private owners;

(iv) is a financial institution with power to—

(I) make loans or loan guarantees for limited purposes such as to provide credit for specific borrowers or one sector; and

(II) raise funds by borrowing (which does not carry the full faith and credit of the Federal Government) or to guarantee the debt of others in unlimited amounts; and

(B)(i) does not exercise powers that are reserved to the Government as sovereign (such as the power to tax or to regulate interstate commerce);

(ii) does not have the power to commit the Government financially (but it may be a recipient of a loan guarantee commitment made by the Government); and

(iii) has employees whose salaries and expenses are paid by the enterprise and are not Federal employees subject to title 5 of the United States Code.

(9) The term "entitlement authority" means—

(A) the authority to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing that authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by that law; and

(B) the food stamp program.

(10) The term "credit authority" means authority to incur direct loan obligations or to incur primary loan guarantee commitments.

The Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) modified paragraphs (2) and (6) of this section and added new paragraphs (7) and (8). Two separate sections of the 1990 Act amended paragraph (2). Section 13201 added a new sentence at the end of the paragraph. Section 13211 rewrote the paragraph entirely, effective for fiscal years after 1991. The text depicted here attempts to harmonize the two; but see 2 U.S.C. 622(2). The Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II of P.L. 99–177) added paragraphs (9) and (10). The Budget Enforcement Act of 1997 (sec. 10101 of P.L. 105–33) amended the definition of "entitlement authority" in paragraph (9) in conjunction with amendments to section 401.

Amounts of liquidating cash provided in the annual bill making appropriations for the Department of Transportation are not new budget authority within the meaning of this section, but are merely funds to liquidate contractual obligations previously incurred pursuant to new discretionary contract authority previously reported from and scored against allocations to the Committee on Public Works and Transportation (now Transportation and Infrastructure) as the authority to enter into obligations that will result in immediate or future outlays (July 30, 1986, p. 18154).

* * * * *

TITLE III—CONGRESSIONAL BUDGET PROCESS

TIMETABLE

SEC. 300. The timetable with respect to the congressional budget process for any fiscal year is as follows:

On or before:	Action to be completed:
First Monday in February	President submits his budget.
February 15	Congressional Budget Office submits report to Budget Committees.
Not later than 6 weeks after President submits budget.	Committees submit views and estimates to Budget Committees.
April 1	Senate Budget Committee reports concurrent resolution on the budget.
April 15	Congress completes action on concurrent resolution on the budget.
May 15	Annual appropriation bills may be considered in the House.
June 10	House Appropriations Committee reports last annual appropriation bill.

On or before:	Action to be completed:
June 15	Congress completes action on reconciliation legislation.
June 30	House completes action on annual appropriation bills.
October 1	Fiscal year begins.

The date for committees' submissions of views and estimates was amended by the Budget Enforcement Act of 1997 (sec. 10104, P.L. 105–33).

ANNUAL ADOPTION OF CONCURRENT RESOLUTION ON THE BUDGET

SEC. 301. (a) CONTENT OF CONCURRENT RESOLUTION ON THE BUDGET.—On or before April 15 of each year, the Congress shall complete action on a concurrent resolution on the budget for the fiscal year beginning on October 1 of such year. The concurrent resolution shall set forth appropriate levels for the fiscal year beginning on October 1 of such year and for at least each of the 4 ensuing fiscal years for the following—

(1) totals of new budget authority and outlays;

(2) total Federal revenues and the amount, if any, by which the aggregate level of Federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees;

(3) the surplus or deficit in the budget;

(4) new budget authority and outlays for each major functional category, based on allocations of the total levels set forth pursuant to paragraph (1);

(5) the public debt;

(6) for purposes of Senate enforcement under this title, outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act for the fiscal year of the resolution and for each of the 4 succeeding fiscal years; and

(7) for purposes of Senate enforcement under this title, revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986) for the fiscal year of the resolution and for each of the 4 succeeding fiscal years.

The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program established under title II of the Social

Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.

(b) ADDITIONAL MATTERS IN CONCURRENT RESOLUTION.—The concurrent resolution on the budget may—

(1) set forth, if required by subsection (f), the calendar year in which, in the opinion of the Congress, the goals for reducing unemployment set forth in section 4(b) of the Employment Act of 1946 should be achieved;

(2) include reconciliation directives described in section 310;

(3) require a procedure under which all or certain bills or resolutions providing new budget authority or new entitlement authority for such fiscal year shall not be enrolled until the Congress has completed action on any reconciliation bill or reconciliation resolution or both required by such concurrent resolution to be reported in accordance with section 310(b);

(4) set forth such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out the purposes of this Act;

(5) include a heading entitled "Debt Increase as Measure of Deficit" in which the concurrent resolution shall set forth the amounts by which the debt subject to limit (in section 3101 of title 31 of the United States Code) has increased or would increase in each of the relevant fiscal years;

(6) include a heading entitled "Display of Federal Retirement Trust Fund Balances" in which the concurrent resolution shall set forth the balances of the Federal retirement trust funds;

(7) set forth procedures in the Senate whereby committee allocations, aggregates, and other levels can be revised for legislation if that legislation would not increase the deficit, or would not increase the deficit when taken with other legislation enacted after the adoption of the resolution, for the first fiscal year or the total period of fiscal years covered by the resolution;

(8) set forth procedures to effectuate pay-as-you-go in the House of Representatives; and

(9) set forth direct loan obligation and primary loan guarantee commitment levels.

The Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) added paragraphs (6) and (7) and a new last sentence to subsection (a), added paragraphs (5)–(8) to subsection (b), and added former section 606 (repealed by the Budget Enforcement Act of 1997 (sec. 10118, P.L. 105–33)), requiring that a concurrent resolution on the budget set forth appropriate levels for five fiscal years for the matters described in subsection (a). Title III had previously been comprehensively amended by the Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177). Sections 301(a) and 301(b) were amended by the Budget Enforcement Act of 1997 (sec. 10105, P.L. 105–33) to extend the requirement that the term of budget resolutions be at least five years and to eliminate the requirement that budget resolutions contain direct loan and loan guarantee levels.

The prescribed content of a concurrent resolution on the budget under the prior version of section 301 evolved over time. Pursuant to the authority to include other "appropriate procedures" under then section 301(b)(2) of the Budget Act, the first concurrent resolution on the budget for fiscal year 1981 (which also contained the third concurrent resolution on the budget for fiscal year 1980, budget targets for fiscal years 1981 and 1983, and other related matters) contained new provisions directing House and Senate committees to report to their respective Budget Committees reconciliation legislation reducing spending for fiscal year 1981 (H. Con. Res. 307, 96th Cong.). Under rule XXVII the final adoption of that concurrent resolution has the effect of triggering the automatic engrossment of a joint resolution setting the public debt limit (see § 1104, *supra*). The first concurrent resolution on the budget for fiscal year 1982, in addition to other new "appropriate procedures," included in its reconciliation instructions directions to several House and Senate committees to report reductions in both entitlement spending authority and discretionary authorization programs sufficient to reduce budget authority and outlays separately for each of three fiscal years, and included a "deferred enrollment" procedure relating to bills containing new budget authority and entitlement spending authority in excess of allocations to committees (H. Con. Res. 115, 97th Cong.). The first concurrent resolution on the budget for fiscal year 1983, in addition to other new "appropriate procedures," included a binding Federal credit budget for two fiscal years, containing not only aggregate and functional category targets for new direct loan obligations and new primary and secondary loan guarantee commitments, but also (1) prohibiting consideration of bills authorizing new loan obligations or new loan guarantee commitments not subject to the appropriations process with certain exceptions (now section 402(a)), and (2) establishing a ceiling on total new direct loan obligations and new primary or secondary loan guarantee commitments for the ensuing fiscal year upon adoption of the second concurrent resolution on the budget for that year (similar to the section 311 ceiling for direct budget authority). Also included was a prohibition against consideration in either House of measures providing new budget or entitlement authority until the reporting committee filed a report in the House con-

cerning its section 302(b) allocation (now section 302(c)) and a direction that if a second concurrent resolution on the budget for fiscal 1983 was not finally adopted by October 1, then the aggregate amounts in that first concurrent resolution would become the spending ceilings and revenue floor for the purposes of section 311 (S. Con. Res. 92, 97th Cong.). The first concurrent resolution on the budget for fiscal year 1984 likewise contained the latter provision, but also provided that a point of order under section 311 of the Budget Act would not apply if spending contained in a bill remained within the reporting committee's discretionary allocation under section 302 (a similar exception is now section 311(b)). The 1984 resolution also contained a new provision reserving specific amounts of budget authority and outlays for subsequent allocation to committees by the Budget Committee (H. Con. Res. 91, 98th Cong.; see also Mar. 6, 1984, p. 4621, for a statement by Speaker O'Neill describing the operation and effect of the latter provision). The first concurrent resolution on the budget for fiscal year 1985 included a similar provision that it be treated as the second budget resolution for that year on October 1, 1984, for the purposes of the section 311 spending ceilings and revenue levels, but that a point of order not apply where the committee in question had not exceeded its section 302(a) allocations. The resolution also provided that legislation providing budget authority, entitlement authority, or credit authority not be considered until the reporting committee filed the requisite report concerning its section 302(b) allocations (H. Con. Res. 280, 98th Cong.).

In 1986, the first concurrent resolution on the budget since the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177), the recommended deficit level for the ensuing fiscal year 1987 was below the maximum deficit amount as then specified, thus permitting consideration of the conference reported amendment in disagreement pursuant to then section 301(i) without a waiver by three-fifths vote in either House (June 26, 1986, p. 15740). That concurrent resolution also contained a "contingency fund" for deficit reduction and unmet critical needs, additional general revenue-sharing funding beyond levels contained therein if deficits were not increased and authorization enacted, and a provision authorizing a report to be filed by the chairman of the House Budget Committee by a date certain to be printed and to constitute allocations of new budget authority and outlays required by section 302(a) (where the conferees did not have time to prepare allocations prior to filing of the conference report).

The concurrent resolution on the budget for fiscal years 1988–1990 contained a provision permitting the first concurrent resolution to "become" a second binding concurrent resolution only at the beginning of the fiscal year. It also contained a provision encouraging sales of Government assets to non-Government buyers but providing that amounts realized not be treated as revenues, receipts, or negative outlays for purposes of specified budget enforcement and scorekeeping procedures (H. Con. Res. 93, 100th Cong.). The concurrent resolutions on the budget for fiscal years 1989–

1991 and for fiscal years 1990–1992, respectively, each contained a section stating that, for purposes of allocations and points of order under section 302, amounts realized from asset sales and prepayments of loans would not be allocated or scored as affecting budget authority or outlays (H. Con. Res. 268, 100th Cong.; H. Con. Res. 106, 101st Cong.). The concurrent resolution on the budget for fiscal years 1989–1991 also contained a section providing for a subsequent allocation of budget authority and outlays for fiscal year 1989 upon the reporting by appropriate committees of an anti-drug initiative (H. Con. Res. 268, 101st Cong.). The concurrent resolution on the budget for fiscal years 1995–1999 included provisions (1) adjusting allocations of budget authority, new entitlement authority, and outlays and adjusting total levels of budget authority, outlays, and revenues for health care reform in the House (within a maximum aggregate deficit for fiscal years 1995–1999), and (2) adjusting committee allocations, budget aggregates, and the maximum deficit amount contingent on certain IRS compliance initiatives (H. Con. Res. 218, 103d Cong.). The concurrent resolution on the budget for fiscal years 1996–2002 established a budget surplus allowance contemplating tax reductions only as part of a legislative package producing a balanced budget by fiscal year 2002; corrected a disparity that had arisen under the Federal Credit Reform Act of 1990 for the scoring of student loans; and established a process for certifying a balanced budget before the House could consider a reconciliation bill reducing taxes (H. Con. Res. 67, 104th Cong.).

Concurrent resolutions on the budget have included reconciliation instructions that contemplated reductions in revenues (*e.g.*, H. Con. Res. 95, 109th Cong.), including one that contemplated two bills reducing revenues (H. Con. Res. 178, 104th Cong.).

The concurrent resolutions on the budget for fiscal years 2000 and 2001 included a point of order against consideration in the House or Senate of a concurrent resolution on the budget for the next fiscal year, or any amendment thereto or conference report thereon, that sets forth a deficit for any fiscal year (as determined by the Budget Committee) (sec. 201, H. Con. Res. 68, 106th Cong.; sec. 201, H. Con. Res. 290, 106th Cong.).

The concurrent resolution on the budget for fiscal year 2001 also included points of order against consideration in the House of a reported bill or joint resolution, or any amendment thereto or conference report thereon: (1) that would cause a surplus for fiscal year 2001 to be less than the level established in the resolution; and (2) that, until January 1, 2001, contains a directed scorekeeping provision (secs. 202, 203, H. Con. Res. 290, 106th Cong.).

Recent budget resolutions have established a point of order against a measure that would cause the total level of discretionary advance appropriations to exceed a set amount (secs. 202, 203, H. Con. Res. 290, 106th Cong.; sec. 201, H. Con. Res. 83, 107th Cong.; (sec. 301, H. Con. Res. 353, 107th Cong., deemed in place by H. Res. 428, 107th Cong., May 22, 2002, p. ——, and by sec. 3(a)(4), H. Res. 5, 108th Cong., Jan. 7, 2003, p. ——;

sec. 501, H. Con. Res. 95, 108th Cong.; sec. 401, S. Con. Res. 95, 108th Cong., May 19, 2004, deemed in place by H. Res. 649, 108th Cong., May 19, 2004, p. ——, and by sec. 3(a)(4), H. Res. 5, 109th Cong., Jan. 4, 2005, p. ——; sec. 401, H. Con. Res. 95, 109th Cong.).

Recent budget resolutions have provided that new budget authority, new entitlement authority, outlays, and receipts designated as an emergency in bills, joint resolutions, amendments, or conference reports are not cognizable under specified sections of title III and IV of the Budget Act. The budget resolutions also have required to be included in a committee report, joint statement of managers, or the Congressional Record an explanation of how an emergency item meets certain criteria (sec. 502, H. Con. Res. 95, 108th Cong.; sec. 402, S. Con. Res. 95, 108th Cong., May 19, 2004, deemed in place by H. Res. 649, 108th Cong., May 19, 2004, p. ——, and by sec. 3(a)(4), H. Res. 5, 109th Cong., Jan. 4, 2005, p. ——; sec. 402, H. Con. Res. 95, 109th Cong.). The concurrent resolution on the budget for fiscal year 2005 also provided that new budget authority, new entitlement authority, and outlays contained in a supplemental appropriation bill for fiscal year 2005 for overseas contingency operations related to the war or terrorism are not cognizable under sections 302, 303 and 401 of the Budget Act (sec. 403, S. Con. Res. 95, 108th Cong., May 19, 2004, deemed in place by H. Res. 649, 108th Cong., May 19, 2004, p. ——, and by sec. 3(a)(4), H. Res. 5, 109th Cong., Jan. 4, 2005, p. ——).

The concurrent resolution on the budget for fiscal year 2006 included a provision permitting the chairman of the Budget Committee to make adjustments to levels and allocations to conform to changes in concepts or definitions and a provision providing for a section 302(b) suballocation to the full Appropriations Committee for appropriations for the Legislative Branch (secs. 406, 410, H. Con. Res. 95, 109th Cong.).

(c) CONSIDERATION OF PROCEDURES OR MATTERS WHICH HAVE THE EFFECT OF CHANGING ANY RULE OF THE HOUSE OF REPRESENTATIVES.—If the Committee on the Budget of the House of Representatives reports any concurrent resolution on the budget which includes any procedure or matter which has the effect of changing any rule of the House of Representatives, such concurrent resolution shall then be referred to the Committee on Rules with instructions to report it within five calendar days (not counting any day on which the House is not in session). The Committee on Rules shall have jurisdiction to report any concurrent resolution referred to it under this paragraph with an amendment or amendments changing or striking out any such procedure or matter.

(d) VIEWS AND ESTIMATES OF OTHER COMMITTEES.—Within 6 weeks after the President submits a budget under section 1105(a) of title 31, United States Code, or at such time as may be requested by the Committee on

the Budget, each committee of the House of Representatives having legislative jurisdiction shall submit to the Committee on the Budget of the House and each committee of the Senate having legislative jurisdiction shall submit to the Committee on the Budget of the Senate its views and estimates (as determined by the committee making such submission) with respect to all matters set forth in subsections (a) and (b) which relate to matters within the jurisdiction or functions of such committee. The Joint Economic Committee shall submit to the Committees on the Budget of both Houses its recommendations as to the fiscal policy appropriate to the goals of the Employment Act of 1946. Any other committee of the House of Representatives or the Senate may submit to the Committee on the Budget of its House, and any joint committee of the Congress may submit to the Committees on the Budget of both Houses, its views and estimates with respect to all matters set forth in subsections (a) and (b) which relate to matters within its jurisdiction or functions. Any Committee of the House of Representatives or the Senate that anticipates that the committee will consider any proposed legislation establishing, amending, or reauthorizing any Federal program likely to have a significant budgetary impact on any State, local, or tribal government, or likely to have a significant financial impact on the private sector, including any legislative proposal submitted by the executive branch likely to have such a budgetary or financial impact, shall include its views and estimates on that proposal to the Committee on the Budget of the applicable House.

Section 301(d) was amended by the Budget Enforcement Act of 1997 (sec. 10105, P.L. 105–33) to permit the Budget Committees to set an alternate deadline for submission of committee views and estimates.

(e) HEARINGS AND REPORT.—

(1) IN GENERAL.—In developing the concurrent resolution on the budget referred to in subsection (a) for each fiscal year, the Committee on the Budget of each House shall hold hearings and shall receive testimony from Members of Congress and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as the committee deems desirable. Each of the recommendations as to short-term and medium-term goals set forth in the report submitted by the members of the Joint Economic Committee under subsection (d) may be consid-

ered by the Committee on the Budget of each House as part of its consideration of such concurrent resolution, and its report may reflect its views thereon, including its views on how the estimates of revenues and levels of budget authority and outlays set forth in such concurrent resolution are designed to achieve any goals it is recommending.

(2) REQUIRED CONTENTS OF REPORT.—The report accompanying the resolution shall include—

(A) a comparison of the levels of total new budget authority, total outlays, total revenues, and the surplus or deficit for each fiscal year set forth in the resolution with those requested in the budget submitted by the President;

(B) with respect to each major functional category, an estimate of total new budget authority and total outlays, with the estimates divided between discretionary and mandatory amounts;

(C) the economic assumptions that underlie each of the matters set forth in the resolution and any alternative economic assumptions and objectives the committee considered;

(D) information, data, and comparisons indicating the manner in which, and the basis on which, the committee determined each of the matters set forth in the resolution;

(E) the estimated levels of tax expenditures (the tax expenditures budget) by major items and functional categories for the President's budget and in the resolution; and

(F) allocations described in section 302(a).

(3) ADDITIONAL CONTENTS OF REPORT.—The report accompanying the resolution may include—

(A) a statement of any significant changes in the proposed levels of Federal assistance to State and local governments;

(B) an allocation of the level of Federal revenues recommended in the resolution among the major sources of such revenues;

(C) information, data, and comparisons on the share of total Federal budget outlays and of gross domestic product devoted to investment in the budget submitted by the President and in the resolution;

(D) the assumed levels of budget authority and outlays for public buildings, with a division be-

tween amounts for construction and repair and for rental payments; and

(E) other matters, relating to the budget and to fiscal policy, that the committee deems appropriate.

The contents required of a report accompanying a budget resolution were modified by the Budget Enforcement Act of 1997 (sec. 10105, P.L. 105–33).

(f) ACHIEVEMENT OF GOALS FOR REDUCING UNEMPLOYMENT.—

(1) If, pursuant to section 4(c) of the Employment Act of 1946, the President recommends in the Economic Report that the goals for reducing unemployment set forth in section 4(b) of such Act be achieved in a year after the close of the five-year period prescribed by such subsection, the concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

(2) After the Congress has expressed its opinion pursuant to paragraph (1) as to the year in which the goals for reducing unemployment set forth in section 4(b) of the Employment Act of 1946 can be achieved, if, pursuant to section 4(e) of such Act, the President recommends in the Economic Report that such goals be achieved in a year which is different from the year in which the Congress has expressed its opinion that such goals should be achieved, either in its action pursuant to paragraph (1) or in its most recent action pursuant to this paragraph, the concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

(3) It shall be in order to amend the provision of such resolution setting forth such year only if the amendment thereto also proposes to alter the estimates, amounts, and levels (as described in subsection (a)) set forth in such resolution in germane fashion in order to be consistent with the economic goals (as described in sections 3(a)(2) and (4)(b) of the Employment Act of 1946) which such amendment proposes can be achieved by the year specified in such amendment.

(g) ECONOMIC ASSUMPTIONS.—

(1) It shall not be in order in the Senate to consider any concurrent resolution on the budget for a fiscal year, or any amendment thereto, or any conference report thereon, that sets forth amounts and levels that are determined on the basis or more than one set of economic and technical assumptions.

(2) The joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall set forth the common economic assumptions upon which such joint statement and conference report are based, or upon which any amendment contained in the joint explanatory statement to be proposed by the conferees in the case of technical disagreement, is based.

(3) Subject to periodic reestimation based on changed economic conditions or technical estimates, determinations under titles III and IV of the Congressional Budget Act of 1974 shall be based upon such common economic and technical assumptions.

(h) BUDGET COMMITTEE'S CONSULTATION WITH COMMITTEES.—The Committee on the Budget of the House of Representatives shall consult with the committees of its House having legislative jurisdiction during the preparation, consideration, and enforcement of the concurrent resolution on the budget with respect to all matters which relate to the jurisdiction or functions of such committees.

(i) SOCIAL SECURITY POINT OF ORDER.—It shall not be in order in the Senate to consider any concurrent resolution on the budget (or amendment, motion, or conference report on the resolution) that would decrease the excess of social security revenues over social security outlays in any of the fiscal years covered by the concurrent resolution. No change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.

The Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177) modified this portion of section 301 by: (1) inserting a new subsection on referral of budget resolutions to the Rules Committee; (2) amending and redesignating existing subsections (c), (d), and (e) as (d), (e), and (f), respectively; and (3) adding new subsections (g) (which was amended by Public Law 100–119) and (h). It also added a former subsection (i), which precluded consideration of a concurrent resolution on the budget exceeding the pertinent maximum deficit amount absent a three-fifths vote. That point of order was amended by Public Law 100–

119 and was eliminated by the Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508). The Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418) added paragraph (10) to subsection (e), effective only for fiscal years 1989 through 1992. Previously, the Full Employment and Balanced Growth Act of 1978 (P.L. 95–523) amended this section by: (1) adding a new paragraph (6) to subsection (a) and redesignating the succeeding paragraph (both of which were later repealed by P.L. 99–177); (2) adding a new second sentence to subsection (c) (now contained in subsection (d)); and (3) adding a new subsection (e) (now designated as (f)), relating to the review of the Economic Report as part of the congressional budget process, and allowing the inclusion in the budget resolution of a timetable for achieving unemployment goals under the Employment Act of 1946. The last sentence of subsection (d) was added by the Unfunded Mandates Reform Act of 1995 (sec. 102(2), P.L. 104–4; 109 Stat. 62). The Social Security point of order contained in paragraph (i) was added by the Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) and later expanded by the Budget Enforcement Act of 1997 (sec. 10105, P.L. 105–33).

The House and Senate completed final action on the first concurrent resolution on the budget considered under the Congressional Budget Act by adopting a conference report thereon on May 14, 1975 (p. 14329). That concurrent resolution contained aggregate figures only for revenues, budget authority, budget outlays, deficit and public debt, since the Budget Committee had not implemented the functional categories provisions of the Act for fiscal year 1976.

On May 13, 1976, the House and Senate completed final action on the first concurrent resolution for fiscal year 1977, the first year of full implementation of title III of the Congressional Budget Act (p. 13776).

COMMITTEE ALLOCATIONS

SEC. 302. (a) COMMITTEE SPENDING ALLOCATIONS.—

(1) ALLOCATION AMONG COMMITTEES.—The joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an allocation, consistent with the resolution recommended in the conference report, of the levels for the first fiscal year of the resolution, for at least each of the ensuing 4 fiscal years, and a total for that period of fiscal years (except in the case of the Committee on Appropriations only for the fiscal year of that resolution) of—

(A) total new budget authority; and

(B) total outlays;

among each committee of the House of Representatives or the Senate that has jurisdiction over legislation providing or creating such amounts.

(2) NO DOUBLE COUNTING.—In the House of Representatives, any item allocated to one committee may not be allocated to another committee.

(3) FURTHER DIVISION OF AMOUNTS.—

(A) IN THE SENATE.—In the Senate, the amount allocated to the Committee on Appropriations shall be further divided among the categories specified in section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 and shall not exceed the limits for each category set forth in section 251(c) of that Act.

(B) IN THE HOUSE.—In the House of Representatives, the amounts allocated to each committee for each fiscal year, other than the Committee on Appropriations, shall be further divided between amounts provided or required by law on the date of filing of that conference report and amounts not so provided or required. The amounts allocated to the Committee on Appropriations shall be further divided—

(i) between discretionary and mandatory amounts or programs, as appropriate; and

(ii) consistent with the categories specified in section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(4) AMOUNTS NOT ALLOCATED.—In the House of Representatives or the Senate, if a committee receives no allocation of new budget authority or outlays, that committee shall be deemed to have received an allocation equal to zero for new budget authority or outlays.

(5) ADJUSTING ALLOCATION OF DISCRETIONARY SPENDING IN THE HOUSE OF REPRESENTATIVES.—(A) If a concurrent resolution on the budget is not adopted by April 15, the chairman of the Committee on the Budget of the House of Representatives shall submit to the House, as soon as practicable, an allocation under paragraph (1) to the Committee on Appropriations consistent with the discretionary spending levels in the most recently agreed to concurrent resolution on the budget for the appropriate fiscal year covered by that resolution.

(B) As soon as practicable after an allocation under paragraph (1) is submitted under this section, the Committee on Appropriations shall make suballocations and report those suballocations to the House of Representatives.

(b) SUBALLOCATIONS BY APPROPRIATIONS COMMITTEES.—As soon as practicable after a concurrent resolution on the budget is agreed to, the Committee on Appropriations of each House (after consulting with the Committee on Appropriations of the other House) shall suballocate each amount allocated to it for the budget year under subsection (a) among its subcommittees. Each Committee on Appropriations shall promptly report to its House suballocations made or revised under this subsection. The Committee on Appropriations of the House of Representatives shall further divide among its subcommittees the divisions made under subsection (a)(3)(B) and promptly report those divisions to the House.

(c) POINT OF ORDER.—After the Committee on Appropriations has received an allocation pursuant to subsection (a) for a fiscal year, it shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report within the jurisdiction of that committee providing new budget authority for that fiscal year, until that committee makes the suballocations required by subsection (b).

(d) SUBSEQUENT CONCURRENT RESOLUTIONS.—In the case of a concurrent resolution on the budget referred to in section 304, the allocations under subsection (a) and the subdivisions under subsection (b) shall be required only to the extent necessary to take into account revisions made in the most recently agreed to concurrent resolution on the budget.

(e) ALTERATION OF ALLOCATIONS.—At any time after a committee reports the allocations required to be made under subsection (b), such committee may report to its House an alteration of such allocations. Any alteration of such allocations must be consistent with any actions already taken by its House on legislation within the committee's jurisdiction.

(f) LEGISLATION SUBJECT TO POINT OF ORDER.—

(1) IN THE HOUSE OF REPRESENTATIVES.—After the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in the House of Representatives to consider any bill, joint resolution, or amendment providing new budget authority for any fiscal year, or any conference report on any such bill or joint resolution, if—

(A) the enactment of such bill or resolution as reported;

(B) the adoption and enactment of such amendment; or

(C) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the applicable allocation of new budget authority made under subsection (a) or (b) for the first fiscal year or the total of fiscal years to be exceeded.

(2) IN THE SENATE.—After a concurrent resolution on the budget is agreed to, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause—

(A) in the case of any committee except the Committee on Appropriations, the applicable allocation of new budget authority or outlays under subsection (a) for the first fiscal year or the total of fiscal years to be exceeded; or

(B) in the case of the Committee on Appropriations, the applicable suballocation of new budget authority or outlays under subsection (b) to be exceeded.

(g) PAY-AS-YOU-GO EXCEPTION IN THE HOUSE.—

(1) IN GENERAL.—(A) Subsection (f)(1) and, after April 15, section 303(a) shall not apply to any bill or joint resolution, as reported, amendment thereto, or conference report thereon if, for each fiscal year covered by the most recently agreed to concurrent resolution on the budget—

(i) the enactment of that bill or resolution as reported;

(ii) the adoption and enactment of that amendment; or

(iii) the enactment of that bill or resolution in the form recommended in that conference report,

would not increase the deficit, and, if the sum of any revenue increases provided in legislation already enacted during the current session (when added to revenue increases, if any, in excess of any outlay increase provided by the legislation proposed for consideration) is at least as great as the sum of the amount, if any, by which the aggregate level of Federal revenues should be increased as set forth in that concurrent resolution and the amount, if any, by which revenues are to be increased pursuant to pay-as-you-go procedures under section 301(b)(8), if included in that concurrent resolution.

(B) Section 311(a), as that section applies to revenues, shall not apply to any bill, joint resolution, amendment thereto, or conference report thereon if, for each fiscal year covered by the most recently agreed to concurrent resolution on the budget—

(i) the enactment of that bill or resolution as reported;

(ii) the adoption and enactment of that amendment; or

(iii) the enactment of that bill or resolution in the form recommended in that conference report,

would not increase the deficit, and, if the sum of any outlay reductions provided in legislation already enacted during the current session (when added to outlay reductions, if any, in excess of any revenue reduction provided by the legislation proposed for consideration) is at least as great as the sum of the amount, if any, by which the aggregate level of Federal outlays should be reduced as required by that concurrent resolution and the amount, if any, by which outlays are to be reduced pursuant to pay-as-you-go procedures under section 301(b)(8), if included in that concurrent resolution.

(2) REVISED ALLOCATIONS.—(A) As soon as practicable after Congress agrees to a bill or joint resolution that would have been subject to a point of order under subsection (f)(1) but for the exception provided in paragraph (1)(A) or would have been subject to a point of order under section 311(a) but for the exception provided in paragraph (1)(B), the chairman of the Committee on the Budget of the House of Representatives shall file with the House appropriately revised allocations under section 302(a) and revised functional levels and budget aggregates to reflect that bill.

(B) Such revised allocations, functional levels, and budget aggregates shall be considered for the purposes of this Act as allocations, functional levels, and budget aggregates contained in the most recently agreed to concurrent resolution on the budget.

Section 302 was amended by the Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177) to: (1) add appropriate levels of total entitlement authority and total credit authority to the allocations required by subsection (a), with all levels further divided into mandatory and discretionary amounts; (2) add new credit authority to the subdivisions required of the Appropriations Committees by subsection (b)(1); (3) redesignate subsection (c) as (d); and (4) add new subsections (c), (e), (f), and

(g). The Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) removed credit authority from the purview of points of order under this section by deleting all references to credit authority in subsections (a), (b), (c), and (f), effective for fiscal years beginning after September 30, 1991. That law also amended subsections (c) and (f) to standardize their application to bills, joint resolutions, amendments, motions, or conference reports. Section 302 was further amended by the Budget Enforcement Act of 1997 (sec. 10106, P.L. 105–33) to: (1) permanently extend the requirement that allocations to the authorizing committees cover at least a five-year period and to revert the temporary allocations under former section 602 into section 302; (2) permit a further allocation among defense, nondefense, and violent crime reduction funding; (3) modify the Appropriation Committee's default allocation; and (4) clarify the Appropriation Committee's suballocations to its subcommittees.

A point of order under section 302(f) operates with respect to a bill or joint resolution in reported state and thus does not lie against consideration of an unreported measure (Mar. 21, 1995, p. 8491). The budget resolution deemed in place for fiscal year 2005 provided that, for purposes of titles II and III of the Budget Act, the term "amendment" or "amendment thereto" means an amendment offered or an amendment made in order as original text or considered as adopted by special order of the House (sec. 406, S. Con. Res. 95, 108th Cong., May 19, 2004, deemed in place by H. Res. 649, 108th Cong., May 19, 2004, p. ——, and by sec. 3(a)(4), H. Res. 5, 109th Cong., Jan. 4, 2005, p. ——).

Points of order under section 302(c) apply separately to the consideration of bills and amendments, and thus a waiver of points of order against consideration of an appropriation bill prior to the filing of a report from the Appropriations Committee allocating new budget authority among its subcommittees does not extend to an amendment providing new budget authority in addition to the amounts contained in the bill (July 13, 1987, p. 19514). Where the House deemed the adoption of section 302(a) allocations for the 108th Congress (sec. 3, H. Res. 5, Jan. 7, 2003, p. ——), the Chair sustained a point of order under section 302(c) against an amendment providing new budget authority where the Appropriations Committee had not reported section 302(b) suballocations (Jan. 8, 2003, p. ——; Jan. 28, 2003, p. —— (both sustained by tabling of appeal)).

By way of example, the Chair has held the following as providing new budget authority in excess of the relevant allocations under section 302(a), as authoritatively estimated by the Budget Committee pursuant to section 312(a), in violation of section 302(f): (1) a motion to recommit a bill establishing a Medicare prescription drug benefit program with instructions to report forthwith an amendment in the nature of substitute containing a different program (sustained by tabling appeal) (June 28, 2000, p. ——); (2) an amendment extending eligibility for Foster Care Maintenance Payments to a new class (Sept. 14, 2005, p. ——); (3) an amendment delaying

the imposition of a monetary penalty resulting in a loss of offsetting receipts (July 18, 1991, p. 18860).

An amendment that proposes offsetting increases and decreases in new budget authority is not subject to a point of order under section 302(f) (May 9, 1995, p. 12175). Amendments to an appropriation bill making a series of figure changes intended to offset one another and considered en bloc, are subject to points of order under section 302(f) where the intended reductions in new discretionary budget authority fail to offset increases in such authority, so that the net effect of the amendments is to cause the bill to exceed the appropriate allocation of new discretionary budget authority made pursuant to section 302(b) for the fiscal year (July 30, 1986, p. 18154).

Where a Senate amendment proposed to increase certain loan guarantees that were estimated by the Budget Committee to breach the subcommittee subdivision of new credit authority (as then required by this section), the Chair sustained a point of order under section 302(f) against a motion to concur therein (Oct. 20, 1990, p. 31517).

Where a limitation on funds in a general appropriation bill was estimated under former section 302(g) (current section 312(a)) to provide negative new budget authority in an amount sufficient to avoid a breach of the pertinent allocation of such authority, an amendment striking the limitation from the bill was held to provide new budget authority causing such a breach, in violation of section 302(f) (June 26, 1991, p. 16474; June 13, 2000, p. 10501). An amendment proposing to strike from a general appropriation bill a proviso stating that a specified increment of new discretionary budget authority ostensibly provided by the bill would "become available for obligation only upon the enactment of future appropriations legislation" was held to cause the bill to provide additional new discretionary budget authority in that incremental amount, in breach of the pertinent allocation under sections 302 and 602, and therefore in violation of section 302(f) (June 26, 1996, p. 15563). An amendment proposing to strike from a general appropriation bill a rescission scored as negative budget authority was held to provide new budget authority in excess of the relevant allocation under section 302(b) (June 20, 2001, p. ——). The Chair relies on authoritative estimates from the Budget Committee pursuant to section 312(a) to determine whether an amendment to a general appropriation bill provides new budget authority in excess of the relevant allocation under section 302(b) in violation of section 302(f) (, *e.g.*, June 8, 2000, p. ——; June 12, 2000, p. ——; June 22, 2000, p. ——).

For a point of order against the motion to rise and report an appropriation bill to the House where the bill, as proposed to be amended, exceeds an applicable allocation of new budget authority under section 302(b) of the Congressional Budget Act of 1974, and setting forth procedures in the Committee of the Whole in the event that the point of order is sustained, see § 1044b, *infra*.

The 104th Congress authorized the chairman of the Budget Committee to revise existing allocations under this section among committees of the House to reflect changes in jurisdiction under clause 1 of rule X and to publish the revised allocations in the Congressional Record, to the end that the revised allocations be effective in the House as though made pursuant to sections 302(a) and 602(a) of the Congressional Budget Act of 1974 (sec. 202(c), H. Res. 6, Jan. 4, 1995, p. 467). The House has adopted resolutions to deem budget resolutions, or portions thereof, to be in place for temporary enforcement (H. Res. 231, July 24, 1985, p. 20181; H. Res. 413, June 19, 1990, p. 14612; H. Res. 477, June 19, 1998, p. 12991; sec. 2(a), H. Res. 5, Jan. 6, 1999, p. 47; H. Res. 428, May 22, 2002, p. ——; sec. 3(a)(4), H. Res. 5, Jan. 7, 2003, p. ——; H. Res. 649, 108th Cong., May 19, 2004, p. ——; sec. 3(a)(4), H. Res. 5, 109th Cong., Jan. 4, 2005, p. ——). The budget resolution deemed adopted for fiscal year 2003 established a reserve fund in the House to support an extra allocation for propositions providing for specified increases in obligation levels for highway spending, with a special application of section 302(f) to enforce levels of outlays (as well as budget authority) in that area, and provided for a separate, exclusive section 302(a) allocation for medicare spending (on one-year and 10-year bases) (sec. 204, H. Con. Res. 353, 107th Cong., deemed in place by H. Res. 428, 107th Cong., May 22, 2002, p. ——, and by sec. 3, H. Res. 5, 108th Cong., Jan. 7, 2003, p. ——). The special allocation for surface transportation was carried in the budget resolution for fiscal year 2004 (sec. 501, H. Con. Res. 95, 108th Cong.) and in the budget resolution deemed in place for fiscal year 2005 (sec. 401, S. Con. Res. 95, 108th Cong., May 19, 2004, deemed in place by H. Res. 649, 108th Cong., May 19, 2004, p. ——, and by sec. 3(a)(4), H. Res. 5, 109th Cong., Jan. 4, 2005, p. ——).

CONCURRENT RESOLUTION ON THE BUDGET MUST BE ADOPTED BEFORE BUDGET-RELATED LEGISLATION IS CONSIDERED

SEC. 303. (a) IN GENERAL.—Until the concurrent resolution on the budget for a fiscal year has been agreed to, it shall not be in order in the House of Representatives, with respect to the first fiscal year covered by that resolution, or the Senate, with respect to any fiscal year covered by that resolution, to consider any bill or joint resolution, amendment or motion thereto, or conference report thereon that—

(1) first provides new budget authority for that fiscal year;

(2) first provides an increase or decrease in revenues during that fiscal year;

(3) provides an increase or decrease in the public debt limit to become effective during that fiscal year;

(4) in the Senate only, first provides new entitlement authority for that fiscal year; or

(5) in the Senate only, first provides for an increase or decrease in outlays for that fiscal year.

(b) EXCEPTIONS IN THE HOUSE.—In the House of Representatives, subsection (a) does not apply—

(1)(A) to any bill or joint resolution, as reported, providing advance discretionary new budget authority that first becomes available for the first or second fiscal year after the budget year; or

(B) to any bill or joint resolution, as reported, first increasing or decreasing revenues in a fiscal year following the fiscal year to which the concurrent resolution applies;

(2) after May 15, to any general appropriation bill or amendment thereto; or

(3) to any bill or joint resolution unless it is reported by a committee.

(c) APPLICATION TO APPROPRIATION MEASURES IN THE SENATE.—

(1) IN GENERAL.—Until the concurrent resolution on the budget for a fiscal year has been agreed to and an allocation has been made to the Committee on Appropriations of the Senate under section 302(a) for that year, it shall not be in order in the Senate to consider any appropriation bill or joint resolution, amendment or motion thereto, or conference report thereon for that year or any subsequent year.

(2) EXCEPTION.—Paragraph (1) does not apply to appropriations legislation making advance appropriations for the first or second fiscal year after the year the allocation referred to in that paragraph is made.

The Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177) amended subsection 303(a) by: (1) adding the phrase "as reported to the House or Senate"; (2) modifying paragraph (4) to apply to new entitlement authority; and (3) adding a paragraph (5) relating to new credit authority. The same law amended subsection (b) by adding the May 15th exception for general appropriation bills. The Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) amended subsection (a) to standardize its application to bills, joint resolutions, amendments, motions, or conference reports, and by deleting the reference in paragraph (5) to new credit authority. That law also subdivided subsection (b) into paragraphs relating to exceptions in the House and Senate. Section 303 was rewritten by the Budget Enforcement Act of 1997 (sec. 10107, P.L. 105–33) to simplify the section, drop obsolete provisions, make certain conforming changes,

and eliminate references to "new entitlement authority" in the House and "new credit authority."

A point of order under section 303(a) operates with respect to a bill or joint resolution in reported state and thus does not lie against consideration of an unreported measure (Mar. 21, 1995, p. 8491), although it does lie against consideration of an amendment to an unreported measure (July 24, 1998, p. 17278). The budget resolution deemed in place for fiscal year 2005 provided that, for purposes of titles II and III of the Budget Act, the term "amendment" or "amendment thereto" means an amendment offered or an amendment made in order as original text or considered as adopted by special order of the House (sec. 406, S. Con. Res. 95, 108th Cong., May 19, 2004, deemed in place by H. Res. 649, 108th Cong., May 19, 2004, p. ——, and by sec. 3(a)(4), H. Res. 5, 109th Cong., Jan. 4, 2005, p. ——).

A conference report containing revenue-sharing provisions in the form of new entitlement authority as described in section 401(c)(2)(C) of the Budget Act to become effective in fiscal years 1978 through 1980 in amounts greater than the amount in fiscal year 1977 was ruled out on a point of order under section 303(a), since the first concurrent resolution on the budget for those future fiscal years had not yet been adopted and the increased entitlements could not be considered merely continuations of entitlement authority that became effective in fiscal year 1977 (for which a concurrent resolution had been adopted), and since the section 303(b) exception, permitting certain advance budget authority, does not apply in the case of new entitlement authority (Speaker Albert, Sept. 30, 1976, p. 34074). An amendment providing new budget authority for a fiscal year before adoption of a budget resolution for that year was held to violate section 303, where points of order under that section had been waived against the pending bill but not against amendments (Aug. 1, 1984, p. 21871; July 17, 1985, pp. 19435, 19463 (amendment contained in motion to recommit with instructions)).

To a bill providing eligibility for certain entitlement benefits to become effective in the fiscal year for which a budget resolution had been adopted, an amendment allowing a deduction in computing household income to determine eligibility effective in the next following fiscal year, to reflect changes in shelter and utility costs, was ruled out as providing new entitlement authority to become effective in a fiscal year for which a concurrent resolution on the budget had not been adopted, in violation of section 303(a)(4) (July 27, 1977, p. 25222).

To a bill partially replacing an existing mandatory student loan (entitlement) program with a new discretionary program, an amendment reducing the discretionary program and commensurately restoring the mandatory program was held to violate section 303(a) by providing new entitlement authority for the ensuing fiscal year prior to the adoption of a concurrent resolution on the budget for that fiscal year (Mar. 26, 1992, p. 7173). Amendments enlarging the class of persons eligible for, or increasing the

amount of, a Government subsidy (lower interest payments on student loans) have been held to violate section 303(a) by providing new entitlement authority for the ensuing fiscal year prior to the adoption of a concurrent resolution on the budget for that fiscal year (Mar. 26, 1992, pp. 7184, 7186, 7227, 7231, 7236).

An amendment repealing an agricultural marketing (entitlement) program for peanuts over a five-year period was nevertheless held to provide new budget authority for the ensuing fiscal year prior to the adoption of the budget resolution for that year, in violation of section 303(a), where the Chair was persuaded by estimates from the Congressional Budget Office that economic conditions under that repeal would result in decreased receipts and increased Federal outlays during that first fiscal year (July 25, 1990, p. 19155).

An amendment imposing fees on generated electric energy, to be deposited in a trust fund, and effective in the ensuing fiscal year, was held to violate section 303(a) by increasing revenues effective in the ensuing fiscal year, for which a budget resolution had yet to be adopted (July 23, 1985, p. 20041). An amendment striking a revenue provision in a pending unreported bill and proposing to insert an alternative revenue provision was held to violate section 303(a) (July 24, 1998, p. 17278).

The Budget Committee of the House determined, as stated in its second report on the implementation of congressional budget procedures for fiscal year 1976 (H. Rept. No. 94–457, Oct. 8, 1975), that the section 303(b) exemption for certain advance budget or revenue authority ceases to apply with the beginning of the fiscal year in question. Therefore, on or after October 1, 1975, the beginning of fiscal year 1976, budget authority or revenue measures to become effective in fiscal year 1977, could no longer be considered under the 303(b) exception but would have to await the final adoption in May of the first concurrent resolution on the budget for fiscal year 1977. But the Senate in the 95th Congress overruled a decision of its presiding officer holding that the section 303(b) exemption ceased to apply after the beginning of the fiscal year preceding the fiscal year for which revenue changes were proposed (Oct. 5, 1978, pp. 33945–50).

In the 106th, 107th, 108th, and 109th Congresses, the House adopted an order to enforce a 303(a) point of order against a reported bill or joint resolution considered under a special order of business on the basis of text made in order as original text (sec. 2(a)(3), H. Res. 5, Jan. 6, 1999, p. 47; sec. 3(b)(2), H. Res. 5, Jan. 3, 2001, p. ——; sec. 3(a)(2), H. Res. 5, Jan. 7, 2003, p. ——; sec. 3(a)(2), H. Res. 5, Jan. 4, 2005, p. ——).

The House has adopted resolutions to deem budget resolutions, or portions thereof, to be in place for temporary enforcement (H. Res. 231, July 24, 1985, p. 20181; H. Res. 413, June 19, 1990, p. 14612; H. Res. 477, June 19, 1998, p. 12991; sec. 2(a)(1), H. Res. 5, Jan. 6, 1999, p. 47; H. Res. 428, 107th Cong., May 22, 2002, p. ——; sec. 3(a)(4), H. Res. 5, Jan. 7, 2003, p. ——; H. Res. 649, 108th Cong., May 19, 2004, p. ——; sec. 3(a)(4), H. Res. 5, 109th Cong., Jan. 4, 2005, p. ——).

PERMISSIBLE REVISIONS OF CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 304. At any time after the concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301, and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises or reaffirms the concurrent resolution on the budget for such fiscal year most recently agreed to.

The Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) deleted a subsection (b), relating to maximum deficit amount requirements for revised budget resolutions, that had been added by the Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177), and redesignated the subsection on economic assumptions, originally added by Public Law 100–119, as (b). The latter subsection (b) was deleted by the Budget Enforcement Act of 1997 (sec. 10108, P.L. 105–33).

PROVISIONS RELATING TO THE CONSIDERATION OF CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 305. (a) PROCEDURE IN HOUSE OF REPRESENTATIVES AFTER REPORT OF COMMITTEE; DEBATE.—

(1) When a concurrent resolution on the budget has been reported by the Committee on the Budget of the House of Representatives and has been referred to the appropriate calendar of the House, it shall be in order on any day thereafter, subject to clause 2(l)(6) of rule XI of the Rules of the House of Representatives, to move to proceed to the consideration of the concurrent resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) General debate on any concurrent resolution on the budget in the House of Representatives shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority parties, plus such additional hours of debate as are consumed pursuant to paragraph (3). A motion further to limit debate is not debatable. A motion to recommit the concurrent resolution is not in order, and it is not in order to move to reconsider the vote by which the concurrent resolution is agreed to or disagreed to.

(3) Following the presentation of opening statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the

House, there shall be a period of up to four hours for debate on economic goals and policies.

(4) Only if a concurrent resolution on the budget reported by the Committee on the Budget of the House sets forth the economic goals (as described in sections 3(a)(2) and (4)(b) of the Full Employment Act of 1946) which the estimates, amounts, and levels (as described in section 301(a)) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.

(5) Consideration of any concurrent resolution on the budget by the House of Representatives shall be in the Committee of the Whole, and the resolution shall be considered for amendment under the five-minute rule in accordance with the applicable provisions of rule XXIII of the Rules of the House of Representatives. After the Committee rises and reports the resolution back to the House, the previous question shall be considered as ordered on the resolution and any amendments thereto to final passage without intervening motion; except that it shall be in order at any time prior to final passage (notwithstanding any other rule or provision of law) to adopt an amendment (or a series of amendments) changing any figure or figures in the resolution as so reported to the extent necessary to achieve mathematical consistency.

(6) Debate in the House of Representatives on the conference report on any concurrent resolution on the budget shall be limited to not more than 5 hours, which shall be divided equally between the majority and minority parties. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

(7) Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any concurrent resolution on the budget shall be decided without debate.

The Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177) amended section 305 in several places, with the most im-

portant changes being the reduction in the availability requirement for the committee report on a budget resolution to five days (from ten) and the addition of a one-day availability requirement for any report thereon from the Rules Committee. The Full Employment and Balanced Growth Act of 1978 (P.L. 95–523) amended this subsection by adding subparagraphs (3) and (4) and making conforming changes relating to debate and amendments on economic goals and policies during consideration of the first concurrent resolution on the budget in the House. A similar addition was made in subparagraphs (3) and (4), relating to Senate procedure. The Budget Enforcement Act of 1997 (sec. 10109, P.L. 105–33) amended section 305(a)(1) to provide a three-day layover requirement for the concurrent resolution on the budget.

General debate on economic goals and policies under subsection (a)(3) must be confined to that subject (Apr. 23, 1980, p. 8815). Clause 10 of rule XVIII (former clause 8 of rule XXVIII), as added in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70) requires that any concurrent resolution on the budget (consisting of both aggregate totals and functional categories) be considered as read and open to amendment at any point, and unanimous consent is required to read such a concurrent resolution by section in order to allow amendments to aggregates to be considered before amendments to functional categories (May 2, 1978, pp. 12074, 12075). Clause 10 of rule XVIII (former clause 8 of rule XXIII) was further amended in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16) to require that amendments to budget resolutions achieve mathematical consistency and contain all the matter set forth in subsections 301(a)(1) through (5). On one occasion, the chairman of the Budget Committee offered a "mathematical consistency" amendment in Committee of the Whole, rather than in the House (Apr. 29, 1976, p. 11916).

A concurrent resolution on the budget is subject to a demand for a division of the question if, for example, the resolution grammatically and substantively relates to different fiscal years (May 7, 1980, pp. 10185–87), or includes a separate, hortatory section having its own grammatical and substantive meaning (Mar. 5, 1992, p. 4675).

Where a perfecting amendment changing several figures in a concurrent resolution on the budget was pending in Committee of the Whole, the Chair indicated that adoption of that amendment would preclude a further amendment merely changing those figures but would not preclude a more comprehensive amendment changing other (unamended) portions of the resolution (Apr. 28, 1976, p. 11599).

While under this paragraph there can be up to five hours of debate on a conference report on a concurrent resolution on the budget, where the conferees report in total disagreement, debate on the motion to dispose of the amendment in disagreement is under the "hour rule" and is equally divided and controlled between the majority and minority parties under clause 8(d) of rule XXII (former clause 2 of rule XXVIII) (May 13, 1976, p. 13756; Sept. 16, 1976, p. 30182).

A concurrent resolution on the budget providing for the production of three separate reconciliation bills, including a reconciliation bill that lowers revenues, is privileged in the Senate under section 305(b) (May 21, 1996, pp. 11937–41).

In the 96th Congress, for the first time, the Rules Committee reported and the House adopted a special order permitting only certain designated amendments to be offered to a concurrent resolution on the budget (H. Res. 642, Apr. 23, 1980, p. 8789). The House has adopted similar "modified-closed rules" for the consideration of concurrent resolutions on the budget in each subsequent Congress. In the 98th Congress, a special order (H. Res. 144, Mar. 22, 1983, p. 6503) waiving the existing 10-day layover requirement of section 305(a)(1) was construed not to have waived the separate three-day layover requirement of clause 4 of rule XIII (former clause 2(l)(6) of rule XI) (since amended in the 102d Congress (H. Res. 5, Jan. 3, 1991, p. 39) to conform to the five-day layover requirement of this section). The House has adopted resolutions to deem budget resolutions, or portions thereof, to be in place for temporary enforcement (H. Res. 231, July 24, 1985, p. 20181; H. Res. 413, June 19, 1990, p. 14612; H. Res. 477, June 19, 1998, p. 12991; sec. 2(a)(1), H. Res. 5, Jan. 6, 1999, p. 47; H. Res. 428, 107th Cong., May 22, 2002, p. ——; sec. 3(a)(4), H. Res. 5, Jan. 7, 2003, p. ——; H. Res. 649, 108th Cong., May 19, 2004, p. ——; sec. 3(a)(4), H. Res. 5, 109th Cong., Jan. 4, 2005, p. ——).

(b) PROCEDURE IN SENATE AFTER REPORT OF COMMITTEE; DEBATE; AMENDMENTS.—

(1) Debate in the Senate on any concurrent resolution on the budget, and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 50 hours, except that with respect to any concurrent resolution referred to in section 304(a) all such debate shall be limited to not more than 15 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(2) Debate in the Senate on any amendment to a concurrent resolution on the budget shall be limited to 2 hours, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, and debate on any amendment to an amendment, debatable motion, or appeal shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, except that in the event the manager of the concurrent resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. No amendment that is not germane to the

provisions of such concurrent resolution shall be received. Such leaders, or either of them, may, from the time under their control on the passage of the concurrent resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(3) Following the presentation of opening statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the Senate, there shall be a period of up to four hours for debate on economic goals and policies.

(4) Subject to the other limitations of this Act, only if a concurrent resolution on the budget reported by the Committee on the Budget of the Senate sets forth the economic goals (as described in sections 3(a)(2) and 4(b) of the Employment Act of 1946) which the estimates, amounts, and levels (as described in section 301(a)) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.

(5) A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution.

(6) Notwithstanding any other rule, an amendment or series of amendments to a concurrent resolution on the budget proposed in the Senate shall always be in order if such amendment or series of amendments proposes to change any figure or figures then contained in such concurrent resolution so as to make such concurrent resolution mathematically consistent or so as to maintain such consistency.

(c) ACTION ON CONFERENCE REPORTS IN THE SENATE.—

(1) A motion to proceed to the consideration of the conference report on any concurrent resolution on the budget (or a reconciliation bill or resolution) may be

made even though a previous motion to the same effect has been disagreed to.

(2) During the consideration in the Senate of the conference report (or a message between Houses) on any concurrent resolution on the budget, and all amendments in disagreement, and all amendments thereto, and debatable motions and appeals in connection therewith, debate shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report (or a message between Houses) shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the conference report (or a message between Houses).

(3) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to 1 hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to one-half hour, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between and controlled by the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

(4) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment that is not germane to the provisions of such amendments shall be received.

(d) CONCURRENT RESOLUTION MUST BE CONSISTENT IN THE SENATE.—It shall not be in order in the Senate to vote on the question of agreeing to—

(1) a concurrent resolution on the budget unless the figures then contained in such resolution are mathematically consistent; or

(2) a conference report on a concurrent resolution on the budget unless the figures contained in such resolution, as recommended in such conference report, are mathematically consistent.

The Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) deleted a subsection (d), which required action by budget conferees within seven days, and redesignated the succeeding subsection.

LEGISLATION DEALING WITH CONGRESSIONAL BUDGET MUST BE HANDLED BY BUDGET COMMITTEES

SEC. 306. No bill, resolution, amendment, motion, or conference report, dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution.

The Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) amended this section by standardizing its application to any bill, resolution, amendment, motion, or conference report. The 107th, 108th, and 109th Congresses adopted an order of the House to construe the term "resolution" as "joint resolution" (sec. 3(b), H. Res. 5, Jan. 3, 2001, p. ——; sec. 3(a)(1), H. Res. 5, Jan. 7, 2003, p. ——; sec. 3(a)(1), H. Res. 5, Jan. 4, 2005, p. ——). The 104th and 105th Congresses expanded the legislative jurisdiction of the Budget Committee (sec. 202(a), H. Res. 6, Jan. 4, 1995, p. 463; sec. 5, H. Res. 5, Jan. 7, 1997, p. 121). See clause 1(e) of rule X, *supra*.

A special order of business adopted by the House providing for consideration of an unreported concurrent resolution on the budget upon the Speaker's declaration that the House be resolved into the Committee of the Whole has the effect of discharging the Budget Committee when so announced by the Speaker, and need not contain the term "discharge" or waive points of order under this section, since the concurrent resolution is effectively discharged consistent with, and not in violation of, this section (Mar. 13, 1986, p. 4638).

The following were held to violate this section: (1) an amendment directing that certain lease-purchase agreements be scored on an annual basis for budget purposes (July 19, 1999, p. 16615); and (2) an amendment designating an appropriation as "emergency spending" within the meaning of the budget-enforcement laws (Sept. 8, 1999, p. 20930).

In the Senate, to an omnibus revenue bill reported from the Senate Committee on Finance containing certain tax credits, an amendment expressing

the sense of Congress that under the Congressional Budget Act process the continuation of tax credits would be offset by reductions in Federal spending was held to violate section 306 and was ruled out of order (June 18, 1976, pp. 19089–97). In the Senate, to a bill making comprehensive amendments to the Social Security Act, an amendment removing social security trust funds from the "unified budget" and establishing separate aggregate and functional categories in all concurrent resolutions on the budget for social security trust funds was held to be a matter within the jurisdiction of the Senate Budget Committee and ruled out of order under section 306 (Mar. 22, 1983, p. 6590).

HOUSE COMMITTEE ACTION ON ALL APPROPRIATION BILLS TO BE COMPLETED BY JUNE 10

SEC. 307. On or before June 10 of each year, the Committee on Appropriations of the House of Representatives shall report annual appropriation bills providing new budget authority under the jurisdiction of all of its subcommittees for the fiscal year which begins on October 1 of that year.

This section was rewritten by the Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177) to establish June 10th as the annual target date for completion of House committee action on all regular appropriation bills.

REPORTS, SUMMARIES, AND PROJECTIONS OF CONGRESSIONAL BUDGET ACTIONS

SEC. 308. (a) REPORTS ON LEGISLATION PROVIDING NEW BUDGET AUTHORITY OR PROVIDING AN INCREASE OR DECREASE IN REVENUES OR TAX EXPENDITURES.—

(1) Whenever a committee of either House reports to its House a bill or joint resolution, or committee amendment thereto, providing new budget authority (other than continuing appropriations) or providing an increase or decrease in revenues or tax expenditures for a fiscal year (or fiscal years), the report accompanying that bill or joint resolution shall contain a statement, or the committee shall make available such a statement in the case of an approved committee amendment which is not reported to its House, prepared after consultation with the Director of the Congressional Budget Office—

(A) comparing the levels in such measure to the appropriate allocations in the reports submitted under section 302(b) for the most recently agreed

to concurrent resolution on the budget for such fiscal year (or fiscal years);

(B) containing a projection by the Congressional Budget Office of how such measure will affect the levels of such budget authority, budget outlays, revenues, or tax expenditures under existing law for such fiscal year (or fiscal years) and each of the four ensuing fiscal years, if timely submitted before such report is filed; and

(C) containing an estimate by the Congressional Budget Office of the level of new budget authority for assistance to State and local governments provided by such measure, if timely submitted before such report is filed.

(2) Whenever a conference report is filed in either House and such conference report or any amendment reported in disagreement or any amendment contained in the joint statement of managers to be proposed by the conferees in the case of technical disagreement on such bill or joint resolution provides new budget authority (other than continuing appropriations) or provides an increase or decrease in revenues for a fiscal year (or fiscal years), the statement of managers accompanying such conference report shall contain the information described in paragraph (1), if available on a timely basis. If such information is not available when the conference report is filed, the committee shall make such information available to Members as soon as practicable prior to the consideration of such conference report.

(b) UP-TO-DATE TABULATIONS OF CONGRESSIONAL BUDGET ACTION.—

(1) The Director of the Congressional Budget Office shall issue to the committees of the House of Representatives and the Senate reports on at least a monthly basis detailing and tabulating the progress of congressional action on bills and joint resolutions providing new budget authority or providing an increase or decrease in revenues or tax expenditures for each fiscal year covered by a concurrent resolution on the budget. Such reports shall include but are not limited to an up-to-date tabulation comparing the appropriate aggregate and functional levels (including outlays) included in the most recently adopted concurrent resolution on the budget with the levels provided in bills and joint resolutions reported by committees or adopt-

ed by either House or by the Congress, and with the levels provided by law for the fiscal year preceding the first fiscal year covered by the appropriate concurrent resolution.

(2) The Committee on the Budget of each House shall make available to Members of its House summary budget scorekeeping reports. Such reports—

(A) shall be made available on at least a monthly basis, but in any case frequently enough to provide Members of each House an accurate representation of the current status of congressional consideration of the budget;

(B) shall include, but are not limited to summaries of tabulations provided under subsection (b)(1); and

(C) shall be based on information provided under subsection (b)(1) without substantive revision.

The chairman of the Committee on the Budget of the House of Representatives shall submit such reports to the Speaker.

(c) FIVE-YEAR PROJECTION OF CONGRESSIONAL BUDGET ACT.—As soon as practicable after the beginning of each fiscal year, the Director of the Congressional Budget Office shall issue a report projecting for the period of 5 fiscal years beginning with such fiscal year—

(1) total new budget authority and total budget outlays for each fiscal year in such period;

(2) revenues to be received and the major sources thereof, and the surplus or deficit, if any, for each fiscal year in such period;

(3) tax expenditures for each fiscal year in such period; and

(4) entitlement authority for each fiscal year in such period.

The Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177) expanded the scope of subsection (a) to apply not only to reports on legislation providing budget authority and tax expenditures but also to reports on legislation providing new spending authority, new credit authority, and changes in revenues. That law also added the requirement that the same information be available to Members prior to consideration of conference reports or amendments in disagreement on such legislation, as well as subsections (b) and (c). The Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) made conforming changes to subsections (a) and (b) to reflect the advent of five-year budget resolutions. Certain tech-

nical and conforming changes were made to this section by the Budget Enforcement Act of 1997 (sec. 10110, P.L. 105–33).

Section 308(a)(1) does not apply either to the consideration or to the adoption of a special order reported from the Rules Committee "self-executing" the adoption in the House of an amendment providing new budget authority, since the amendment is not separately before the House during consideration of the special order (but only when the bill of which it becomes a part is before the House), and since it is the amendment itself, and not the special order resolution, that provides the new budget authority (Feb. 24, 1993, p. 3543). A committee cost estimate identifying certain spending authority as recurring annually and indefinitely was held necessarily to address the five-year period required by this section (Nov. 20, 1993, p. 31354).

HOUSE APPROVAL OF REGULAR APPROPRIATION BILLS

SEC. 309. It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has approved annual appropriation bills providing new budget authority under the jurisdiction of all the subcommittees of the Committee on Appropriations for the fiscal year beginning on October 1 of such year. For purposes of this section, the chairman of the Committee on Appropriations of the House of Representatives shall periodically advise the Speaker as to changes in jurisdiction among its various subcommittees.

The Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177) added this section. See also section 310(f), *infra*.

RECONCILIATION

SEC. 310. (a) INCLUSION OF RECONCILIATION DIRECTIVES IN CONCURRENT RESOLUTIONS ON THE BUDGET.—A concurrent resolution on the budget for any fiscal year, to the extent necessary to effectuate the provisions and requirements of such resolution, shall—

(1) specify the total amount by which—

(A) new budget authority for such fiscal year;

(B) budget authority initially provided for prior fiscal years;

(C) new entitlement authority which is to become effective during such fiscal year; and

(D) credit authority for such fiscal year,

contained in laws, bills, and resolutions within the jurisdiction of a committee is to be changed and direct

that committee to determine and recommend changes to accomplish a change of such total amount;

(2) specify the total amount by which revenues are to be changed and direct that the committees having jurisdiction to determine and recommend changes in the revenue laws, bills, and resolutions to accomplish a change of such total amount;

(3) specify the amounts by which the statutory limit on the public debt is to be changed and direct the committee having jurisdiction to recommend such change; or

(4) specify and direct any combination of the matters described in paragraphs (1), (2), and (3) (including a direction to achieve deficit reduction).

(b) LEGISLATIVE PROCEDURE.—If a concurrent resolution containing directives to one or more committees to determine and recommend changes in laws, bills, or resolutions is agreed to in accordance with subsection (a), and—

(1) only one committee of the House or the Senate is directed to determine and recommend changes, that committee shall promptly make such determination and recommendations and report to its House reconciliation legislation containing such recommendations; or

(2) more than one committee of the House or the Senate is directed to determine and recommend changes, each such committee so directed shall promptly make such determination and recommendations and submit such recommendations to the Committee on the Budget of its House, which upon receiving all such recommendations, shall report to its House reconciliation legislation carrying out all such recommendations without any substantive revision.

For purposes of this subsection, a reconciliation resolution is a concurrent resolution directing the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be, to make specified changes in bills and resolutions which have not been enrolled.

(c) COMPLIANCE WITH RECONCILIATION DIRECTIONS.—(1) Any committee of the House of Representatives or the Senate that is directed, pursuant to a concurrent resolution on the budget, to determine and recommend changes of the type described in paragraphs (1) and (2) of subsection (a) with respect to laws within its jurisdiction, shall be deemed to have complied with such directions—

(A) if—

(i) the amount of the changes of the type described in paragraph (1) of such subsection recommended by such committee do not exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under that paragraph by more than—

(I) in the Senate, 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection; or

(II) in the House of Representatives, 20 percent of the sum of the absolute value of the changes the committee was directed to make under paragraph (1) and the absolute value of the changes the committee was directed to make under paragraph (2); and

(ii) the amount of the changes of the type described in paragraph (2) of such subsection recommended by such committee do not exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under that paragraph by more than—

(I) in the Senate, 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection; or

(II) in the House of Representatives, 20 percent of the sum of the absolute value of the changes the committee was directed to make under paragraph (1) and the absolute value of the changes the committee was directed to make under paragraph (2); and

(B) if the total amount of the changes recommended by such committee is not less than the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection.

(2)(A) Upon the reporting to the Committee on the Budget of the Senate of a recommendation that shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of that committee may file with the Senate appropriately revised allocations under section 302(a) and revised

functional levels and aggregates to carry out this subsection.

(B) Upon the submission to the Senate of a conference report recommending a reconciliation bill or resolution in which a committee shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this subsection.

(C) Allocations, functional levels, and aggregates revised pursuant to this paragraph shall be considered to be allocations, functional levels, and aggregates contained in the concurrent resolution on the budget pursuant to section 301.

(D) Upon the filing of revised allocations pursuant to this paragraph, the reporting committee shall report revised allocations pursuant to section 302(b) to carry out this subsection.

(d) LIMITATION ON AMENDMENTS TO RECONCILIATION BILLS AND RESOLUTIONS.—

(1) It shall not be in order in the House of Representatives to consider any amendment to a reconciliation bill or reconciliation resolution if such amendment would have the effect of increasing any specific budget outlays above the level of such outlays provided in the bill or resolution (for the fiscal years covered by the reconciliation instructions set forth in the most recently agreed to concurrent resolution on the budget), or would have the effect of reducing any specific Federal revenues below the level of such revenues provided in the bill or resolution (for such fiscal years), unless such amendment makes at least an equivalent reduction in other specific budget outlays, an equivalent increase in other specific Federal revenues, or an equivalent combination thereof (for such fiscal years), except that a motion to strike a provision providing new budget authority or new entitlement authority may be in order.

(2) It shall not be in order in the Senate to consider any amendment to a reconciliation bill or reconciliation resolution if such amendment would have the effect of decreasing any specific budget outlay reductions below the level of such outlay reductions provided (for the fiscal years covered) in the reconcili-

ation instructions which relate to such bill or resolution set forth in a resolution providing for reconciliation, or would have the effect of reducing Federal revenue increases below the level of such revenue increases provided (for such fiscal years) in such instructions relating to such bill or resolution, unless such amendment makes a reduction in other specific budget outlays, an increase in other specific Federal revenues, or a combination thereof (for such fiscal years) at least equivalent to any increase in outlays or decrease in revenues provided by such amendment, except that a motion to strike a provision shall always be in order.

(3) Paragraphs (1) and (2) shall not apply if a declaration of war by the Congress is in effect.

(4) For purposes of this section, the levels of budget outlays and Federal revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or of the Senate, as the case may be.

(5) The Committee on Rules of the House of Representatives may make in order amendments to achieve changes specified by reconciliation directives contained in a concurrent resolution on the budget if a committee or committees of the House fail to submit recommended changes to its Committee on the Budget pursuant to its instruction.

(e) PROCEDURE IN THE SENATE.—

(1) Except as provided in paragraph (2), the provisions of section 305 for the consideration in the Senate of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration in the Senate of reconciliation bills reported under subsection (b) and conference reports thereon.

(2) Debate in the Senate on any reconciliation bill reported under subsection (b), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours.

(f) COMPLETION OF RECONCILIATION PROCESS.—It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has completed action on the reconciliation legislation for the fiscal year beginning on October 1 of the calendar year to which the ad-

journment resolution pertains, if reconciliation legislation is required to be reported by the concurrent resolution on the budget for such fiscal year.

(g) LIMITATION ON CHANGES TO THE SOCIAL SECURITY ACT.—Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider any reconciliation bill or reconciliation resolution reported pursuant to a concurrent resolution on the budget agreed to under section 301 or 304, or a joint resolution pursuant to section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985, or any amendment thereto or conference report thereon, that contains recommendations with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act.

Until the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177) this section required the Congress to complete action on a concurrent resolution on the budget, normally the second for that fiscal year, reaffirming or revising the most recently agreed to concurrent resolution on the budget. It also permitted the second budget resolution to implement the reconciliation process (instructions to committees to make changes in law necessary to achieve the changes in spending or revenues contemplated by the budget resolution). The Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177) amended subsection (a) to eliminate the requirement for subsequent budget resolutions and specified the reconciliation process in greater detail by adding paragraph (1)(D) to subsection (a) along with new subsections (b) through (g). The Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) amended subsection (c), relating to adjustments to allocations in the Senate, and deleted from subsection (f) a June 15 deadline for congressional action on reconciliation. The Budget Enforcement Act of 1997 (sec. 10111, P.L. 105–33) amended section 310(c)(1)(A) to clarify that committees, in meeting their reconciliation targets, may alternatively substitute revenue and spending changes by up to 20 percent of the sum of the absolute value of reconciled changes as long as the result does not increase the deficit relative to the reconciliation instructions.

BUDGET-RELATED LEGISLATION MUST BE WITHIN APPROPRIATE LEVELS

SEC. 311. (a) ENFORCEMENT OF BUDGET AGGREGATES.—

(1) IN THE HOUSE OF REPRESENTATIVES.—Except as provided by subsection (c), after the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in the House of Representatives to consider any bill, joint resolution, amendment, motion, or conference report

providing new budget authority or reducing revenues, if—

(A) the enactment of that bill or resolution as reported;

(B) the adoption and enactment of that amendment; or

(C) the enactment of that bill or resolution in the form recommended in that conference report;

would cause the level of total new budget authority or total outlays set forth in the applicable concurrent resolution on the budget for the first fiscal year to be exceeded, or would cause revenues to be less than the level of total revenues set forth in that concurrent resolution for the first fiscal year or for the total of that first fiscal year and the ensuing fiscal years for which allocations are provided under section 302(a), except when a declaration of war by the Congress is in effect.

(2) IN THE SENATE.—After a concurrent resolution on the budget is agreed to, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that—

(A) would cause the level of total new budget authority or total outlays set forth for the first fiscal year in the applicable resolution to be exceeded; or

(B) would cause revenues to be less than the level of total revenues set forth for that first fiscal year or for the total of that first fiscal year and the ensuing fiscal years in the applicable resolution for which allocations are provided under section 302(a).

(3) ENFORCEMENT OF SOCIAL SECURITY LEVELS IN THE SENATE.—After a concurrent resolution on the budget is agreed to, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause a decrease in social security surpluses or an increase in social security deficits relative to the levels set forth in the applicable resolution for the first fiscal year or for the total of that fiscal year and the ensuing fiscal years for which allocations are provided under section 302(a).

(b) SOCIAL SECURITY LEVELS.—

(1) IN GENERAL.—For purposes of subsection (a)(3), social security surpluses equal the excess of social security revenues over social security outlays in a fiscal

year or years with such an excess and social security deficits equal the excess of social security outlays over social security revenues in a fiscal year or years with such an excess.

(2) TAX TREATMENT.—For purposes of subsection (a)(3), no provision of any legislation involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues or outlays unless that provision changes the income tax treatment of social security benefits.

(c) EXCEPTION IN THE HOUSE OF REPRESENTATIVES.—Subsection (a)(1) shall not apply in the House of Representatives to any bill, joint resolution, or amendment that provides new budget authority for a fiscal year or to any conference report on any such bill or resolution, if—

(1) the enactment of that bill or resolution as reported;

(2) the adoption and enactment of that amendment; or

(3) the enactment of that bill or resolution in the form recommended in that conference report;

would not cause the appropriate allocation of new budget authority made pursuant to section 302(a) for that fiscal year to be exceeded.

The Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) amended subsection (a) by: (1) standardizing its application to any bill, joint resolution, amendment, motion, or conference report; (2) adding the exception for the case of a declaration of war; and (3) adding a new paragraph (2) relating to Senate procedure. The Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177) made important changes in this section by codifying in subsection (b) the exception for the House that previously had appeared in the budget resolution, and by adding subsection (c). The Budget Enforcement Act of 1997 (sec. 10112, P.L. 105–33) further amended this section by: (1) eliminating references to "new entitlement authority"; (2) modifying Senate procedure; and (3) enforcing the revenue level for the same multiyear period covered by the allocations under section 302(a).

A point of order under section 311(a) operates with respect to a bill or joint resolution in reported state and thus does not lie against consideration of an unreported measure (Mar. 21, 1995, p. 8491). The budget resolution deemed in place for fiscal year 2005 provided that, for purposes of titles II and III of the Budget Act, the term "amendment" or "amendment thereto" means an amendment offered or an amendment made in order as original text or considered as adopted by special order of the House (sec. 406, S. Con. Res. 95, 108th Cong., May 19, 2004, deemed in place by H. Res.

649, 108th Cong., May 19, 2004, p. ——, and by sec. 3(a)(4), H. Res. 5, 109th Cong., Jan. 4, 2005, p. ——). The House has adopted resolutions to deem budget resolutions, or portions thereof, to be in place for temporary enforcement (H. Res. 231, July 24, 1985, p. 20181; H. Res. 413, June 19, 1990, p. 14612; H. Res. 477, June 19, 1998, p. 12991; sec. 2(a)(1), H. Res. 5, Jan. 6, 1999, p. 47; H. Res. 428, 107th Cong., May 22, 2002, p. ——; sec. 3(a)(4), H. Res. 5, Jan. 7, 2003, p. ——; H. Res. 649, 108th Cong., May 19, 2004, p. ——; and by sec. 3(a)(4), H. Res. 5, 109th Cong., Jan. 4, 2005, p. ——).

To an appropriation bill already containing new budget outlays in excess of the total level permitted by the second concurrent resolution on the budget for that fiscal year, where the bill was considered under a waiver of section 311(a) of the Budget Act, an amendment striking out a proposed rescission of existing budget authority which had the effect of causing the net total of new budget authority in the bill to be increased was ruled out in the House as in violation of section 311(a), as further exceeding the total budget outlay ceiling in the second concurrent resolution on the budget (May 12, 1981, pp. 9314, 15). An amendment that provides no new budget authority or outlays but instead results in outlay savings is not subject to a point of order under section 311(a) (June 30, 1987, p. 18308).

The Chair relied on estimates furnished by the Budget Committee to hold that a motion to amend a Senate amendment providing new budget authority for official mail costs to be available immediately violated section 311(a) since the appropriate level of new budget authority contained in the budget resolution had already been exceeded and since the Appropriations Committee had exceeded its section 302(a) allocation (thereby rendering the section 311(b) exception inapplicable) (Sept. 28, 1989, p. 22267).

In the Senate, the Chair sustained a point of order (later withdrawn) against an amendment that had the effect of reducing revenues for fiscal year 1977 below the total level of revenues contained in the final concurrent resolution on the budget for that year, in violation of section 311(a) (Oct. 1, 1976, p. 34557). Similarly, a motion in the Senate to recommit a bill with instructions to report it back with an amendment to the Internal Revenue Code delaying the implementation of withholding on interest and dividends was held (in response to a parliamentary inquiry) to be subject to a point of order since the amendment would cause revenues to be less than the appropriate level provided in the budget resolution for that year (where S. Con. Res. 92 of the 97th Congress, the first budget resolution for fiscal year 1985, provided that if a second budget resolution was not adopted by October 1, 1982, then section 311 would be enforced based on the aggregate figures contained in that resolution) (Apr. 20, 1983, pp. 9131, 9151). A point of order was sustained (and upheld on appeal) in the Senate against consideration of an amendment reducing the amount of a rescission of appropriated funds where the effect was to increase the net amount of total budget outlays contained in the bill to a level which, when taken together with other spending actions already completed by

Congress, exceeded the total amount of budget outlays provided for the current fiscal year in the third budget resolution, in violation of section 311 (June 27, 1980, pp. 17478, 17479). Also in the Senate, to a bill making comprehensive changes in the Social Security Act being considered at a time when the revenue floor established by the second concurrent resolution on the budget for that fiscal year had already been breached, an amendment to the Internal Revenue Code to delay interest and dividend withholding during that fiscal year was held to constitute a further revenue reduction and to violate section 311 (Vice President Bush, Mar. 22, 1983, p. 6573). An amendment in the Senate to a Defense Department authorization bill, providing a new entitlement program of educational assistance to members and veterans of the armed forces, to become effective in a future fiscal year or at any earlier time if so determined by the President, was held to allow new entitlement spending for the current fiscal year and to breach the applicable budget total, in violation of section 311 (July 13, 1983, p. 19018).

DETERMINATIONS AND POINTS OF ORDER

SEC. 312. (a) BUDGET COMMITTEE DETERMINATIONS.—For purposes of this title and title IV, the levels of new budget authority, outlays, direct spending, new entitlement authority, and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as applicable.

(b) DISCRETIONARY SPENDING POINT OF ORDER IN THE SENATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, it shall not be in order in the Senate to consider any bill or resolution (or amendment, motion, or conference report on that bill or resolution) that would exceed any of the discretionary spending limits in section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) EXCEPTIONS.—This subsection shall not apply if a declaration of war by the Congress is in effect or if a joint resolution pursuant to section 258 of the Balanced Budget and Emergency Deficit Control Act of 1985 has been enacted.

(c) MAXIMUM DEFICIT AMOUNT POINT OF ORDER IN THE SENATE.—It shall not be in order in the Senate to consider any concurrent resolution on the budget for a fiscal year, or to consider any amendment to that concurrent resolution, or to consider a conference report on that concurrent resolution, if—

(1) the level of total outlays for the first fiscal year set forth in that concurrent resolution or conference report exceeds; or

(2) the adoption of that amendment would result in a level of total outlays for that fiscal year that exceeds;

the recommended level of Federal revenues for that fiscal year, by an amount that is greater than the maximum deficit amount, if any, specified in the Balanced Budget and Emergency Deficit Control Act of 1985 for that fiscal year.

(d) TIMING OF POINTS OF ORDER IN THE SENATE.—A point of order under this Act may not be raised against a bill, resolution, amendment, motion, or conference report while an amendment or motion, the adoption of which would remedy the violation of this Act, is pending before the Senate.

(e) POINTS OF ORDER IN THE SENATE AGAINST AMENDMENTS BETWEEN THE HOUSES.—Each provision of this Act that establishes a point of order against an amendment also establishes a point of order in the Senate against an amendment between the Houses. If a point of order under this Act is raised in the Senate against an amendment between the Houses and the point of order is sustained, the effect shall be the same as if the Senate had disagreed to the amendment.

(f) EFFECT OF A POINT OF ORDER IN THE SENATE.—In the Senate, if a point of order under this Act against a bill or resolution is sustained, the Presiding Officer shall then recommit the bill or resolution to the committee of appropriate jurisdiction for further consideration.

Section 312 was added by the Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508). The section was amended by the Budget Enforcement Act of 1997 (sec. 10113, P.L. 105–33) to: (1) clarify the responsibility of the Budget Committee to provide estimates to the Chair upon which points of order under the Congressional Budget Act are evaluated; and (2) modify Senate procedure. The concurrent resolution on the budget for fiscal year 2000 included a point of order against consideration in the House or Senate of a concurrent resolution on the budget for fiscal year 2001, or any amendment thereto or conference report thereon, that sets forth a deficit for any fiscal year (as determined by the Budget Committee) (sec. 201, H. Con. Res. 68, 106th Cong., Apr. 13, 1999, p. 6337).

EXTRANEOUS MATTER IN RECONCILIATION LEGISLATION

SEC. 313. (a) IN GENERAL.—When the Senate is considering a reconciliation bill or a reconciliation resolution pursuant to section 310 (whether that bill or resolution originated in the Senate or the House) or section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985, upon a point of order being made by any Senator against material extraneous to the instructions to a committee which is contained in any title or provision of the bill or resolution or offered as an amendment to the bill or resolution, and the point of order is sustained by the Chair, any part of said title or provision that contains material extraneous to the instructions to said Committee as defined in subsection (b) shall be deemed stricken from the bill and may not be offered as an amendment from the floor.

(b) EXTRANEOUS PROVISIONS.—(1)(A) Except as provided in paragraph (2), a provision of a reconciliation bill or reconciliation resolution considered pursuant to section 310 shall be considered extraneous if such provision does not produce a change in outlays or revenue, including changes in outlays and revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected (but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous by virtue of this subparagraph); (B) any provision producing an increase in outlays or decrease in revenues shall be considered extraneous if the net effect of provisions reported by the Committee reporting the title containing the provision is that the Committee fails to achieve its reconciliation instructions; (C) a provision that is not in the jurisdiction of the Committee with jurisdiction over said title or provision shall be considered extraneous; (D) a provision shall be considered extraneous if it produces changes in outlays or revenues which are merely incidental to the non-budgetary components of the provision; (E) a provision shall be considered to be extraneous if it increases, or would increase, net outlays, or if it decreases, or would decrease, revenues during a fiscal year after the fiscal years covered by such reconciliation bill or reconciliation resolution, and such increases or decreases are greater than outlay reductions or revenue increases resulting from other provisions in such title in such year;

and (F) a provision shall be considered extraneous if it violates section 310(g).

(2) A Senate-originated provision shall not be considered extraneous under paragraph (1)(A) if the Chairman and Ranking Minority Member of the Committee on the Budget and the Chairman and Ranking Minority Member of the Committee which reported the provision certify that: (A) the provision mitigates direct effects clearly attributable to a provision changing outlays or revenue and both provisions together produce a net reduction in the deficit; (B) the provision will result in a substantial reduction in outlays or a substantial increase in revenues during fiscal years after the fiscal years covered by the reconciliation bill or reconciliation resolution; (C) a reduction of outlays or an increase in revenues is likely to occur as a result of the provision, in the event of new regulations authorized by the provision or likely to be proposed, court rulings on pending litigation, or relationships between economic indices and stipulated statutory triggers pertaining to the provision, other than the regulations, court rulings or relationships currently projected by the Congressional Budget Office for scorekeeping purposes; or (D) such provision will be likely to produce a significant reduction in outlays or increase in revenues but, due to insufficient data, such reduction or increase cannot be reliably estimated.

(3) A provision reported by a committee shall not be considered extraneous under paragraph (1)(C) if (A) the provision is an integral part of a provision or title, which if introduced as a bill or resolution would be referred to such committee, and the provision sets forth the procedure to carry out or implement the substantive provisions that were reported and which fall within the jurisdiction of such committee; or (B) the provision states an exception to, or a special application of, the general provision or title of which it is a part and such general provision or title if introduced as a bill or resolution would be referred to such committee.

(c) EXTRANEOUS MATERIALS.—Upon the reporting or discharge of a reconciliation bill or resolution pursuant to section 310 in the Senate, and again upon the submission of a conference report on such a reconciliation bill or resolution, the Committee on the Budget of the Senate shall submit for the record a list of material considered to be extraneous under subsections (b)(1)(A), (b)(1)(B), and (b)(1)(E) of this section to the instructions of a committee

as provided in this section. The inclusion or exclusion of a provision shall not constitute a determination of extraneousness by the Presiding Officer of the Senate.

(d) CONFERENCE REPORTS.—When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a reconciliation bill or reconciliation resolution pursuant to section 310, upon—

(1) a point of order being made by any Senator against extraneous material meeting the definition of subsections (b)(1)(A), (b)(1)(B), (b)(1)(D), (b)(1)(E), or (b)(1)(F), and

(2) such point of order being sustained,

such material contained in such conference report or amendment shall be deemed stricken, and the Senate shall proceed, without intervening action or motion, to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable for two hours. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.

(e) GENERAL POINT OF ORDER.—Notwithstanding any other law or rule of the Senate, it shall be in order for a Senator to raise a single point of order that several provisions of a bill, resolution, amendment, motion, or conference report violate this section. The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order. If the Presiding Officer so sustains the point of order as to some of the provisions (including provisions of an amendment, motion, or conference report) against which the Senator raised the point of order, then only those provisions (including provisions of an amendment, motion, or conference report) against which the Presiding Officer sustains the point of order shall be deemed stricken pursuant to this section. Before the Presiding Officer rules on such a point of order, any Senator may move to waive such a point of order as it applies to some or all of the provisions against which the point of order was raised.

Such a motion to waive is amendable in accordance with the rules and precedents of the Senate. After the Presiding Officer rules on such a point of order, any Senator may appeal the ruling of the Presiding Officer on such a point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

Section 313, popularly known as the "Byrd Rule," was added by the Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508). The Budget Enforcement Act of 1997 effected a technical correction to this section (sec. 10113, P.L. 105–33). Changes in outlays or revenues are not rendered incidental under this section simply by their insusceptibility to measurement (Aug. 6, 1993, p. 19764).

ADJUSTMENTS

SEC. 314. (a) ADJUSTMENTS.—

(1) IN GENERAL.—After the reporting of a bill or joint resolution, the offering of an amendment thereto, or the submission of a conference report thereon, the chairman of the Committee on the Budget of the House of Representatives or the Senate shall make the adjustments set forth in paragraph (2) for the amount of new budget authority in that measure (if that measure meets the requirements set forth in subsection (b)) and the outlays flowing from that budget authority.

(2) MATTERS TO BE ADJUSTED.—The adjustments referred to in paragraph (1) are to be made to—

(A) the discretionary spending limits, if any, set forth in the appropriate concurrent resolution on the budget;

(B) the allocations made pursuant to the appropriate concurrent resolution on the budget pursuant to section 302(a); and

(C) the budgetary aggregates as set forth in the appropriate concurrent resolution on the budget.

(b) AMOUNTS OF ADJUSTMENTS.—The adjustment referred to in subsection (a) shall be—

(1) an amount provided and designated as an emergency requirement pursuant to section 251(b)(2)(A) or 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985;

(2) an amount provided for continuing disability reviews subject to the limitations in section 251(b)(2)(C) of that Act;

(3) for any fiscal year through 2002, an amount provided that is the dollar equivalent of the Special Drawing Rights with respect to—

(A) an increase in the United States quota as part of the International Monetary Fund Eleventh General Review of Quotas (United States Quota); or

(B) any increase in the maximum amount available to the Secretary of the Treasury pursuant to section 17 of the Bretton Woods Agreements Act, as amended from time to time (New Arrangements to Borrow);

(4) an amount provided not to exceed $1,884,000,000 for the period of fiscal years 1998 through 2000 for arrearages for international organizations, international peacekeeping, and multilateral development banks;

(5) an amount provided for an earned income tax credit compliance initiative but not to exceed—

(A) with respect to fiscal year 1998, $138,000,000 in new budget authority;

(B) with respect to fiscal year 1999, $143,000,000 in new budget authority;

(C) with respect to fiscal year 2000, $144,000,000 in new budget authority;

(D) with respect to fiscal year 2001, $145,000,000 in new budget authority; and

(E) with respect to fiscal year 2002, $146,000,000 in new budget authority; or

(6) in the case of an amount for adoption incentive payments (as defined in section 251(b)(2)(G) of the Balanced Budget and Emergency Deficit Control Act of 1985) for fiscal year 1999, 2000, 2001, 2002, or 2003 for the Department of Health and Human Services, an amount not to exceed $20,000,000.

(c) APPLICATION OF ADJUSTMENTS.—The adjustments made pursuant to subsection (a) for legislation shall—

(1) apply while that legislation is under consideration;

(2) take effect upon the enactment of that legislation; and

(3) be published in the Congressional Record as soon as practicable.

(d) REPORTING REVISED SUBALLOCATIONS.—Following any adjustment made under subsection (a), the Committees on Appropriations of the Senate and the House of

Representatives may report appropriately revised suballocations under section 302(b) to carry out this section.

(e) DEFINITIONS FOR CDRS.—As used in subsection (b)(2)—

(1) the term "continuing disability reviews" shall have the same meaning as provided in section 251(b)(2)(C)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985; and

(2) the term "new budget authority" shall have the same meaning as the term "additional new budget authority" and the term "outlays" shall have the same meaning as "additional outlays" in that section.

This section was added by the Budget Enforcement Act of 1997 (sec. 10114, P.L. 105–33). Subsection (b)(6) was added by the Adoption and Safe Families Act of 1997 (sec. 201(b), P.L. 105–89). Emergency designations for discretionary budget authority under section 314 are ineffectual because section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 has expired pursuant to § 275 of that Act. Recent budget resolutions have provided that new budget authority, new entitlement authority, outlays, and receipts designated as an emergency in bills, joint resolutions, amendments, or conference reports are not cognizable under specified sections of title III and IV of the Budget Act. The budget resolutions also have required to be included in a committee report, joint statement of managers, or the Congressional Record an explanation of how an emergency item meets certain criteria (sec. 502, H. Con. Res. 95, 108th Cong.; sec. 402, S. Con. Res. 95, 108th Cong., May 19, 2004, deemed in place by H. Res. 649, 108th Cong., May 19, 2004, p. ——, and by sec. 3(a)(4), H. Res. 5, 109th Cong., Jan. 4, 2005, p. ——; sec. 402, H. Con. Res. 95, 109th Cong.).

EFFECT OF ADOPTION OF A SPECIAL ORDER OF BUSINESS IN THE HOUSE OF REPRESENTATIVES

SEC. 315. For purposes of a reported bill or joint resolution considered in the House of Representatives pursuant to a special order of business, the term "as reported" in this title or title IV shall be considered to refer to the text made in order as an original bill or joint resolution for the purpose of amendment or to the text on which the previous question is ordered directly to passage, as the case may be.

This section was added by the Budget Enforcement Act of 1997 (sec. 10115, P.L. 105–33). In the 106th, 107th, 108th, and 109th Congresses, the House adopted an order to enforce a 303(a) point of order against a reported bill or joint resolution considered under a special order of business on the basis of text made in order as original text (sec. 2(a)(3), H. Res.

5, Jan. 6, 1999, p. 47; sec. 3(b)(2), H. Res. 5, Jan. 3, 2001, p. ——; sec. 3(a)(2), H. Res. 5, Jan. 7, 2003, p. ——; sec. 3(a)(2), H. Res. 5, Jan. 4, 2005, p. ——).

The Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) established a new title VI which placed temporary limits on discretionary spending and provided mechanisms for enforcement which included those found in title III of the Congressional Budget Act, which was extended by the Omnibus Budget Reconciliation Act of 1993 (tit. XIV, P.L. 103–66). Title VI was repealed by the Budget Enforcement Act of 1997 (sec. 10118, P.L. 105–33). For the text of title VI, see the House Rules and Manual for the 104th Congress (H. Doc. 103–342).

TITLE IV—ADDITIONAL PROVISIONS TO IMPROVE FISCAL PROCEDURES

PART A—GENERAL PROVISIONS

BUDGET-RELATED LEGISLATION NOT SUBJECT TO APPROPRIATIONS

SEC. 401. (a) CONTROLS ON CERTAIN BUDGET-RELATED LEGISLATION NOT SUBJECT TO APPROPRIATIONS.—It shall not be in order in either the House of Representatives or the Senate to consider any bill or joint resolution (in the House of Representatives only, as reported), amendment, motion, or conference report that provides—

(1) new authority to enter into contracts under which the United States is obligated to make outlays;

(2) new authority to incur indebtedness (other than indebtedness incurred under chapter 31 of title 31 of the United States Code) for the repayment of which the United States is liable; or

(3) new credit authority;

unless that bill, joint resolution, amendment, motion, or conference report also provides that the new authority is to be effective for any fiscal year only to the extent or in the amounts provided in advance in appropriation Acts.

(b) LEGISLATION PROVIDING NEW ENTITLEMENT AUTHORITY.—

(1) POINT OF ORDER.—It shall not be in order in either the House of Representatives or the Senate to consider any bill or joint resolution (in the House of Representatives only, as reported), amendment, motion, or conference report that provides new entitlement authority that is to become effective during the current fiscal year.

(2) If any committee of the House of Representatives or the Senate reports any bill or resolution

which provides new entitlement authority which is to become effective during a fiscal year and the amount of new budget authority which will be required for such fiscal year if such bill or resolution is enacted as so reported exceeds the appropriate allocation of new budget authority reported under section 302(b) in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year, such bill or resolution shall then be referred to the Committee on Appropriations of the Senate or may then be referred to the Committee on Appropriations of the House, as the case may be, with instructions to report it, with the committee's recommendations, within 15 calendar days (not counting any day on which that House is not in session) beginning with the day following the day on which it is so referred. If the Committee on Appropriations of either House fails to report a bill or resolution referred to it under this paragraph within such 15-day period, the committee shall automatically be discharged from further consideration of such bill or resolution and such bill or resolution shall be placed on the appropriate calendar.

(3) The Committee on Appropriations of each House shall have jurisdiction to report any bill or resolution referred to it under paragraph (2) with an amendment which limits the total amount of new spending authority provided in such bill or resolution.

(c) EXCEPTIONS.—

(1) Subsections (a) and (b) shall not apply to new authority described in those subsections if outlays from that new authority [will][1] flow—

(A) from a trust fund established by the Social Security Act (as in effect on the date of the enactment of this Act); or

(B) from any other trust fund, 90 percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays are or will be made) received in the Treasury under specified provisions of the Internal Revenue Code of 1954.

[1] Paragraph (4)(A) of section 10116(a) of Public Law 105–33 amended this provision as shown above. However, the word "will" probably should have appeared in the matter proposed to be stricken by that public law.

(2) Subsections (a) and (b) shall not apply to new authority described in those subsections to the extent that—

(A) the outlays resulting therefrom are made by an organization which is (i) a mixed-ownership Government corporation (as defined in section 201 of the Government Corporation Control Act), or (ii) a wholly owned Government corporation (as defined in section 101 of such Act) which is specifically exempted by law from compliance with any or all of the provisions of that Act, as of the date of enactment of the Balanced Budget and Emergency Deficit Control Act of 1985; or

(B) the outlays resulting therefrom consist exclusively of the proceeds of gifts or bequests made to the United States for a specific purpose.

The Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177) amended subsection (a) by substituting the phrase "spending authority" for "contract or borrowing authority" and extended the point of order to conference reports, consistent with House precedent. The Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177) left the subsection entitled "exceptions" intact except to clarify the application of section 401 to Government corporations created after December 12, 1985. The Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) amended subsections (a) and (b)(1) to standardize their application to any bill, joint resolution, amendment, motion, or conference report. The Budget Enforcement Act of 1997 (sec. 10116, P.L. 105–33): (1) repealed section 402, collapsing the point of order under that section into section 401; (2) repealed the definition of "new spending authority," while shifting the definition of new entitlement authority to section 3; and (3) converted the mandatory referral of measures providing new entitlement authority to the Appropriations Committee to discretionary referral of such measures.

Language in a bill authorizing receipts from loans under certain legislation to be made available for designated purposes was held not to be "new spending authority" which would prohibit the consideration of the bill under section 401(a) of the Congressional Budget Act, where it was shown from the term "authorized" and from the committee report on the bill that the amounts of repaid loans must again be appropriated in appropriation acts before the funds could be expended (Speaker Albert, Sept. 10, 1975, p. 28270). A point of order under section 401(a) operates with respect to a bill or joint resolution in reported state and thus does not lie against consideration of an unreported measure (Mar. 21, 1995, p. 8491). Section 401(a) prohibits the consideration of a bill or amendment, including a conference report, containing new spending authority to incur indebtedness for the repayment of which the United States is primarily liable, the budget

authority for which is not provided in advance by appropriation acts. Thus a conference report authorizing the Secretary of HEW to borrow funds by issuing Government notes as a public debt transaction to make payments in connection with defaults on loans by medical students, not subject to amounts specified in advance by appropriation acts, was ruled out of order as violating section 401(a) (Sept. 27, 1976, pp. 32655–704).

A point of order under section 401(b) operates with respect to a bill or joint resolution in reported state and thus does not lie against consideration of an unreported measure (Mar. 21, 1995, p. 8491). A conference report (filed in 1976 to accompany a bill originally reported in the House in calendar year 1975) requiring the Secretary of Agriculture to pay a cost of transporting agricultural commodities to major disaster areas upon the date of enactment was held to constitute new spending "entitlement" authority which could become effective prior to the fiscal year beginning during the calendar year in which the bill had been reported from conference, in violation of section 401(b)(1), and the conference report was ruled out of order (Speaker Albert, Sept. 23, 1976, pp. 3209, 3210). A Senate amendment providing new spending "entitlement" authority for adjustment assistance under the Trade Act of 1974, by requiring the Secretary of Labor to certify a new group of workers as eligible beginning on the day prior to the start of the ensuing fiscal year, was conceded to violate section 401(b)(1), and a motion to concur was ruled out on that point of order (June 26, 1986, p. 15729). Where an amendment contained new entitlement authority in the form of retirement benefits to certain Federal employees, the Chair contemplated immediate enactment in his determination that the new entitlement authority became effective before the fiscal year beginning during the calendar year in which the pending bill was reported (May 9, 1995, p. 12178).

Where a committee had not yet filed with the House a report subdividing among its subcommittees or by programs new entitlement authority allocated to that committee in the joint statement accompanying a conference report on a concurrent resolution on the budget, formerly required under section 302(a), the Speaker under section 401(b) referred to the Appropriations Committee for the 15-day period a bill reported by that committee which exceeded the total entitlement authority allocated to that committee in the joint statement, and also referred a subsequent bill reported by that committee which contained new entitlement authority (Speaker Albert, May 17, 1976, p. 14093; Aug. 25, 1976, p. 27775). During the efficacy of title VI, section 401(b)(2) had no vitality since that section remained linked to section 302 rather than the overriding section 602. Prior to consideration of a bill in Committee of the Whole, the Speaker may discharge from the Union Calendar and refer to the Appropriations Committee for 15 days, pursuant to section 401(b), a bill which has been reported providing new entitlement authority in excess of the total amount allocated to the reporting committee (Speaker O'Neill, Sept. 8, 1977, p. 28153; Sept. 8, 1978, p. 28543) even if the bill was reported prior to final adoption

of the first budget resolution (Speaker O'Neill, July 19, 1978, pp. 21786, 21787; May 21, 1981, p. 10622). A bill reported from the Committee on Agriculture amending the Food and Agriculture Act to increase certain commodity target prices of 1979 crops, thereby providing new entitlement authority for fiscal year 1980 in excess of the amount allocated to that committee under the first budget resolution, and a bill reported from the Committee on Ways and Means increasing eligibility and payments for child welfare and social services under the Social Security Act, providing new entitlement authority in excess of the net amount of such authority allocated to that committee under the first budget resolution, were discharged from the Union Calendar by the Speaker and referred to the Appropriations Committee pursuant to section 401(b) (Speaker O'Neill, June 5, 1979, p. 13385; June 6, 1979, p. 13665). The Speaker may exercise his referral authority under section 401(b), whether or not the committee has filed its report under section 302(b) of the Budget Act, where the budget authority for the entitlement bill has been assumed in the budget resolution and would be included in the committee's 302(b) report, but where the budget authority for such bill exceeds the net amount of such authority allocated to the reporting committee, because the budget resolution assumes the reporting of other legislation, decreasing other programs for the year in question, which has not yet been reported (Speaker O'Neill, June 6, 1979, p. 13665).

Although the former definition of new spending authority in section 401(c)(2) did not include the authority to insure or guarantee the repayment of indebtedness incurred by another person or government (as where the authority to incur contractual obligations to insure or guarantee another person's debt is a contingent liability of the United States), the authority to make payments in connection with defaults which have already occurred was conceded to constitute a primary liability of the United States to incur indebtedness and to require budget authority in advance in appropriation acts (Sept. 27, 1976, pp. 32655–704). A provision which requires payments to individuals meeting certain qualifications, but which also contains an authorization for appropriations to make such payments and a provision that if sums appropriated pursuant thereto are insufficient to make payments, then payments be ratably reduced to the amounts of appropriations actually made, does not constitute new entitlement authority (Sept. 13, 1983, p. 23884). An amendment establishing a new executive position at compensation level II but subjecting its salary to the appropriation process was held not to provide new entitlement authority (Mar. 26, 1992, p. 7203). The 106th Congress adopted a temporary rule excluding Federal compensation from the definition of entitlement authority (sec. 2(a)(2), H. Res. 5, Jan. 6, 1999, p. 47), which expired upon the adoption of the budget resolution for fiscal year 2000. The 107th and 108th Congresses adopted that rule for the entire Congress (sec. 3(b)(3), H. Res. 5, Jan. 3, 2001, p. ——; sec. 3(a)(3), H. Res. 5, Jan. 7, 2003, p. ——). The

109th Congress adopted that rule for the entire Congress but limited its applicability to section 401 (sec. 3(a)(3), H. Res. 5, Jan. 4, 2005, p. ——).

The former definition of new entitlement authority did not include revenue-sharing spending authority in the form of entitlements, as the exception from the definition of new spending authority for revenue-sharing programs did not apply to new entitlement authority for future fiscal years (Speaker Albert, Sept. 30, 1976, pp. 34074–100).

ANALYSIS BY CONGRESSIONAL BUDGET OFFICE

SEC. 402. The Director of the Congressional Budget Office shall, to the extent practicable, prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee—

(1) an estimate of the costs which would be incurred in carrying out such bill or resolution in the fiscal year in which it is to become effective and in each of the 4 fiscal years following such fiscal year, together with the basis for each such estimate;

(2) a comparison of the estimates of costs described in paragraph (1), with any available estimates of costs made by such committee or by any Federal agency; and

(3) a description of each method for establishing a Federal financial commitment contained in such bill or resolution.

The estimates, comparison, and description so submitted shall be included in the report accompanying such bill or resolution if timely submitted to such committee before such report is filed.

* * * * *

The Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177) amended this section by adding paragraph (4) to subsection (a), along with a conforming change to the second sentence of that subsection. Public Law 97–108 previously amended section 403 by adding subsections (a)(2), (b), and (c). The Unfunded Mandates Reform Act of 1995 deleted from this section a requirement that the Director estimate costs incurred by State and local governments, in favor of a more particularized requirement in section 424, *infra* (sec. 104, P.L. 104–4; 109 Stat. 62). The Budget Enforcement Act of 1997 (sec. 10116, P.L. 105–33) redesignated this section, formerly section 403, as section 402. A committee cost estimate identifying certain spending authority as recurring annually and indefinitely was held necessarily to address the five-year period required by section 308 (Nov. 20, 1993, p. 31354).

STUDY BY THE GENERAL ACCOUNTING OFFICE OF FORMS OF FEDERAL FINANCIAL COMMITMENT THAT ARE NOT REVIEWED ANNUALLY BY CONGRESS

SEC. 404. The General Accounting Office shall study those provisions of law which provide mandatory spending and report to the Congress its recommendations for the appropriate form of financing for activities or programs financed by such provisions not later than eighteen months after the effective date of this section. Such report shall be revised from time to time.

This section, formerly section 405, was redesignated by the Budget Enforcement Act of 1997 (sec. 10116, P.L. 105–33). The General Accounting Office is now designated the Government Accountability Office (31 U.S.C. 702 note).

OFF-BUDGET AGENCIES, PROGRAMS, AND ACTIVITIES

SEC. 405. (a) Notwithstanding any other provision of law, budget authority, credit authority, and estimates of outlays and receipts for activities of the Federal budget which are off-budget immediately prior to the date of enactment of this section, not including activities of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, shall be included in a budget submitted pursuant to section 1105 of title 31, United States Code, and in a concurrent resolution on the budget reported pursuant to section 301 or section 304 of this Act and shall be considered, for purposes of this Act, budget authority, outlays, and spending authority in accordance with definitions set forth in this Act.

(b) All receipts and disbursements of the Federal Financing Bank with respect to any obligations which are issued, sold, or guaranteed by a Federal agency shall be treated as a means of financing such agency for purposes of section 1105 of title 31, United States Code, and for purposes of this Act.

This section, formerly section 406, was redesignated by the Budget Enforcement Act of 1997 (sec. 10116, P.L. 105–33).

MEMBER USER GROUP

SEC. 406. The Speaker of the House of Representatives, after consulting with the Minority Leader of the House, may appoint a Member User Group for the purpose of reviewing budgetary scorekeeping rules and practices of the House and advising the Speaker from time to time on the effect and impact of such rules and practices.

The Balanced Budget and Emergency Deficit Control Act of 1985 (tit. II, P.L. 99–177) added sections 405, 406, and 407 as new sections at the end of title IV. This section, formerly section 407, was redesignated by the Budget Enforcement Act of 1997 (sec. 10116, P.L. 105–33).

* * * * *

PART B—FEDERAL MANDATES

SEC. 421. DEFINITIONS.

For purposes of this part:

(1) AGENCY.—The term "agency" has the same meaning as defined in section 551(1) of title 5, United States Code, but does not include independent regulatory agencies.

(2) AMOUNT.—The term "amount", with respect to an authorization of appropriations for Federal financial assistance, means the amount of budget authority for any Federal grant assistance program or any Federal program providing loan guarantees or direct loans.

(3) DIRECT COSTS.—The term "direct costs"—

(A)(i) in the case of a Federal intergovernmental mandate, means the aggregate estimated amounts that all State, local, and tribal governments would be required to spend or would be prohibited from raising in revenues in order to comply with the Federal intergovernmental mandate; or

(ii) in the case of a provision referred to in paragraph (5)(A)(ii), means the amount of Federal financial assistance eliminated or reduced;

(B) in the case of a Federal private sector mandate, means the aggregate estimated amounts that the private sector will be required to spend in order to comply with the Federal private sector mandate;

(C) shall be determined on the assumption that—

(i) State, local, and tribal governments, and the private sector will take all reasonable steps necessary to mitigate the costs resulting from the Federal mandate, and will comply with applicable standards of practice and conduct established by recognized professional or trade associations; and

(ii) reasonable steps to mitigate the costs shall not include increases in State, local, or tribal taxes or fees; and

(D) shall not include—

(i) estimated amounts that the State, local, and tribal governments (in the case of a Federal intergovernmental mandate) or the private sector (in the case of a Federal private sector mandate) would spend—

(I) to comply with or carry out all applicable Federal, State, local, and tribal laws and regulations in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that Federal mandate; or

(II) to comply with or carry out State, local, and tribal governmental programs, or private-sector business or other activities in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that mandate; or

(ii) expenditures to the extent that such expenditures will be offset by any direct savings to the State, local, and tribal governments, or by the private sector, as a result of—

(I) compliance with the Federal mandate; or

(II) other changes in Federal law or regulation that are enacted or adopted in the same bill or joint resolution or proposed or final Federal regulation and that govern the same activity as is affected by the Federal mandate.

(4) DIRECT SAVINGS.—The term "direct savings", when used with respect to the result of compliance with the Federal mandate—

(A) in the case of a Federal intergovernmental mandate, means the aggregate estimated reduction in costs to any State, local, or tribal government as a result of compliance with the Federal intergovernmental mandate; and

(B) in the case of a Federal private sector mandate, means the aggregate estimated reduction in costs to the private sector as a result of compliance with the Federal private sector mandate.

(5) FEDERAL INTERGOVERNMENTAL MANDATE.—The term "Federal intergovernmental mandate" means—

(A) any provision in legislation, statute, or regulation that—

(i) would impose an enforceable duty upon State, local, or tribal governments, except—

(I) a condition of Federal assistance; or

(II) a duty arising from participation in a voluntary Federal program, except as provided in subparagraph (B); or

(ii) would reduce or eliminate the amount of authorization of appropriations for—

(I) Federal financial assistance that would be provided to State, local, or tribal governments for the purpose of complying with any such previously imposed duty unless such duty is reduced or eliminated by a corresponding amount; or

(II) the control of borders by the Federal Government; or reimbursement to State, local, or tribal governments for the net cost associated with illegal, deportable, and excludable aliens, including court-mandated expenses related to emergency health care, education or criminal justice; when such a reduction or elimination would result in increased net costs to State, local, or tribal governments in providing education or emergency health care to, or incarceration of, illegal aliens; except that this subclause shall not be in effect with respect to a State, local, or tribal government, to the extent that such government has not fully cooperated in the efforts of the Federal Government to locate, apprehend, and deport illegal aliens;

(B) any provision in legislation, statute, or regulation that relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority, if the provision—

(i)(I) would increase the stringency of conditions of assistance to State, local, or tribal governments under the program; or

(II) would place caps upon, or otherwise decrease, the Federal Government's responsibility

to provide funding to State, local, or tribal governments under the program; and

(ii) the State, local, or tribal governments that participate in the Federal program lack authority under that program to amend their financial or programmatic responsibilities to continue providing required services that are affected by the legislation, statute, or regulation.

(6) FEDERAL MANDATE.—The term "Federal mandate" means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (5) and (7).

(7) FEDERAL PRIVATE SECTOR MANDATE.—The term "Federal private sector mandate" means any provision in legislation, statute, or regulation that—

(A) would impose an enforceable duty upon the private sector except—

(i) a condition of Federal assistance; or

(ii) a duty arising from participation in a voluntary Federal program; or

(B) would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that will be provided to the private sector for the purposes of ensuring compliance with such duty.

(8) LOCAL GOVERNMENT.—The term "local government" has the same meaning as defined in section 6501(6) of title 31, United States Code.

(9) PRIVATE SECTOR.—The term "private sector" means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.

(10) REGULATION; RULE.—The term "regulation" or "rule" (except with respect to a rule of either House of the Congress) has the meaning of "rule" as defined in section 601(2) of title 5, United States Code.

(11) SMALL GOVERNMENT.—The term "small government" means any small governmental jurisdictions defined in section 601(5) of title 5, United States Code, and any tribal government.

(12) STATE.—The term "State" has the same meaning as defined in section 6501(9) of title 31, United States Code.

(13) TRIBAL GOVERNMENT.—The term "tribal government" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians.

SEC. 422. EXCLUSIONS.

This part shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress that—

(1) enforces constitutional rights of individuals;

(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;

(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government;

(4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government;

(5) is necessary for the national security or the ratification or implementation of international treaty obligations;

(6) the President designates as emergency legislation and that the Congress so designates in statute; or

(7) relates to the old-age, survivors, and disability insurance program under title II of the Social Security Act (including taxes imposed by sections 3101(a) and 3111(a) of the Internal Revenue Code of 1986 (relating to old-age, survivors, and disability insurance).

SEC. 423. DUTIES OF CONGRESSIONAL COMMITTEES.

(a) IN GENERAL.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character that includes any Federal mandate, the report of the committee accompanying the bill or joint resolution shall contain the information required by subsections (c) and (d).

(b) SUBMISSION OF BILLS TO THE DIRECTOR.—When a committee of authorization of the Senate or the House of Representatives orders reported a bill or joint resolution of a public character, the committee shall promptly provide the bill or joint resolution to the Director of the Congres-

sional Budget Office and shall identify to the Director any Federal mandates contained in the bill or resolution.

(c) REPORTS ON FEDERAL MANDATES.—Each report described under subsection (a) shall contain—

(1) an identification and description of any Federal mandates in the bill or joint resolution, including the direct costs to State, local, and tribal governments, and to the private sector, required to comply with the Federal mandates;

(2) a qualitative, and if practicable, a quantitative assessment of costs and benefits anticipated from the Federal mandates (including the effects on health and safety and the protection of the natural environment); and

(3) a statement of the degree to which a Federal mandate affects both the public and private sectors and the extent to which Federal payment of public sector costs or the modification or termination of the Federal mandate as provided under section 425(a)(2) would affect the competitive balance between State, local, or tribal governments and the private sector including a description of the actions, if any, taken by the committee to avoid any adverse impact on the private sector or the competitive balance between the public sector and the private sector.

(d) INTERGOVERNMENTAL MANDATES.—If any of the Federal mandates in the bill or joint resolution are Federal intergovernmental mandates, the report required under subsection (a) shall also contain—

(1)(A) a statement of the amount, if any, of increase or decrease in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable for activities of State, local, or tribal governments subject to the Federal intergovernmental mandates;

(B) a statement of whether the committee intends that the Federal intergovernmental mandates be partly or entirely unfunded, and if so, the reasons for that intention; and

(C) if funded in whole or in part, a statement of whether and how the committee has created a mechanism to allocate the funding in a manner that is reasonably consistent with the expected direct costs

among and between the respective levels of State, local, and tribal government; and

(2) any existing sources of Federal assistance in addition to those identified in paragraph (1) that may assist State, local, and tribal governments in meeting the direct costs of the Federal intergovernmental mandates.

(e) PREEMPTION CLARIFICATION AND INFORMATION.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character, the committee report accompanying the bill or joint resolution shall contain, if relevant to the bill or joint resolution, an explicit statement on the extent to which the bill or joint resolution is intended to preempt any State, local, or tribal law, and, if so, an explanation of the effect of such preemption.

(f) PUBLICATION OF STATEMENT FROM THE DIRECTOR.—

(1) IN GENERAL.—Upon receiving a statement from the Director under section 424, a committee of the Senate or the House of Representatives shall publish the statement in the committee report accompanying the bill or joint resolution to which the statement relates if the statement is available at the time the report is printed.

(2) OTHER PUBLICATION OF STATEMENT OF DIRECTOR.—If the statement is not published in the report, or if the bill or joint resolution to which the statement relates is expected to be considered by the Senate or the House of Representatives before the report is published, the committee shall cause the statement, or a summary thereof, to be published in the Congressional Record in advance of floor consideration of the bill or joint resolution.

SEC. 424. DUTIES OF THE DIRECTOR; STATEMENTS ON BILLS AND JOINT RESOLUTIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS.

(a) FEDERAL INTERGOVERNMENTAL MANDATES IN REPORTED BILLS AND RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

(1) CONTENTS.—If the Director estimates that the direct cost of all Federal intergovernmental mandates in the bill or joint resolution will equal or exceed

$50,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal intergovernmental mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

(2) ESTIMATES.—Estimates required under paragraph (1) shall include estimates (and brief explanations of the basis of the estimates) of—

(A) the total amount of direct cost of complying with the Federal intergovernmental mandates in the bill or joint resolution;

(B) if the bill or resolution contains an authorization of appropriations under section 425(a)(2)(B), the amount of new budget authority for each fiscal year for a period not to exceed 10 years beyond the effective date necessary for the direct cost of the intergovernmental mandate; and

(C) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable by State, local, or tribal governments for activities subject to the Federal intergovernmental mandates.

(3) ESTIMATE NOT FEASIBLE.—If the Director determines that it is not feasible to make a reasonable estimate that would be required under paragraphs (1) and (2), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement. If such determination is made by the Director, a point of order under this part shall lie only under section 425(a)(1) and as if the requirement of section 425(a)(1) had not been met.

(b) FEDERAL PRIVATE SECTOR MANDATES IN REPORTED BILLS AND JOINT RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

(1) CONTENTS.—If the Director estimates that the direct cost of all Federal private sector mandates in the bill or joint resolution will equal or exceed $100,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal private sector mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

(2) ESTIMATES.—Estimates required under paragraph (1) shall include estimates (and a brief explanation of the basis of the estimates) of—

(A) the total amount of direct costs of complying with the Federal private sector mandates in the bill or joint resolution; and

(B) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution usable by the private sector for the activities subject to the Federal private sector mandates.

(3) ESTIMATE NOT FEASIBLE.—If the Director determines that it is not feasible to make a reasonable estimate that would be required under paragraphs (1) and (2), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement.

(c) LEGISLATION FALLING BELOW THE DIRECT COSTS THRESHOLDS.—If the Director estimates that the direct costs of a Federal mandate will not equal or exceed the thresholds specified in subsections (a) and (b), the Director shall so state and shall briefly explain the basis of the estimate.

(d) AMENDED BILLS AND JOINT RESOLUTIONS; CONFERENCE REPORTS.—If a bill or joint resolution is passed in an amended form (including if passed by one House as an amendment in the nature of a substitute for the text of a bill or joint resolution from the other House) or is reported by a committee of conference in amended form, and the amended form contains a Federal mandate not previously considered by either House or which contains an increase in the direct cost of a previously considered Federal mandate, then the committee of conference shall en-

sure, to the greatest extent practicable, that the Director shall prepare a statement as provided in this subsection or a supplemental statement for the bill or joint resolution in that amended form.

SEC. 425. LEGISLATION SUBJECT TO POINT OF ORDER.

(a) IN GENERAL.—It shall not be in order in the Senate or the House of Representatives to consider—

(1) any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the direct costs of Federal mandates in accordance with section 423(f) before such consideration, except this paragraph shall not apply to any supplemental statement prepared by the Director under section 424(d); and

(2) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal intergovernmental mandates by an amount that causes the thresholds specified in section 424(a)(1) to be exceeded, unless—

(A) the bill, joint resolution, amendment, motion, or conference report provides new budget authority or new entitlement authority in the House of Representatives or direct spending authority in the Senate for each fiscal year for such mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount equal to or exceeding the direct costs of such mandate; or

(B) the bill, joint resolution, amendment, motion, or conference report includes an authorization for appropriations in an amount equal to or exceeding the direct costs of such mandate, and—

(i) identifies a specific dollar amount of the direct costs of such mandate for each year up to 10 years during which such mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with the estimate determined under subsection (e) for each fiscal year;

(ii) identifies any appropriation bill that is expected to provide for Federal funding of the direct cost referred to under clause (i); and

(iii)(I) provides that for any fiscal year the responsible Federal agency shall determine whether there are insufficient appropriations for that fiscal year to provide for the direct

costs under clause (i) of such mandate, and shall (no later than 30 days after the beginning of the fiscal year) notify the appropriate authorizing committees of Congress of the determination and submit either—

(aa) a statement that the agency has determined, based on a re-estimate of the direct costs of such mandate, after consultation with State, local, and tribal governments, that the amount appropriated is sufficient to pay for the direct costs of such mandate; or

(bb) legislative recommendations for either implementing a less costly mandate or making such mandate ineffective for the fiscal year;

(II) provides for expedited procedures for the consideration of the statement or legislative recommendations referred to in subclause (I) by Congress no later than 30 days after the statement or recommendations are submitted to Congress; and

(III) provides that such mandate shall—

(aa) in the case of a statement referred to in subclause (I)(aa), cease to be effective 60 days after the statement is submitted unless Congress has approved the agency's determination by joint resolution during the 60-day period;

(bb) cease to be effective 60 days after the date the legislative recommendations of the responsible Federal agency are submitted to Congress under subclause (I)(bb) unless Congress provides otherwise by law; or

(cc) in the case that such mandate that has not yet taken effect, continue not to be effective unless Congress provides otherwise by law.

(b) RULE OF CONSTRUCTION.—The provisions of subsection (a)(2)(B)(iii) shall not be construed to prohibit or otherwise restrict a State, local, or tribal government from voluntarily electing to remain subject to the original Federal intergovernmental mandate, complying with the programmatic or financial responsibilities of the original Federal intergovernmental mandate and providing the funding necessary consistent with the costs of Federal agency assistance, monitoring, and enforcement.

(c) COMMITTEE ON APPROPRIATIONS.—

(1) APPLICATION.—The provisions of subsection (a)—

(A) shall not apply to any bill or resolution reported by the Committee on Appropriations of the Senate or the House of Representatives; except

(B) shall apply to—

(i) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

(ii) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendment offered to a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

(iii) any legislative provision increasing direct costs of a Federal intergovernmental mandate in a conference report accompanying a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives; and

(iv) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendments in disagreement between the two Houses to any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives.

(2) CERTAIN PROVISIONS STRICKEN IN SENATE.—Upon a point of order being made by any Senator against any provision listed in paragraph (1)(B), and the point of order being sustained by the Chair, such specific provision shall be deemed stricken from the bill, resolution, amendment, amendment in disagreement, or conference report and may not be offered as an amendment from the floor.

(d) DETERMINATIONS OF APPLICABILITY TO PENDING LEGISLATION.—For purposes of this section, in the Senate, the presiding officer of the Senate shall consult with the Committee on Governmental Affairs, to the extent practicable, on questions concerning the applicability of this part to a pending bill, joint resolution, amendment, motion, or conference report.

(e) DETERMINATIONS OF FEDERAL MANDATE LEVELS.—For purposes of this section, in the Senate, the levels of Federal mandates for a fiscal year shall be determined based on the estimates made by the Committee on the Budget.

SEC. 426. PROVISIONS RELATING TO THE HOUSE OF REPRESENTATIVES.

(a) ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.—It shall not be in order in the House of Representatives to consider a rule or order that waives the application of section 425.

(b) DISPOSITION OF POINTS OF ORDER.—

(1) APPLICATION TO THE HOUSE OF REPRESENTATIVES.—This subsection shall apply only to the House of Representatives.

(2) THRESHOLD BURDEN.—In order to be cognizable by the Chair, a point of order under section 425 or subsection (a) of this section must specify the precise language on which it is premised.

(3) QUESTION OF CONSIDERATION.—As disposition of points of order under section 425 or subsection (a) of this section, the Chair shall put the question of consideration with respect to the proposition that is the subject of the points of order.

(4) DEBATE AND INTERVENING MOTIONS.—A question of consideration under this section shall be debatable for 10 minutes by each Member initiating a point of order and for 10 minutes by an opponent on each point of order, but shall otherwise be decided without intervening motion except one that the House adjourn or that the Committee of the Whole rise, as the case may be.

(5) EFFECT ON AMENDMENT IN ORDER AS ORIGINAL TEXT.—The disposition of the question of consideration under this subsection with respect to a bill or joint resolution shall be considered also to determine the question of consideration under this subsection with respect to an amendment made in order as original text.

SEC. 427. REQUESTS TO THE CONGRESSIONAL BUDGET OFFICE FROM SENATORS.

At the written request of a Senator, the Director shall, to the extent practicable, prepare an estimate of the direct costs of a Federal intergovernmental mandate contained in an amendment of such Senator.

SEC. 428. CLARIFICATION OF APPLICATION.

(a) IN GENERAL.—This part applies to any bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out any statute, or that otherwise amends any statute, only if enactment of the bill, joint resolution, amendment, motion, or conference report—

(1) would result in a net reduction in or elimination of authorization of appropriations for Federal financial assistance that would be provided to State, local, or tribal governments for use for the purpose of complying with any Federal intergovernmental mandate, or to the private sector for use to comply with any Federal private sector mandate, and would not eliminate or reduce duties established by the Federal mandate by a corresponding amount; or

(2) would result in a net increase in the aggregate amount of direct costs of Federal intergovernmental mandates or Federal private sector mandates other than as described in paragraph (1).

(b) DIRECT COSTS.—

(1) IN GENERAL.—For purposes of this part, the direct cost of the Federal mandates in a bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out a statute, or that otherwise amends any statute, means the net increase, resulting from enactment of the bill, joint resolution, amendment, motion, or conference report, in the amount described under paragraph (2)(A) over the amount described under paragraph (2)(B).

(2) AMOUNTS.—The amounts referred to under paragraph (1) are—

(A) the aggregate amount of direct costs of Federal mandates that would result under the statute if the bill, joint resolution, amendment, motion, or conference report is enacted; and

(B) the aggregate amount of direct costs of Federal mandates that would result under the statute if the bill, joint resolution, amendment, motion, or conference report were not enacted.

(3) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.—For purposes of this section, in the case of legislation to extend authorization of appropriations, the authorization level that would be provided by the

extension shall be compared to the authorization level for the last year in which authorization of appropriations is already provided.

Part B of title IV was added by the Unfunded Mandates Reform Act of 1995 (sec. 101(a), P.L. 104–4; 109 Stat. 50–60). That Act explicitly declared that the new part was enacted as an exercise of congressional rulemaking powers (sec. 108; 109 Stat. 63–64).

Pursuant to section 426, a Member raising a point of order under section 425 must specify the precise language upon which the point of order is based (May 23, 1996, p. 12283; May 1, 1997, p. 7006; Oct. 29, 1997, p. 23712; June 4, 1998, p. 11086; Mar. 9, 2000, p. ——; Mar. 22, 2000, p. ——; May 10, 2000, p. ——; May 8, 2002, p. ——; Feb. 9, 2005, p. ——). A statutorily privileged joint resolution of approval may be subject to a point of order under section 425 (May 8, 2002, p. ——). Debate on the point of order is on the question of considering the underlying text that is the subject of the point of order. The Members controlling debate on the point of order may reserve their time (Mar. 28, 1996, p. 6932), and a manager of a measure who controls time for debate against the point of order has the right to close debate (June 10, 1998, p. 11854). A point of order under section 426 against consideration of a resolution providing a special order of business that waives section 425 or self-executes the adoption of an amendment must be made when the special order is called up and comes too late after the resolution has been adopted (July 18, 1996, p. 17668) and must also specify the precise language upon which the point of order is based (June 10, 1998 p. 11853; June 28, 2000, p. ——; June 26, 2001, p. ——). A point of order under section 425 against consideration of a bill is properly raised pending the Speaker's declaration that the House resolve into the Committee of the Whole for such consideration (Oct. 29, 1997, p. 23712). Under clause 11 of rule XVIII an amendment may be offered in the Committee of the Whole that proposes only to strike an unfunded mandate unless precluded by specific terms of a special order of the House (§ 991, *supra*).

TITLE VII—PROGRAM REVIEW AND EVALUATION

* * * * *

CONTINUING STUDY OF ADDITIONAL BUDGET REFORM PROPOSALS

SEC. 703. (a) The Committees on the Budget of the House of Representatives and the Senate shall study on a continuing basis proposals designed to improve and facilitate methods of congressional budgetmaking. The proposals to be studied shall include, but are not limited to, proposals for—

(1) improving the information base required for determining the effectiveness of new programs by such

means as pilot testing, survey research, and other experimental and analytical techniques;

(2) improving analytical and systematic evaluation of the effectiveness of existing programs;

(3) establishing maximum and minimum time limitations for program authorization; and

(4) developing techniques of human resource accounting and other means of providing noneconomic as well as economic evaluation measures.

(b) The Committee on the Budget of each House shall, from time to time, report to its House the results of the study carried on by it under subsection (a), together with its recommendations.

(c) Nothing in this section shall preclude studies to improve the budgetary process by any other committee of the House of Representatives or the Senate or any joint committee of the Congress.

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TITLE IX—MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

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EXERCISE OF RULEMAKING POWERS

SEC. 904. (a) The provisions of this title and of titles I, III, IV, and V and the provisions of sections 701, 703, and 1017 are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(b) Any provision of title III or IV may be waived or suspended in the Senate by a majority vote of the Members voting, a quorum being present, or by the unanimous consent of the Senate.

(c) WAIVERS.—

(1) PERMANENT.—Sections 305(b)(2), 305(c)(4), 306, 310(d)(2), 313, 904(c), and 904(d) of this Act may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

(2) TEMPORARY.—Sections 301(i), 302(c), 302(f), 310(g), 311(a), 312(b), and 312(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(I), 258B(f)(1), 258B(h)(1), 258(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

(d) APPEALS.—

(1) PROCEDURE.—Appeals in the Senate from the decisions of the Chair relating to any provision of title III or IV or section 1017 shall, except as otherwise provided therein, be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, concurrent resolution, reconciliation bill, or rescission bill, as the case may be.

(2) PERMANENT.—An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 305(b)(2), 305(c)(4), 306, 310(d)(2), 313, 904(c), and 904(d) of this Act.

(3) TEMPORARY.—An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 301(i), 302(c), 302(f), 310(g), 311(a), 312(b), and 312(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(I), 258B(f)(1), 258B(h)(1), 258(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(e) EXPIRATION OF CERTAIN SUPERMAJORITY VOTING REQUIREMENTS.—Subsections (c)(2) and (d)(3) shall expire on September 30, 2002.

Section 904 was amended by the Budget Enforcement Act of 1997 (sec. 10119, P.L. 105–33) to clarify points of order in the Senate that may be waived by a supermajority vote. Pursuant to this section, and under its authority contained in clause 5 of rule XIII (former clause 4(b) of rule XI) to report on rules and the order of business, the Rules Committee

may report as privileged a resolution recommending the temporary waiver of the provisions of section 401 of the Congressional Budget Act during the consideration of designated legislation in the House (Speaker Albert, Mar. 20, 1975, p. 7676). A point of order against consideration of a resolution reported from the Rules Committee providing for consideration of a concurrent resolution on the budget does not lie based upon alleged violation of a statute which merely reaffirms the congressional commitment towards achieving balanced Federal budgets (P.L. 96–389), since the statute does not constitute a rule of the House and since section 904 of the Budget Act acknowledges the constitutional authority of either House to change its rules at any time (June 10, 1982, pp. 13352, 13353). A unanimous-consent agreement which only permits a (nonprivileged) bill to be considered in the House prior to three-day availability of the report thereon, but which does not specifically waive points of order against consideration, does not preclude a point of order against consideration of the bill when called up based upon an alleged violation of the Budget Act (Feb. 4, 1982, p. 845).

BUDGET ENFORCEMENT ACT OF 1990

EXCERPTS FROM TITLE XIII OF P.L. 101–508

In addition to adding titles V and VI to the Congressional Budget Act of 1974 (relating to credit reform and to budget agreement enforcement, respectively), the Budget Enforcement Act of 1990 (tit. XIII, P.L. 101–508) also included these free-standing provisions addressing the budgetary treatment of social security.

Subtitle C—Social Security

SEC. 13301. OFF-BUDGET STATUS OF OASDI TRUST FUNDS.

(a) EXCLUSION OF SOCIAL SECURITY FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President,

(2) the congressional budget, or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

* * * * *

SEC. 13302. PROTECTION OF OASDI TRUST FUNDS IN THE HOUSE OF REPRESENTATIVES.

(a) IN GENERAL.—It shall not be in order in the House of Representatives to consider any bill or joint resolution, as reported, or any amendment thereto or conference report thereon, if, upon enactment—

(1)(A) such legislation under consideration would provide for a net increase in OASDI benefits of at least 0.02 percent of the present value of future taxable payroll for the 75-year period utilized in the most

recent annual report of the Board of Trustees provided pursuant to section 201(c)(2) of the Social Security Act, and (B) such legislation under consideration does not provide at least a net increase, for such 75-year period, in OASDI taxes of the amount by which the net increase in such benefits exceeds 0.02 percent of the present value of future taxable payroll for such 75-year period,

(2)(A) such legislation under consideration would provide for a net increase in OASDI benefits (for the 5-year estimating period for such legislation under consideration), (B) such net increase, together with the net increases in OASDI benefits resulting from previous legislation enacted during that fiscal year or any of the previous 4 fiscal years (as estimated at the time of enactment) which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, exceeds $250,000,000, and (C) such legislation under consideration does not provide at least a net increase, for the 5-year estimating period for such legislation under consideration, in OASDI taxes which, together with net increases in OASDI taxes resulting from such previous legislation which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, equals the amount by which the net increase derived under subparagraph (B) exceeds $250,000,000;

(3)(A) such legislation under consideration would provide for a net decrease in OASDI taxes of at least 0.02 percent of the present value of future taxable payroll for the 75-year period utilized in the most recent annual report of the Board of Trustees provided pursuant to section 201(c)(2) of the Social Security Act, and (B) such legislation under consideration does not provide at least a net decrease, for such 75-year period, in OASDI benefits of the amount by which the net decrease in such taxes exceeds 0.02 percent of the present value of future taxable payroll for such 75-year period, or

(4)(A) such legislation under consideration would provide for a net decrease in OASDI taxes (for the 5-year estimating period for such legislation under con-

sideration), (B) such net decrease, together with the net decreases in OASDI taxes resulting from previous legislation enacted during that fiscal year or any of the previous 4 fiscal years (as estimated at the time of enactment) which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, exceeds $250,000,000, and (C) such legislation under consideration does not provide at least a net decrease, for the 5-year estimating period for such legislation under consideration, in OASDI benefits which, together with net decreases in OASDI benefits resulting from such previous legislation which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, equals the amount by which the net decrease derived under subparagraph (B) exceeds $250,000,000.

(b) APPLICATION.—In applying paragraph (3) or (4) of subsection (a), any provision of any bill or joint resolution, as reported, or any amendment thereto, or conference report thereon, the effect of which is to provide for a net decrease for any period in taxes described in subsection (c)(2)(A) shall be disregarded if such bill, joint resolution, amendment, or conference report also includes a provision the effect of which is to provide for a net increase of at least an equivalent amount for such period in medicare taxes.

(c) DEFINITIONS.—For purposes of this subsection:

(1) The term "OASDI benefits" means the benefits under the old-age, survivors, and disability insurance programs under title II of the Social Security Act.

(2) The term "OASDI taxes" means—

(A) the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1986, and

(B) the taxes imposed under chapter 1 of such Code (to the extent attributable to section 86 of such Code).

(3) The term "medicare taxes" means the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1986.

(4) The term "previous legislation" shall not include legislation enacted before fiscal year 1991.

(5) The term "5-year estimating period" means, with respect to any legislation, the fiscal year in which such legislation becomes or would become effective and the next 4 fiscal years.

(6) No provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of OASDI taxes referred to in paragraph (2)(B) unless such provision changes the income tax treatment of OASDI benefits.

* * * * *

For a discussion of the Federal budget process, including the current vitality of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman), which sets forth executive budget enforcement mechanisms, see House Practice, ch. 7.

"CONGRESSIONAL DISAPPROVAL" PROVISIONS CONTAINED IN PUBLIC LAWS

"CONGRESSIONAL DISAPPROVAL" PROVISIONS CONTAINED IN PUBLIC LAWS

§ 1130.

Congress has, from time to time, passed laws reserving to itself an absolute or limited right of review by approval or disapproval of certain actions of the executive branch or of independent agencies. These laws, known as "congressional disapproval" statutes, usually envision some form of congressional action falling into one of three general categories: (1) action by both Houses of Congress on a bill or joint resolution requiring presidential signature; (2) action by one or both Houses of Congress on a simple or concurrent resolution; and (3) action by a congressional committee. Although provisions in the first category remain viable, provisions in the latter two categories should be read in light of Immigration and Naturalization Service *v.* Chadha, 462 U.S. 919 (1983). In that case the Supreme Court held unconstitutional as in violation of the presentment clause of article I, section 7, and the doctrine of separation of powers the provisions of the Immigration and Nationality Act contemplating disapproval of a decision of the Attorney General to allow an otherwise deportable alien to remain in the United States by simple resolution of one House. That same year, the Supreme Court summarily affirmed several lower court decisions invalidating provisions contemplating disapproval of executive actions by methods described in both categories (2) and (3) above. 463 U.S. 1216 (1983). Since then, Congress has amended several "congressional disapproval" statutes to convert provisions requiring simple or concurrent resolutions to provisions requiring joint resolutions.

Many "congressional disapproval" statutes prescribe special procedures for the House to follow when reviewing executive actions. These procedures, termed "privileged procedures," technically are Rules of the House, enacted expressly or impliedly as an exercise of the House's rulemaking authority. At the beginning of each Congress, it is customary for the House to re-incorporate by reference in the resolution adopting its rules such "congressional disapproval" procedures as may exist in current law. Never-

theless, because the House retains the constitutional right to change its rules at any time, the Committee on Rules may report a resolution varying the statutorily prescribed procedures for the House.

Other "congressional disapproval" statutes prescribe no special procedures for the consideration of executive actions. As a result, those statutes contain no provisions that technically are rules of the House; and thus they are not carried in this Manual. For a recent listing of those statutes, see the House Rules and Manual for the 102d Congress (H. Doc. 101–256).

Below is a compilation of the various provisions in "congressional disapproval" statutes setting forth "privileged procedures" to be followed by the House when considering executive actions, together with any annotations of decisions of the Chair interpreting those provisions. Although some annotations provide pertinent legislative history, this compilation does not endeavor to provide a comprehensive record of legislative history for every provision. Excerpts of the Balanced Budget and Emergency Deficit Control Act, formerly carried after the Congressional Budget Act, have been scaled down and moved to this segment of the Manual for quick reference to the legislative procedures therein. The primary enforcement mechanisms in the statute (such as sequestration) are no longer carried because they are not legislative procedures. However, sections 250, 251, and 252 operate in conjunction with procedural provisions in title III of the Congressional Budget Act of 1974, *supra*. Sections 258, 258A, 258B, and 258C primarily provide for reporting and consideration of legislation in the Senate; therefore, only portions of those sections are carried here. A more thorough understanding of the statutory scheme requires the full statutory text (see 2 U.S.C. 900).

RESOLUTIONS PRIVILEGED FOR CONSIDERATION IN THE HOUSE

1. Executive Reorganization.
2. War Powers Resolution.
3. National Emergencies Act.
4. International Emergency Economic Powers Act.
5. District of Columbia Home Rule Act.
6. Title X of the Congressional Budget and Impoundment Control Act of 1974.
   - A. Impoundment Control.
   - B. Line Item Veto Authority.
7. Foreign Spent Nuclear Fuel.

8. Pension Reform Act.
9. Multiemployer Guarantees, Revised Schedules.
10. Nuclear Non-Proliferation Provisions of the Atomic Energy Act.
11. Trade Provisions.
    - A. Import Relief.
    - B. Freedom of Emigration.
    - C. Nondiscriminatory Treatment.
    - D. "Fast-Track" Procedures.
    - E. Narcotics Control Provisions.
    - F. Customs Duties, Negotiation and Implementation of Trade Agreements.
    - G. Trade Promotion Authority.
    - H. U.S. Participation in WTO.
    - I. Burmese Freedom and Democracy Act.
    - J. Prohibition on import restrictions that would threaten to impair national security.
12. Federal Salary Act of 1967.
13. Energy Policy and Conservation Act.
14. Extensions of Emergency Energy Authorities.
15. Nuclear Waste Fund Fees.
16. Arms Export Control.
    - A. Arms Export Control Act, § 36(b).
    - B. Arms Export Control Act, § 36(c).
    - C. Arms Export Control Act, § 36(d).
    - D. Arms Export Control Act, § 3.
    - E. Arms Export Control Act, §§ 62–63.
    - F. Arms Export Control Act, § 40(f).
17. Federal Election Commission Regulations.
18. Alaska Natural Gas Transportation Act of 1976.
19. Crude Oil Transportation Systems.
20. Alaska National Interest Lands Conservation Act.
21. Federal Land Policy and Management Act of 1976.
    - A. Land Use Planning.
    - B. Sales.
    - C. Withdrawals.
    - D. Review of Withdrawals.
22. Marine Fisheries Conservation Act.
23. Outer Continental Shelf Lands Act.
24. Nuclear Waste Policy Act of 1982.
    - A. High-level Radioactive Waste and Spent Nuclear Fuel.
    - B. Interim Storage Program.
    - C. Monitored Retrievable Storage.
25. Defense Base Closure and Realignment.
    - A. Defense Base Closure and Realignment Act of 1990.
    - B. Limitation on Military Construction Funds.
26. Congressional Accountability Act of 1995.
27. Termination of Cuban Economic Embargo.
28. Congressional Review of Agency Rulemaking.
29. The Balanced Budget and Emergency Deficit Control Act of 1985.
30. Andean Counterdrug Initiative.
31. Medicare Cost Containment.
32. Minimum Standards for Identification of Documents.

1. Executive Reorganization [5 U.S.C. 902–12]

SEC. 902. DEFINITIONS

For the purpose of this chapter—

(1) "agency" means—

(A) an Executive agency or part thereof; and

(B) an office or officer in the executive branch; but does include the General Accounting Office or the Comptroller General of the United States;

(2) "reorganization" means a transfer, consolidation, coordination, authorization, or abolition, referred to in section 903 of this title; and

(3) "officer" is not limited by section 2104 of this title.

The General Accounting Office is now designated the Government Accountability Office (31 U.S.C. 702 note).

SEC. 903. REORGANIZATION PLANS

(a) Whenever the President, after investigation, finds that changes in the organization of agencies are necessary to carry out any policy set forth in section 901(a) of this title, he shall prepare a reorganization plan specifying the reorganizations he finds are necessary. Any plan may provide for—

(1) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;

(2) the abolition of all or a part of the functions of an agency, except that no enforcement function or statutory program shall be abolished by the plan;

(3) the consolidation or coordination of the whole or a part of an agency, or of the whole part of the functions thereof, with the whole or a part of another agency or the functions thereof;

(4) the consolidation or coordination of a part of an agency or the functions thereof with another part of the same agency or the functions thereof;

(5) the authorization of an officer to delegate any of his functions; or

(6) the abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions.

The President shall transmit the plan (bearing an identification number) to the Congress together with a declaration that, with respect to each reorganization included in the plan, he has found that the reorganization is necessary to carry out any policy set forth in section 901(a) of this title.

(b) The President shall have a reorganization plan delivered to both Houses on the same day and to each House while it is in session, except that no more than three plans may be pending before the Congress at one time. In his message transmitting a reorganization plan, the President shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function. The message shall also estimate any reduction or increase in expenditures (itemized so far as practicable), and describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan. In addition, the President's message shall include an implementation section which shall (1) describe in detail (A) the actions necessary or planned to complete the reorganization, (B) the anticipated nature and substance of any orders, directives, and other administrative and operational actions which are expected to be required for completing or implementing the reorganization, and (C) any preliminary actions which have been taken in the implementation process, and (2) contain a projected timetable for completion of the implementation process. The President shall also submit such further background or other information as the Congress may require for its consideration of the plan.

(c) Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution described in section 909 has been ordered reported in either House, the President may make amendments or modifications to the plan, consistent with sections 903–905 of this title, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this chapter. The President may withdraw the plan any time prior to the conclusion of 90 calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

* * *

SEC. 905. LIMITATIONS ON POWERS

(a) A reorganization plan may not provide for, and a reorganization under this chapter may not have the effect of—

(1) creating a new executive department or renaming an existing executive department, abolishing or transferring an executive department or independent regulatory agency, or all the functions thereof, or consolidating two or more executive departments or two or more independent regulatory agencies, or all the functions thereof;

(2) continuing an agency beyond the period authorized by law for its existence or beyond the time when it would have terminated if the reorganization had not been made;

(3) continuing a function beyond the period authorized by law for its exercise or beyond the time when it would have terminated if the reorganization had not been made;

(4) authorizing an agency to exercise a function which is not expressly authorized by law at the time the plan is transmitted to Congress;

(5) creating a new agency which is not a component or part of an existing executive department or independent agency;

(6) increasing the term of an office beyond that provided by law for the office; or

(7) dealing with more than one logically consistent subject matter.

(b) A provision contained in a reorganization plan may take effect only if the plan in transmitted to Congress (in accordance with section 903(b) of this chapter) on or before December 31, 1984.

SEC. 906. EFFECTIVE DATE AND PUBLICATION OF REORGANIZATION PLANS

(a) Except as provided under subsection (c) of this section, a reorganization plan shall be effective upon approval by the President of a resolution (as defined in section 909) with respect to such plan, if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous

session of Congress after the date on which the plan is transmitted to Congress. Failure of either House to act upon such resolution by the end of such period shall be the same as disapproval of the resolution.

(b) For the purpose of this chapter—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(c) Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

(d) A reorganization plan which is effective shall be printed (1) in the Statutes at Large in the same volume as the public laws and (2) in the Federal Register.

* * *

SEC. 908. RULES OF SENATE AND HOUSE OF REPRESENTATIVES ON REORGANIZATION PLANS

Sections 909 through 912 of this title are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions with respect to any reorganization plans transmitted to Congress (in accordance with section 903(b) of this chapter) on or before December 31, 1984; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

SEC. 909. TERMS OF RESOLUTION

For the purpose of sections 908 through 912 of this title, "resolution" means only a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That the ——— Congress approves the reorganization plan numbered ——— transmitted to the Congress by the President on ———, 19—.", and includes such modifications and revisions as submitted by the President under section 903(c) of this chapter. The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than one reorganization plan.

SEC. 910. INTRODUCTION AND REFERENCE OF RESOLUTION

(a) No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under section 903, a resolution, as defined in section 909, shall be introduced (by request) in the House by the chairman of the Committee on Government Reform of the House, or by a Member of Members of the House designated by such chairman; and shall be introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(b) A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution's introduction.

SEC. 911. DISCHARGE OF COMMITTEE CONSIDERING RESOLUTION

If the committee to which is referred a resolution introduced pursuant to subsection (a) of section 910 (or, in the absence of such a resolution, the first resolution introduced with respect to the same reorganization plan) has

not reported such resolution or identical resolution at the end of 75 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

SEC. 912. PROCEDURE AFTER REPORT OR DISCHARGE OF COMMITTEE; DEBATE; VOTE ON FINAL PASSAGE

(a) When the committee has reported, or has been deemed to be discharged (under section 911) from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(b) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(c) Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(d) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.

(e) If, prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then—

(1) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(2) the vote on final passage shall be on the resolution of the other House.

Section 905(b) was amended by Public Law 98–614 to terminate the authority of the President to submit reorganization plans under this statute on December 31, 1984. These provisions are carried in this compilation because other Acts have incorporated their procedures by reference.

2. War Powers Resolution, §§ 5–7 [50 U.S.C. 1544–1546]

SEC. 5. (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on International Relations of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem if advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the

Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

This section (and section 7, *infra*) should be read in light of INS *v.* Chadha, 462 U.S. 919 (1983).

SEC. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on International Relations of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the

sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

SEC. 7. (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on International Relations of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

In the 94th Congress the President was granted authority to implement a "Sinai early-warning system" involving the assignment of civilian personnel to noncombat functions. In the same enactment, Congress provided for privileged consideration of a concurrent resolution calling for the removal of such personnel (see 22 U.S.C. 2348 note).

In the 98th Congress the Committee on Foreign Affairs reported a joint resolution providing statutory authorization under the War Powers Resolution for a multinational peacekeeping force in Lebanon. The joint resolution would have been subject to consideration under the procedural provisions of the statute, but the House adopted a special order reported from the Committee on Rules varying the procedures for consideration of the joint resolution and also providing for consideration of a similar Senate joint resolution (H. Res. 318, Sept. 28, 1983, p. 26108). The House subsequently passed a Senate joint resolution on the subject that changed the Rules of the House and Senate to provide special procedures for consideration of a joint resolution or bill to amend or repeal its provisions (P.L. 98–119, Sept. 29, 1983, p. 26493).

In the 98th Congress the Act was amended to provide for expedited consideration in the Senate of bills or joint resolutions requiring the removal of U.S. forces engaged in hostilities outside U.S. territory without a declaration of war (P.L. 98–164, Nov. 22, 1983). Those procedures appear in section 601(b) of the International Security Assistance and Arms Export Control Act of 1976 (P.L. 94–329; 90 Stat. 765).

In the 102d Congress the President was granted specific authority within the meaning of section 5(b) of the Act to use U.S. armed forces to enforce United Nations resolutions in response to the occupation of Kuwait by Iraq (P.L. 102–1, Jan. 14, 1991).

In the 103d Congress the Committee on Foreign Affairs reported H. Con. Res. 170, directing the President pursuant to 5(c) of the Act to remove United States Armed Forces from Somalia by January 31, 1994. By unanimous consent the House extended by one day the time for privileged consideration of that concurrent resolution under section 7(b) (Nov. 4, 1993, p. 27393).

In the 105th Congress the Committee on International Relations reported H. Con. Res. 227, directing the President pursuant to section 5(c) of the Act to remove United States Armed Forces from the Republic of Bosnia and Herzegovina. By unanimous consent the House postponed consideration of the concurrent resolution until a subsequent date certain and provided for its consideration under a "closed" procedure (Mar. 12, 1998, p. 3398).

In the 106th Congress the Committee on International Relations reported H. Con. Res. 82, directing the President pursuant to section 5(c) of the Act to remove United States Armed Forces from their positions in connection with the operations against the Federal Republic of Yugoslavia, and H. J. Res. 44, pursuant to section 5(b) of the Act and article I, section 8 of the Constitution, declaring a state of war between the United States

and the Government of the Federal Republic of Yugoslavia. The House adopted a special order reported from the Committee on Rules varying the statutory procedures for consideration of both the concurrent resolution and the joint resolution (H. Res. 151, Apr. 28, 1999, p. 7718).

3. National Emergencies Act [50 U.S.C. 1601, 1621, 1622]

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

[50 U.S.C. 1601]

SEC. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act [Sept. 14, 1976] are terminated two years from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

[50 U.S.C. 1621]

SEC. 201. (a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of

enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

[50 U.S.C. 1622]

SEC. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) there is enacted into law a joint resolution terminating the emergency; or

(2) the President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any joint resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a joint resolution to determine whether that emergency shall be terminated.

(c)(1) A joint resolution to terminate a national emergency delared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such joint resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any joint resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be

voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a joint resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together within its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such joint resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection (b) of this section, and section 502(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) Any national emergency declared by the President in accordance with this title, and not otherwise previously

terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

4. International Emergency Economic Powers Act [50 U.S.C. 1701]

SEC. 203. (a)(1) At the times and to the extent specified in section 202, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit—

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and

(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to

time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.

* * *

SEC. 207. * * * (b) The authorities described in subsection (a)(1) may not continue to be exercised under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act [50 U.S.C. 1622] and if the Congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section.

5. District of Columbia Home Rule Act, §§ 303(b), 602(c), 604

SEC. 303. * * * (b) An amendment to the charter ratified by the registered electors shall take effect upon the expiration of the 35-calendar-day period (excluding Saturday, Sunday, holidays, and days on which either House of Congress is not in session) following the date such amendment was submitted to the Congress, or upon the date prescribed by such amendment, whichever is later, unless during such 35-day period, there has been enacted into law a joint resolution, in accordance with the procedures specified in section 604 of this Act, disapproving such amendment. In any case in which any such joint resolution disapproving such an amendment has, within such 35-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such 35-day period, shall be deemed to have repealed such amendment, as of the date such resolution becomes law.

SEC. 602. * * * (c)(1) Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921, any act which the Council determines according to section 412(a), should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of

this Act, and except as provided in section 462(c) and section 472(d)(1) [relative to borrowing in anticipation of revenues], the Chairman of the Council shall transmit to the Speaker of the House of Representatives, and the President of the Senate a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting, each act passed by the Council and allowed to become effective by the Mayor without his signature, and each initiated act and act subject to referendum which has been ratified by a majority of the registered qualified electors voting on the initiative or referendum. Except as provided in paragraph (2), such act shall take effect upon the expiration of the 30-calendar-day period (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than three days, or an adjournment of more than three days) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate, or upon the date prescribed by such act, whichever is later, unless during such 30-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such joint resolution disapproving such an act has, within such 30-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law, subsequent to the expiration of such 30-day period, shall be deemed to have repealed such act, as of the date such resolution becomes law. The provisions of section 604, except subsections (d), (e), and (f) of such section, shall apply with respect to any joint resolution disapproving any act pursuant to this paragraph.

(2) In the case of any such Act transmitted by the Chairman with respect to any Act codified in title 22, 23, or 24 of the District of Columbia Code, such act shall take effect at the end of the 60-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate unless, during such 60-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such joint resolution disapproving such an act has, within such 60-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such 60-day period shall be

deemed to have repealed such act, as of the date such resolution becomes law. The provisions of section 604, relating to an expedited procedure for consideration of joint resolutions, shall apply to a joint resolution disapproving such Act as specified in this paragraph.

(3) The Council shall submit with each Act transmitted under this subsection an estimate of the costs which will be incurred by the District of Columbia as a result of the enactment of the Act in each of the first 4 fiscal years for which the Act is in effect, together with a statement of the basis for such estimate.

CONGRESSIONAL ACTION ON CERTAIN DISTRICT MATTERS

SEC. 604. (a) This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such these provisions are deemed a part of the rule of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rule (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) For the purpose of this section, "resolution" means only a joint resolution, the matter after the resolving clause of which is as follows: "That the ——— approves/disapproves of the action of the District of Columbia Council described as follows: ———.", the blank spaces therein being appropriately filled, and either approval or disapproval being appropriately indicated; but does not include a resolution which specifies more than one action.

(c) A resolution with respect to Council action shall be referred to the Committee on Government Reform of the House of Representatives, or the Committee on the District of Columbia of the Senate, by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(d) If the committee to which a resolution has been referred has not reported it at the end of twenty calendar days after its introduction, it is in order to move to discharge the committee from further consideration of any

other resolution with respect to the same Council action which has been referred to the committee.

(e) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(f) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same action.

(g) When the committee has reported, or has been discharged from further consideration of, a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(h) Debate on the resolution shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(i) Motions to postpone made with respect to the discharge from committee or the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(j) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

It is not in order to offer as privileged a motion to discharge the Committee on the District of Columbia (now Government Reform) from a simple (now joint) resolution disapproving an act passed by the D.C. City Council prior to the time that the Council was vested with the authority to pass the category of act to which the simple resolution disapproval procedure applies (Speaker Albert, Sept. 22, 1976, pp. 31873–74). The D.C. City Council subsequently having been vested with that authority, a motion to dis-

charge the Committee on the District of Columbia (now Government Reform) from further consideration of a (joint) resolution disapproving an act of the Council amending the D.C. Criminal Code is privileged after 20 calendar days from introduction of the resolution, if not reported during that time (Oct. 1, 1981, p. 22752; Oct. 14, 1987, p. 27847).

Section 604 does not provide a privileged motion to discharge the District of Columbia Committee from a concurrent (now joint) resolution disapproving acts of the D.C. City Council not affecting the D.C. Criminal Code, such concurrent resolutions only being privileged when reported by that committee (Speaker Albert, Sept. 22, 1976, pp. 31873–74). Under section 604(h), debate on a concurrent (now joint) resolution of disapproval can be limited by motion, but otherwise extends not to exceed 10 hours; a concurrent (now joint) resolution disapproving an action of the D.C. Council which does not affect the U.S. Treasury is considered in the House (Dec. 20, 1979, p. 7303).

6. Title X of the Congressional Budget and Impoundment Control Act of 1974

A. IMPOUNDMENT CONTROL, §§ 1011–13, 1017

[2 U.S.C. 682–84, 688]

DEFINITIONS

SEC. 1011. For purposes of this part—

(1) "deferral of budget authority" includes—

(A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or

(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority, including authority to obligate by contract in advance of appropriations as specifically authorized by law;

(2) "Comptroller General" means the Comptroller General of the United States;

(3) "rescission bill" means a bill or joint resolution which only rescinds, in whole or in part, budget authority proposed to be rescinded in a special message transmitted by the President under section 1012, and upon which the Congress completes action before the end of the first period of 45 calendar days of continuous session of the Congress after the date on which the President's message is received by the Congress;

(4) "impoundment resolution" means a resolution of the House of Representatives or the Senate which only expresses its disapproval of a proposed deferral of budget authority set forth in a special message transmitted by the President under section 1013; and

(5) continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 45-day period referred to in paragraph (3) of this section and in section 1012, and the 25-day periods referred to in sections 1016 and 1017(b)(1). If a special message is transmitted under section 1012 during any Congress and the last session of such Congress adjourns sine die before the expiration of 45 calendar days of continuous session (or a special message is so transmitted after the last session of the Congress adjourns sine die), the message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the 45-day period referred to in paragraph (3) of this section and in section 1012 (with respect to such message) shall commence on the day after such first day.

RESCISSION OF BUDGET AUTHORITY

SEC. 1012. (a) TRANSMITTAL OF SPECIAL MESSAGE.—Whenever the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons (including the termination of authorized projects or activities for which budget authority has been provided), or whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year, the President shall transmit to both Houses of Congress a special message specifying—

(1) the amount of budget authority which he proposes to be rescinded or which is to be so reserved;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved;

(3) the reasons why the budget authority should be rescinded or is to be so reserved;

(4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed rescission or of the reservation; and

(5) all facts, circumstances, and considerations relating to or bearing upon the proposed rescission or the reservation and the decision to effect the proposed rescission or the reservation, and to the maximum extent practicable, the estimated effect of the proposed rescission or the reservation upon the objects, purposes, and programs for which the budget authority is provided.

(b) REQUIREMENT TO MAKE AVAILABLE FOR OBLIGATION.—Any amount of budget authority proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded or that is to be reserved. Funds made available for obligation under this procedure may not be proposed for rescission again.

PROPOSED DEFERRALS OF BUDGET AUTHORITY

SEC. 1013. (a) TRANSMITTAL OF SPECIAL MESSAGE.—Whenever the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States proposes to defer any budget authority provided for a specific purpose or project, the President shall transmit to the House of Representatives and the Senate a special message specifying—

(1) The amount of the budget authority proposed to be deferred;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific projects or governmental functions involved;

(3) the period of time during which the budget authority is proposed to be deferred;

(4) the reasons for the proposed deferral, including any legal authority invoked to justify the proposed deferral;

(5) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed deferral; and

(6) all facts, circumstances, and considerations relating to or bearing upon the proposed deferral and the decision to effect the proposed deferral, including an analysis of such facts, circumstances, and considerations in terms of their application to any legal authority, including specific elements of legal authority, invoked to justify such proposed deferral, and to the maximum extent practicable, the estimated effect of the proposed deferral upon the objects, purposes, and programs for which the budget authority is provided.

A special message may include one or more proposed deferrals of budget authority. A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate.

(b) CONSISTENCY WITH LEGISLATIVE POLICY.—Deferrals shall be permissible only—

(1) to provide for contingencies;

(2) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or

(3) as specifically provided by law.

No officer or employee of the United States may defer any budget authority for any other purpose.

(c) EXCEPTION.—The provisions of this section do not apply to any budget authority proposed to be rescinded or that is to be reserved as set forth in a special message required to be transmitted under section 1012.

* * *

PROCEDURE IN HOUSE AND SENATE

SEC. 1017. (a) REFERRAL.—Any rescission bill introduced with respect to a special message or impoundment resolution introduced with respect to a proposed deferral of budget authority shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be.

(b) DISCHARGE OF COMMITTEE.—(1) If the committee of which a rescission bill or impoundment resolution has been referred has not reported it at the end of 25 calendar days of continuous session of the Congress after its introduction, it is in order to move either to discharge the com-

mittee from further consideration of the bill or resolution or to discharge the committee from further consideration of any other rescission bill with respect to the same special message or impoundment resolution with respect to the same proposed deferral, as the case may be, which has been referred to the committee.

(2) A motion to discharge may be made only by an individual favoring the bill or resolution, may be made only if supported by one-fifth of the Members of the House involved (a quorum being present), and is highly privileged in the House and privileged in the Senate (except that it may not be made after the committee has reported a bill or resolution with respect to the same special message or the same proposed deferral, as the case may be); and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the bill or resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(c) FLOOR CONSIDERATION IN THE HOUSE.—(1) When the committee of the House of Representatives has reported, or has been discharged from further consideration of, a rescission bill or impoundment resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the bill or resolution. The motion shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate on a rescission bill or impoundment resolution shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. In the case of an impoundment resolution, no amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a rescission bill or impoundment resolution is agreed to or disagreed to.

(3) Motions to postpone, made with respect to the consideration of a rescission bill or impoundment resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any rescission bill or impoundment resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any rescission bill or impoundment resolution and amendments thereto (or any conference report thereon) shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions, amendments, and conference reports in similar circumstances.

(d) FLOOR CONSIDERATION IN THE SENATE.—(1) Debate in the Senate on any rescission bill or impoundment resolution, and all amendments thereto (in the case of a rescission bill) and debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(2) Debate in the Senate on any amendment to a rescission bill shall be limited to 2 hours, to be equally divided between, and controlled by, the mover and the manager of the bill. Debate on any amendment to an amendment, to such a bill, and debate on any debatable motion or appeal in connection with such a bill or an impoundment resolution shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. No amendment that is not germane to the provisions of a rescission bill shall be received. Such leaders, or either of them, may, from the time under their control on the passage of a rescission bill or impoundment resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(3) A motion to further limit debate is not debatable. In the case of a rescission bill, a motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution. In the case of an impoundment

resolution, no amendment or motion to recommit is in order.

(4) The conference report on any rescission bill shall be in order in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such a conference report is reported and is available to Members of the Senate. A motion to proceed to the consideration of the conference report may be made even though a previous motion to the same effect has been disagreed to.

(5) During the consideration in the Senate of the conference report on any rescission bill, debate shall be limited to 2 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report.

(6) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to one hour, to be equally divided, between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between, and controlled by the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

(7) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment that is not germane to the provisions of such amendments shall be received.

The privileged status given in section 1017(c)(1) to rescission bills within the 45-day period prescribed in section 1011 applies only to the initial consideration of the bill in the House, and consideration of a conference report on any bill containing rescissions of budget authority is subject only to the general rules of the House relating to conference reports and is

not prevented by the expiration of the 45-day period following the initial consideration of the bill in the House (Speaker Albert, Mar. 25, 1975, pp. 8484–85).

B. LINE ITEM VETO AUTHORITY, §§ 1021–27

[2 U.S.C. 691–91f]

LINE ITEM VETO AUTHORITY

In Clinton *v.* City of New York, 524 U.S. 417 (1998), the Supreme Court held that the cancellation procedures of the Line Item Veto Act violated the presentment clause of article I, section 7 of the Constitution. During the period between the January 1, 1997, effective date of the Act and the Court decision, the President exercised his authority under the Act to cancel dollar amounts of discretionary budget authority (see *e.g.,* H. Doc. 105–147), new direct spending (H. Doc. 105–115), and limited tax benefits (H. Doc. 105–116). Cancellations were effective unless disapproved by law (P.L. 105–159). While the congressional review procedures remain in the law, the Court decision makes it unlikely that they will be invoked. Accordingly their text is omitted here but may be found in pp. 1029–45 of the House Rules and Manual for the 105th Congress. The procedures may be summarized as follows: The cancellations were transmitted to the Congress by the President by a special message within five calendar days after the enactment of the law to which the cancellation applied. The Act provided for a congressional review period of 30 calendar days of session with expedited House consideration of bills disapproving the cancellations including: (1) prescribing the text (section 1026(6)); (2) referral to committee with directions to report within seven calendar days subject to a motion to discharge (section 1025(d)); (3) consideration of a disapproval bill in the Committee of the Whole with no amendment in order (except that a Member, supported by 49 other Members, could offer an amendment striking cancellations from the bill), and consideration of the bill for amendment limited to one hour (section 1025(d)); and (4) one-calendar-day availability for a conference report (section 1025(f)). The Act also provided for expedited procedures in the Senate, and was to have no force or effect after January 1, 2005.

7. Foreign Spent Nuclear Fuel [Department of Energy Act of 1978—Civilian Applications, § 107 (22 U.S.C. 3224a)]

SEC. 107. * * * *Provided,* That notwithstanding any other provision of law, that none of the funds made available to the Secretary of Energy under any other authorization or appropriation Act shall be used, directly or indi-

rectly, for the repurchase, transportation or storage of any foreign spent nuclear fuel (including any nuclear fuel irradiated in any nuclear power reactor located outside of the United States and operated by any foreign legal entity, government or nongovernment, regardless of the legal ownership or control of the fuel or the reactor, and regardless of the origin or licensing of the fuel or the reactor, but not including fuel irradiated in a research reactor, and not including fuel irradiated in a power reactor if the President determines that (1) use of funds for repurchase, transportation or storage of such fuel is required by an emergency situation, (2) it is in the interest of the common defense and security of the United States to take such action, and (3) he notifies the Congress of the determination and action, with a detailed explanation and justification thereof, as soon as possible) unless the President formally notifies, with the report information specified herein, the Committee on Energy and Natural Resources of the Senate and the Committee on Science of the House of Representatives of such use of funds thirty calendar days, during such time as either House of Congress is in session, before the commitment, expenditure, or obligation of such funds: *And provided further,* That, notwithstanding any other provision of law, that none of the funds appropriated pursuant to this Act or any other funds made available to the Secretary of Energy under any other authorization or appropriation Act shall be used, directly or indirectly, for the repurchase, transportation, or storage of any such foreign spent nuclear fuel for storage or other disposition, interim or permanent, in the United States, unless the use of the funds for that specific purpose has been (1) previously and expressly authorized by Congress in legislation hereafter enacted, (2) previously and expressly authorized by a concurrent resolution, or (3) the President submits a plan for such use, with the report information specified herein, thirty days during which the Congress is in continuous session, as defined in the Impoundment Control Act of 1974, prior to such use and neither House of Congress approves a resolution of disapproval of the plan prior to the expiration of the aforementioned thirty-day period. If such a resolution of disapproval has been introduced, but has not been reported by the Committee on or before the twentieth day after transmission of the presidential message, a privileged motion shall be in order in the respective body to discharge the Committee from further consideration of the resolu-

tion and to provide for its immediate consideration, using the procedures specified for consideration of an impoundment resolution in section 1017 of the Impoundment Control Act of 1974 (2 U.S.C. 688).

This provision should be read in light of INS *v.* Chadha, 462 U.S. 919 (1983).

8. Pension Reform Act, § 4006(b) [29 U.S.C. 1306(b)]

SEC. 4006. REVISED COVERAGE SCHEDULES— * * * (b)(1) In order to place a revised schedule (other than a schedule described in subsection (a)(2) (C), (D), or (E) in effect, the corporation shall transmit the proposed schedule, its proposed effective date, and the reasons for its proposal to the Committee on Ways and Means and the Committee on Economic and Educational Opportunities of the House of Representatives, and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

(2) The succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3). They shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any rule of that House.

(3) For the purpose of the succeeding paragraphs of this subsection, "resolution" means only a joint resolution, the matter after the resolving clause of which is as follows: "The proposed revised schedule transmitted to Congress by the Pension Benefit Guaranty Corporation on ——— is hereby approved.", the blank space therein being filled with the date on which the corporation's message proposing the rate was delivered.

(4) A resolution shall be referred to the Committee on Ways and Means and the Committee on Economic and Educational Opportunities of the House of Representatives

and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

(5) If a committee to which has been referred a resolution has not reported it before the expiration of 10 calendar days after its introduction, it shall then (but not before) be in order to move to discharge the committee from further consideration of that resolution, or to discharge the committee from further consideration of any other resolution with respect to the proposed adjustment which has been referred to the committee. The motion to discharge may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same proposed rate), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same proposed rate.

(6) When a committee has reported, or has been discharged from further consideration of a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(7) Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution and motions to proceed to the consideration of other business shall be decided without debate. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

By unanimous consent a concurrent resolution approving a revised coverage schedule proposed by the Pension Benefit Guaranty Corporation was considered in the House as in Committee of the Whole (Nov. 2, 1977, pp. 36644–46).

9. Multiemployer Guarantees, Revised Schedules [Employee Retirement Income Security Act of 1974, § 4022A (29 U.S.C. 1322a)]

MULTIEMPLOYER PLAN BENEFITS GUARANTEED

SEC. 4022A. * * * (f)(1) No later than 5 years after September 26, 1980, and at least every fifth year thereafter, the corporation shall—

(A) conduct a study to determine—

(i) the premiums needed to maintain the basic-benefit guarantee levels for multiemployer plans described in subsection (c), and

(ii) whether the basic-benefit guarantee levels for multiemployer plans may be increased without increasing the basic-benefit premiums for multiemployer plans under this title; and

(B) report such determinations to the Committee on Ways and Means and the Committee on Economic and Educational Opportunities of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

(2)(A) If the last report described in paragraph (1) indicates that a premium increase is necessary to support the existing basic-benefit guarantee levels for multiemployer plans, the corporation shall transmit to the Committee on Ways and Means and the Committee on Economic and Educational Opportunities of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate by March 31 of any calendar year in which congressional action under this subsection is requested—

(i) a revised schedule of basic-benefit guarantees for multiemployer plans which would be necessary in the absence of an increase in premiums approved in accordance with section 4006(b) [29 U.S.C. 1306(b)],

(ii) a revised schedule of basic-benefit premiums for multiemployer plans which is necessary to support the existing basic-benefit guarantees for such plans, and

(iii) a revised schedule of basic-benefit guarantees for multiemployer plans for which the schedule of premiums necessary is higher than the existing premium schedule for such plans but lower than the revised schedule of premiums for such plans specified in clause (ii), together with such schedule of premiums.

(B) The revised schedule of increased premiums referred to in subparagraph (A)(ii) or (A)(iii) shall go into effect as approved by the enactment of a joint resolution.

(C) If an increase in premiums is not so enacted, the revised guarantee schedule described in subparagraph (A)(i) shall go into effect on the first day of the second calendar year following the year in which such revised guarantee schedule was submitted to the Congress.

(3)(A) If the last report described in paragraph (1) indicates that basic-benefit guarantees for multiemployer plans can be increased without increasing the basic-benefit premiums for multiemployer plans under this title, the corporation shall submit to the Committee on Ways and Means and the Committee on Economic and Educational Opportunities of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate by March 31 of the calendar year in which congressional action under this paragraph is requested—

(i) a revised schedule of increases in the basic-benefit guarantees which can be supported by the existing schedule of basic-benefit premiums for multiemployer plans, and

(ii) a revised schedule of basic-benefit premiums sufficient to support the existing basic-benefit guarantees.

(B) The revised schedules referred to in subparagraph (A)(i) or subparagraph (A)(ii) shall go into effect as approved by the Congress by the enactment of a joint resolution.

(4)(A) The succeeding subparagraphs of this paragraph are enacted by the Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of joint resolutions (as defined in subparagraph (B)). Such subparagraphs shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the

constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any rule of that House.

(B) For purposes of this subsection, "joint resolution" means only a joint resolution, the matter after the resolving clause of which is as follows: "The proposed schedule described in ——— transmitted to the Congress by the Pension Benefit Guaranty Corporation on ——— is hereby approved.", the first blank space therein being filled with "section 4022A(f)(2)(A)(ii) of the Employee Retirement Income Security Act of 1974", "section 4022A(f)(2)(A)(iii) of the Employee Retirement Income Security Act of 1974", "section 4022A(f)(3)(A)(i) of the Employee Retirement Income Security Act of 1974", or "section 4022A(f)(3)(A)(ii) of the Employee Retirement Income Security Act of 1974" (whichever is applicable), and the second blank space therein being filled with the date on which the corporation's message proposing the revision was submitted.

(C) The procedure for disposition of a joint resolution shall be the procedure described in section 4006(b)(4) through (7) [29 U.S.C. 1306(b)(4)–(7)]. * * *

(g)(4)(A) No revised schedule of premiums under this subsection, after the initial schedule, shall go into effect unless—

(i) the revised schedule is submitted to the Congress, and

(ii) a joint resolution described in subparagraph (B) is not adopted before the close of the 60th legislative day after such schedule is submitted to the Congress.

(B) For purposes of subparagraph (A), a joint resolution described in this subparagraph is a joint resolution the matter after the resolving clause of which is as follows: "The revised premium schedule transmitted to the Congress by the Pension Benefit Guaranty Corporation under section 4022A(g)(4) of the Employee Retirement Income Security Act of 1974 on ——— is hereby disapproved.", the blank space therein being filled with the date on which the revised schedule was submitted.

(C) For purposes of subparagraph (A), the term "legislative day" means any calendar day other than a day on which either House is not in session because of a sine die adjournment or an adjournment of more than 3 days to a day certain.

(D) The procedure for disposition of a joint resolution described in subparagraph (B) shall be the procedure de-

scribed in paragraphs (4) through (7) of section 4006(b) [29 U.S.C. 1306(b)(4)–(7)].

10. Nuclear Non-Proliferation Provisions of the Atomic Energy Act [42 U.S.C 2153–60]

COOPERATION WITH OTHER NATIONS

[42 U.S.C. 2153]

SEC. 123. COOPERATION WITH OTHER NATIONS.—

No cooperation with any nation, group of nations or regional defense organization pursuant to section 53, 54a., 57, 64, 82, 91, 103, 104, or 144 [42 U.S.C. 2073, 2074(a), 2077, 2094, 2112, 2121, 2133, 2134, or 2164] shall be undertaken until—

a. the proposed agreement for cooperation has been submitted to the President, which proposed agreement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements: * * *

b. the President has submitted text of the proposed agreement for cooperation (except an agreement arranged pursuant to subsection 91(c), 144(b), 144(c), or 144(d) [42 U.S.C. 2121(c), 2164(b), 2164(c), or 2164(d)], together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 130 [42 U.S.C. 2159]) concerning the consistency of the terms of the proposed agreement with all the requirements of this chapter, and the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security;

c. the proposed agreement for cooperation (if not an agreement subject to subsection d.), together with the approval and determination of the President, has been submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in subsection 130g. [42 U.S.C.

2159(g)]): *Provided, however,* That these committees, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and

d. the proposed agreement for cooperation (if arranged pursuant to subsection 91c., 144b., 144c., or 144d. [42 U.S.C. 2121(c), 2164(b), 2164(c), or 2164(d)], or if entailing implementation of section 53, 54a., 103, or 104 [42 U.S.C. 2073, 2074(a), 2133, or 2134] in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in subsection 130g. of this Act [42 U.S.C. 2159(g)]) and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91c., 144b., 144c., or 144d. [42 U.S.C. 2121(c), 2164(b), 2164(c), or 2164(d)], the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts and there is enacted, a joint resolution stating in substance that the Congress does not favor the proposed agreement for cooperation: *Provided,* That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Secretary of State, and any annexes thereto, when required by subsection a., have been submitted to the Congress. * * *

Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 130(i) of this Act [42 U.S.C. 2159(i)].

Following submission of a proposed agreement for co-operation (except an agreement for cooperation arranged pursuant to subsection 91c., 144b., 144c., or 144d. [42 U.S.C. 2121(c), 2164(b), 2164(c), or 2164(d)]) to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other con-

trols contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

If, after March 10, 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection a.(2), such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to subsection 128b.(3) [42 U.S.C. 2157(b)(3)] for purposes of the Commission's consideration of applications and requests under section 126a.(2) [42 U.S.C. 2155(a)(2)] and there shall be no congressional review pursuant to section 128 [42 U.S.C. 2157] of any subsequent license or authorization with respect to that until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.

EXPORT LICENSING PROCEDURES

[42 U.S.C. 2155]

SEC. 126. EXPORT LICENSING PROCEDURES.—

a. No license may be issued by the Nuclear Regulatory Commission (the "Commission") for the export of any production or utilization facility, or any source material or special nuclear material, including distributions of any material by the Department of Energy under sections 54, 64, or 82 [42 U.S.C. 2074, 2094, 2112], for which a license is required or requested, and no exemption from any requirement for such an export license may be granted by the Commission, as the case may be, until— * * *

Provided, That continued cooperation under an agreement for cooperation as authorized in accordance with section 124 of this Act [42 U.S.C. 2154] shall not be prevented by failure to meet the provisions of paragraph (4) or (5) of section 127 [42 U.S.C. 2156(4) or (5)] for a period of thirty days after March 10, 1978, and for a period of twenty-three months thereafter if the Secretary of State notifies the Commission that the nation or group of nations bound by the relevant agreement has agreed to negotiations as called for in section 404(a) of the Nuclear Non-Proliferation Act of 1978 [42 U.S.C. 2153c(a)]; however, nothing in this subsection shall be deemed to relinquish any rights which the United States may have under

agreements for cooperation in force on the date of enactment of this section: *Provided further,* That if, upon the expiration of such twenty-month period, the President determines that failure to continue cooperation with any group of nations which has been exempted pursuant to the above proviso from the provisions of paragraph (4) or (5) of section 127 of this Act [42 U.S.C. 2156(4) or (5)], but which has not yet agreed to comply with those provisions would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, he may, after notifying the Congress of his determination, extend by Executive order the duration of the above proviso for a period of twelve months, and may further extend the duration of such proviso by one year increments annually thereafter if he again makes such determination and so notifies the Congress. In the event that the Committee on International Relations of the House of Representatives or the Committee on Foreign Relations of the Senate reports a joint resolution to take any action with respect to any such extension, such joint resolution will be considered in the House or Senate, as the case may be, under procedures identical to those provided for the consideration of resolutions pursuant to section 130 of this Act [42 U.S.C. 2159]: * * *

b. * * * (2) * * * If, after receiving the proposed license application and reviewing the Commission's decision, the President determines that withholding the proposed export would be seriously prejudicial to the achievement of United States non-proliferation objectives, or would otherwise jeopdarize the common defense and security, the proposed export may be authorized by Executive order: *Provided,* That prior to any such export, the President shall submit the Executive order, together with his explanation of why, in light of the Commission's decision, the export should nonetheless be made, to the Congress for a period of sixty days of continuous session (as defined in subsection 130g. [42 U.S.C. 2159(g)]) and shall be referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such proposed export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the proposed export. Any such Executive order shall be considered pursuant to the procedures set forth in

section 130 of this Act [42 U.S.C. 2159] for the consideration of Presidential submissions: * * *

c. In the event that the House of Representatives or the Senate passes a joint resolution which would adopt one or more additional export criteria, or would modify any existing criteria under this Act, any such joint resolution shall be referred in the other House to the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House of Representatives, as the case may be, and shall be considered by the other House under applicable procedures provided for the consideration of resolutions pursuant to section 130 of this Act [42 U.S.C. 2159].

Subsection b.(2) should be read in light of INS *v.* Chadha, 462 U.S. 919 (1983).

ADDITIONAL EXPORT CRITERION AND PROCEDURES

[42 U.S.C. 2157]

SEC. 128. ADDITIONAL EXPORT CRITERION AND PROCEDURES.— * * * b. * * * (1) * * * *Provided,* That no such export of any production or utilization facility or of any source or special nuclear material (intended for use as fuel in any production or utilization facility) which has been licensed or authorized pursuant to this subsection shall be made to any non-nuclear-weapon state which has failed to meet such criterion until the first such license or authorization with respect to such state is submitted to the Congress (together with a detailed assessment of the reasons underlying the President's determination, the judgment of the executive branch required under section 126 of this Act [42 U.S.C. 2155], and any Commission opinion and views) for a period of sixty days of continuous session (as defined in subsection 130g. of this Act [42 U.S.C. 2159(g)]) and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, but such export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that the Congress does not favor the proposed export. Any such license or authorization shall be considered pursuant to the procedures set forth in section 130 of this Act [42 U.S.C. 2159] for the consideration of Presidential submissions.

(2) If the Congress adopts a resolution of disapproval pursuant to paragraph (1), no further export of materials,

facilities, or technology specified in subsection a. shall be permitted for the remainder of that Congress, unless such state meets the criterion or the President notifies the Congress that he has determined that significant progress has been made in achieving adherence to such criterion by such state or that United States foreign policy interests dictate reconsideration and the Congress, pursuant to the procedure of paragraph (1), does not adopt a concurrent resolution stating in substance that it disagrees with the President's determination.

(3) If the Congress does not adopt a resolution of disapproval with respect to a license or authorization submitted pursuant to paragraph (1), the criterion set forth in subsection a. shall not be applied as an export criterion with respect to exports of materials, facilities and technology specified in subsection a. to that state: *Provided,* That the first license or authorization with respect to that state which is issued pursuant to this paragraph after twelve months from the elapse of the sixty-day period specified in paragraph (1), and the first such license or authorization which is issued after each twelve-month period thereafter, shall be submitted to the Congress for review pursuant to the procedures specified in paragraph (1): *Provided further,* That if the Congress adopts a resolution of disapproval during any review period provided for by this paragraph, the provisions of paragraph (2) shall apply with respect to further exports to such state.

This provision should be read in light of INS *v.* Chadha, 462 U.S. 919 (1983).

CONDUCT RESULTING IN TERMINATION OF NUCLEAR EXPORTS

[42 U.S.C. 2158]

SEC. 129. CONDUCT RESULTING IN TERMINATION OF NUCLEAR EXPORTS.—(a) No nuclear materials and equipment or sensitive nuclear technology shall be exported to—

(1) any non-nuclear-weapon state that is found by the President to have, at any time after March 10, 1978,

* * *

unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security: *Provided,*

That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be submitted to the Congress and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of sixty days of continuous session (as defined in subsection 130g. of this Act [42 U.S.C. 2159(g)]), but any such determination shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in section 130 of this Act [42 U.S.C. 2159] for the consideration of Presidential submissions.

This provision should be read in light of INS *v.* Chadha, 462 U.S. 919 (1983).

CONGRESSIONAL REVIEW PROCEDURES

[42 U.S.C. 2159]

SEC. 130. CONGRESSIONAL REVIEW PROCEDURES.—

a. Not later than forty-five days of continuous session of Congress after the date of transmittal to the Congress of any submission of the President required by subsection 126a.(2), 126b.(2), 127b., 129, 131a.(3), or 131f.(1)(A) of this Act [42 U.S.C. 2155(a)(2), 2155(b)(2), 2157(b), 2158, 2160(a)(3), or 2160(f)(1)(A)], the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives, shall each submit a report to its respective House on its views and recommendations respecting such Presidential submission together with a resolution, as defined in subsection f., stating in substance that the Congress approves or disapproves such submission, as the case may be: *Provided,* That if any such committee has not reported such a resolution at the end of such forty-five day period, such committee shall be deemed to be discharged from further consideration of such submission. If no such resolution has been reported at the end of such period, the first resolution, as defined in subsection f., which is introduced within five days thereafter within such House shall be placed on the appropriate calendar of such House.

b. When the relevant committee or committees have reported such a resolution (or have been discharged from

further consideration of such a resolution pursuant to subsection a. of this section) or when a resolution has been introduced and placed on the appropriate calendar pursuant to subsection a. of this section, as the case may be, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

c. Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to a motion to postpone, or a motion to recommit the resolution, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order. No amendment to any concurrent resolution pursuant to the procedures of this section is in order except as provided in subsection d. of this section.

d. Immediately following (1) the conclusion of the debate on such concurrent resolution, (2) a single quorum call at the conclusion of debate if requested in accordance with the rules of the appropriate House, and (3) the consideration of an amendment introduced by the Majority Leader or his designee to insert the phrase, "does not" in lieu of the word "does" if the resolution under consideration is a concurrent resolution of approval, the vote on final approval of the resolution shall occur.

e. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or of the House of Representatives, as the case may be, to the procedure relating to such a resolution shall be decided without debate.

f. For the purposes of subsections a. through e. of this section, the term "resolution" means a concurrent resolution of the Congress, the matter after the resolving clause

of which is as follows: "That the Congress (does or does not) favor the ——— transmitted to the Congress by the President on ———.", the blank spaces therein to be appropriately filled, and the affirmative or negative phrase within the parenthetical to be appropriately selected.

g. (1) Except as provided in paragraph (2), for the purposes of this section—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(2) For purposes of this section insofar as it applies to section 123 [42 U.S.C. 2153]—

(A) continuity of session is broken only by an adjournment of Congress sine die at the end of a Congress; and

(B) the days on which either House is not in session because of an adjournment of more than three days are excluded in the computation of any period of time in which Congress is in continuous session.

h. This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by subsection f. of this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

i. (1) For the purposes of this subsection, the term "joint resolution" means a joint resolution, the matter after the resolving clause of which is as follows: "That the Congress (does or does not) favor the proposed agreement for cooperation transmitted to the Congress by the President on ———.", with the date of the transmission of the proposed agreement for cooperation inserted in the blank, and the

affirmative or negative phrase within the parenthetical appropriately selected.

(2) On the day on which a proposed agreement for cooperation is submitted to the House of Representatives and the Senate under section 123d. [42 U.S.C. 2153(d)], a joint resolution with respect to such agreement for cooperation shall be introduced (by request) in the House by the chairman of the Committee on International Relations, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement for cooperation is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(3) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee or committees, and all joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 91c., 144b., or 144c. [42 U.S.C. 2121(c), 2164(b), 2164(c)], the Committee on Armed Services.

(4) If the committee of either House to which a joint resolution has been referred has not reported it at the end of 45 days after its introduction, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter; except that, in the case of a joint resolution which has been referred to more than one committee, if before the end of that 45-day period one such committee has reported the joint resolution, any other committee to which the joint resolution was referred shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

(5) A joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolu-

tions reported or discharged pursuant to the provisions of this subsection, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this subsection which may be similiar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Exports Control Act of 1976.

(6) In the case of a joint resolution described in paragraph (1), if prior to the passage by one House of a joint resolution of that House, that House receives a joint resolution with respect to the same matter from the other House, then—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

SUBSEQUENT ARRANGEMENTS

[42 U.S.C. 2160]

SEC. 131. SUBSEQUENT ARRANGEMENTS.— * * *

f. (1) With regard to any subsequent arrangement under subsection a. (2)(E) (for the storage or disposition of irradiated fuel elements), where such arrangement involves a direct or indirect commitment of the United States for the storage or other disposition, interim or permanent, of any foreign spent nuclear fuel in the United States, the Secretary of Energy may not enter into any such subsequent arrangement, unless:

(A)(i) Such commitment of the United States has been submitted to the Congress for a period of sixty days of continuous session (as defined in subsection 130g. of this Act [42 U.S.C. 2159(g)]) and has been referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such commitment shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the commitment, any such commitment to be considered pursuant to the procedures set forth in section 130 of this Act [42 U.S.C. 2159] for the consideration of Presidential submissions; or (ii) if the President has sub-

mitted a detailed generic plan for such disposition or storage in the United States to the Congress for a period of sixty days of continuous session (as defined in subsection 130g. of this Act [42 U.S.C. 2159(g)]), which plan has been referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate and has not been disapproved during such sixty-day period by the adoption of a concurrent resolution stating in substance that Congress does not favor the plan; and the commitment is subject to the terms of an effective plan. Any such plan shall be considered pursuant to the procedures set forth in section 130 of this Act [42 U.S.C. 2159] for the consideration of Presidential submissions;

* * *

11. Trade Provisions

A. IMPORT RELIEF, § 203

[19 U.S.C. 2253]

SEC. 203. ACTION BY PRESIDENT AFTER DETERMINATION OF IMPORT INJURY.— * * *

(b) REPORTS TO CONGRESS.—(1) On the day the President takes action under subsection (a)(1), the President shall transmit to Congress a document describing the action and the reasons for taking the action. If the action taken by the President differs from the action required to be recommended by the Commission under section 202(e)(1), the President shall state in detail the reasons for the difference.

(2) On the day on which the President decides that there is no appropriate and feasible action to take under subsection (a)(1) with respect to a domestic industry, the President shall transmit to Congress a document that sets forth in detail the reasons for the decision.

(3) On the day on which the President takes any action under subsection (a)(1) that is not reported under paragraph (1), the President shall transmit to Congress a document setting forth the action being taken and the reasons therefor.

(c) IMPLEMENTATION OF ACTION RECOMMENDED BY COMMISSION.—If the President reports under subsection (b)(1) or (2) that—

(1) the action taken under subsection (a)(1) differs from the action recommended by the Commission under section 202(e)(1); or

(2) no action will be taken under subsection (a)(1) with respect to the domestic industry;

the action recommended by the Commission shall take effect (as provided in subsection (d)(2)) upon the enactment of a joint resolution described in section 152(a)(1)(A) within the 90-day period beginning on the date on which the document referred to in subsection (b)(1) or (2) is transmitted to the Congress.

The House adopted a special order "hereby" laying on the table a joint resolution disapproving a steel-tariff action taken by the President privileged under this section (the joint resolution was reported adversely by the Committee on Ways and Means) (H. Res. 414, May 8, 2002, p. ——).

B. FREEDOM OF EMIGRATION, § 402

[19 U.S.C. 2432]

SEC. 402. FREEDOM OF EMIGRATION IN EAST-WEST TRADE.— * * *

(c)(1) During the 18-month period beginning on the date of the enactment of this Act, the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(2) During any period subsequent to the 18-month period referred to in paragraph (1), the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if the waiver authority granted by this subsection continues to apply to such country pursuant to subsection (d), and if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(3) A waiver with respect to any country shall terminate on the day after the waiver authority granted by this subsection ceases to be effective with respect to such country pursuant to subsection (d). The President may, at any time, terminate by Executive order any waiver granted under this subsection.

(d)(1) If the President determines that the further extension of the waiver authority granted under subsection (c) will substantially promote the objectives of this section, he may recommend further extensions of such authority for successive 12-month periods. Any such recommendations shall—

(A) be made not later than 30 days before the expiration of such authority;

(B) be made in a document transmitted to the House of Representatives and the Senate setting forth his reasons for recommending the extension of such authority; and

(C) include, for each country with respect to which a waiver granted under subsection (c) is in effect, a determination that continuation of the waiver applicable to that country will substantially promote the objectives of this section, and a statement setting forth his reasons for such determination.

If the President recommends the further extension of such authority, such authority shall continue in effect until the end of the 12-month period following the end of the previous 12-month extension with respect to any country (except for any country with respect to which such authority has not been extended under this subsection), unless a joint resolution described in section 153(a) is enacted into law pursuant to the provisions of paragraph (2).

(2)(A) The requirements of this paragraph are met if the joint resolution is enacted under the procedures set forth in section 153, and—

(i) the Congress adopts and transmits the joint resolution to the President before the end of the 60-day period beginning on the date the waiver authority would expire but for an extension under paragraph (1), and

(ii) if the President vetoes the joint resolution, each House of Congress votes to override such veto on or

before the later of the last day of the 60-day period referred to in clause (i) or the last day of the 15-day period (excluding any day described in section 154(b)) beginning on the date the Congress receives the veto message from the President.

(B) If a joint resolution is enacted into law under the provisions of this paragraph, the waiver authority applicable to any country with respect to which the joint resolution disapproves of the extension of such authority shall cease to be effective as of the day after the 60-day period beginning on the date of the enactment of the joint resolution.

(C) A joint resolution to which this subsection and section 153 apply may be introduced at any time on or after the date the President transmits to the Congress the document described in paragraph (1)(B).

(e) This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

C. NONDISCRIMINATORY TREATMENT, § 407

[19 U.S.C. 2437]

SEC. 407. PROCEDURE FOR CONGRESSIONAL APPROVAL OR DISAPPROVAL OF EXTENSION OF NONDISCRIMINATORY TREATMENT AND PRESIDENTIAL REPORTS.—(a) Whenever the President issues a proclamation under section 404 extending nondiscriminatory treatment to the products of any foreign country, he shall promptly transmit to the House of Representatives and to the Senate a document setting forth the proclamation and the agreement the proclamation proposes to implement, together with his reasons therefor.

(b) The President shall transmit to the House of Representatives and the Senate a document containing the initial report submitted by him under section 402(b) or 409(b) with respect to a nonmarket economy country. On or before December 31 of each year, the President shall transmit to the House of Representatives and the Senate, a document containing the report required by section 402(b) or 409(b) as the case may be, to be submitted on or before such December 31.

(c)(1) In the case of a document referred to in subsection (a), the proclamation set forth in the document may become effective and the agreement set forth in the docu-

ment may enter into force and effect only if a joint resolution described in section 151(b)(3) that approves of the extension of nondiscriminatory treatment to the products of the country concerned is enacted into law.

(2) In the case of a document referred to in subsection (b) which contains a report submitted by the President under section 402(b) or 409(b) with respect to a nonmarket economy country, if, before the close of the 90-day period beginning on the day on which such document is delivered to the House of Representatives and to the Senate, a joint resolution described in section 152(a)(i)(B) is enacted into law that disapproves of the report submitted by the President with respect to such country, then, beginning with the day after the end of the 60-day period beginning with the date of the enactment of such resolution of disapproval, (A) nondiscriminatory treatment shall not be in force with respect to the products of such country, and the products of such country shall be dutiable at the rates set forth in rate column numbered 2 of the Harmonized Tariff Schedule of the United States, (B) such country may not participate in any program of the Government of the United States which extends credit or credit guarantees or investment guarantees, and (C) no commercial agreement may thereafter be concluded with such country under this title. If the President vetoes the joint resolution, the joint resolution shall be treated as enacted into law before the end of the 90-day period under this paragraph if both Houses of Congress vote to override such veto on or before the later of the last day of such 90-day period or the last day of the 15-day period (excluding any day described in section 154(b)) beginning on the date the Congress receives the veto message from the President.

D. "FAST-TRACK" PROCEDURES, §§ 151–154

[19 U.S.C. 2191–94]

IMPLEMENTING BILLS, § 151

[19 U.S.C. 2191]

SEC. 151. BILLS IMPLEMENTING TRADE AGREEMENTS ON NONTARIFF BARRIERS AND RESOLUTIONS APPROVING COMMERCIAL AGREEMENTS WITH COMMUNIST COUNTRIES.—(a) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This section and sections 152 and 153 are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementing bills described in subsection (b)(1), implementing revenues bills described in subsection (b)(2), approval resolutions described in subsection (b)(3), and resolutions described in subsections 152(a) and 153(a); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) DEFINITIONS.—For purposes of this section—

(1) The term "implementing bill" means only a bill of either House of Congress which is introduced as provided in subsection (c) with respect to one or more trade agreements, or with respect to an extension described in section 282(c)(3) of the Uruguay Round Agreements Act, submitted to the House of Representatives and the Senate under section 102 of this Act, section 282 of the Uruguay Round Agreements Act, or section 2105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002, and which contains—

(A) a provision approving such trade agreement or agreements or such extension,

(B) a provision approving the statement of administrative action (if any) proposed to implement such trade agreement or agreements, and

(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements or such extension, provisions, necessary or appropriate to implement such trade agreement or agreements, either repealing or amending existing laws or providing new statutory authority.

(2) The term "implementing revenue bill" or resolution means an implementing bill or approval resolution which contains one or more revenue measures by reason of which it must originate in the House of Representatives.

(3) The term "approval resolution" means only a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress approves the extension of nondiscriminatory treatment with respect to the products of ——— transmitted by the President to the Congress on ———.", the first blank space being filled with the name of the country involved and the second blank space being filled with the appropriate date.

(c) INTRODUCTION AND REFERRAL.—(1) On the day on which a trade agreement or extension is submitted to the House of Representatives and the Senate under section 102, section 282 of the Uruguay Round Agreements Act, or section 2105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002, the implementing bill submitted by the President with respect to such trade agreement or extension shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a trade agreement is submitted, the implementing bill shall be introduced in that House as provided in the preceding sentence, on the first day thereafter on which the House is in session. Such bills shall be referred by the Presiding Officers of the respective Houses to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

(2) On the day on which a bilateral commerical agreement, entered into under title IV of this Act after the date of the enactment of this Act, is transmitted to the House of Representatives and the Senate, an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority

leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement is transmitted, the approval resolution with respect to such agreement shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. The approval resolution introduced in the House shall be referred to the Committee on Ways and Means and the approval resolution introduced in the Senate shall be referred to the Committee on Finance.

(d) AMENDMENTS PROHIBITED.—No amendment to an implementing bill or approval resolution shall be in order in either the House of Representatives or the Senate; and no motion to suspend the application of this subsection shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

(e) PERIOD FOR COMMITTEE AND FLOOR CONSIDERATION.—(1) Except as provided in paragraph (2), if the committee or committees of either House to which an implementing bill or approval resolution has been referred have not reported it at the close of the 45th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the bill or resolution and it shall be placed on the appropriate calendar. A vote on final passage of the bill or resolution shall be taken in each House on or before the close of the 15th day after the bill or resolution is reported by the committee or committees of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the bill or resolution. If prior to the passage by one House of an implementing bill or approval resolution of that House, that House receives the same implementing bill or approval resolution from the other House, then—

(A) the procedure in that House shall be the same as if no implementing bill or approval resolution had been received from the other House; but

(B) the vote on final passage shall be on the implementing bill or approval resolution of the other House.

(2) The provisions of paragraph (1) shall not apply in the Senate to an implementing revenue bill or resolution. An implementing revenue bill or resolution received from the House shall be referred to the appropriate committee or committees of the Senate. If such committee or commit-

tees have not reported such bill at the close of the 15th day after its receipt by the Senate (or, if later, before the close of the 45th day after the corresponding implementing revenue bill or resolution was introduced in the Senate), such committee or committees shall be automatically discharged from further consideration of such bill or resolution and it shall be placed on the calendar. A vote on final passage of such bill or resolution shall be taken in the Senate on or before the close of the 15th day after such bill or resolution is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill or resolution.

(3) For purposes of paragraphs (1) and (2), in computing a number of days in either House, there shall be excluded any day on which that House was not in session.

(f) FLOOR CONSIDERATION IN THE HOUSE.—(1) A motion in the House of Representatives to proceed to the consideration of an implementing bill or approval resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the House of Representatives on an implementing bill or approval resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit an implementing bill or approval resolution or to move to reconsider the vote by which an implementing bill or approval resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of an implementing bill or approval resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to an implementing bill or approval resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of an implementing bill or approval resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(g) FLOOR CONSIDERATION IN THE SENATE.—(1) A motion in the Senate to proceed to the consideration of an implementing bill or approval resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on an implementing, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with an implementing bill or approval resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of an implementing bill or approval resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate is not debatable. A motion to recommit an implementing bill or approval resolution is not in order.

Pursuant to section 151(f)(2) of this Act debate on an implementing revenue bill must be equally divided and controlled among those favoring and opposing the bill (absent unanimous-consent agreement for some other distribution of the time); a motion to limit debate on such legislation must be made in the House, and not in the Committee of the Whole, and may be made either pending the motion to resolve into Committee of the Whole or at a later time, after the Committee has risen without completing action on the bill (July 10, 1979, pp. 17812–13). An implementing bill reported from committee has been considered as privileged under the Act (Nov. 14, 1980, p. 29617). The House has adopted a special order recommended by the Committee on Rules providing for consideration of both a resolution to deny the extension of "fast track" procedures requested by the President under section 1103(b) of the Omnibus Trade and Competitiveness Act of 1988 and a resolution to express the sense of the House concerning U.S. negotiating objectives after such an extension (May 23, 1991, p. 12137). The Senate has affirmed its constitutional authority to enact a statutory rule (as in subsection (d) of section 151) prohibiting amendments to specified revenue bills in derogation of its constitutional authority to propose amendments to House revenue bills (presiding officer sustained on appeal) (Nov. 19, 1993, p. 30641).

RESOLUTIONS OF DISAPPROVAL, § 152

[19 U.S.C. 2192]

SEC. 152. RESOLUTIONS DISAPPROVING CERTAIN ACTIONS.—(a) CONTENTS OF RESOLUTION.—(1) For purposes of this section, the term "resolution" means only—

(A) a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the action taken by, or the determination of the President under section 203 of the Trade Act of 1974 transmitted to the Congress on ———.", the blank space being filled with the appropriate date; and

(B) a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve ——— transmitted to the Congress on ———.", with the first blank space being filled in accordance with paragraph (2), and the second blank space being filled with the appropriate date.

(2) The first blank space referred to in paragraph (1)(B) shall be filled as follows: in the case of a resolution referred to in section 407(c)(2), with the phrase "the report of the President submitted under section ——— of the Trade Act of 1974 with respect to ———" (with the first blank space being filled with "402(b)" or "409(b)", as appropriate, and the second blank space being filled with the name of the country involved).

(b) REFERENCE TO COMMITTEES.—All resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all resolutions introduced in the Senate shall be referred to the Committee on Finance.

(c) DISCHARGE OF COMMITTEES.—(1) If the committee of either House to which a resolution has been referred has not reported it at the end of 30 days after its introduction, not counting any day which is excluded under section 154(b), it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same matter, except that a motion to discharge—

(A) may only be made on the second legislative day after the calendar day on which the Member making the motion announces to the House his intention to do so; and

(B) is not in order after the Committee has reported a resolution with respect to the same matter.

(2) A motion to discharge under paragraph (1) may be made only by an individual favoring the resolution, and is highly privileged in the House and privileged in the Senate; and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(d) FLOOR CONSIDERATION IN THE HOUSE.—(1) A motion in the House of Representatives to proceed to the consideration of a resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the House of Representatives on a resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of a resolution in the House of Representatives shall be governed by the Rules of the House of Representatives applicable to other resolutions in similar circumstances.

(e) FLOOR CONSIDERATION IN THE SENATE.—(1) A motion in the Senate to proceed to the consideration of a resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on a resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate on a resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a resolution is in order in the Senate.

(f) PROCEDURES IN THE SENATE.—(1) Except as otherwise provided in this section, the following procedures shall apply in the Senate to a resolution to which this section applies:

(A)(i) Except as provided in clause (ii), a resolution that has passed the House of Representatives shall, when received in the Senate, be referred to the Committee on Finance for consideration in accordance with this section.

(ii) If a resolution to which this section applies was introduced in the Senate before receipt of a resolution that has passed the House of Representatives, the resolution from the House of Representatives shall, when received in the Senate, be placed on the calendar. If this clause applies, the procedures in the Senate with respect to a resolution introduced in the Senate that contains the identical matter as the resolution that passed the House of Representatives shall be the same as if no resolution had been received from the House of Representatives, except that the vote on passage in the Senate shall be on the resolution that passed the House of Representatives.

(B) If the Senate passes a resolution before receiving from the House of Representatives a joint resolution that contains the identical matter, the joint resolution shall be held at the desk pending receipt of the

joint resolution from the House of Representatives. Upon receipt of the joint resolution from the House of Representatives, such joint resolution shall be deemed to be read twice, considered, read the third time, and passed.

(2) If the texts of joint resolutions described in section 152 or 153(a), whichever is applicable concerning any matter are not identical—

(A) the Senate shall vote passage on the resolution introduced in the Senate, and

(B) the text of the joint resolution passed by the Senate shall, immediately upon its passage (or, if later, upon receipt of the joint resolution passed by the House), be substituted for the text of the joint resolution passed by the House of Representatives, and such resolution, as amended, shall be returned with a request for a conference between the two Houses.

(3) Consideration in the Senate of any veto message with respect to a joint resolution described in subsection (a)(2)(B) or section 153(a), including consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

Although a motion that the House resolve itself into the Committee of the Whole is not ordinarily subject to the motion to postpone indefinitely (VI, 726), the motion to postpone indefinitely may be offered pursuant to the provisions of this statute, is nondebatable, and represents final adverse disposition of the disapproval resolution (Mar. 10, 1977, p. 7021).

RESOLUTIONS TO EXTEND SECTION 402 WAIVERS, § 153

[19 U.S.C. 2193]

SEC. 153. RESOLUTIONS RELATING TO EXTENSION OF WAIVER AUTHORITY UNDER SECTION 402.—(a) CONTENTS OF RESOLUTIONS.—For purposes of this section, the term "resolution" means only a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the extension of the authority contained in section 402(c) of the Trade Act of 1974 recommended by the President to the Congress on ——— with respect to ———.", with the first blank space being filled with the appropriate date, and the second blank space being filled with the names of those countries, if any, with respect to which such extension of

authority is not approved, and with the clause beginning with "with-respect-to" being omitted if the extension of the authority is not approved with respect to any country.

(b) APPLICATION OF RULES OF SECTION 152; EXCEPTIONS.—(1) Except as provided in this section, the provisions of section 152 shall apply to resolutions described in subsection (a).

(2) In applying section 152(c)(1), all calendar days shall be counted.

(3) That part of section 152(d)(2) which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting a with-respect-to clause. Debate in the House of Representatives on any amendment to a resolution shall be limited to not more than 1 hour which shall be equally divided between those favoring and those opposing the amendment. A motion in the House to further limit debate on an amendment to a resolution is not debatable.

(4) That part of section 152(e)(4) which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting a with-respect-to clause. The time limit on a debate on a resolution in the Senate under section 152(e)(2) shall include all amendments to a resolution. Debate in the Senate on any amendment to a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such amendment, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and minority leader may, from time under the control on the passage of a resolution, allot additional time to any Senator during the consideration of any amendment. A motion in the Senate to further limit debate on an amendment to a resolution is not debatable.

(c) CONSIDERATION OF SECOND RESOLUTION NOT IN ORDER.—It shall not be in order in either the House of Representatives or the Senate to consider a resolution with respect to a recommendation of the President under section 402(d) (other than a resolution described in subsection (a) received from the other House), if that House has adopted a resolution with respect to the same recommendation.

(d) PROCEDURES RELATING TO CONFERENCE REPORTS IN THE SENATE.—(1) Consideration in the Senate of the conference report on any joint resolution described in subsection (a), including consideration of all amendments in disagreement (and all amendments thereto), and consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the conference report.

(2) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment to any amendment in disagreement shall be received unless it is a germane amendment.

SPECIAL RULES FOR CONGRESSIONAL PROCEDURE, § 154

[19 U.S.C. 2194]

SEC. 154. SPECIAL RULES RELATING TO CONGRESSIONAL PROCEDURES.—(a) Whenever, pursuant to section 102(e), 203(b), 402(d), or 407 (a) or (b), a document is required to be transmitted to the Congress, copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(b) For purposes of sections 203(c), and 407(c)(2), the 90-day period referred to in such sections shall be computed by excluding—

(1) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(2) any Saturday and Sunday, not excluded under paragraph (1), when either House is not in session.

E. NARCOTICS CONTROL PROVISIONS—TRADE ACT OF 1974, §§ 801–05

[19 U.S.C. 2491–95]

TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES, § 856

[19 U.S.C. 2492]

SEC. 802. TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES.

(a) REQUIRED ACTION BY PRESIDENT.—Subject to subsection (b), for every major drug producing country and every major drug-transit country, the President shall, on or after March 1, 1987, and March 1 of each succeeding year, to the extent considered necessary by the President to achieve the purposes of this title—

(1) deny to any or all of the products of that country tariff treatment under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act, or any other law providing preferential tariff treatment;

(2) apply to any or all of the dutiable products of that country an additional duty at a rate not to exceed 50 percent ad valorem or the specific rate equivalent;

(3) apply to one or more duty-free products of that country a duty at a rate not to exceed 50 percent ad valorem;

(4) take the steps described in subsection (d)(1) or (d)(2), or both, to curtail air transportation between the United States and that country;

(5) withdraw the personnel and resources of the United States from participation in any arrangement with that country for the pre-clearance of customs by visitors between the United States and that country; or

(6) take any combination of the actions described in paragraphs (1) through (5).

(b)(1)(A) Subject to paragraph (3), subsection (a) shall not apply with respect to a country if the President determines and certifies to the Congress, at the time of the submission of the report required by section 481(e) of the Foreign Assistance Act of 1961, that— * * *

* * *

(3) Subsection (a) shall apply to a country without regard to paragraph (1) of this subsection if the Congress enacts, with 45 days of continuous session after receipt of a certification under paragraph (1), a joint resolution disapproving the determination of the President contained in that certification.

(4) If the President takes action under subsection (a), that action shall remain in effect until—

(A) the President makes the certification under paragraph (a), a period of 45 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproval; or

(B) the President submits at any other time a certification of the matters described in paragraph (1) with respect to that country, a period of 45 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproving determination contained in that certification.

(5) For the purpose of expediting the consideration and enactment of joint resolutions under paragraphs (3) and (4)—

(A) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Ways and Means shall be treated as highly privileged in the House of Representatives; and

(B) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Finance shall be treated as privileged in the Senate.

* * *

DEFINITIONS, § 805

[19 U.S.C. 2495]

SEC. 805. For purposes of this title—

(1) continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated; * * *

* * *

F. OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988, § 1103

[19 U.S.C. 2903]

SEC. 1103. IMPLEMENTATION OF TRADE AGREEMENTS

(a) IN GENERAL—

(1) Any agreement entered into under section 1102(b) or (c) shall enter into force with respect to the United States if (and only if)—

(A) the President, at least 90 calendar days before the day on which he enters into the trade agreement, notifies the House of Representatives and the Senate of his intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(B) after entering into the agreement, the President submits a document to the House of Representatives and to the Senate containing a copy of the final legal text of the agreement, together with—

(i) a draft of an implementing bill,

(ii) a statement of any administrative action proposed to implement the trade agreement, and

(iii) the supporting information described in paragraph (2); and

(C) the implementing bill is enacted into law.

* * *

(b) APPLICATION OF CONGRESSIONAL "FAST TRACK" PROCEDURES TO IMPLEMENTING BILLS—

(1) Except as provided in subsection (c) of this section—

(A) the provisions of section 151 of the Trade Act of 1974 (hereinafter in this section referred to as "fast track procedures") apply to implementing bills submitted with respect to trade agreements entered into under section 1102(b) or (c) of this title before June 1, 1991; and

(B) such fast track procedures shall be extended to implementing bills submitted with respect to trade agreements entered into under section

2902(b) or (c) of this title after May 31, 1991, and before June 1, 1993, if (and only if)—

(i) the President requests such extension under paragraph (2); and

(ii) neither House of the Congress adopts an extension disapproval resolution under paragraph (5) before June 1, 1991.

(2) If the President is of the opinion that the fast track procedures should be extended to implementing bills described in paragraph (1)(B), the President must submit to the Congress, no later than March 1, 1991, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under section 1102(b) or (c) of this title and the anticipated schedule for submitting such agreements to the Congress for approval;

(B) a description of the progress that has been made in multilateral and bilateral negotiations to achieve the purposes, policies, and objectives of this title, and a statement that such progress justifies the continuation of negotiations; and

(C) a statement of the reasons why the extension is needed to complete the negotiations.

(3) The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974 of his decision to submit a report to Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but no later than March 1, 1991, a written report that contains—

(A) its views regarding the progress that has been made in multilateral and bilateral negotiations to achieve the purposes, policies, and objectives of this title; and

(B) a statement of its views, and the reasons therefor, regarding whether the extension requested under paragraph (2) should be approved or disapproved.

(4) The reports submitted to the Congress under paragraphs (2) and (3), or any portion of the reports, may be classified to the extent the President determines appropriate.

(5)(A) For purposes of this subsection, the term "extension disapproval resolution" means a resolution of

either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the ——— disapproves the request of the President for the extension, under section 1103(b)(1)(B)(i) of the Omnibus Trade and Competitiveness Act of 1988, of the provisions of section 151 of the Trade Act of 1974 to any implementing bill submitted with respect to any trade agreement entered into under section 1102(b) or (c) of such Act after May 31, 1991, because sufficient tangible progress has not been made in trade negotiations.", with the blank space being filled with the name of the resolving House of the Congress.

(B) Extension disapproval resolutions—

(i) may be introduced in either House of the Congress by any member of such House; and

(ii) shall be jointly referred, in the House of Representatives, to the Committee on Ways and Means and the Committee on Rules.

(C) The provisions of section 152(d) and (e) of the Trade Act of 1974 (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.

(D) It is not in order for—

(i) the Senate to consider any extension disapproval resolution not reported by the Committee on Finance;

(ii) the House of Representatives to consider any extension disapproval resolution not reported by the Committee on Ways and Means and the Committee on Rules; or

(iii) either House of the Congress to consider an extension disapproval resolution that is reported to such House after May 15, 1991.

(c) LIMITATIONS ON USE OF "FAST TRACK" PROCEDURES—

(1)(A) The fast track procedures shall not apply to any implementing bill submitted with respect to a trade agreement entered into under section 1102(b) or (c) if both Houses of the Congress separately agree to procedural disapproval resolutions within any 60-day period.

(B) Procedural disapproval resolutions—

(i) in the House of Representatives—

(I) shall be introduced by the chairman or ranking minority member of the Committee on Ways and Means or the chairman or ranking minority member of the Committee on Rules,

(II) shall be jointly referred to the Committee on Ways and Means and the Committee on Rules, and

(III) may not be amended by either Committee; and

(ii) in the Senate shall be original resolutions of the Committee on Finance.

(C) The provisions of section 152(d) and (e) of the Trade Act of 1974 (relating to the floor consideration of certain resolutions in the House and Senate) apply to procedural disapproval resolutions.

(D) It is not in order for the House of Representatives to consider any procedural disapproval resolution not reported by the Committee on Ways and Means and the Committee on Rules.

(E) For purposes of this subsection, the term "procedural disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the President has failed or refused to consult with Congress on trade negotiations and trade agreements in accordance with the provisions of the Omnibus Trade and Competitiveness Act of 1988, and, therefore, the provisions of section 151 of the Trade Act of 1974 shall not apply to any implementing bill submitted with respect to any trade agreement entered into under section 1102(b) or (c) of such Act of 1988, if, during the 60-day period beginning on the date on which this resolution is agreed to by the ———, the ——— agrees to a procedural disapproval resolution (within the meaning of section 1103(c)(1)(E) of such Act of 1988).", with the first blank space being filled with the name of the resolving House of the Congress and the second blank space being filled with the name of the other House of the Congress.

(2) The fast track procedures shall not apply to any implementing bill that contains a provision approving of any trade agreement which is entered into under section 1102(c) with any foreign country if either—

(A) the requirements of section 1102(c)(3) are not met with respect to the negotiation of such agreement; or

(B) the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives disapproves of the negotiation of such agreement before the close of the 60-day

period which begins on the date notice is provided under section 1102(c)(3)(C)(i) with respect to the negotiation of such agreement.

(d) RULES OF HOUSE OF REPRESENTATIVES AND SENATE SUBSECTIONS (b) AND (c) OF THIS SECTION ARE ENACTED BY THE CONGRESS—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

(e) COMPUTATION OF CERTAIN PERIODS OF TIME—Each period of time described in subsection (c)(1)(A) and (E) and (2) of this section shall be computed without regard to—

(1) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(2) any Saturday and Sunday, not excluded under paragraph (1), when either House of the Congress is not in session.

G. TRADE PROMOTION AUTHORITY UNDER THE BIPARTISAN TRADE PROMOTION AUTHORITY ACT OF 2002, §§ 2101–13

[19 U.S.C. 3801–13]

TRADE AGREEMENTS AUTHORITY

[19 U.S.C. 3803]

SEC. 2103. TRADE AGREEMENTS AUTHORITY.

(a) AGREEMENTS REGARDING TARIFF BARRIERS.—

(1) IN GENERAL.—Whenever the President determines that one or more existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes, policies, priorities, and objectives of this title will be promoted thereby, the President—

(A) may enter into trade agreements with foreign countries before—

(i) July 1, 2005; or

(ii) July 1, 2007, if trade authorities procedures are extended under subsection (c); and

(B) may, subject to paragraphs (2) and (3), proclaim—

(i) such modification or continuance of any existing duty,

(ii) such continuance of existing duty-free or excise treatment, or

(iii) such additional duties,

as the President determines to be required or appropriate to carry out any such trade agreement. The President shall notify the Congress of the President's intention to enter into an agreement under this subsection.

(2) LIMITATIONS.—No proclamation may be made under paragraph (1) that—

(A) reduces any rate of duty (other than a rate of duty that does not exceed 5 percent ad valorem on the date of the enactment of this Act) to a rate of duty which is less than 50 percent of the rate of such duty that applies on such date of enactment;

(B) reduces the rate of duty below that applicable under the Uruguay Round Agreements, on any import sensitive agricultural product; or

(C) increases any rate of duty above the rate that applied on the date of the enactment of this Act.

(3) AGGREGATE REDUCTION; EXEMPTION FROM STAGING.—

(A) AGGREGATE REDUCTION.—Except as provided in subparagraph (B), the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement entered into under paragraph (1) shall not exceed the aggregate reduction which would have been in effect on such day if—

(i) a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed under paragraph (1) to carry out such agreement with respect to such article; and

(ii) a reduction equal to the amount applicable under clause (i) had taken effect at 1-year intervals after the effective date of such first reduction.

(B) EXEMPTION FROM STAGING.—No staging is required under subparagraph (A) with respect to a duty reduction that is proclaimed under paragraph (1) for an article of a kind that is not produced in the United States. The United States International Trade Commission shall advise the President of the identity of articles that may be exempted from staging under this subparagraph.

(4) ROUNDING.—If the President determines that such action will simplify the computation of reductions under paragraph (3), the President may round an annual reduction by an amount equal to the lesser of—

(A) the difference between the reduction without regard to this paragraph and the next lower whole number; or

(B) one-half of 1 percent ad valorem.

(5) OTHER LIMITATIONS.—A rate of duty reduction that may not be proclaimed by reason of paragraph (2) may take effect only if a provision authorizing such reduction is included within an implementing bill provided for under section 2105 and that bill is enacted into law.

(6) OTHER TARIFF MODIFICATIONS.—Notwithstanding paragraphs (1)(B), (2)(A), (2)(C), and (3) through (5), and subject to the consultation and layover requirements of section 115 of the Uruguay Round Agreements Act, the President may proclaim the modification of any duty or staged rate reduction of any duty set forth in Schedule XX, as defined in section 2(5) of that Act, if the United States agrees to such modification or staged rate reduction in a negotiation for the reciprocal elimination or harmonization of duties under the auspices of the World Trade Organization.

(7) AUTHORITY UNDER URUGUAY ROUND AGREEMENTS ACT NOT AFFECTED.—Nothing in this subsection shall limit the authority provided to the President under section 111(b) of the Uruguay Round Agreements Act (19 U.S.C. 3521(b)).

(b) AGREEMENTS REGARDING TARIFF AND NONTARIFF BARRIERS.—

(1) IN GENERAL.—(A) Whenever the President determines that—

(i) one or more existing duties or any other import restriction of any foreign country or the United States or any other barrier to, or other distortion of, international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the United States economy, or

(ii) the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect,

and that the purposes, policies, priorities, and objectives of this title will be promoted thereby, the President may enter into a trade agreement described in subparagraph (B) during the period described in subparagraph (C).

(B) The President may enter into a trade agreement under subparagraph (A) with foreign countries providing for—

(i) the reduction or elimination of a duty, restriction, barrier, or other distortion described in subparagraph (A); or

(ii) the prohibition of, or limitation on the imposition of, such barrier or other distortion.

(C) The President may enter into a trade agreement under this paragraph before—

(i) July 1, 2005; or

(ii) July 1, 2007, if trade authorities procedures are extended under subsection (c).

(2) CONDITIONS.—A trade agreement may be entered into under this subsection only if such agreement makes progress in meeting the applicable objectives described in section 2102(a) and (b) and the President satisfies the conditions set forth in section 2104.

(3) BILLS QUALIFYING FOR TRADE AUTHORITIES PROCEDURES.—(A) The provisions of section 151 of the Trade Act of 1974 (in this title referred to as "trade authorities procedures") apply to a bill of either House of Congress which contains provisions described in subparagraph (B) to the same extent as such section 151 applies to implementing bills under that section. A bill to which this paragraph applies shall hereafter in this title be referred to as an "implementing bill".

(B) The provisions referred to in subparagraph (A) are—

(i) a provision approving a trade agreement entered into under this subsection and approving the statement of administrative action, if any, proposed to implement such trade agreement; and

(ii) if changes in existing laws or new statutory authority are required to implement such trade agreement or agreements, provisions, necessary or appropriate to implement such trade agreement or agreements, either repealing or amending existing laws or providing new statutory authority.

(c) EXTENSION DISAPPROVAL PROCESS FOR CONGRESSIONAL TRADE AUTHORITIES PROCEDURES.—

(1) IN GENERAL.—Except as provided in section 2105(b)—

(A) the trade authorities procedures apply to implementing bills submitted with respect to trade agreements entered into under subsection (b) before July 1, 2005; and

(B) the trade authorities procedures shall be extended to implementing bills submitted with respect to trade agreements entered into under subsection (b) after June 30, 2005, and before July 1, 2007, if (and only if)—

(i) the President requests such extension under paragraph (2); and

(ii) neither House of the Congress adopts an extension disapproval resolution under paragraph (5) before July 1, 2005.

(2) REPORT TO CONGRESS BY THE PRESIDENT.—If the President is of the opinion that the trade authorities procedures should be extended to implementing bills described in paragraph (1)(B), the President shall submit to the Congress, not later than April 1, 2005, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under subsection (b) and the anticipated schedule for submitting such agreements to the Congress for approval;

(B) a description of the progress that has been made in negotiations to achieve the purposes, policies, priorities, and objectives of this title, and a statement that such progress justifies the continuation of negotiations; and

(C) a statement of the reasons why the extension is needed to complete the negotiations.

(3) OTHER REPORTS TO CONGRESS.—

(A) REPORT BY THE ADVISORY COMMITTEE.—The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) of the President's decision to submit a report to the Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but not later than May 1, 2005, a written report that contains—

(i) its views regarding the progress that has been made in negotiations to achieve the purposes, policies, priorities, and objectives of this title; and

(ii) a statement of its views, and the reasons therefor, regarding whether the extension requested under paragraph (2) should be approved or disapproved.

(B) REPORT BY ITC.—The President shall promptly inform the International Trade Commission of the President's decision to submit a report to the Congress under paragraph (2). The International Trade Commission shall submit to the Congress as soon as practicable, but not later than June 1, 2005, a written report that contains a review and analysis of the economic impact on the United States of all trade agreements implemented between the date of enactment of this Act and the date on which the President decides to seek an extension requested under paragraph (2).

(4) STATUS OF REPORTS.—The reports submitted to the Congress under paragraphs (2) and (3), or any portion of such reports, may be classified to the extent the President determines appropriate.

(5) EXTENSION DISAPPROVAL RESOLUTIONS.—(A) For purposes of paragraph (1), the term "extension disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the ——— disapproves the request of the President for the extension, under section 2103(c)(1)(B)(i) of the Bipartisan Trade Promotion Authority Act of 2002, of the trade authorities procedures under that Act to any imple-

menting bill submitted with respect to any trade agreement entered into under section 2103(b) of that Act after June 30, 2005.", with the blank space being filled with the name of the resolving House of the Congress.

(B) Extension disapproval resolutions—

(i) may be introduced in either House of the Congress by any member of such House; and

(ii) shall be referred, in the House of Representatives, to the Committee on Ways and Means and, in addition, to the Committee on Rules.

(C) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.

(D) It is not in order for—

(i) the Senate to consider any extension disapproval resolution not reported by the Committee on Finance;

(ii) the House of Representatives to consider any extension disapproval resolution not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules; or

(iii) either House of the Congress to consider an extension disapproval resolution after June 30, 2005.

(d) COMMENCEMENT OF NEGOTIATIONS.—In order to contribute to the continued economic expansion of the United States, the President shall commence negotiations covering tariff and nontariff barriers affecting any industry, product, or service sector, and expand existing sectoral agreements to countries that are not parties to those agreements, in cases where the President determines that such negotiations are feasible and timely and would benefit the United States. Such sectors include agriculture, commercial services, intellectual property rights, industrial and capital goods, government procurement, information technology products, environmental technology and services, medical equipment and services, civil aircraft, and infrastructure products. In so doing, the President shall take into account all of the principal negotiating objectives set forth in section 2102(b).

SEC. 2104. CONSULTATIONS AND ASSESSMENT.

(a) NOTICE AND CONSULTATION BEFORE NEGOTIATION.—The President, with respect to any agreement that is subject to the provisions of section 2103(b), shall—

(1) provide, at least 90 calendar days before initiating negotiations, written notice to the Congress of the President's intention to enter into the negotiations and set forth therein the date the President intends to initiate such negotiations, the specific United States objectives for the negotiations, and whether the President intends to seek an agreement, or changes to an existing agreement;

(2) before and after submission of the notice, consult regarding the negotiations with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, such other committees of the House and Senate as the President deems appropriate, and the Congressional Oversight group convened under section 2107; and

(3) upon the request of a majority of the members of the Congressional Oversight Group under section 2107(c), meet with the Congressional Oversight Group before initiating the negotiations or at any other time concerning the negotiations.

(b) NEGOTIATIONS REGARDING AGRICULTURE.—

(1) IN GENERAL.—Before initiating or continuing negotiations the subject matter of which is directly related to the subject matter under section 2102(b)(10)(A)(i) with any country, the President shall assess whether United States tariffs on agricultural products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In addition, the President shall consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than United States tariffs and whether the negotiation provides an opportunity to address any such disparity. The President shall consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning the results of the assessment, whether it is appropriate for the United States to agree to further tariff reductions based on the conclusions reached in the assessment, and how all applicable negotiating objectives will be met.

(2) SPECIAL CONSULTATIONS ON IMPORT SENSITIVE PRODUCTS.—(A) Before initiating negotiations with regard to agriculture, and, with respect to the Free Trade Area for the Americas and negotiations with regard to agriculture under the auspices of the World Trade Organization, as soon as practicable after the enactment of this Act, the United States Trade Representative shall—

(i) identify those agricultural products subject to tariff-rate quotas on the date of enactment of this Act, and agricultural products subject to tariff reductions by the United States as a result of the Uruguay Round Agreements, for which the rate of duty was reduced on January 1, 1995, to a rate which was not less than 97.5 percent of the rate of duty that applied to such article on December 31, 1994;

(ii) consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning—

(I) whether any further tariff reductions on the products identified under clause (i) should be appropriate, taking into account the impact of any such tariff reduction on the United States industry producing the product concerned;

(II) whether the products so identified face unjustified sanitary or phytosanitary restrictions, including those not based on scientific principles in contravention of the Uruguay Round Agreements; and

(III) whether the countries participating in the negotiations maintain export subsidies or other programs, policies, or practices that distort world trade in such products and the impact of such programs, policies, and practices on United States producers of the products;

(iii) request that the International Trade Commission prepare an assessment of the probable economic effects of any such tariff reduction on the United States industry producing the product concerned and on the United States economy as a whole; and

(iv) upon complying with clauses (i), (ii), and (iii), notify the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate of those products identified under clause (i) for which the Trade Representative intends to seek tariff liberalization in the negotiations and the reasons for seeking such tariff liberalization.

(B) If, after negotiations described in subparagraph (A) are commenced—

(i) the United States Trade Representative identifies any additional agricultural product described in subparagraph (A)(i) for tariff reductions which were not the subject of a notification under subparagraph (A)(iv), or

(ii) any additional agricultural product described in subparagraph (A)(i) is the subject of a request for tariff reductions by a party to the negotiations,

the Trade Representative shall, as soon as practicable, notify the committees referred to in subparagraph (A)(iv) of those products and the reasons for seeking such tariff reductions.

(3) NEGOTIATIONS REGARDING THE FISHING INDUSTRY.—Before initiating, or continuing, negotiations which directly relate to fish or shellfish trade with any country, the President shall consult with the Committee on Ways and Means and the Committee on Resources of the House of Representatives, and the Committee on Finance and the Committee on Commerce, Science, and Transportation of the Senate, and shall keep the Committees apprised of negotiations on an ongoing and timely basis.

(c) NEGOTIATIONS REGARDING TEXTILES.—Before initiating or continuing negotiations the subject matter of which is directly related to textiles and apparel products with any country, the President shall assess whether United States tariffs on textile and apparel products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country and whether the negotiation provides an opportunity to address any such disparity. The President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate con-

cerning the results of the assessment, whether it is appropriate for the United States to agree to further tariff reductions based on the conclusions reached in the assessment, and how all applicable negotiating objectives will be met.

(d) CONSULTATION WITH CONGRESS BEFORE AGREEMENTS ENTERED INTO.—

(1) CONSULTATION.—Before entering into any trade agreement under section 2103(b), the President shall consult with—

(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate;

(B) each other committee of the House and the Senate, and each joint committee of the Congress, which has jurisdiction over legislation involving subject matters which would be affected by the trade agreement; and

(C) the Congressional Oversight Group convened under section 2107.

(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

(A) the nature of the agreement;

(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of this title; and

(C) the implementation of the agreement under section 2105, including the general effect of the agreement on existing laws.

(3) REPORT REGARDING UNITED STATES TRADE REMEDY LAWS.—

(A) CHANGES IN CERTAIN TRADE LAWS.—The President, at least 180 calendar days before the day on which the President enters into a trade agreement under section 2103(b), shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(i) the range of proposals advanced in the negotiations with respect to that agreement, that may be in the final agreement, and that could require amendments to title VII of the Tariff Act of 1930 or to chapter 1 of title II of the Trade Act of 1974; and

(ii) how these proposals relate to the objectives described in section 2102(b)(14).

(B) CERTAIN AGREEMENTS.—With respect to a trade agreement entered into with Chile or Singapore, the report referred to in subparagraph (A) shall be submitted by the President at least 90 calendar days before the day on which the President enters into that agreement.

(C) RESOLUTIONS.—(i) At any time after the transmission of the report under subparagraph (A), if a resolution is introduced with respect to that report in either House of Congress, the procedures set forth in clauses (iii) through (vi) shall apply to that resolution if—

(I) no other resolution with respect to that report has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, pursuant to those procedures; and

(II) no procedural disapproval resolution under section 2105(b) introduced with respect to a trade agreement entered into pursuant to the negotiations to which the report under subparagraph (A) relates has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be.

(ii) For purposes of this subparagraph, the term "resolution" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the ——— finds that the proposed changes to United States trade remedy laws contained in the report of the President transmitted to the Congress on ——— under section 2104(d)(3) of the Bipartisan Trade Promotion Authority Act of 2002 with respect to ———, are inconsistent with the negotiating objectives described in section 2102(b)(14) of that Act.", with the first blank space being filled with the name of the resolving House of Congress, the second blank space being filled with the appropriate date of the report, and the third blank space being filled with the name of the country or countries involved.

(iii) Resolutions in the House of Representatives—

(I) may be introduced by any Member of the House;

(II) shall be referred to the Committee on Ways and Means and, in addition, to the Committee on Rules; and

(III) may not be amended by either Committee.

(iv)[1] Resolutions in the Senate—

(I) may introduced by any Member of the Senate;

(II) shall be referred to the Committee on Finance; and

(III) may not be amended.

(iv)[2] It is not in order for the House of Representatives to consider any resolution that is not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules.

(v) It is not in order for the Senate to consider any resolution that is not reported by the Committee on Finance.

(vi) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to floor consideration of certain resolutions in the House and Senate) shall apply to resolutions.

(e) ADVISORY COMMITTEE REPORTS.—The report required under section 135(e)(1) of the Trade Act of 1974 regarding any trade agreement entered into under section 2103(a) or (b) of this Act shall be provided to the President, the Congress, and the United States Trade Representative not later than 30 days after the date on which the President notifies the Congress under section 2103(a)(1) or 2105(a)(1)(A) of the President's intention to enter into the agreement.

(f) ITC ASSESSMENT.—

(1) IN GENERAL.—The President at least 90 calendar days before the day on which the President enters into a trade agreement under section 2103(b), shall provide the International Trade Commission (referred to in this subsection as "the Commission") with the details of the agreement as it exists at that time and request the Commission to prepare and submit an assessment of the agreement as described in paragraph (2). Between the time the President makes the request under this paragraph and the time the Commis-

[1] So in original; two clauses (iv) have been enacted.

[2] So in original; two clauses (iv) have been enacted.

sion submits the assessment, the President shall keep the Commission current with respect to the details of the agreement.

(2) ITC ASSESSMENT.—Not later than 90 calendar days after the President enters into the agreement, the Commission shall submit to the President and the Congress a report assessing the likely impact of the agreement on the United States economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the agreement, and the interests of United States consumers.

(3) REVIEW OF EMPIRICAL LITERATURE.—In preparing the assessment, the Commission shall review available economic assessments regarding the agreement, including literature regarding any substantially equivalent proposed agreement, and shall provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the agreement.

SEC. 2105. IMPLEMENTATION OF TRADE AGREEMENTS. [19 U.S.C. 3805]

(a) IN GENERAL.—

(1) NOTIFICATION AND SUBMISSION.—Any agreement entered into under section 2103(b) shall enter into force with respect to the United States if (and only if)—

(A) the President, at least 90 calendar days before the day on which the President enters into the trade agreement, notifies the House of Representatives and the Senate of the President's intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(B) within 60 days after entering into the agreement, the President submits to the Congress a description of those changes to existing laws that the President considers would be required in order to bring the United States into compliance with the agreement;

(C) after entering into the agreement, the President submits to the Congress, on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement, together with—

(i) a draft of an implementing bill described in section 2103(b)(3);

(ii) a statement of any administrative action proposed to implement the trade agreement; and

(iii) the supporting information described in paragraph (2); and

(D) the implementing bill is enacted into law.

(2) SUPPORTING INFORMATION.—The supporting information required under paragraph (1)(C)(iii) consists of—

(A) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law; and

(B) a statement—

(i) asserting that the agreement makes progress in achieving the applicable purposes, policies, priorities, and objectives of this title; and

(ii) setting forth the reasons of the President regarding—

(I) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in clause (i);

(II) whether and how the agreement changes provisions of an agreement previously negotiated;

(III) how the agreement serves the interests of United States commerce;

(IV) how the implementing bill meets the standards set forth in section 2103(b)(3); and

(V) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in section 2102(c) regarding the promotion of certain priorities.

(3) RECIPROCAL BENEFITS.—In order to ensure that a foreign country that is not a party to a trade agreement entered into under section 2103(b) does not receive benefits under the agreement unless the country

is also subject to the obligations under the agreement, the implementing bill submitted with respect to the agreement shall provide that the benefits and obligations under the agreement apply only to the parties to the agreement, if such application is consistent with the terms of the agreement. The implementing bill may also provide that the benefits and obligations under the agreement do not apply uniformly to all parties to the agreement, if such application is consistent with the terms of the agreement.

(4) DISCLOSURE OF COMMITMENTS.—Any agreement or other understanding with a foreign government or governments (whether oral or in writing) that—

(A) relates to a trade agreement with respect to which the Congress enacts an implementing bill under trade authorities procedures, and

(B) is not disclosed to the Congress before an implementing bill with respect to that agreement is introduced in either House of Congress, shall not be considered to be part of the agreement approved by the Congress and shall have no force and effect under United States law or in any dispute settlement body.

(b) LIMITATIONS ON TRADE AUTHORITIES PROCEDURES.—

(1) FOR LACK OF NOTICE OR CONSULTATIONS.—

(A) IN GENERAL.—The trade authorities procedures shall not apply to any implementing bill submitted with respect to a trade agreement or trade agreements entered into under section 2103(b) if during the 60-day period beginning on the date that one House of Congress agrees to a procedural disapproval resolution for lack of notice or consultations with respect to such trade agreement or agreements, the other House separately agrees to a procedural disapproval resolution with respect to such trade agreement or agreements.

(B) PROCEDURAL DISAPPROVAL RESOLUTION.—(i) For purposes of this paragraph, the term "procedural disapproval resolution" means a resolution of either House of Congress, the sole matter after the resolving clause of which is as follows: "That the President has failed or refused to notify or consult in accordance with the Bipartisan Trade Promotion Authority Act of 2002 on negotiations with respect to ——— and, therefore, the trade

authorities procedures under that Act shall not apply to any implementing bill submitted with respect to such trade agreement or agreements.", with the blank space being filled with a description of the trade agreement or agreements with respect to which the President is considered to have failed or refused to notify or consult.

(ii) For purposes of clause (i), the President has "failed or refused to notify or consult in accordance with the Bipartisan Trade Promotion Authority Act of 2002" on negotiations with respect to a trade agreement or trade agreements if—

(I) the President has failed or refused to consult (as the case may be) in accordance with section 2104 or 2105 with respect to the negotiations, agreement, or agreements;

(II) guidelines under section 2107(b) have not been developed or met with respect to the negotiations, agreement, or agreements;

(III) the President has not met with the Congressional Oversight Group pursuant to a request made under section 2107(c) with respect to the negotiations, agreement, or agreements; or

(IV) the agreement or agreements fail to make progress in achieving the purposes, policies, priorities, and objectives of this title.

(2) PROCEDURES FOR CONSIDERING RESOLUTIONS.—

(A) Procedural disapproval resolutions—

(i) in the House of Representatives—

(I) may be introduced by any Member of the House;

(II) shall be referred to the Committee on Ways and Means and, in addition, to the Committee on Rules; and

(III) may not be amended by either Committee; and

(ii) in the Senate—

(I) may be introduced by any Member of the Senate

(II) shall be referred to the Committee on Finance; and

(III) may not be amended.

(B) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e))

(relating to the floor consideration of certain resolutions in the House and Senate) apply to a procedural disapproval resolution introduced with respect to a trade agreement if no other procedural disapproval resolution with respect to that trade agreement has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, and if no resolution described in section 2104(d)(3)(C)(ii) with respect to that trade agreement has been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, pursuant to the procedures set forth in clauses (iii) through (vi) of such section 2104(d)(3)(C).

(C) It is not in order for the House of Representatives to consider any procedural disapproval resolution not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules.

(D) It is not in order for the Senate to consider any procedural disapproval resolution not reported by the Committee on Finance.

(3) FOR FAILURE TO MEET OTHER REQUIREMENTS.—Not later than December 31, 2002, the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of the Treasury, the Attorney General, and the United States Trade Representative, shall transmit to the Congress a report setting forth the strategy of the executive branch to address concerns of the Congress regarding whether dispute settlement panels and the Appellate Body of the WTO have added to obligations, or diminished rights, of the United States, as described in section 2101(b)(3). Trade authorities procedures shall not apply to any implementing bill with respect to an agreement negotiated under the auspices of the WTO unless the Secretary of Commerce has issued such report in a timely manner.

(c) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—Subsection (b) of this section, section 2103(c), and section 2104(d)(3)(C) are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such are deemed a part of the rules of each House, respectively, and such procedures super-

sede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

SEC. 2106. TREATMENT OF CERTAIN TRADE AGREEMENTS FOR WHICH NEGOTIATIONS HAVE ALREADY BEGUN.

(a) CERTAIN AGREEMENTS.—Notwithstanding the prenegotiation notification and consultation requirement described in section 2104(a), if an agreement to which section 2103(b) applies—

(1) is entered into under the auspices of the World Trade Organization,

(2) is entered into with Chile,

(3) is entered into with Singapore, or

(4) establishes a Free Trade Area for the Americas, and results from negotiations that were commenced before the date of the enactment of this Act, subsection (b) shall apply.

(b) TREATMENT OF AGREEMENTS.—In the case of any agreement to which subsection (a) applies—

(1) the applicability of the trade authorities procedures to implementing bills shall be determined without regard to the requirements of section 2104(a) (relating only to 90 days notice prior to initiating negotiations), and any procedural disapproval resolution under section 2105(b)(1)(B) shall not be in order on the basis of a failure or refusal to comply with the provisions of section 2104(a); and

(2) the President shall, as soon as feasible after the enactment of this Act—

(A) notify the Congress of the negotiations described in subsection (a), the specific United State objectives in the negotiations, and whether the President is seeking a new agreement or changes to an existing agreement; and

(B) before and after submission of the notice, consult regarding the negotiations with the committees referred to section 2104(a)(2) and the Congressional Oversight Group convened under section 2107.

H. U.S. PARTICIPATION IN WTO, URUGUAY ROUND AGREEMENTS ACT, § 125

[19 U.S.C. 3535]

SEC. 125. REVIEW OF PARTICIPATION IN THE WTO.—

(a) REPORT ON THE OPERATION OF THE WTO.—The first annual report submitted to the Congress under section 124—

(1) after the end of the 5-year period beginning on the date on which the WTO Agreement enters into force with respect to the United States, and

(2) after the end of every 5-year period thereafter, shall include an analysis of the effects of the WTO Agreement on the interests of the United States, the costs and benefits to the United States of its participation in the WTO, and the value of the continued participation of the United States in the WTO.

(b) CONGRESSIONAL DISAPPROVAL OF U.S. PARTICIPATION IN THE WTO.—

(1) GENERAL RULE.—The approval of the Congress, provided under section 101(a), of the WTO Agreement shall cease to be effective if, and only if, a joint resolution described in subsection (c) is enacted into law pursuant to the provisions of paragraph (2).

(2) PROCEDURAL PROVISIONS.—(A) The requirements of this paragraph are met if the joint resolution is enacted under subsection (c), and—

(i) the Congress adopts and transmits the joint resolution to the President before the end of the 90-day period (excluding any day described in section 154(b) of the Trade Act of 1974), beginning on the date on which the Congress receives a report referred to in subsection (a), and

(ii) if the President vetoes the joint resolution, each House of Congress votes to override that veto on or before the later of the last day of the 90-day period referred to in clause (i) or the last day of the 15-day period (excluding any day described in section 154(b) of the Trade Act of 1974) beginning on the date on which the Congress receives the veto message from the President.

(B) A joint resolution to which this section applies may be introduced at any time on or after the date on which the President transmits to the Congress a re-

port described in subsection (a), and before the end of the 90-day period referred to in subparagraph (A).

(c) JOINT RESOLUTIONS.—

(1) JOINT RESOLUTIONS.—For purposes of this section, the term "joint resolution" means only a joint resolution of the 2 Houses of Congress, the matter after the resolving clause of which is as follows: "That the Congress withdraws its approval, provided under section 101(a) of the Uruguay Round Agreements Act, of the WTO Agreement as defined in section 2(9) of that Act.".

(2) PROCEDURES.—(A) Joint resolutions may be introduced in either House of the Congress by any member of such House.

(B) Subject to the provisions of this subsection, the provisions of subsections (b), (d), (e), and (f) of section 152 of the Trade Act of 1974 (19 U.S.C. 2192(b), (d), (e), and (f)) apply to joint resolutions to the same extent as such provisions apply to resolutions under such section.

(C) If the committee of either House to which a joint resolution has been referred has not reported it by the close of the 45th day after its introduction (excluding any day described in section 154(b) of the Trade Act of 1974), such committee shall be automatically discharged from further consideration of the joint resolution and it shall be placed on the appropriate calendar.

(D) It is not in order for—

(i) the Senate to consider any joint resolution unless it has been reported by the Committee on Finance or the committee has been discharged under subparagraph (C); or

(ii) the House of Representatives to consider any joint resolution unless it has been reported by the Committee on Ways and Means or the committee has been discharged under subparagraph (C).

(E) A motion in the House of Representatives to proceed to the consideration of a joint resolution may only be made on the second legislative day after the calendar day on which the Member making the motion announces to the House his or her intention to do so.

(3) CONSIDERATION OF SECOND RESOLUTION NOT IN ORDER.—It shall not be in order in either the House

of Representatives or the Senate to consider a joint resolution (other than a joint resolution received from the other House), if that House has previously adopted a joint resolution under this section.

(d) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This section is enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

In the 106th and 109th Congresses a joint resolution withdrawing the approval of the United States from the Agreement establishing the World Trade Organization was considered under a special rule and failed of passage (H. J. Res. 90, June 21, 2000, p. ——; H. J. Res. 27, June 9, 2005, p.——).

I. BURMESE FREEDOM AND DEMOCRACY ACT, § 9

[50 U.S.C. 1701 note]

SEC. 9. DURATION OF SANCTIONS.—

(a) TERMINATION BY REQUEST FROM DEMOCRATIC BURMA.—The President may terminate any provision in this Act upon the request of a democratically elected government in Burma, provided that all the conditions in section 3(a)(3) have been met.

(b) CONTINUATION OF IMPORT SANCTIONS.—

(1) EXPIRATION.—The import restrictions contained in section 3(a)(1) shall expire 1 year from the date of enactment of this Act unless renewed under paragraph (2) of this section.

(2) RESOLUTION BY CONGRESS.—The import restrictions contained in section 3(a)(1) may be renewed annually for a 1-year period if, prior to the anniversary of the date of enactment of this Act, and each year thereafter, a renewal resolution is enacted into law in accordance with subsection (c).

(3) LIMITATION.—The import restrictions contained in section 3(a)(1) may be renewed for a maximum of three years from the date of the enactment of this Act.

(c) RENEWAL RESOLUTIONS.—

(1) IN GENERAL.—For purposes of this section, the term "renewal resolution" means a joint resolution of the 2 Houses of Congress, the sole matter after the resolving clause of which is as follows: "That Congress approves the renewal of the import restrictions contained in section 3(a)(1) of the Burmese Freedom and Democracy Act of 2003.".

(2) PROCEDURES.—

(A) IN GENERAL.—A renewal resolution—

(i) may be introduced in either House of Congress by any member of such House at any time within the 90-day period before the expiration of the import restrictions contained in section 3(a)(1); and

(ii) the provisions of subparagraph (B) shall apply.

(B) EXPEDITED CONSIDERATION.—The provisions of section 152(b), (c), (d), (e), and (f) of the Trade Act of 1974 (19 U.S.C. 2192 (b), (c), (d), (e), and (f)) apply to a renewal resolution under this Act as if such resolution were a resolution described in section 152(a) of the Trade Act of 1974.

J. PROHIBITION ON IMPORT RESTRICTIONS THAT WOULD THREATEN TO IMPAIR NATIONAL SECURITY [19 U.S.C. 1862]

SEC. 1862. .SAFEGUARDING NATIONAL SECURITY— * * *

(f) CONGRESSIONAL DISAPPROVAL OF PRESIDENTIAL ADJUSTMENT OF IMPORTS OF PETROLEUM OR PETROLEUM PRODUCTS; DISAPPROVAL RESOLUTION—

(1) An action taken by the President under subsection (c) of this section to adjust imports of petroleum or petroleum products shall cease to have force and effect upon the enactment of a disapprovalresolution, provided for in paragraph (2), relating to that action.

(2)(A) This paragraph is enacted by the Congress—

(i) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedures to be followed

in that House in the case of disapproval resolutions and such procedures supersede other rules only to the extent that they are inconsistent therewith; and

(ii) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

(B) For purposes of this subsection, the term "disapproval resolution" means only a joint resolution of either House of Congress the matter after the resolving clause of which is as follows: "That the Congress disapproves the action taken under section 232 of the Trade Expansion Act of 1962 with respect to petroleum imports under ———— dated ————.", the first blank space being filled with the number of the proclamation, Executive order, or other Executive act issued under the authority of subsection (c) of this section for purposes of adjusting imports of petroleum or petroleum products and the second blank being filled with the appropriate date.

(C)(i) All disapproval resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all disapproval resolutions introduced in the Senate shall be referred to the Committee on Finance.

(ii) No amendment to a disapproval resolution shall be in order in either the House of Representatives or the Senate, and no motion to suspend the application of this clause shall be in order in either House nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this clause by unanimous consent.

12. Federal Salary Act of 1967, § 225(h)–(j) [2 U.S.C. 358–60]

SEC. 225. CITIZENS' COMMISSION ON PUBLIC SERVICE AND COMPENSATION.— * * *

(h) RECOMMENDATIONS OF THE PRESIDENT WITH RESPECT TO PAY [2 U.S.C. 358].— * * * (2) The President shall transmit his recommendations under this subsection to Congress on the first Monday after January 3 of the first calendar year beginning after the date on which the Com-

mission submits its report and recommendations to the President under subsection (g) [2 U.S.C. 357].

(i) EFFECTIVE DATE OF RECOMMENDATIONS OF THE PRESIDENT [2 U.S.C. 359].—(1) None of the President's recommendations under subsection (h) [2 U.S.C. 358] shall take effect unless approved under paragraph (2).

(2)(A) The recommendations of the President under subsection (h) [2 U.S.C. 358] shall be considered approved under this paragraph if there is enacted into law a bill or joint resolution approving such recommendations in their entirety. This bill or joint resolution shall be passed by recorded vote to reflect the vote of each Member of Congress thereon.

(B)(i) The provisions of this subparagraph are enacted by the Congress—

(I) as an exercise of the rulemaking power of the Senate and the House of Representatives and as such shall be considered as part of the rules of each House, and shall supersede other rules only to the extent that they are inconsistent therewith; and

(II) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedures of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(ii) During the 60-calendar-day period beginning on the date that the President transmits his recommendations to the Congress under subsection (h) [2 U.S.C. 358], it shall be in order as a matter of highest privilege in each House of Congress to consider a bill or joint resolution, if offered by the majority leader of such House (or a designee), approving such recommendations in their entirety.

(3) Except as provided in paragraph (4), any recommended pay adjustment approved under paragraph (2) shall take effect as of the date proposed by the President under subsection (h) [2 U.S.C. 358] with respect to such adjustment.

(4)(A) Notwithstanding the approval of the President's pay recommendations in accordance with paragraph (2), none of those recommendations shall take effect unless, between the date on which the bill or resolution approving those recommendations is signed by the President (or otherwise becomes law) and the earliest date as of which the President proposes (under subsection (h) [2 U.S.C. 358]) that any of those recommendations take effect, an election of Representatives shall have intervened.

(B) For purposes of this paragraph, the term "election of Representatives" means an election held on the Tuesday following the first Monday of November in any even-numbered calendar year.

(j) EFFECT OF RECOMMENDATIONS ON EXISTING LAW AND PRIOR RECOMMENDATIONS [2 U.S.C. 360].—The recommendations of the President taking effect as provided in section 225(i) [2 U.S.C. 359] shall be held and considered to modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(A) all provisions of law enacted prior to the effective date or dates of all or part (as the case may be) of such recommendations (other than any provision of law enacted with respect to such recommendations in the period beginning on the date the President transmits his recommendations to the Congress under subsection (h) [2 U.S.C. 358] and ending on the date of their approval under subsection (i)(2) [2 U.S.C. 359(2)]), and

(B) any prior recommendations of the President which take effect under this chapter.

In 1985, the Salary Act was amended to require a salary commission report with respect to fiscal year 1987. The President transmitted his recommendations concerning that report in his fiscal year 1988 Budget message (Jan. 5, 1987, H. Doc. 100–11). Since not disapproved by the Congress in accordance with the Salary Act (2 U.S.C. 359), those recommendations took effect on March 1, 1987. On return to the normal quadrennial cycle, the President transmitted with his fiscal year 1990 Budget message recommendations concerning a salary commission report with respect to fiscal year 1989 (Jan. 9, 1989, H. Doc. 101–21). Those recommendations were disapproved by Public Law 101–1 (H. J. Res. 129, 101st Cong., Feb. 7, 1989, p. 1708). In 1989, the Salary Act was amended to redesignate the Commission, refine the parameters for quadrennial adjustments, and provide for privileged consideration of legislation to approve adjustments recommended by the President. The quadrennial review contemplated by the statute has not occurred since 1993. Adjustments are to maintain equal levels of pay among the Speaker, the Vice President, and the Chief Justice; among the Majority and Minority Leaders, the President pro tempore of the Senate, and level I of the Executive Schedule; and among Representatives, Senators, certain judges, and level II of the Executive Schedule (2 U.S.C. 362).

Under section 311(d) of the Legislative Branch Appropriations Act, 1988 (2 U.S.C. 60a–2a), the Speaker may adjust pay levels for officers and employees of the House to maintain certain relationships with comparable

levels in the Senate and in the other branches of government. This authority to issue "pay orders" is stated as follows:

"Sec. 311. * * * (d)(1) Notwithstanding any other provision of this Act, or any other provision of law, rule, or regulation, hereafter each time the President pro tempore of the Senate exercises any authority pursuant to any of the amendments made by this section with respect to rates of pay or any other matter relating to personnel whose pay is disbursed by the Secretary of the Senate, or whenever any of the events described in paragraph (2) occurs, the Speaker of the House of Representatives may adjust the rates of pay (and any minimum or maximum rate, limitation, or allowance) applicable to personnel whose pay is disbursed by the Clerk of the House of Representatives to the extent necessary to ensure—

"(A) appropriate pay levels and relationships between and among positions held by personnel of the House of Representatives; and

"(B) appropriate pay relationships between—

"(i) positions referred to in subparagraph (A); and

"(ii)(I) positions under subparagraphs (A) through (D) of section 225(f) of the Federal Salary Act of 1967 [2 U.S.C. 356];

"(II) positions held by personnel whose pay is disbursed by the Secretary of the Senate; and

"(III) positions to which the General Schedule applies.

"(2) The other events permitting an exercise of authority under this subsection are either—

"(A) an adjustment under section 5303 of title 5, United States Code, in rates of pay under the General Schedule; or

"(B) an adjustment in rates of pay for Members of the House of Representatives (other than an adjustment which occurs by virtue of an adjustment described in subparagraph (A)).

"(3) For the purpose of this subsection, the term 'Member of the House of Representatives' means a Member of the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico."

13. Energy Policy and Conservation Act [42 U.S.C. 6421]

PART C—CONGRESSIONAL REVIEW

PROCEDURE FOR CONGRESSIONAL REVIEW OF PRESIDENTIAL REQUESTS TO IMPLEMENT CERTAIN AUTHORITIES

SEC. 551. (a) For purposes of this section, the term "energy action" means any matter required to be transmitted, or submitted to the Congress in accordance with the procedures of this section.

(b) The President shall transmit any energy action (bearing an identification number) to both Houses of Congress on the same day. If both Houses are not in session on the day any energy action is received by the appropriate officers of each House, for purposes of this section such energy action shall be deemed to have transmitted on the first succeeding day on which both Houses are in session.

(c)(1) Except as provided in paragraph (2) of this subsection, if energy action is transmitted to the Houses of Congress, such action shall take effect at the end of the first period of 15 calendar days of continuous session of Congress after the date on which such action is transmitted to such Houses, unless between the date of transmittal and the end of such 15-day period, either House passes a resolution stating in substance that such House does not favor such action.

(2) An energy action described in paragraph (1) may take effect prior to the expiration of the 15-calendar-day period after the date on which such action is transmitted, if each House of Congress approves a resolution affirmatively stating in substance that such House does not object to such action.

(d) For the purpose of subsection (c) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 15-calendar-day period.

(e) Under provisions contained in an energy action, a provision of such an action may take effect on a date later than the date on which such action otherwise takes effect pursuant to the provisions of this section.

(f)(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the

same manner and to the same extent as in the case of any other rule of the House.

(2) For purposes of this subsection, the term "resolution" means only a resolution of either House of Congress described in subparagraph (A) or (B) of this paragraph.

(A) A resolution the matter after the resolving clause of which is as follows: "That the ——— does not object to the energy action numbered ——— submitted to the Congress on ———, 19—.", the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one energy action.

(B) A resolution the matter after the resolving clause of which is as follows: "That the ——— does not favor the energy action numbered ——— transmitted to Congress on ———, 19—.", the first blank space therein being filled with the name of the resolving House and other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one energy action.

(3) A resolution once introduced with respect to an energy action shall immediately be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to an energy action has been referred has not reported it at the end of 5 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such energy action which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same energy action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same energy action.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to; except that it shall be in order—

(i) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2)(A) of this subsection with respect to an energy action, for a resolution described in paragraph (2)(B) of this subsection with respect to the same such action, or

(ii) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2)(B) of this subsection with respect to an energy action, for a resolution described in paragraph (2)(A) of this subsection with respect to the same such action.

The amendments described in clauses (i) and (ii) of this subparagraph shall not be amendable.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to an energy action, then it shall not be in order to consider in that House any other resolution with respect to the same such action.

These statutory procedures have been used for consideration of a motion to discharge a committee from consideration of a resolution disapproving an "energy action" under Public Law 94–163 (Apr. 13, 1976, p. 10794; May 27, 1976, p. 15772).

14. Extensions of Emergency Energy Authorities [42 U.S.C. 8374]

SEC. 404. EMERGENCY AUTHORITIES.—(a) COAL ALLOCATION AUTHORITY.—(1) If the President—

(A) declares a severe energy supply interruption, as defined in section 3(8) of the Energy Policy and Conservation Act [42 U.S.C. 6202(8)], or

(B) finds, and publishes such finding, that a national or regional fuel supply shortage exists or may exist which the President determines—

(i) is, or is likely to be, of significant scope and duration, and of an emergency nature;

(ii) causes, or may cause, major adverse impact on public health, safety, or welfare or on the economy; and

(iii) results, or is likely to result, from an interruption in the supply of coal or from sabotage, or an act of God;

the President may, by order, allocate (and require the transportation thereof) for the use of any electrical powerplant or major fuel-burning installation, in accordance with such terms and conditions as he may prescribe, to insure reliability of electric service or prevent unemployment, or protect public health, safety, or welfare.

(2) For purposes of this subsection, the term "coal" means anthracite and bituminous coal and lignite (but does not mean any fuel derivative thereof).

(b) EMERGENCY PROHIBITION ON USE OF NATURAL GAS OR PETROLEUM.—If the President declares a severe energy supply interruption, as defined in section 3(8) of the Energy Policy and Conservation Act [42 U.S.C. 6202(8)], the President may, by order, prohibit any electric powerplant or major fuelburning installation from using natural gas or petroleum, or both, as a primary energy source for the

duration of such interruption. Notwithstanding any other provision of this section, any suspension of emission limitations or other requirements of applicable implementation plans, as defined in section 110(d) of the Clean Air Act [42 U.S.C. 7410(d)], required by such prohibition shall be issued only in accordance with section 110(f) of the Clean Air Act [42 U.S.C. 7410(f)].

(c) EMERGENCY STAYS.—The President may, by order, stay the application of any provision of this act, or any rule or order thereunder, applicable to any new or existing electric powerplant, if the President finds, and publishes such finding, that an emergency exists, due to national, regional, or systemwide shortages of coal or other alternate fuels, or disruption of transportation facilities, which emergency is likely to affect reliability of service of any such electric powerplant.

(d) DURATION OF EMERGENCY ORDERS.—(1) Except as provided in paragraph (3), any order issued by the President under this section shall not be effective for longer than the duration of the interruption or emergency, or 90 days, whichever is less.

(2) Any such order may be extended by a subsequent order which the President shall transmit to the Congress in accordance with section 551 of the Energy Policy and Conservation Act [42 U.S.C. 6421]. Such order shall be subject to congressional review pursuant to such section.

(3) Notwithstanding paragraph (1), the effectiveness of any order issued under this section shall not terminate under this subsection during the 15-calendar-day period during which any such subsequent order described in paragraph (2) is subject to congressional review under section 551 of the Energy Policy and Conservation Act [42 U.S.C. 6421].

15. Nuclear Waste Fund Fees [42 U.S.C. 10222]

SEC. 302. (a) CONTRACTS.—(1) In the performance of his functions under this Act, the Secretary is authorized to enter into contracts with any person who generates or holds title to high-level radioactive waste, or spent nuclear fuel, of domestic origin for the acceptance of title, subsequent transportation, and disposal of such waste or spent fuel. Such contracts shall provide for payment to the Secretary of fees pursuant to paragraphs (2) and (3) sufficient to offset expenditures described in subsection (d).

* * *

(4) Not later than 180 days after the date of enactment of this Act, the Secretary shall establish procedures for the collection and payment of the fees established by paragraph (2) and paragraph (3). The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3) above to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (d) herein. In the event the Secretary determines that either insufficient or excess revenues are being collected, in order to recover the costs incurred by the Federal Government that are specified in subsection (d), the Secretary shall propose an adjustment to the fee to insure full cost recovery. The Secretary shall immediately transmit this proposal for such an adjustment to Congress. The adjusted fee proposed by the Secretary shall be effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period either House of Congress adopts a resolution disapproving the Secretary's proposed adjustment in accordance with the procedures set forth for congressional review of an energy action under section 551 of the Energy Policy and Conservation Act [42 U.S.C. 6421].

16. Arms Export Control

A. ARMS EXPORT CONTROL ACT, § 36

[22 U.S.C. 2776(b)]

REPORTS ON COMMERCIAL AND GOVERNMENTAL MILITARY EXPORTS; CONGRESSIONAL ACTION

SEC. 36. * * * (b)(1) Subject to paragraph (6), in the case of any letter of offer to sell any defense articles or services under this Act for $50,000,000 or more, any design and construction services for $200,000,000 or more, or any major defense equipment for $14,000,000 or more, before such letter of offer is issued, the President shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a numbered certification with respect to such offer to sell containing the information specified in * * * subsection (a) * * *

A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (ii) and the details of the description specified in clause (iii) of subsection (a) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information. The letter of offer shall not be issued with respect to a proposed sale to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, or New Zealand, if the Congress, within fifteen calendar days after receiving such certification, or with respect to a proposed sale to any other country or organization, if the Congress within thirty calendar days after receiving such certification, enacts a joint resolution prohibiting the proposed sale, unless the President states in his certification that an emergency exists which requires such sale in the national security interests of the United States. If the President states in his certification that an emergency exists which requires the proposed sale in the national security interest of the United States, thus waiving the congressional review requirements of this subsection, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate issuance of the letter of offer and a discussion of the national security interests involved.

(2) Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, except that for purposes of consideration of any joint resolution with respect to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, or New Zealand, it shall be in order in the Senate to move to discharge a committee to which such joint resolution was referred if such committee has not reported such joint resolution at the end of five calendar days after its introduction.

(3) For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

* * *

Pursuant to this provision, a motion that the House resolve itself into the Committee of the Whole for consideration of a concurrent (now joint; see P.L. 99–247) resolution disapproving an export sale of major defense equipment is highly privileged after the resolution has been reported, subject to the three-day availability requirement of clause 4 of rule XIII (former clause 2(l)(6) of rule XI) (Oct. 14, 1981, pp. 23796, 23871, 23872; May 7, 1986, p. 9716).

B. ARMS EXPORT CONTROL ACT, § 36

COMMERCIAL EXPORTS OF DEFENSE ARTICLES AND DEFENSE SERVICES

[22 U.S.C. 2776(c)]

SEC. 36. * * * (c) * * * (2) Unless the President states in his certification [under paragraph (1)] that an emergency exists which requires the proposed export in the national security interests of the United States, a license for export described in paragraph (1)—

(A) in the case of a license for an export to the North Atlantic Treaty Organization, any member country of that Organization or Australia, Japan, or New Zealand, shall not be issued until at least 15 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 15-day period, enacts a joint resolution prohibiting the proposed export; and

(B) in the case of a license for an export of a commercial communications satellite for launch from, and by nationals of, the Russian Federation, Ukraine, or Kazakhstan, shall not be issued until at least 15 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 15-day period, enacts a joint resolution prohibiting the proposed export; and

(C) in the case of any other license, shall not be issued until at least 30 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 30-day period, enacts a joint resolution prohibiting the proposed export.

(3)(A) Any joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

C. ARMS EXPORT CONTROL ACT, § 36

COMMERCIAL MANUFACTURING AGREEMENTS

[22 U.S.C. 2776(d)]

SEC. 36. (d)(1) In the case of an approval under section 38 of this Act [22 U.S.C. 2778] of a United States commercial technical assistance or manufacturing licensing agreement which involves the manufacture abroad of any item of significant combat equipment on the United States Munitions List, before such approval is given, the President shall submit a certification with respect to such proposed commercial agreement in a manner similar to the certification required under subsection (c)(1) of this section containing comparable information, except that the last sentence of such subsection shall not apply to certifications submitted pursuant to this subsection.

(2) A certification under this subsection shall be submitted—

(A) at least 15 days before approval is given in the case of an agreement for or in a country which is a member of the North Atlantic Treaty Organization or Australia, Japan, or New Zealand; and

(B) at least 30 days before approval is given in the case of an agreement for or in any other country;

unless the President states in his certification that an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States.

(3) If the President states in his certification that an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States, thus waiving the requirements of paragraph (4), he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate approval of the agreement and a discussion of the national security interests involved.

(4) Approval for an agreement subject to paragraph (1) may not be given under section 38 if the Congress, within the 15-day or 30-day period specified in paragraph (2)(A) or (B), as the case may be, enacts a joint resolution prohibiting such approval.

(5)(A) Any joint resolution under paragraph (4) shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions under paragraph (4), a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

D. ARMS EXPORT CONTROL ACT, § 3

THIRD COUNTRY TRANSFER OF MILITARY EQUIPMENT

[22 U.S.C. 2753]

SEC. 3. (a) No defense article or defense service shall be sold or leased by the United States Government under this Act to any country or international organization, and no agreement shall be entered into for a cooperative project (as defined in section 27 of this Act [22 U.S.C. 2767]), unless—

* * *

(2) the country or international organization shall have agreed not to transfer title to, or possession of, any defense article or related training or other defense service so furnished to it, or produced in a cooperative project (as defined in section 27 of this Act [22 U.S.C. 2767]), to anyone not an officer, employee, or agent of that country or international organization (or the North Atlantic Treaty Organization or the specific member countries (other than the United States) in the case of a cooperative project) and not to use or permit the use of such article or related training or other defense service for purposes other than those for which furnished unless the consent of the President has first been obtained;

* * *

(d)(1) Subject to paragraph (5), the President may not give his consent under paragraph (2) of subsection (a) or

under the third sentence of such subsection, or under section 505(a)(1) or 505(a)(4) of the Foreign Assistance Act of 1961 [22 U.S.C. 2314(a)(1) or (4)], to a transfer of any major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more, or any defense article or related training or of other defense service valued (in terms of its original acquisition cost) at $50,000,000 or more, unless the President submits to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate a written certification with respect to such proposed transfer containing—

(A) the name of the country or international organization proposing to make such transfer,

(B) a description of the article or service proposed to be transferred, including its acquisition cost,

(C) the name of the proposed recipient of such article or service,

(D) the reasons for such proposed transfer, and

(E) the date on which such transfer is proposed to be made.

Any certification submitted to Congress pursuant to this paragraph shall be unclassified, except that information regarding the dollar value and number of articles or services proposed to be transferred may be classified if public disclosure thereof would be clearly detrimental to the security of the United States.

(2)(A) Except as provided in subparagraph (B), unless the President states in the certification submitted pursuant to paragraph (1) of this subsection that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States, such consent shall not become effective until 30 calendar days after the date of such submission and such consent shall become effective then only if the Congress does not enact, within such 30-day period, a joint resolution prohibiting the proposed transfer.

(B) In the case of a proposed transfer to the North Atlantic Treaty Organization, or any member country of such Organization, Japan, Australia, or New Zealand, unless the President states in the certification submitted pursuant to paragraph (1) of this subsection that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States, such consent shall not become effective until fifteen calendar days after the

date of such submission and such consent shall become effective then only if the Congress does not enact, with such fifteen-day period, a joint resolution prohibiting the proposed transfer.

(C) If the President states in his certification under subparagraph (A) or (B) that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States, thus waiving the requirements of that subparagraph, the President shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate immediate consent to the transfer and a discussion of the national security interests involved.

(D)(i) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(ii) For the purpose of expediting the consideration and enactment of joint resolutions under this paragraph, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(3)(A) Subject to paragraph (5), the President may not give his consent to the transfer of any major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more, or any defense article or defense service valued (in terms of its original acquisition cost) at $50,000,000 or more, the export of which has been licensed or approved under section 38 of this Act [22 U.S.C. 2778], unless before giving such consent the President submits to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate a certification containing the information specified in subparagraphs (A) through (E) of paragraph (1). Such certification shall be submitted—

(i) at least 15 calendar days before such consent is given in the case of a transfer to a country which is a member of the North Atlantic Treaty Organization or Australia, Japan, or New Zealand; and

(ii) at least 30 calendar days before such consent is given in the case of a transfer to any other country,

unless the President states in his certification that an emergency exists which requires that consent to the proposed transfer become effective immediately in the na-

tional security interests of the United States. If the President states in his certification that such an emergency exists (thus waiving the requirements of clause (i) or (ii), as the case may be, and of subparagraph (B)) the President shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate that consent to the proposed transfer become effective immediately and a discussion of the national security interests involved.

(B) Consent to a transfer subject to subparagraph (A) shall become effective after the end of the 15-day or 30-day period specified in subparagraph (A)(i) or (ii), as the case may be, only if the Congress does not enact, within that period, a joint resolution prohibiting the proposed transfer.

(C)(i) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(ii) For the purpose of expediting the consideration and enactment of joint resolutions under this paragraph, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(4) This subsection shall not apply—

(A) to transfers of maintenance, repair, or overhaul defense services, or of the repair parts of other defense articles used in furnishing such services, if the transfer will not result in any increase, relative to the original specifications, in the military capability of the defense articles and services to be maintained, repaired, or overhauled;

(B) to temporary transfers of defense articles for the sole purpose of receiving maintenance, repair, or overhaul; or

(C) to arrangements among members of the North Atlantic Treaty Organization or between the North Atlantic Treaty Organization and any of its member countries—

(i) for cooperative cross servicing, or

(ii) for lead-nation procurement if the certification transmitted to the Congress pursuant to section 36(b) of this Act [22 U.S.C. 2776(b)] with regard to such lead-nation procurement identified

the transferees on whose behalf the lead-nation procurement was proposed.

(5) In the case of a transfer to a member country of the North Atlantic Treaty Organization (NATO) or Australia, Japan, or New Zealand that does not authorize a new sales territory that includes any country other than such countries, the limitations on consent of the President set forth in paragraphs (1) and (3)(A) shall apply only if the transfer is—

(A) a transfer of major defense equipment valued (in terms of its original acquisition cost) at $25,000,000 or more; or

(B) a transfer of defense articles or defense services valued (in terms of its original acquisition cost) at $100,000,000 or more.

* * *

E. ARMS EXPORT CONTROL ACT, §§ 62, 63

LEASES OF DEFENSE ARTICLES

[22 U.S.C. 2796a, 2796b]

SEC. 62. REPORTS TO THE CONGRESS.—(a) Before entering into or renewing any agreement with a foreign country or international organization to lease any defense article under this chapter, or to loan any defense article under chapter 2 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2311], for a period of one year or longer, the President shall transmit to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations of the Senate and the chairman of the Committee on Armed Services of the Senate, a written certification which specifies—

(1) the country or international organization to which the defense article is to be leased or loaned;

(2) the type, quantity, and value (in terms of replacement cost) of the defense article to be leased or loaned;

(3) the terms and duration of the lease or loan; and

(4) a justification for the lease or loan, including an explanation of why the defense article is being leased or loaned rather than sold under this Act.

(b) The President may waive the requirements of this section (and in the case of an agreement described in sec-

tion 63 [22 U.S.C. 2796b], may waive the provisions of that section) if he states in his certification, that an emergency exists which requires that the lease or loan be entered into immediately in the national security interests of the United States. If the President states in his certification that such an emergency exists, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate that the lease be entered into immediately and a discussion of the national security interests involved.

(c) The certification required by subsection (a) shall be transmitted—

(1) not less than 15 calendar days before the agreement is entered into or renewed in the case of an agreement with the North Atlantic Treaty Organization, any member country of that Organization or Australia, Japan, or New Zealand; and

(2) not less than 30 calendar days before the agreement is entered into or renewed in the case of an agreement with any other organization or country.

SEC. 63. LEGISLATIVE REVIEW.—(a)(1) Subject to paragraph (2), in the case of any agreement involving the lease under this chapter, or the loan under chapter 2 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2311], to any foreign country or international organization for a period of one year or longer of any defense articles which are either (i) major defense equipment valued (in terms of its replacement cost less any depreciation in its value) at $14,000,000 or more, or (ii) defense articles valued (in terms of their replacement cost less any depreciation in their value) at $50,000,000 or more, the agreement may not be entered into or renewed if the Congress, within the 15-day or 30-day period specified in section 62(c) (1) or (2), as the case may be, enacts a joint resolution prohibiting the proposed lease or loan.

(2) In the case of an agreement described in paragraph (1) that is entered into with a member country of the North Atlantic Treaty Organization (NATO) or Australia, Japan, or New Zealand, the limitations in paragraph (1) shall apply only if the agreement involves a lease or loan of—

(A) major defense equipment valued (in terms of its replacement cost less any depreciation in its value) at $25,000,000 or more; or

(B) defense articles valued (in terms of their replacement cost less any depreciation in their value) at $100,000,000 or more.

(b) Any joint resolution under subsection (a) shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(c) For the purpose of expediting the consideration and enactment of joint resolutions under subsection (a), a motion to proceed to the consideration of any such resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

F. ARMS EXPORT CONTROL ACT, § 40

TRANSACTIONS WITH COUNTRIES SUPPORTING ACTS OF INTERNATIONAL TERRORISM.

[22 U.S.C. 2780]

SEC. 40. TRANSACTIONS WITH COUNTRIES SUPPORTING ACTS OF INTERNATIONAL TERRORISM.

* * *

(f) RESCISSION.—(1) A determination made by the Secretary of State under subsection (d) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate—

(A) before the proposed rescission would take effect, a report certifying that—

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(2) (A) No rescission under paragraph (1)(B) of a determination under subsection (d) may be made if the Congress, within 45 days after receipt of a report under paragraph (1)(B), enacts a joint resolution the matter after the resolving clause of which is as follows: "That the proposed rescission of the determination under section 40(d) of the Arms Export Control Act pursuant to the report submitted to the Congress on ——— is hereby prohibited.", the blank to be completed with the appropriate date.

(B) A joint resolution described in subparagraph (A) and introduced within the appropriate 45-day period shall be considered in the Senate and the House of Representatives in accordance with paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act (as contained in Public Law 98–473), except that references in such paragraphs to the Committees on Appropriations of the House of Representatives and the Senate shall be deemed to be references to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, respectively.

* * *

17. Federal Election Commission Regulations, § 311(d) [2 U.S.C. 438(d)]

SEC. 311. * * * (d)(1) Before prescribing any rule, regulation, or form under this section or any other provision of this Act, the Commission shall transmit a statement with respect to such rule, regulation, or form to the Senate and the House of Representatives, in accordance with this subsection. Such statement shall set forth the proposed rule, regulation, or form, and shall contain a detailed explanation and justification of it.

(2) If either House of the Congress does not disapprove by resolution any proposed rule or regulation submitted by the Commission under this section within 30 legislative days after the date of the receipt of such proposed rule or regulation or within 10 legislative days after the date of receipt of such proposed form, the Commission may prescribe such rule, regulation, or form.

(3) For purposes of this subsection, the term "legislative day" means, with respect to statements transmitted to the Senate, any calendar day on which the Senate is in session, and with respect to statements transmitted to the House of Representatives, any calendar day on which the House of Representatives is in session.

(4) For purposes of this subsection, the terms "rule" and "regulation" mean a provision or series of interrelated provisions stating a single, separate rule of law.

(5)(A) A motion to discharge a committee of the Senate from the consideration of a resolution relating to any such rule, regulation, or form or a motion to proceed to the consideration of such a resolution, is highly privileged and shall be decided without debate.

(B) Whenever a committee of the House of Representatives reports any resolution relating to any such form, rule or regulation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and is not in order to move to reconsider the vote by which the motion is agreed to or disagreed with.

18. Alaska Natural Gas Transportation Act of 1976, §§ 8, 9 [15 U.S.C. 719f, 719g]

CONGRESSIONAL REVIEW

SEC. 8. * * * (c) For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day calendar period.

(d)(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of each House of Congress, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as those rules relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

(2) For purposes of this Act, the term "resolution" means (A) a joint resolution, the resolving clause of which is as follows: "That the House of Representatives and Senate approve the Presidential decision on an Alaska natural gas transportation system submitted to the Congress on ———, 19—, and find that any environmental impact statements prepared relative to such system and submitted with the President's decision are in compliance with the Natural [so in original] Environmental Policy Act of 1969."; the blank space therein shall be filled with the date on which the President submits his decision to the House of Representatives and the Senate; or (B) a joint resolution described in subsection (g) of this section.

(3) A resolution once introduced with respect to a Presidential decision on an Alaska natural gas transportation system shall be referred to one or more committees (and all resolutions with respect to the same Presidential decision on an Alaska natural gas transportation system shall be referred to the same committee or committees) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If any committee to which a resolution with respect to a Presidential decision on an Alaska natural gas transportation system has been referred has not reported it at the end of 30 calendar days after its referral, it shall be in order to move either to discharge such committee from further consideration of such resolution or to discharge such committee from consideration of any other resolution with respect to such Presidential decision on an Alaska natural gas transportation system which has been referred to such committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same Presidential decision on an Alaska natural gas transportation system), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order

to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential decision on an Alaska natural gas transportation system.

(5)(A) When any committee has reported, or has been discharged from further consideration of, a resolution, but in no case earlier than 30 days after the date or receipt of the President's decision to the Congress, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution described in subsection (d)(2)(A) shall be limited to not more than 10 hours and on any resolution described in subsection (g) to one hour. This time shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to or, thereafter within such 60-day period, to consider any other resolution respecting the same Presidential decision.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.

* * *

(g)(1) At any time after a decision designating a transportation system is submitted to the Congress pursuant to this section, if the President finds that any provision of law applicable to actions to be taken under subsection (a) or (c) of section 9 (15 U.S.C. 719g(a) or (c)) require waiver in order to permit expeditious construction and initial operation of the approved transportation system, the Presi-

dent may submit such proposed waiver to both Houses of Congress.

(2) Such provision shall be waived with respect to actions to be taken under subsection (a) or (c) of section 9 [15 U.S.C. 719g(a) or (c)] upon enactment of a joint resolution pursuant to the procedures specified in subsection (c) and (d) of this section (other than subsection (d)(2) thereof) within the first period of 60 calendar days of continuous session of Congress beginning on the date after the date of receipt by the Senate and House of Representatives of such proposal.

(3) The resolving clause of the joint resolution referred to in this subsection is as follows: "That the House of Representatives and Senate approve the waiver of the provision of law (———) as proposed by the President, submitted to the Congress on ———, 19——." The first blank space therein being filled with the citation to the provision of law and the second blank space therein being filled with the date on which the President submits his decision to the House of Representatives and the Senate.

(4) In the case of action with respect to a joint resolution described in this subsection, the phrase "a waiver of a provision of law" shall be substituted in subsection (d) for the phrase "the Alaska natural gas transportation system.".

AUTHORIZATIONS

SEC. 9. (a) To the extent that the taking of any action which is necessary or related to the construction and initial operation of the approved transportation system requires a certificate, right-of-way, permit, lease, or other authorization to be issued or granted by a Federal officer or agency, such Federal officer or agency shall—

(1) to the fullest extent permitted by the provisions of law administered by such officer or agency, but

(2) without regard to any provision of law which is waived pursuant to section 8(g) [15 U.S.C. 719f(g)] issue or grant such certificates, permits, rights-of-way, leases, and other authorizations at the earliest practicable date.

* * *

(c) Any certificate, right-of-way, permit, lease, or other authorization issued or granted pursuant to the direction under subsection (a) shall include the terms and conditions required by law unless waived pursuant to a resolu-

tion under section 8(g) [15 U.S.C. 719f(g)], and may include terms and conditions permitted by law, except that with respect to terms and conditions permitted but not required, the Federal officer or agency, notwithstanding any such other provision of law, shall have no authority to include terms and conditions as would compel a change in the basic nature and general route of the approved transportation system or those the inclusion of which would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

Pursuant to section 8(d)(6)(A) of this statute [15 U.S.C. 719f(d)(6)(A)] a privileged motion to resolve into the Committee of the Whole to consider a joint resolution providing a waiver of law under the statute is subject to a nondebatable motion to postpone to a day certain (or indefinitely) (Dec. 8, 1981, pp. 29972–73).

19. Crude Oil Transportation Systems [43 U.S.C. 2008]

SEC. 508. PROCEDURES FOR WAIVER OF FEDERAL LAW.—(a) WAIVER OF PROVISIONS OF FEDERAL LAW.—The President may identify those provisions of Federal law (including any law or laws regarding the location of a crude oil transportation system but not including any provision of the antitrust laws) which, in the national interest, as determined by the President, should be waived in whole or in part to facilitate construction or operation of any such system approved under section 507 [43 U.S.C. 2007] or of the Long Beach-Midland project, and he shall submit any such proposed waiver to both Houses of the Congress. The provisions so identified shall be waived with respect to actions to be taken to construct or operate such system or project only upon enactment of a joint resolution within the first period of 60 calendar days of continuous session of Congress beginning on the date of receipt by the House of Representatives and the Senate of such proposal.

(b) JOINT RESOLUTION.—The resolving clause of the joint resolution referred to in subsection (a) is as follows: "That the House of Representatives and Senate approve the waiver of the provisions of law (———) as proposed by the President, submitted to the Congress on ———, 19——.". The first blank space therein being filled with the citation to the provisions of law proposed to be waived by the President and the second blank space therein being filled

with the date on which the President submits his decision to waive such provisions of law to the House of Representatives and the Senate. Rules and procedures for consideration of any such joint resolution shall be governed by section 8 (c) and (d) of the Alaskan Natural Gas Transportation Act [15 U.S.C. 719f(c) and (d)], other than paragraph (2) of section 8(d) [15 U.S.C. 719f(d)], except that for the purposes of this subsection, the phrase "a waiver of provisions of law" shall be substituted in section 8(d) [15 U.S.C. 719f(d)] each place where the phrase "an Alaska natural gas transportation system" appears.

20. Alaska National Interest Lands Conservation Act, §§ 1502, 1503 [16 U.S.C. 3232, 3233]

NATIONAL NEED MINERAL ACTIVITY RECOMMENDATIONS

[16 U.S.C. 3232]

SEC. 1502. (a) RECOMMENDATION.—At any time after December 2, 1980, the President may transmit a recommendation to the Congress that mineral exploration, development, or extraction not permitted under this Act or other applicable law shall be permitted in a specified area of the lands referred to in section 1501 [16 U.S.C. 3231]. Notice of such transmittal shall be published in the Federal Register. No recommendation of the President under this section may be transmitted to the Congress before ninety days after publication in the Federal Register of notice of his intention to submit such recommendation.

* * *

(d) APPROVAL.—Any recommendation under this section shall take effect only upon enactment of a joint resolution approving such recommendation within the first period of one hundred and twenty calendar days of continuous session of Congress beginning on the date after the date of receipt by the Senate and House of Representatives of such recommendation. Any recommendation of the President submitted to Congress under subsection (a) shall be considered received by both Houses for purposes of this section on the first day on which both are in session occurring after such recommendation is submitted.

(e) ONE-HUNDRED-AND-TWENTY-DAY COMPUTATION.—For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the one-hundred-and-twenty-day calendar period.

EXPEDITED CONGRESSIONAL REVIEW

[16 U.S.C. 3233]

SEC. 1503. (a) RULEMAKING.—This subsection is enacted by Congress—

(1) as an exercise of the rulemaking power of each House of Congress, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by subsection (b) of this section and it supersedes other rules only to the extent that it is inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as those relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

(b) RESOLUTION.—For purposes of this section, the term "resolution" means a joint resolution, the resolving clause of which is as follows: "That the House of Representatives and Senate approve the recommendation of the President for ——— in ——— submitted to the Congress on ———, 19——.", the first blank space therein to be filled in with appropriate activity, the second blank space therein to be filled in with the name or description of the area of land affected by the activity, and the third blank space therein to be filled with the date on which the President submits his recommendation to the House of Representatives and the Senate. Such resolution may also include material relating to the application and effect of the National Environmental Policy Act of 1969 [42 U.S.C. 4321] to the recommendation.

(c) REFERRAL.—A resolution once introduced with respect to such Presidential recommendation shall be referred to one or more committees (and all resolutions with respect to the same Presidential recommendation shall be referred to the same committee or committees) by the

President of the Senate or the Speaker of the House of Representatives, as the case may be.

(d) OTHER PROCEDURES.—Except as otherwise provided in this section the provisions of section 8(d) of the Alaska Natural Gas Transportation Act [15 U.S.C. 719f(d)] shall apply to the consideration of the resolution.

21. Federal Land Policy and Management Act of 1976 [43 U.S.C. 1701]

A. LAND USE PLANNING

[43 U.S.C. 1712]

SEC. 202. (a) The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

* * *

(d) Any classification of public lands or any land use plan in effect on October 21, 1976, is subject to review in the land use planning process conducted under this section, and all public lands, regardless of classification, are subject to inclusion in any land use plan developed pursuant to this section. The Secretary may modify or terminate any such classification with such land use plans.

(e) The Secretary may issue management decisions to implement land use plans developed or revised under this section in accordance with the following:

(1) Such decisions, including but not limited to exclusions (that is, total elimination) of one or more of the principal or major uses made by a management decision shall remain subject to reconsideration, modification, and termination through revision by the Secretary or his delegate, under the provisions of this section, of the land use plan involved.

(2) Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be re-

ported by the Secretary to the House of Representatives and the Senate. If within ninety days from the giving of such notice (exclusive of days on which either House has adjourned for more than three consecutive days), the Congress adopts a concurrent resolution of nonapproval of the management decision or action, then the management decision or action shall be promptly terminated by the Secretary. If the committee to which a resolution has been referred during the said ninety day period has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the management decision or action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same management decision or action. When the committee has reported, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

B. SALES

[43 U.S.C. 1713]

SEC. 203. * * * (c) Where a tract of the public lands in excess of two thousand five hundred acres has been designated for sale, such sale may be made only after the end of the ninety days (not counting days on which the House

of Representatives or the Senate has adjourned for more than three consecutive days) beginning on the day the Secretary has submitted notice of such designation to the Senate and the House of Representatives, and then only if the Congress has not adopted a concurrent resolution stating that such House does not approve of such designation. If the committee to which a resolution has been referred during the said ninety day period has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the designation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same designation. When the committee has reported, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

C. WITHDRAWALS

[43 U.S.C. 1714]

SEC. 204. * * * (c)(1) On and after the dates of approval of this Act a withdrawal aggregating five thousand acres or more may be made (or such a withdrawal or any other withdrawal involving the aggregate five thousand acres or more which terminates after such date of approval may be extended) only for a period of not more than twenty years by the Secretary on his own motion or upon request by a department or agency head. The Secretary shall notify both Houses of Congress of such a withdrawal no later

than its effective date and the withdrawal shall terminate and become effective at the end of ninety days (not counting days on which the Senate or the House of Representatives has adjourned for more than three consecutive days) beginning on the day notice of such withdrawal has been submitted to the Senate and to the House of Representatives, if the Congress has adopted a concurrent resolution stating that such House does not approve the withdrawal. If the committee to which a resolution has been referred during the said ninety day period has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reported, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

§ 1130(

D. REVIEW OF WITHDRAWALS

[43 U.S.C. 1714]

SEC. 204. * * * (l)(1) The Secretary shall, within fifteen years of October 21, 1976, review withdrawals existing on the date of approval of this Act, in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming of (1) all Federal lands other than withdrawals of the public lands

administered by the Bureau of Land Management and of lands which, on the date of approval of this Act, were part of Indian reservations and other Indian holdings, the National Forest System, the National Park System, the National Wildlife Refuge System, other lands administered by the Fish and Wildlife Service or the Secretary through the Fish and Wildlife Service, the National Wild and Scenic Rivers System, and the National System of Trails; and (2) all public lands administered by the Bureau of Land Management and of lands in the National Forest System (except those in wilderness areas, and those areas formally identified as primitive or natural areas or designated as national recreation areas) which closed the lands to appropriation under the Mining Law of 1872 (17 Stat. 91, as amended; 30 U.S.C. 22) or to leasing under the Mineral Leasing Act of 1920 (41 Stat. 437, as amended; 30 U.S.C. 181).

(2) In the review required by paragraph (1) of this subsection, the Secretary shall determine whether, and for how long, the continuation of the existing withdrawal of the lands would be, in his judgment, consistent with the statutory objectives of the programs for which the lands were dedicated and of the other relevant programs. The Secretary shall report his recommendations to the President, together with statements of concurrence or nonconcurrence submitted by the heads of the departments or agencies which administer the lands. The President shall transmit this report to the President of the Senate and the Speaker of the House of Representatives, together with his recommendations for action by the Secretary, or for legislation. The Secretary may act to terminate withdrawals other than those made by Act of the Congress in accordance with the recommendations of the President unless before the end of ninety days (not counting days on which the Senate and the House of Representatives has adjourned for more than three consecutive days) beginning on the day the report of the President has been submitted to the Senate and the House of Representatives the Congress has adopted a concurrent resolution indicating otherwise. If the committee to which a resolution has been referred during the said ninety day period has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to

discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reported, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

22. Marine Fisheries Conservation Act, § 203 [16 U.S.C. 1823]

SEC. 203. CONGRESSIONAL OVERSIGHT OF INTERNATIONAL FISHERY AGREEMENTS.—(a) IN GENERAL.—No governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement shall become effective with respect to the United States before the close of the first 120 days (excluding any days in a period for which the Congress is adjourned sine die) after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

(b) REFERRAL TO COMMITTEES.—Any document described in subsection (a) shall be immediately referred in the House of Representatives to the Committee on Resources, and in the Senate to the Committees on Commerce and Foreign Relations.

(c) CONGRESSIONAL PROCEDURES.—(1) RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.—The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.

(2) DEFINITION.—For purposes of this subsection, the term "fishery agreement resolution" refers to a joint resolution of either House of Congress—

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a); and

(B) which is reported from the Committee on Resources of the House of Representatives or the Committee on Commerce or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) relating to that agreement is transmitted to the Congress.

(3) PLACEMENT ON CALENDAR.—Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

(4) FLOOR CONSIDERATION IN THE HOUSE.—

(A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally

between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.

(C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any fishery agreement resolution shall be decided without debate.

(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

23. Outer Continental Shelf Lands Act, § 8 [43 U.S.C. 1337]

SEC. 8. (a)(1) The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the Outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act [43 U.S.C. 1335(a)]. * * *

* * *

(4)(A) The Secretary of Energy shall submit any bidding system authorized in subparagraph (H) of paragraph (1) to the Senate and House of Representatives. The Secretary may institute such bidding system unless either the Senate or the House of Representatives passes a resolution of disapproval within thirty days after receipt of the bidding system.

(B) Subparagraphs (C) through (J) of this paragraph are enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate and the House of Representatives, respec-

tively, and as such they are deemed a part of the rules of each House, respectively, but they are applicable only with respect to the procedures to be followed in that House in the case of resolutions described by this paragraph, and they supersede other rules only to the extent that they are inconsistent therewith; and

(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(C) A resolution disapproving a bidding system submitted pursuant to this paragraph shall immediately be referred to a committee (and all resolutions with respect to the same request shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(D) If the committee to which has been referred any resolution disapproving the bidding system of the Secretary has not reported the resolution at the end of ten calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the same bidding system which has been referred to the committee.

(E) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same recommendation), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(F) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same bidding system.

(G) When the committee has reported, or has been discharged from further consideration of, a resolution as provided in this paragraph, it shall be at any time thereafter in order (even though a previous motion to the same effect

has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(H) Debate on the resolution is limited to not more than two hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(I) Motions to postpone, made with respect to the discharge from the committee, or the consideration of a resolution with respect to a bidding system, and motions to proceed to the consideration of other business, shall be decided without debate.

(J) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a bidding system shall be decided without debate.

24. Nuclear Waste Policy Act of 1982 [42 U.S.C. 10101]

A. HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL, §§ 111–125

[42 U.S.C. 10131–10145]

REVIEW OF REPOSITORY SITE SELECTION, § 115

[42 U.S.C. 10135]

SEC. 115. (a) DEFINITION.—For purposes of this section, the term "resolution of repository siting approval" means a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the site at ——— for a repository, with respect to which a notice of disapproval was submitted by ——— on ———". The first blank space in such resolution shall be filled with the name of the geographic location of the proposed site of the repository to which such resolution pertains; the second blank space in such resolution

shall be filled with the designation of the State Governor and legislature or Indian tribe governing body submitting the notice of disapproval to which such resolution pertains; and the last blank space in such resolution shall be filled with the date of such submission.

(b) STATE OR INDIAN TRIBE PETITIONS.—The designation of a site as suitable for application for a construction authorization for a repository shall be effective at the end of the 60-day period beginning on the date that the President recommends such site to the Congress under section 114, unless the Governor and the legislature of the State in which such site is located, or the governing body of an Indian tribe on whose reservation such site is located, as the case may be, has submitted to the Congress a notice of disapproval under section 116 or 118. If any such notice of disapproval has been submitted, the designation of such site shall not be effective except as provided under subsection (c).

(c) CONGRESSIONAL REVIEW OF PETITIONS.—If any notice of disapproval of a repository site designation has been submitted to the Congress under section 116 or 118 after a recommendation for approval of such site is made by the President under section 114, such site shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution of repository siting approval in accordance with this subsection approving such site, and such resolution thereafter becomes law.

(d) PROCEDURES APPLICABLE TO THE SENATE.—[see 42 U.S.C. 10135(d)]

* * *

(e) PROCEDURES APPLICABLE TO THE HOUSE OF REPRESENTATIVES.—(1) The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives, and as such they are deemed a part of the rules of the House, but applicable only with respect to the procedure to be followed in the House in the case of resolutions of repository siting approval, and such provisions supersede other rules of the House only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the House to change the rules (so far as relating to

the procedure of the House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) Resolutions of repository siting approval shall, upon introduction, be immediately referred by the Speaker of the House to the appropriate committee or committees of the House. Any such resolution received from the Senate shall be held at the Speaker's table.

(3) Upon the expiration of 60 days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall be discharged from further consideration of such resolution, and such resolution shall be referred to the appropriate calendar, unless such resolution or an identical resolution was previously reported by each committee to which it was referred.

(4) It shall be in order for the Speaker to recognize a Member favoring a resolution to call up a resolution of repository siting approval after it has been on the appropriate calendar for 5 legislative days. When any such resolution is called up, the House shall proceed to its immediate consideration and the Speaker shall recognize the Member calling up such resolution and a Member opposed to such resolution for 2 hours of debate in the House, to be equally divided and controlled by such Members. When such time has expired, the previous question shall be considered as ordered on the resolution to adoption without intervening motion. No amendment to any such resolution shall be in order, nor shall it be in order to move to reconsider the vote by which such resolution is agreed to or disagreed to.

(5) If the House receives from the Senate a resolution of repository siting approval with respect to any site, then the following procedures shall apply:

(A) The resolution of the Senate with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the House with respect to such site—

(i) the procedure with respect to that or other resolutions of the House with respect to such site shall be the same as if no resolution from the Senate with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the House with respect to such site, a resolu-

tion from the Senate with respect to such site where the text is identical shall be automatically substituted for the resolution of the House.

(f) COMPUTATION OF DAYS.—For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period referred to in subsection (c) and the 60-day period referred to in subsections (d) and (e).

* * *

The first time the House considered a measure under these procedures was to address the proposed Yucca Mountain Repository Site (H. J. Res. 87, May 8, 2002, p. ——). A privileged joint resolution of approval called up under these procedures is subject to a point of order under section 425 of the Congressional Budget Act of 1974 (relating to unfunded mandates) (May 8, 2002, p. ——).

B. INTERIM STORAGE PROGRAM, §§ 131–37

[42 U.S.C. 10151–57]

REVIEW OF STORAGE SITES AND STATE PARTICIPATION, § 135

[42 U.S.C. 10155]

SEC. 135. * * * (d) * * * (6)(A) Upon deciding to provide an aggregate of 300 or more metric tons of storage capacity under subsection (a)(1) at any one site, the Secretary shall notify the Governor and legislature of the State where such site is located, or the governing body of the Indian tribe in whose reservation such site is located, as the case may be, of such decision. During the 60-day period following receipt of notification by the Secretary of his decision to provide an aggregate of 300 or more metric tons of storage capacity at any one site, the Governor or legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, may disapprove the provision of 300 or more metric tons of storage capacity at the site involved and submit to the Congress a notice of such disapproval. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of

the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the provision of such storage capacity at such site was disapproved by such Governor or legislature or the governing body of such Indian tribe.

(B) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under subparagraph (A). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this subtitle to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(C) The authority of the Governor and legislature of each State under this paragraph shall not be applicable with respect to any site located on a reservation.

(D) If any notice of disapproval is submitted to the Congress under subparagraph (A), the proposed provision of 300 or more metric tons of storage capacity at the site involved shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress following the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution approving such proposed provision of storage capacity in accordance with the procedures established in this paragraph and subsections (d) through (f) of section 115 and such resolution thereafter becomes law. For purposes of this paragraph, the term "resolution" means a joint resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the provision of 300 or more metric tons of spent nuclear fuel storage capacity at the site located at ———, with respect to which a notice of disapproval was submitted by ——— on ———.". The first blank space in such resolution shall be filled with the geographic location of the site involved; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or affected Indian tribe governing body submitting the notice of disapproval involved; and the last blank space in such resolution shall be filled with the date of submission of such notice of disapproval.

(E) For purposes of the consideration of any resolution described in subparagraph (D), each reference in subsections (d) and (e) of section 115 to a resolution of reposi-

tory siting approval shall be considered to refer to the resolution described in such subparagraph.

* * *

C. MONITORED RETRIEVABLE STORAGE, §§ 141–49

SECRETARIAL PROPOSAL, § 141

[42 U.S.C. 10161]

SEC. 141. * * * (b) SUBMISSION OF PROPOSAL BY SECRETARY.—(1) On or before June 1, 1985, the Secretary shall complete a detailed study of the need for and feasibility of, and shall submit to the Congress a proposal for, the construction of one or more monitored retrievable storage facilities for high-level radioactive waste and spent nuclear fuel. Each such facility shall be designed—

(A) to accommodate spent nuclear fuel and high-level radioactive waste resulting from civilian nuclear activities;

(B) to permit continuous monitoring, management, and maintenance of such spent fuel and waste for the foreseeable future;

(C) to provide for the ready retrieval of such spent fuel and waste for further processing or disposal; and

(D) to safely store such spent fuel and waste as long as may be necessary by maintaining such facility through appropriate means, including any required replacement of such facility. * * *

* * *

(h) PARTICIPATION OF STATES AND INDIAN TRIBES.—Any facility authorized pursuant to this section shall be subject to the provisions of sections 115, 116(a), 116(b), 116(d), 117, and 118. For purposes of carrying out the provisions of this subsection, any reference in sections 115 through 118 to a repository shall be considered to refer to a monitored retrievable storage facility.

SITE SELECTION, § 145

[42 U.S.C. 10165]

SEC. 145. (a) IN GENERAL.—The Secretary may select the site evaluated under section 144 that the Secretary determines on the basis of available information to be the most

suitable for a monitored retrievable storage facility that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act.

* * *

NOTICE OF DISAPPROVAL, § 146

[42 U.S.C. 10166]

SEC. 146. (a) IN GENERAL.—The selection of a site under section 145 shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection, unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 145 shall not be effective except as provided under section 115(c).

(b) REFERENCES.—For purposes of carrying out the provisions of this subsection, references in section 115(c) to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under section 116(b) or 118(a) shall be considered to refer to a notice of disapproval under this section.

25. Defense Base Closure and Realignment

A. DEFENSE BASE CLOSURE AND REALIGNMENT ACT OF 1990, §§ 2903, 2904, 2908

[10 U.S.C. 2687 note]

RECOMMENDATIONS FOR BASE CLOSURES AND REALIGNMENTS, § 2903

SEC. 2903. * * * (c) DOD RECOMMENDATIONS.—(1) The Secretary may, by no later than April 15, 1991, April 15, 1993, and April 15, 1995, publish in the Federal Register and transmit to the congressional defense committees and to the Commission a list of the military installations in-

side the United States that the Secretary recommends for closure or realignment * * *

(d) REVIEW AND RECOMMENDATIONS BY THE COMMISSION.— * * * (2)(A) The Commission shall, by no later than July 1 of each year in which the Secretary transmits recommendations to it pursuant to subsection (c), transmit to the President a report containing the Commission's findings and conclusions based on a review and analysis of the recommendations made by the Secretary, together with the Commission's recommendations for closures and realignments of military installations inside the United States.

* * *

(e) REVIEW BY THE PRESIDENT.—(1) The President shall, by no later than July 15 of each year in which the Commission makes recommendations under subsection (d), transmit to the Commission and to the Congress a report containing the President's approval or disapproval of the Commission's recommendations.

(2) If the President approves all the recommendations of the Commission, the President shall transmit a copy of such recommendations to the Congress, together with a certification of such approval.

(3) If the President disapproves the recommendations of the Commission, in whole or in part, the President shall transmit to the Commission and the Congress the reasons for that disapproval. The Commission shall then transmit to the President, by no later than August 15 of the year concerned, a revised list of recommendations for the closure and realignment of military installations.

(4) If the President approves all of the revised recommendations of the Commission transmitted to the President under paragraph (3), the President shall transmit a copy of such revised recommendations to the Congress, together with a certification of such approval.

(5) If the President does not transmit to the Congress an approval and certification described in paragraph (2) or (4) by September 1 of any year in which the Commission has transmitted recommendations to the President under this part, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS, § 2904

SEC. 2904. (a) IN GENERAL.—Subject to subsection (b), the Secretary shall—

(1) close all military installations recommended for closure by the Commission in each report transmitted to the Congress by the President pursuant to section 2903(e);

(2) realign all military installations recommended for realignment by such Commission in each such report;

(3) carry out the privatization in place of a military installation recommended for closure or realignment by the Commission in the 2005 report only if privatization in place is a method of closure or realignment of the military installation specified in the recommendations of the Commission in such report and is determined by the Commission to be the most cost-effective method of implementation of the recommendation;

(4) initiate all such closures and realignments no later than two years after the date on which the President transmits a report to the Congress pursuant to section 2903(e) containing the recommendations for such closures or realignments; and

(5) complete all such closures and realignments no later than the end of the six-year period beginning on the date on which the President transmits the report pursuant to section 2903(e) containing the recommendations for such closures or realignments.

(b) CONGRESSIONAL DISAPPROVAL.—(1) The Secretary may not carry out any closure or realignment recommended by the Commission in a report transmitted from the President pursuant to section 2903(e) if a joint resolution is enacted, in accordance with the provisions of section 2908, disapproving such recommendations of the Commission before the earlier of—

(A) the end of the 45-day period beginning on the date on which the President transmits such report; or

(B) the adjournment of Congress sine die for the session during which such report is transmitted.

(2) For purposes of paragraph (1) of this subsection and subsections (a) and (c) of section 2908, the days on which either House of Congress is not in session because of an

adjournment of more than three days to a day certain shall be excluded in the computation of a period.

* * *

CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT, § 2908

SEC. 2908. (a) TERMS OF THE RESOLUTION.—For purposes of section 2904(b), the term "joint resolution" means only a joint resolution which is introduced within the 10-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), and—

(1) which does not have a preamble;

(2) the matter after the resolving clause of which is as follows: "That Congress disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on ———", the blank space being filled in with the appropriate date; and

(3) the title of which is as follows: "Joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission.".

(b) REFERRAL.—A resolution described in subsection (a) that is introduced in the House of Representatives shall be referred to the Committee on Armed Services of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) by the end of the 20-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

(d) CONSIDERATION.—(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consider-

ation of the resolution. A Member may make the motion only on the day after the calendar day on which the Member announces to the House concerned the Member's intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred. All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) CONSIDERATION BY OTHER HOUSE.—(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the

other House a resolution described in subsection (a), then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

* * *

2005 ROUND OF REALIGNMENTS AND CLOSURES OF MILITARY INSTALLATIONS, § 2912

* * *

SEC. 2912. * * *

(d) AUTHORIZATION OF ADDITIONAL ROUND; COMMISSION.—

(1) APPOINTMENT OF COMMISSION.—Subject to the certifications required under subsection (b), the President may commence an additional round for the selection of military installations for closure and realignment under this part in 2005 by transmitting to the

Senate, not later than March 15, 2005, nominations pursuant to section 2902(c) for the appointment of new members to the Defense Base Closure and Realignment Commission.

(2) EFFECT OF FAILURE TO NOMINATE.—If the President does not transmit to the Senate the nominations for the Commission by March 15, 2005, the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

(3) MEMBERS.—Notwithstanding section 2902(c)(1), the Commission appointed under the authority of this subsection shall consist of nine members.

(4) TERMS; MEETINGS; TERMINATION.—Notwithstanding subsections (d), (e)(1), and (l) of section 2902, the Commission appointed under the authority of this subsection shall meet during calendar year 2005 and shall terminate on April 15, 2006.

(5) FUNDING.—If no funds are appropriated to the Commission by the end of the second session of the 108th Congress for the activities of the Commission in 2005, the Secretary may transfer to the Commission for purposes of its activities under this part in that year such funds as the Commission may require to carry out such activities. The Secretary may transfer funds under the preceding sentence from any funds available to the Secretary. Funds so transferred shall remain available to the Commission for such purposes until expended.

* * *

COMMISSION CONSIDERATION OF RECOMMENDATIONS, § 2914

SEC. 2914. * * *

(d) COMMISSION REVIEW AND RECOMMENDATIONS.—

(1) IN GENERAL.—Except as provided in this subsection, section 2903(d) shall apply to the consideration by the Commission of the recommendations transmitted by the Secretary in 2005. The Commission's report containing its findings and conclusions, based on a review and analysis of the Secretary's recommendations shall be transmitted to the President not later than September 8, 2005.

* * *

(e) REVIEW BY THE PRESIDENT.—

(1) IN GENERAL.—Except as provided in this subsection, section 2903(e) shall apply to the review by the President of the recommendations of the Commission under this section, and the actions, if any, of the Commission in response to such review, in 2005. The President shall review the recommendations of the Secretary and the recommendations contained in the report of the Commission under subsection (d) and prepare a report, not later than September 23, 2005, containing the President's approval or disapproval of the Commission's recommendations.

(2) COMMISSION RECONSIDERATION.—If the Commission prepares a revised list of recommendations under section 2903(e)(3) in 2005 in response to the review of the President in that year under paragraph (1), the Commission shall transmit the revised list to the President not later than October 20, 2005.

(3) EFFECT OF FAILURE TO TRANSMIT.—If the President does not transmit to Congress an approval and certification described in paragraph (2) or (4) of section 2903(e) by November 7, 2005, the process by which military installations may be selected for closure or relignment under this part in 2005 shall be terminated.

(4) EFFECT OF TRANSMITTAL.—A report of the President under this subsection containing the President's approval of the Commission's recommendations is deemed to be a report under section 2903(e) for purposes of sections 2904 and 2908.

B. EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS FOR THE DEPARTMENT OF DEFENSE TO PRESERVE AND ENHANCE MILITARY READINESS ACT OF 1994, § 112

[P.L. 104–6; 10 U.S.C. 2687 note]

DEPARTMENT OF DEFENSE—MILITARY CONSTRUCTION

SEC. 112. None of the funds made available to the Department of Defense for any fiscal year for military construction or family housing may be obligated to initiate construction projects upon enactment of this Act for any project on an installation that—

(1) was included in the closure and realignment recommendations submitted by the Secretary of Defense

to the Base Closure and Realignment Commission on February 28, 1995, unless removed by the Base Closure and Realignment Commission, or

(2) is included in the closure and realignment recommendation as submitted to Congress in 1995 in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101–510):

Provided, That the prohibition on obligation of funds for projects located on an installation cited for realignment are only to be in effect if the function or activity with which the project is associated will be transferred from the installation as a result of the realignment: *Provided further*, That this provision will remain in effect unless the Congress enacts a Joint Resolution of Disapproval in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101–510).

26. Congressional Accountability Act of 1995, § 304 [2 U.S.C. 1384]

SEC. 304. SUBSTANTIVE REGULATIONS.

(a) REGULATIONS.—

(1) IN GENERAL.—The procedures applicable to the regulations of the Board issued for the implementation of this Act, which shall include regulations the Board is required to issue under title II (including regulations on the appropriate application of exemptions under the laws made applicable in title II) are prescribed in this section.

(2) RULEMAKING PROCEDURE.—Such regulations of the Board—

(A) shall be adopted, approved, and issued in accordance with subsection (b); and

(B) shall consist of 3 separate bodies of regulations, which shall apply, respectively, to—

(i) the Senate and Employees of the Senate;

(ii) the House of Representatives and employees of the House of Representatives; and

(iii) all other covered employees and employing offices.

(b) ADOPTION BY THE BOARD.—The Board shall adopt the regulations referred to in subsection (a)(1) in accordance with the principles and procedures set forth in section 553 of title 5, United States Code, and as provided in the following provisions of this subsection:

(1) PROPOSAL.—The Board shall publish a general notice of proposed rulemaking under section 553(b) of title 5, United States Code, but, instead of publication of a general notice of proposed rulemaking in the Federal Register, the Board shall transmit such notice to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day on which both Houses are in session following such transmittal. Such notice shall set forth the recommendations of the Deputy Director for the Senate in regard to regulations under subsection (a)(2)(B)(i), the recommendations of the Deputy Director for the House of Representatives in regard to regulations under subsection (a)(2)(B)(ii), and the recommendations of the Executive Director for regulations under subsection (a)(2)(B)(iii).

(2) COMMENT.—Before adopting regulations, the Board shall provide a comment period of at least 30 days after publication of a general notice of proposed rulemaking.

(3) ADOPTION.—After considering comments, the Board shall adopt regulations and shall transmit notice of such action together with a copy of such regulations to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day on which both Houses are in session following such transmittal.

(4) RECOMMENDATION AS TO METHOD OF APPROVAL.—The Board shall include a recommendation in the general notice of proposed rulemaking and in the regulations as to whether the regulations should be approved by resolution of the Senate, by resolution of the House of Representatives, by concurrent resolution, or by joint resolution.

(c) APPROVAL OF REGULATIONS.—

(1) IN GENERAL.—Regulations referred to in paragraph (2)(B)(i) of subsection (a) may be approved by the Senate by resolution or by the Congress by concurrent resolution or by joint resolution. Regulations referred to in paragraph (2)(B)(ii) of subsection (a) may be approved by the House of Representatives by resolution or by the Congress by concurrent resolution or by joint resolution. Regulations referred to in para-

graph (2)(B)(iii) may be approved by Congress by concurrent resolution or by joint resolution.

(2) REFERRAL.—Upon receipt of a notice of adoption of regulations under subsection (b)(3), the presiding officers of the House of Representatives and the Senate shall refer such notice, together with a copy of such regulations, to the appropriate committee or committees of the House of Representatives and of the Senate. The purpose of the referral shall be to consider whether such regulations should be approved, and, if so, whether such approval should be by resolution of the House of Representatives or of the Senate, by concurrent resolution or by joint resolution.

(3) JOINT REFERRAL AND DISCHARGE IN THE SENATE.—The presiding officer of the Senate may refer the notice of issuance of regulations, or any resolution of approval of regulations, to one committee or jointly to more than one committee. If a committee of the Senate acts to report a jointly referred measure, any other committee of the Senate must act within 30 calendar days of continuous session, or be automatically discharged.

(4) ONE-HOUSE RESOLUTION OR CONCURRENT RESOLUTION.—In the case of a resolution of the House of Representatives or the Senate or a concurrent resolution referred to in paragraph (1), the matter after the resolving clause shall be the following: "The following regulations issued by the Office of Compliance on ———— are hereby approved:" (the blank space being appropriately filled in, and the text of the regulations being set forth).

(5) JOINT RESOLUTION.—In the case of joint resolution referred to in paragraph (1), the matter after the resolving clause shall be the following: "The following regulations issued by the Office of Compliance on ———— are hereby approved and shall have the force and effect of law:" (the blank space being appropriately filled in, and the text of the regulations being set forth).

(d) ISSUANCE AND EFFECTIVE DATE.—

(1) PUBLICATION.—After approval of regulations under subsection (c), the Board shall submit the regulations to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day on

which both Houses are in session following such transmittal.

(2) DATE OF ISSUANCE.—The date of issuance of regulations shall be the date on which they are published in the Congressional Record under paragraph (1).

(3) EFFECTIVE DATE.—Regulations shall become effective not less than 60 days after the regulations are issued, except that the Board may provide for an earlier effective date for good cause found (within the meaning of section 553(d)(3) of title 5, United States Code) and published with the regulation.

(e) AMENDMENT OF REGULATIONS.—Regulations may be amended in the same manner as is described in this section for the adoption, approval, and issuance of regulations, except that the Board may, in its discretion, dispense with publications of a general notice of proposed rulemaking of minor, technical, or urgent amendments that satisfy the criteria for dispensing with publication of such notice pursuant to section 553(b)(B) of title 5, United States Code.

* * *

In the 104th Congress the House agreed to a concurrent resolution approving with changes regulations promulgated by the Office of Compliance under this provision (S. Con. Res. 51, Apr. 15, 1996, p. 7515).

27. Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, § 204(e) [22 U.S.C. 6064]

SEC. 204. TERMINATION OF THE ECONOMIC EMBARGO OF CUBA.

(a) PRESIDENTIAL ACTIONS.—Upon submitting a determination to the appropriate congressional committees under section 203(c)(1) that a transition government in Cuba is in power, the President, after consultation with the Congress, is authorized to take steps to suspend the economic embargo of Cuba and to suspend the right of action created in section 302 [22 U.S.C. 6082] with respect to actions thereafter filed against the Cuban Government, to the extent that such steps contribute to a stable foundation for a democratically elected government in Cuba.

* * *

(e) REVIEW OF SUSPENSION OF ECONOMIC EMBARGO.—

(1) REVIEW.—If the President takes action under subsection (a) to suspend the economic embargo of Cuba, the President shall immediately so notify the Congress. The President shall report to the Congress no less frequently than every 6 months thereafter, until he submits a determination under section 203(c)(3) that a democratically elected government in Cuba is in power, on the progress being made by Cuba toward the establishment of such a democratically elected government. The action of the President under subsection (a) shall cease to be effective upon the enactment of a joint resolution described in paragraph (2).

(2) JOINT RESOLUTIONS.—For purposes of this subsection, the term "joint resolution" means only a joint resolution of the 2 Houses of Congress, the matter after the resolving clause of which is as follows: "That the Congress disapproves the action of the President under section 204(a) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to suspend the economic embargo of Cuba, notice of which was submitted to the Congress on ———.", with the blank space being filled with the appropriate date.

(3) REFERRAL TO COMMITTEES.—Joint resolutions introduced in the House of Representatives shall be referred to the Committee on International Relations and joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations.

(4) PROCEDURES.—(A) Any joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions, a motion to proceed to the consideration of any joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(C) Not more than 1 joint resolution may be considered in the House of Representatives and the Senate in the 6-month period beginning on the date on which the President notifies the Congress under paragraph (1) of the action taken under subsection (a), and in each 6-month period thereafter.

28. Congressional Review of Agency Rulemaking [5 U.S.C. 801, 802, 804]

The following excerpts of chapter 8 of title 5, United States Code, do not contain privileged procedures for the consideration of a measure in the House. They are depicted here because they constitute Rules of the House and potentially affect the legislative process. Detailed procedures for the consideration in the Senate of a joint resolution disapproving an agency rule may be found in the statute (5 U.S.C. 802).

SEC. 801. CONGRESSIONAL REVIEW.

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule, including whether it is a major rule; and

(iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995 [2 U.S.C. 1532–35]; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General

shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

(A) the later of the date occurring 60 days after the date on which—

(i) the Congress receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register, if so published;

(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under para-

graph (2) and submits written notice of such determination to the Congress.

(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

(A) necessary because of an imminent threat to health or safety or other emergency;

(B) necessary for the enforcement of criminal laws;

(C) necessary for national security; or

(D) issued pursuant to any statute implementing an international trade agreement.

(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

(A) in the case of the Senate, 60 session days, or

(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

(i) such rule were published in the Federal Register (as a rule that shall take effect) on—

(I) in the case of the Senate, the 15th session day, or

(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

* * *

(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

SEC. 802. CONGRESSIONAL DISAPPROVAL PROCEDURE.

(a) For purposes of this section, the term "joint resolution" means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: "That Congress disapproves the rule submitted by the ——— relating to ———, and such rule shall have no force or effect." (The blank spaces being appropriately filled in).

(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

(2) For purposes of this section, the term "submission or publication date" means the later of the date on which—

(A) the Congress receives the report submitted under section 801(a)(1); or

(B) the rule is published in the Federal Register, if so published.

* * *

(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

(1) The joint resolution of the other House shall not be referred to a committee.

(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

* * *

SEC. 804. DEFINITIONS.

For purposes of this chapter—

(1) The term "Federal agency" means any agency as that term is defined in section 551(1).

(2) The term "major rule" means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

(A) an annual effect on the economy of $100,000,000 or more;

(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

(3) The term "rule" has the meaning given such term in section 551, except that such term does not include—

(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

(B) any rule relating to agency management or personnel; or

(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

* * *

In compliance with the requirement of the Act that "major" final regulations submitted later than a certain number of days before the end of a legislative session be treated as though received on a legislative day certain in the next session, the Congressional Record of that subsequent legislative day contained a notice of the resubmission of all such "grandfathered" regulations (*e.g.*, Mar. 1, 2000, p. ——; Mar. 4, 2002, p. ——; Mar. 1, 2004, p. ——).

29. Balanced Budget and Emergency Deficit Control Act [2 U.S.C. 904(i), 907a–907d]

These excerpts are provided for quick reference. They include the provisions of the Act that relate directly to House procedure. Sections 258, 258A, 258B, and 258C primarily provide for reporting and consideration of legislation in the Senate; therefore, only portions of those sections are carried here. A more thorough understanding of the statutory scheme requires the full statutory text (see 2 U.S.C. 900).

SEC. 254. REPORTS AND ORDERS.

* * * * *

(i) LOW-GROWTH REPORT.—At any time, CBO shall notify the Congress if—

(1) during the period consisting of the quarter during which such notification is given, the quarter preceding such notification and the 4 quarters following such notification, CBO or OMB has determined that real economic growth is projected or estimated to be less than zero with respect to each of any 2 consecutive quarters within such period; or

(2) the most recent of the Department of Commerce's advance preliminary or final reports of actual real economic growth indicate that the rate of real economic growth for each of the most recently reported quarter and the immediately preceding quarter is less than one percent.

* * * * *

SEC. 258. SUSPENSION IN THE EVENT OF WAR OR LOW GROWTH.

(a) PROCEDURES IN THE EVENT OF A LOW-GROWTH REPORT.—

(1) TRIGGER.—Whenever CBO issues a low-growth report under section 254(j), the Majority Leader of the House of Representatives may, and the Majority Leader of the Senate shall, introduce a joint resolution (in the form set forth in paragraph (2)) declaring that the conditions specified in section 254(j) are met and suspending the relevant provisions of this title, titles III and VI of the Congressional Budget Act of 1974, and section 1103 of title 31, United States Code.

(2) FORM OF JOINT RESOLUTION.—

(A) The matter after the resolving clause in any joint resolution introduced pursuant to paragraph (1) shall be as follows: "That the Congress declares that the conditions specified in section 254(j) of the Balanced Budget and Emergency Deficit Control Act of 1985 are met, and the implementation of the Congressional Budget and Impoundment Control Act of 1974, chapter 11 of title 31, United States Code, and part C of the Balanced Budget and Emergency Deficit Control Act of 1985 are modified as described in section 258(b) of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(B) The title of the joint resolution shall be "Joint resolution suspending certain provisions of law pursuant to section 258(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985."; and the joint resolution shall not contain any preamble.

(3) COMMITTEE ACTION.—Each joint resolution introduced pursuant to paragraph (1) shall be referred to the appropriate committees of the House of Representatives or the Committee on the Budget of the Senate, as the case may be; and such Committee shall report the joint resolution to its House without amendment on or before the fifth day on which such House is in session after the date on which the joint resolution is introduced. If the Committee fails to report the joint resolution within the five-day period referred to in the preceding sentence, it shall be automatically discharged from further consideration of the

joint resolution, and the joint resolution shall be placed on the appropriate calendar.

(4) CONSIDERATION OF JOINT RESOLUTION.—(A) A vote on final passage of a joint resolution reported to the Senate or discharged pursuant to paragraph (3) shall be taken on or before the close of the fifth calendar day of session after the date on which the joint resolution is reported or after the Committee has been discharged from further consideration of the joint resolution. If prior to the passage by one House of a joint resolution of that House, that House receives the same joint resolution from the other House, then—

(i) the procedure in that House shall be the same as if no such joint resolution had been received from the other House, but

(ii) the vote on final passage shall be on the joint resolution of the other House.

When the joint resolution is agreed to, the Clerk of the House of Representatives (in the case of a House joint resolution agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a Senate joint resolution agreed to in the Senate) shall cause the joint resolution to be engrossed, certified, and transmitted to the other House of the Congress as soon as practicable.

* * * * *

(b) SUSPENSION OF SEQUESTRATION PROCEDURES.—Upon the enactment of a declaration of war or a joint resolution described in subsection (a)—

(1) the subsequent issuance of any sequestration report or any sequestration order is precluded;

(2) sections 302(f), 310(d), 311(a), and title VI of the Congressional Budget Act of 1974 are suspended; and

(3) section 1103 of title 31, United States Code, is suspended.

(c) RESTORATION OF SEQUESTRATION PROCEDURES.—(1) In the event of a suspension of sequestration procedures due to a declaration of war, then, effective with the first fiscal year that begins in the session after the state of war is concluded by Senate ratification of the necessary treaties, the provisions of subsection (b) triggered by that declaration of war are no longer effective.

(2) In the event of a suspension of sequestration procedures due to the enactment of a joint resolution described

in subsection (a), then, effective with regard to the first fiscal year beginning at least 12 months after the enactment of that resolution, the provisions of subsection (b) triggered by that resolution are no longer effective.

SEC. 258A. MODIFICATION OF PRESIDENTIAL ORDER.

(a) INTRODUCTION OF JOINT RESOLUTION.—At any time after the Director of OMB issues a final sequestration report under section 254 for a fiscal year, but before the close of the twentieth calendar day of the session of Congress beginning after the date of issuance of such report, the majority leader of either House of Congress may introduce a joint resolution which contains provisions directing the President to modify the most recent order issued under section 254 or provide an alternative to reduce the deficit for such fiscal year. After the introduction of the first such joint resolution in either House of Congress in any calendar year, then no other joint resolution introduced in such House in such calendar year shall be subject to the procedures set forth in this section.

(b) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS.—

* * * * *

(7) RESOLUTION FROM OTHER HOUSE.—If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (a), the Senate receives from the House of Representatives a joint resolution introduced under subsection (a), then the following procedures shall apply:

(A) The joint resolution of the House of Representatives shall not be referred to a committee and shall be placed on the calendar.

(B) With respect to a joint resolution introduced under subsection (a) in the Senate—

(i) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

(ii)(I) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

(II) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate

then passes the Senate joint resolution, the Senate shall be considered to have passed the House joint resolution as amended by the text of the Senate joint resolution.

(C) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the resolution originated in the Senate.

(8) SENATE ACTION ON HOUSE RESOLUTION.—If the Senate receives from the House of Representatives a joint resolution introduced under subsection (a) after the Senate has disposed of a Senate originated resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.

SEC. 258B. FLEXIBILITY AMONG DEFENSE PROGRAMS, PROJECTS, AND ACTIVITIES.

(a) Subject to subsections (b), (c), and (d), new budget authority and unobligated balances for any programs, projects, or activities within major functional category 050 (other than a military personnel account) may be further reduced beyond the amount specified in an order issued by the President under section 254 for such fiscal year. To the extent such additional reductions are made and result in additional outlay reductions, the President may provide for lesser reductions in new budget authority and unobligated balances for other programs, projects, or activities within major functional category 050 for such fiscal year, but only to the extent that the resulting outlay increases do not exceed the additional outlay reductions, and no such program, project, or activity may be increased above the level actually made available by law in appropriation Acts (before taking sequestration into account). In making calculations under this subsection, the President shall use account outlay rates that are identical to those used in the report by the Director of OMB under section 254.

(b) No actions taken by the President under subsection (a) for a fiscal year may result in a domestic base closure

or realignment that would otherwise be subject to section 2687 of title 10, United States Code.

(c) The President may not exercise the authority provided by this paragraph for a fiscal year unless—

(1) the President submits a single report to Congress specifying, for each account, the detailed changes proposed to be made for such fiscal year pursuant to this section;

(2) that report is submitted within 5 calendar days of the start of the next session of Congress; and

(3) a joint resolution affirming or modifying the changes proposed by the President pursuant to this paragraph becomes law.

(d) Within 5 calendar days of session after the President submits a report to Congress under subsection (c)(1) for a fiscal year, the majority leader of each House of Congress shall (by request) introduce a joint resolution which contains provisions affirming the changes proposed by the President pursuant to this paragraph.

(e)(1) The matter after the resolving clause in any joint resolution introduced pursuant to subsection (d) shall be as follows: "That the report of the President as submitted on [Insert Date] under section 258B is hereby approved.".

(2) The title of the joint resolution shall be "Joint resolution approving the report of the President submitted under section 258B of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(3) Such joint resolution shall not contain any preamble.

* * * * *

(l) If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (d), the Senate receives from the House of Representatives a joint resolution introduced under subsection (d), then the following procedures shall apply:

(1) The joint resolution of the House of Representatives shall not be referred to a committee.

(2) With respect to a joint resolution introduced under subsection (d) in the Senate—

(A) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

(B)(i) the vote on final passage shall be on the joint resolution of the House if it is identical to

the joint resolution then pending for passage in the Senate; or

(ii) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes the Senate joint resolution, the Senate shall be considered to have passed the House joint resolution as amended by the text of the Senate joint resolution.

(3) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the joint resolution originated in the Senate.

(m) If the Senate receives from the House of Representatives a joint resolution introduced under subsection (d) after the Senate has disposed of a Senate originated joint resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.

30. Andean Counterdrug Initiative

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2003 [DIVISION E OF CONSOLIDATED APPROPRIATIONS RESOLUTION, 2003, P.L. 108–7; 117 Stat. 159, 174]

TITLE II—BILATERAL ECONOMIC ASSISTANCE—ANDEAN COUNTERDRUG INITIATIVE

* * * Provided further, That the provisions of section 3204(b) through (d) of Public Law 106–246, as amended by Public Law 107–115, shall be applicable to funds appropriated for fiscal year 2003 * * *

* * * * *

EMERGENCY SUPPLEMENTAL ACT, 2000 § 3204 [P.L. 106–246, 114 STAT. 511, 576, AS AMENDED BY P.L. 107–115, 115 STAT. 2131]

SEC. 3204. LIMITATIONS ON SUPPORT FOR PLAN COLOMBIA AND ON THE ASSIGNMENT OF UNITED STATES PERSONNEL IN COLOMBIA.

(a) LIMITATION ON SUPPORT FOR PLAN COLOMBIA.—

(1) LIMITATION.—Except as provided in paragraph (2), none of the funds appropriated or otherwise made available by any Act shall be available for support of Plan Colombia unless and until—

(A) the President submits a report to Congress requesting the availability of such funds; and

(B) Congress enacts a joint resolution approving the request of the President under subparagraph (A).

(2) EXCEPTIONS.—The limitation in paragraph (1) does not apply to—

(A) appropriations made by this Act, the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001, the Military Construction Appropriations Act, 2001, the Commerce, Justice, State and the Judiciary Appropriations Act, 2001, the Treasury and General Government Appropriations Act, 2001, or the Department of Defense Appropriations Act, 2001, for the purpose of support of Plan Colombia; or

(B) the unobligated balances from any other program used for their originally appropriated purpose to combat drug production and trafficking, foster peace, increase the rule of law, improve human rights, expand economic development, and institute justice reform in the countries covered by Plan Colombia.

(3) WAIVER.—The limitations in subsection (a) may be waived by an Act of Congress.

(b) LIMITATION ON ASSIGNMENT OF UNITED STATES PERSONNEL IN COLOMBIA.—

(1) LIMITATION.—Except as provided in paragraph (2), none of the funds appropriated or otherwise made available by this or any other Act (including funds described in subsection (c)) may be available for—

(A) the assignment of any United States military personnel for temporary or permanent duty in Colombia in connection with support of Plan

Colombia if that assignment would cause the number of United States military personnel so assigned in Colombia to exceed 400, or

(B) the employment of any United States individual civilian retained as a contractor in Colombia if that employment would cause the total number of United States individual civilian contractors employed in Colombia in support of Plan Colombia who are funded by Federal funds to exceed 400.

(2) EXCEPTION.—The limitation contained in paragraph (1) shall not apply if—

(A) the President submits a report to Congress requesting that the limitation not apply; and

(B) Congress enacts a joint resolution approving the request of the President under subparagraph (A).

(c) WAIVER.—The President may waive the limitation in subsection (b)(1) for a single period of up to 90 days in the event that the Armed Forces of the United States are involved in hostilities or that imminent involvement by the Armed Forces of the United States in hostilities is clearly indicated by the circumstances.

(d) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to affect the authority of the President to carry out any emergency evacuation of United States citizens or any search or rescue operation for United States military personnel or other United States citizens.

(e) REPORT ON SUPPORT FOR PLAN COLOMBIA.—Not later than June 1, 2001, and not later than June 1 and December 1 of each of the succeeding 4 fiscal years, the President shall submit a report to Congress setting forth any costs (including incremental costs incurred by the Department of Defense) incurred by any department, agency, or other entity of the executive branch of Government during the two previous fiscal quarters in support of Plan Colombia. Each such report shall provide an itemization of expenditures by each such department, agency or entity.

(f) BIMONTHLY REPORTS.—Beginning within 90 days of the date of the enactment of this Act, and every 60 days thereafter, the President shall submit a report to Congress that shall include the aggregate number, locations, activities, and lengths of assignment for all temporary and permanent United States military personnel and United States individual civilians retained as contractors involved in the antinarcotics campaign in Colombia.

(g) CONGRESSIONAL PRIORITY PROCEDURES.—

(1) JOINT RESOLUTIONS DEFINED.—

(A) For purposes of subsection (a)(1)(B), the term "joint resolution" means only a joint resolution introduced not later than 10 days of the date on which the report of the President under subsection (a)(1)(A) is received by Congress, the matter after the resolving clause of which is as follows: "That Congress approves the request of the President for additional funds for Plan Colombia contained in the report submitted by the President under section 3204(a)(1) of the 2000 Emergency Supplemental Appropriations Act.".

(B) For purposes of subsection (b)(2)(B), the term "joint resolution" means only a joint resolution introduced not later than 10 days of the date on which the report of the President under subsection (a)(1)(A) is received by Congress, the matter after the resolving clause of which is as follows: "That Congress approves the request of the President for exemption from the limitation applicable to the assignment of personnel in Colombia contained in the report submitted by the President under section 3204(b)(2)(B) of the 2000 Emergency Supplemental Appropriations Act.".

(2) PROCEDURES.—Except as provided in subparagraph (B), a joint resolution described in paragraph (1)(A) or (1)(B) shall be considered in a House of Congress in accordance with the procedures applicable to joint resolutions under paragraphs (3) through (8) of section 8066(c) of the Department of Defense Appropriations Act, 1985 (as contained in Public Law 98–473; 98 Stat. 1936).

(h) PLAN COLOMBIA DEFINED.—In this section, the term "Plan Colombia" means the plan of the Government of Colombia instituted by the administration of President Pastrana to combate drug production and trafficking, foster peace, increase the rule of law, improve human rights, expand economic development, and institute justice reform.

* * * * *

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1985
§ 8066(c) [P.L. 98–473; 98 stat. 1904, 1936–37]

Sec. 8066 * * * (c)

(c)(3) A resolution described in paragraph (1) introduced in the House of Representatives shall be referred to the Committee on Appropriations of the House of Representatives. A resolution described in paragraph (1) introduced in the Senate shall be referred to the Committee on Appropriations of the Senate. Such a resolution may not be reported before the eighth day after its introduction.

(4) If the committee to which is referred a resolution described in paragraph (1) has not reported such resolution (or an identical resolution) at the end of fifteen calendar days after its introduction, such committee shall be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(5)(A) When the committee to which a resolution is referred has reported, or has been deemed to be discharged (under paragraph (4)) from further consideration of, a resolution described in paragraph (1) notwithstanding any rule or precedent of the Senate, including Rule 22, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(B) Debate on the resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A mo-

tion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(C) Immediately following the conclusion of the debate on a resolution described in paragraph (1), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in paragraph (1) shall be decided without debate.

(6) If, before the passage by the Senate of a resolution described in paragraph (1), the Senate receives from the House of Representatives a resolution described in paragraph (1), then the following procedures shall apply:

(A) The resolution of the House of Representatives shall not be referred to a committee.

(B) With respect to a resolution described in paragraph (1) of the Senate—

(i) the procedure in the Senate shall be the same as if no resolution had been received from the House; but

(ii) the vote on final passage shall be on the resolution of the House.

(C) Upon disposition of the resolution received from the House, it shall no longer be in order to consider the resolution originated in the Senate.

(7) If the Senate receives from the House of Representatives a resolution described in paragraph (1) after the Senate has disposed of a Senate originated resolution, the action of the Senate with regard to the disposition of the Senate originated resolution shall be deemed to be the action of the Senate with regard to the House originated resolution.

(8) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in paragraph (1), and it supercedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating

to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

31. Medicare Cost Containment; Medicare Prescription Drug, Improvement, and Modernization Act of 2003, §§ 802–804 [31 U.S.C. 1105, 1105 note]

SEC. 1105. BUDGET CONTENTS AND SUBMISSION TO CONGRESS.

* * *

(h)(1) If there is a medicare funding warning under section 801(a)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 made in a year, the President shall submit to Congress, within the 15-day period beginning on the date of the budget submission to Congress under subsection (a) for the succeeding year, proposed legislation to respond to such warning.

(2) Paragraph (1) does not apply if, during the year in which the warning is made, legislation is enacted which eliminates excess general revenue medicare funding (as defined in section 801(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003) for the 7-fiscal-year reporting period, as certified by the Board of Trustees of each medicare trust fund (as defined in section 801(c)(5) of such Act) not later than 30 days after the date of the enactment of such legislation.

SEC. 803. PROCEDURES IN THE HOUSE OF REPRESENTATIVES.

[31 U.S.C. 1105 note]

(a) INTRODUCTION AND REFERRAL OF PRESIDENT'S LEGISLATIVE PROPOSAL.—

(1) INTRODUCTION.—In the case of a legislative proposal submitted by the President pursuant to section 1105(h) of title 31, United States Code, within the 15-day period specified in paragraph (1) of such section, the Majority Leader of the House of Representatives (or his designee) and the Minority Leader of the House of Representatives (or his designee) shall introduce such proposal (by request), the title of which is as follows: "A bill to respond to a medicare funding

warning." Such bill shall be introduced within 3 legislative days after Congress receives such proposal.

(2) REFERRAL.—Any legislation introduced pursuant to paragraph (1) shall be referred to the appropriate committees of the House of Representatives.

(b) DIRECTION TO THE APPROPRIATE HOUSE COMMITTEES.—

(1) IN GENERAL.—In the House, in any year during which the President is required to submit proposed legislation to Congress under section 1105(h) of title 31, United States Code, the appropriate committees shall report medicare funding legislation by not later than June 30 of such year.

(2) MEDICARE FUNDING LEGISLATION.—For purposes of this section, the term "medicare funding legislation" means—

(A) legislation introduced pursuant to subsection (a)(1), but only if the legislative proposal upon which the legislation is based was submitted within the 15-day period referred to in such subsection; or

(B) any bill the title of which is as follows: "A bill to respond to a medicare funding warning.".

(3) CERTIFICATION.—With respect to any medicare funding legislation or any amendment to such legislation to respond to a medicare funding warning, the chairman of the Committee on the Budget of the House shall certify—

(A) whether or not such legislation eliminates excess general revenue medicare funding (as defined in section 801(c)) for each fiscal year in the 7-fiscal-year reporting period; and

(B) with respect to such an amendment, whether the legislation, as amended, would eliminate excess general revenue medicare funding (as defined in section 801(c)) for each fiscal year in such 7-fiscal-year reporting period.

(c) FALLBACK PROCEDURE FOR FLOOR CONSIDERATION IF THE HOUSE FAILS TO VOTE ON FINAL PASSAGE BY JULY 30.—

(1) After July 30 of any year during which the President is required to submit proposed legislation to Congress under section 1105(h) of title 31, United States Code, unless the House of Representatives has voted on final passage of any medicare funding legislation for which there is an affirmative certification

under subsection (b)(3)(A), then, after the expiration of not less than 30 calendar days (and concurrently 5 legislative days), it is in order to move to discharge any committee to which medicare funding legislation which has such a certification and which has been referred to such committee for 30 calendar days from further consideration of the legislation.

(2) A motion to discharge may be made only by an individual favoring the legislation, may be made only if supported by one-fifth of the total membership of the House (a quorum being present), and is highly privileged in the House. Debate thereon shall be limited to not more than one hour, the time to be divided in the House equally between those favoring and those opposing the motion. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(3) Only one motion to discharge a particular committee may be adopted under this subsection in any session of a Congress.

(4) Notwithstanding paragraph (1), it shall not be in order to move to discharge a committee from further consideration of medicare funding legislation pursuant to this subsection during a session of a Congress if, during the previous session of the Congress, the House passed medicare funding legislation for which there is an affirmative certification under subsection (b)(3)(A).

(d) FLOOR CONSIDERATION IN THE HOUSE OF DISCHARGED LEGISLATION.—

(1) In the House, not later than 3 legislative days after any committee has been discharged from further consideration of legislation under subsection (c), the Speaker shall resolve the House into the Committee of the Whole for consideration of the legislation.

(2) The first reading of the legislation shall be dispensed with. All points of order against consideration of the legislation are waived. General debate shall be confined to the legislation and shall not exceed five hours, which shall be divided equally between those favoring and those opposing the legislation. After general debate the legislation shall be considered for amendment under the five-minute rule. During consideration of the legislation, no amendments shall be in order in the House or in the Committee of the

Whole except those for which there has been an affirmative certification under subsection (b)(3)(B). All points of order against consideration of any such amendment in the Committee of the Whole are waived. The legislation, together with any amendments which shall be in order, shall be considered as read. During the consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 8 of Rule XVIII of the Rules of the House of Representatives. Debate on any amendment shall not exceed one hour, which shall be divided equally between those favoring and those opposing the amendment, and no pro forma amendments shall be offered during the debate. The total time for debate on all amendments shall not exceed 10 hours. At the conclusion of consideration of the legislation for amendment, the Committee shall rise and report the legislation to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the legislation and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions. If the Committee of the Whole rises and reports that it has come to no resolution on the bill, then on the next legislative day the House shall, immediately after the third daily order of business under clause 1 of Rule XIV of the Rules of the House of Representatives, resolve into the Committee of the Whole for further consideration of the bill.

(3) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any such legislation shall be decided without debate.

(4) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any such legislation and amendments thereto (or any conference report thereon) shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions, amendments, and conference reports in similar circumstances.

(e) LEGISLATIVE DAY DEFINED.—As used in this section, the term "legislative day" means a day on which the House of Representatives is in session.

(f) RESTRICTION ON WAIVER.—In the House, the provisions of this section may be waived only by a rule or order proposing only to waive such provisions.

(g) RULEMAKING POWER.—The provisions of this section are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and, as such, shall be considered as part of the rules of that House and shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of that House to change the rules (so far as they relate to the procedures of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 804. PROCEDURES IN THE SENATE.

[31 U.S.C. 1105 note]

* * *

32. Minimum Standards for Identification of Documents; Intelligence Reform and Terrorism Prevention Act of 2004, § 7220 [49 U.S.C. 44901 note]

SEC. 7220. IDENTIFICATION STANDARDS.

(a) PROPOSED STANDARDS.—

(1) IN GENERAL.—The Secretary of Homeland Security—

(A) shall propose minimum standards for identification documents required of domestic commercial airline passengers for boarding an aircraft; and

(B) may, from time to time, propose minimum standards amending or replacing standards previously proposed and transmitted to Congress and approved under this section.

(2) SUBMISSION TO CONGRESS.—Not later than 6 months after the date of enactment of this Act, the Secretary shall submit the standards under

paragraph (1)(A) to the Senate and the House of Representatives on the same day while each House is in session.

(3) EFFECTIVE DATE.—Any proposed standards submitted to Congress under this subsection shall take effect when an approval resolution is passed by the House and the Senate under the procedures described in subsection (b) and becomes law.

(b) CONGRESSIONAL APPROVAL PROCEDURES.—

(1) RULEMAKING POWER.—This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of such approval resolutions; and it supersedes other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(2) APPROVAL RESOLUTION.—For the purpose of this subsection, the term "approval resolution" means a joint resolution of Congress, the matter after the resolving clause of which is as follows: "That the Congress approves the proposed standards issued under section 7220 of the 9/11 Commission Implementation Act of 2004, transmitted by the President to the Congress on ——————", the blank space being filled in with the appropriate date.

(3) INTRODUCTION.—Not later than the first day of session following the day on which proposed standards are transmitted to the House of Representatives and the Senate under subsection (a), an approval resolution—

(A) shall be introduced (by request) in the House by the Majority Leader of the House of Representatives, for himself or herself and the Minority Leader of the House of Representa-

tives, or by Members of the House of Representatives designated by the Majority Leader and Minority Leader of the House; and

(B) shall be introduced (by request) in the Senate by the Majority Leader of the Senate, for himself or herself and the Minority Leader of the Senate, or by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate.

(4) PROHIBITIONS.—

(A) AMENDMENTS.—No amendment to an approval resolution shall be in order in either the House of Representatives or the Senate.

(B) MOTIONS TO SUSPEND.—No motion to suspend the application of this paragraph shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this paragraph by unanimous consent.

(5) REFERRAL.—

(A) IN GENERAL.—An approval resolution shall be referred to the committees of the House of Representatives and of the Senate with jurisdiction. Each committee shall make its recommendations to the House of Representatives or the Senate, as the case may be, within 45 days after its introduction. Except as provided in subparagraph (B), if a committee to which an approval resolution has been referred has not reported it at the close of the 45th day after its introduction, such committee shall be automatically discharged from further consideration of the resolution and it shall be placed on the appropriate calendar.

(B) FINAL PASSAGE.—A vote on final passage of the resolution shall be taken in each House on or before the close of the 15th day after the resolution is reported by the committee or committees of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the resolution.

(C) COMPUTATION OF DAYS.—For purposes of this paragraph, in computing a number of days in either House, there shall be excluded any day on which that House is not in session.

(6) COORDINATION WITH ACTION OF OTHER HOUSE.—If prior to the passage by one House of an approval resolution of that House, that House receives the same approval resolution from the other House, then the procedure in that House shall be the same as if no approval resolution has been received from the other House, but the vote on final passage shall be on the approval resolution of the other House.

(7) FLOOR CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

(A) MOTION TO PROCEED.—A motion in the House of Representatives to proceed to the consideration of an approval resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, not shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) DEBATE.—Debate in the House of Representatives on an implementing bill or approval resolution shall be limited to not more than 4 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion to further limit debate shall not be debatable. It shall not be in order to move to recommit an approval resolution or to move to reconsider the vote by which an approval resolution is agreed to or disagreed to.

(C) MOTION TO POSTPONE.—Motions to postpone made in the House of Representatives with respect to the consideration of an approval resolution and motions to proceed to the consideration of other business shall be decided without debate.

(D) APPEALS.—All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to an approval resolution shall be decided without debate.

(E) RULES OF THE HOUSE OF REPRESENTATIVES.—Except to the extent specifically provided in subparagraphs (A) through (D), consideration of an approval resolution shall be governed by the Rules of the House of Representa-

tives applicable to other resolutions in similar circumstances.

(8) FLOOR CONSIDERATION IN THE SENATE.—

* * *

(c) DEFAULT STANDARDS.—

4(1) IN GENERAL.—If the standards proposed under subsection (a)(1)(A) are not approved pursuant to the procedures described in subsection (b), then not later than 1 year after rejection by a vote of either House of Congress, domestic commercial airline passengers seeking to board an aircraft shall present, for identification purposes—

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INDEX

I N D E X

Section

ABSENCE. *See also* ATTENDANCE; QUORUM.
Attendance required.
Arrest of Members for absence 1021–1023
Arrest of Members attending committee meetings during call of the House notwithstanding leave for committee to sit 324
Call of House 1025, 1026
Call of House in old form 1021–1024
Deductions from pay of Members on account of absence 86, 671
House may excuse, during call of the House 1022
Jurisdiction of matters relating to 730
Members to be present unless excused 671
Failure of quorum in Committee of the Whole 982
Of chairman in committee 793
Rule of Parliament as to 311
Leave of.
Presentation of requests for 671
Revoked but not granted during call of the House 1022

ACCOUNTS.
In the House, jurisdiction as to 724
Of receipt and expenditures of public money to be published ... 143

ACCUSATION.
Common fame as ground for 341
Right of accused to be informed of in criminal cases 213

ACTS.
Signed by Speaker 624, 626
States reciprocally to give full faith and credit to public 183

ADDRESSES.
Signed by Speaker 624
Of and to the early Presidents 316

ADHERE, MOTION TO. *See* AMENDMENTS BETWEEN THE HOUSES.

ADJOURN, MOTION TO. *See also* ADJOURNMENT.
Nature and conditions of.
Amendment of 585, 912

Section

ADJOURN, MOTION TO—Continued
Nature and conditions of—Continued
Repetition of 918
General conditions of..... 911, 912
May be held dilatory 903
Precedence of.
High privilege and precedence of..... 439, 911, 912
In order after ordering of yeas and nays 80
In order before reading of the Journal 621
In order in House as in Committee of the Whole 427
Not in order in Committee of the Whole..... 333, 334, 912
When not in order in House 912
Not to interrupt Member having the floor in debate..... 393, 946
One in order pending motion for suspension of rules 890
One in order pending report from Committee on Rules 857
Privileged over motion to reconsider 1003
Privileged over questions of privilege 698
Yields to presentation but not consideration of conference reports 1077
Relation of, to quorum.
In order in absence of quorum 52, 1022
In order during call of the House..... 1025, 1026
Not in order when Committee of the Whole rises to report proceedings incident to securing quorum 912
To fix the day.
General conditions of motion to fix the day to which the House shall adjourn..... 911, 913
ADJOURNMENT. *See also* ADJOURN, MOTION TO.
Of the House alone.
At the end of the term of a Congress 6
Emergency postponement of reconvening time..... 83, 639
For three days or less 82, 83, 639
Hours of, entered on the Journal 647
House has adjourned for more than one day before election of Speaker 83
Pronounced by the Speaker 587
Speaker takes Chair at hour to which House has adjourned 621
Of Congress—Requirements as to.
Adjournment during pleasure effected by a recess 586
Case in which President may cause 171
Neither House to adjourn for more than three days without consent of other 82, 83
Joint leadership recall authority under adjournment resolutions to another time or place..... 82–84
Of a session as related to constitutional day of meeting 45

Section

ADJOURNMENT—Continued
Of Congress—Requirements as to—Continued
Parliamentary law as to the adjournment of the Lords and Commons 584
Prohibited before completion of congressional budget process ..... 1127 (sec. 310)
Session not terminated by an adjournment of Congress for a fixed time over three days 590
Time of 6
To be in July with certain exceptions 1106
Of Congress—Manner of.
For more than three days by privileged concurrent resolution 84
Jurisdiction of resolutions for final, of Congress 733
Manner of closing a session by action of the two Houses ... 591
Resolutions relating to, not presented to President for approval 115
Of Congress—Effect of.
As affecting signing of enrolled bills 577
As affecting the functions of committees 589
As related to action on a veto message 107
Conferences not interrupted by 533
Duties of clerks as to committee papers at 695
Effect of, as to bills in hands of President 111
Effect of adjournment to day certain, as to bills in hands of President 113
Impeachment not interrupted by 592, 620
Journal of last day not approved 74, 621
Obsolete law as to business at time of 385
Parliamentary law as to business at the termination of a session 592
Of a debate.
Of a debate, obsolete practice as to 444
ADMINISTRATIVE OVERSIGHT.
Former subcommittee on 744
ADMINISTRATOR OF GENERAL SERVICES.
Bills that become law deposited with 105, 109
ADMIRALTY.
Judicial power extends to cases of 178
ADMISSION. *See* FLOOR; GALLERIES.
ADVANCE APPROPRIATIONS.
Point of order against 1127
ADVERSE REPORTS. *See* COMMITTEES, REPORTS OF.
AFFIRMATION. *See also* OATH.
In lieu of oath 196
In support of certain warrants 211

Section

AFFIRMATION—Continued
Senators on, for trial of impeachments 615b
AFFRAYS. *See* DECORUM.
AGE.
As qualification of a Representative 9
As qualification of a Senator 35
As qualification of the President of the United States 154
Reference to, as a qualification of suffrage 226
Right to vote extended to persons 18 years or older 257
AGING.
Former select committee on 784
AGREE, MOTION TO.
Amendments in order on motion to 487
Negative of, equivalent to affirmative of disagree 487
Order of precedence of 486, 528, 528a, 528b, 528d
Precedence of motion to amend over motion to agree or disagree 528, 528b, 528d
Priority of amendments over 456, 528b, 528d
AGREEMENTS AMONG STATES. *See* STATES.
AGRICULTURE.
Committee on, history and jurisdiction of 715
AID TO ENEMIES OF UNITED STATES. *See* TREASON.
ALCOHOLIC LIQUORS.
Jurisdiction as to bills relating to, generally 730
Jurisdiction as to sale of, in District of Columbia 723
ALIENS.
Jurisdiction of bills relating to, generally 730
ALLIANCE AMONG STATES. *See* STATES.
ALTERATION OF A BILL. *See* BILLS.
AMBASSADORS.
Admitted to the floor of the House 678
Duty of President to receive 172
Gallery for use of 682
Judicial power extends to cases affecting 178
Jurisdiction of Supreme Court in cases affecting 179
President appoints 166
AMEND, MOTION TO.
General conditions of.
Conditions, form, and precedence of the motion 922–927
In order to amend motion to commit with instructions unless previous question ordered 917
Must be germane 928–940
Not to be applied to a conference report 550
Not in order in third degree 454, 923
Precedence of 911, 926

Section

AMEND, MOTION TO—Continued
General conditions of—Continued
Precedence of motion to, over motion to agree or disagree 528, 528a, 528b, 528d
Precedence of motion to, over one to strike out or agree 456
Rule as to offering, degree of 922
Substitute 922
To title of a bill 427, 512, 922
Withdrawal of 925
Yields precedence to motion to refer 449
Relations of.
Application of previous question to 450, 994
Not applicable to the previous question 452, 927
Relations of, to motion to postpone 449, 451, 453, 927
Relations of, to other motions 927
Relations of, to points of order 924
Striking out and inserting.
Matter to be inserted not divisible 920, 921
Negative of motion to strike out not a bar to further amendment 920, 921
Relations to motion to strike out enacting words 988
To strike out and insert not divisible 920, 921

AMENDMENTS.
General conditions of.
Amending portions of bill already amended 469
Form, conditions, precedence of 922–927
Commemoratives prohibited 823
Conferees restricted as to action on Senate amendments proposing appropriations 1076
Copies of, furnished by Clerk 978
Co-offerors not permitted 825, 923
Closing debate on 959
Divisibility of amendments 921, 1042, 1063a
Do not have several readings as in case of bills 496
En bloc 1042, 1063a
Modification of 922
Not in order in the third degree 454, 923
Of a conference report not in order 542
Of motion to adjourn 585, 927
On general appropriation bills, limited 1039–1063a
On general appropriation bills, en bloc 1042, 1063a
Priority of, over motions to strike out or agree 456
Proposing a commemorative prohibited 823
Proposing an appropriation prohibited 1065
Proposing settlement of certain claims prohibited 822
Proposing taxes or tariffs 1066–1068, 1076a

Section

AMENDMENTS—Continued
General conditions of—Continued
Reading, motion to dispense with, in Committee of the Whole 986
Relation of, to division of the question for voting 482, 921
Relation of point of order to motion to amend 924
Right of Member who has spoken to the main question to speak to an amendment 465, 959
Self-executed adoption of amendments by special rule 928, 1065
Senate may concur with, on revenue bills 102
Separate vote on Senate, if not germane 1091
Speaker not to decide as to legislative or legal effect or consistency of 466, 629
Germane.
Required to be germane 928
Amendment being considered, which would have been subject to a point of order, may be perfected by amendments germane to it 1052
Amendments imposing conditions, qualifications and limitations 940
Amendments to bills amending existing law 939
Amendments to special orders reported from Rules Committee 928
Committee jurisdiction as test of germaneness 934
Fundamental purpose as test of germaneness 933
General provision not germane to a specific subject 937
Instructions to committees and amendments thereto must be germane 930
One individual proposition not germane to another 936
Parliamentary law as to germaneness 467
Proposition to which amendment must be germane 929
Senate amendments and matter contained in conference reports, procedure for consideration if not germane 931, 1090, 1091
Specific subjects germane to general propositions of the class 938
Subject matter as test of germaneness 932
Various tests of germaneness are not exclusive 935
Striking out and inserting.
Application of the motion to strike out 472
Conditions of repetition of motions to strike out and insert 471
Conditions of striking out an amendment already agreed to 474
Effect of affirmative vote on motion to strike out and insert 473

Section

AMENDMENTS—Continued
Striking out and inserting—Continued
Motions to strike out and insert not divisible 920, 921
Negative decision on motion to strike out not bar to further amendment 920, 921
Principles as to perfecting, before inserting or striking out 469
Priority of perfecting amendments over 456
Reading the motion and putting the question on motion to strike out and insert 470
To strike out certain words of a bill 468
Of bills.
Action of House on those, reported from a committee 423
Clerk makes corrections of section numbers of 479
For joining and dividing bills 476
For transposing the sections 477
In "House as in Committee of the Whole" 427
Method of noting amendments to a bill 417
Numerical designations of amendments printed in Record 987
Of bills in standing and select committees 412
Offered after second reading and before engrossment and third reading 428, 497
Order of amending bills in the House 413
To the preamble 414
To title of a bill, parliamentary law as to 427, 512, 922
In Committee of the Whole.
Dispensing with reading of certain amendments in Committee of the Whole 986
Amendments preempted by motion to rise after appropriation bill read 1039, 1040, 1044b
Numerical designations of amendments printed in Record 987
On general appropriation bills, en bloc 1042, 1063a
Pro forma, in Committee of the Whole 981
Printing in Record of proposed, 10 minutes debate required on, in Committee of the Whole 987
Reading concurrent resolution on budget for amendment .. 990
Rule as to consideration of, in Committee of the Whole 978, 980, 981
Withdrawal of, in Committee of the Whole 925, 978
By Committee of the Whole.
Consideration and report of, by Committee of the Whole ... 336
Consideration of, by the House after report from Committee of the Whole 337
For filling blanks, and amending numbers 455
For filling blanks as to time 475
For filling blanks left by the other House 478

Section

AMENDMENTS—Continued
By Committee of the Whole—Continued
Former automatic de novo votes in House where Delegates' votes decisive in Committee of the Whole 985
Not to be withdrawn when reported from Committee of the Whole 335
Of Journal.
Cut off when previous question is ordered on motion to approve Journal 74, 621
Nature of 74
Precedence of 74, 621
Scope of 71
To the Constitution.
Differences as to, committed to conference 530
Jurisdiction over 730
Methods of making 190–193
Not approved by the President 115
The twenty-seven 208–258
Two-thirds vote on conference report as to 192, 549
Two-thirds vote not necessary on amendments to a resolution proposing a constitutional amendment 192
Two-thirds vote required on amendment of other House to joint resolution proposing a constitutional amendment .. 192
Yeas and nays not necessarily taken on 76
AMENDMENTS BETWEEN THE HOUSES.
General principles as to.
Amendments to Senate amendment may not contain appropriation on legislative bill 1065
Degree of amendments between the Houses 529
Discussion of, in Jefferson's Manual 521–529
Germaneness, separate vote on Senate amendments included in conference reports or reported in disagreement if not germane 931, 1090, 1091
Germaneness, amendments to Senate amendment should be germane 931, 1091
Germaneness, reference of nongermane Senate amendments to committee 874
Senate amendments to legislative bills containing appropriations 1076, 1065
Senate amendments to appropriation bills containing legislation 1076, 1084
Senate amendments containing taxes or tariffs 1066, 1076a
Stage of disagreement on 528a, 528c, 1074
Status of, after rejection of a conference report 551, 1090
Text to which both Houses have agreed not to be changed 527, 1088

Section

AMENDMENTS BETWEEN THE HOUSES—Continued
General principles as to—Continued
Two-thirds vote required on agreeing to amendment of the other House to a constitutional amendment 224
Parliamentary principles relative to motions as to.
Adherence and conference, relations of 553, 554
Disagree, amendments in order on motion to 487
Disagreeing, insisting, and adhering..... 521, 522, 526, 528b
Division of question on..... 525, 528d
Receding, discussion in Jefferson's Manual..... 523–526
Receding, one House not to recede from its own amendment with an amendment; or depart from form fixed by adherence..... 524, 526
Receding, practice of the House as to receding from its own amendment to a bill of the other House 524
Receding, practice of the House as to receding from disagreement to amendment of the other House 525
Previous question, motion to amend not in order when demanded on motion to concur 486
Previous question, motion to recede not in order when ordered on motion to adhere 525
Previous question, effect of demanding or ordering on the motion to refer..... 486, 1002
To lay on the table 519, 528b, 528d, 914
To refer 486, 528d, 916, 1002
To reject nongermane matter in..... 1089, 1091
To send to conference, *see* CONFERENCES.
Precedence of motions as to.
Precedence of motions for disposition of 486, 519, 525, 528, 528a, 528b, 528d, 916, 1002, 1084, 1089, 1091
Precedence of motions before stage of disagreement.... 486, 528, 528a, 528b,
Precedence of motions after stage of disagreement..... 486, 525, 528, 528a, 528d,
Precedence of motions to dispose of nongermane matter in conference reports..... 1089, 1090
Precedence of motions to dispose of nongermane matter reported in disagreement 1089, 1091
Precedence of motion to insist as to legislative amendment to appropriation bill 1084
Precedence of motion to adhere 486, 528b, 528d
Equivalent questions as to.
Discussion of equivalent questions on motions relating to..... 485–488
Equivalent questions on motions to agree and disagree as related to amendments 487

Section

AMENDMENTS BETWEEN THE HOUSES—Continued
Equivalent questions as to—Continued
No equivalent questions on motions to recede, insist, and adhere 488
Consideration of.
Consideration, generally 528, 528a, 1072, 1073, 1075, 1076a
Debate on amendments reported in disagreement 1086
Legislative amendments to appropriation bills 1084
Nongermane Senate amendments in conference reports or reported in disagreement 1089–1091
Senate amendments carrying a tax or tariff..... 1066, 1076a
Senate amendments in Committee of the Whole..... 528a, 1072, 1073
Senate amendments in House..... 528a, 873, 874, 1071–1073, 1075
When privileged 1075
Reference of Senate amendments from Speaker's table 528a, 873, 874
When consideration of Senate amendments should be in Committee of the Whole..... 528a, 1073
Conferences on. See CONFERENCES.
ANDEAN COUNTERDRUG INITIATIVE.
Expedited procedures with respect to..... 1130(30)
ANIMAL INDUSTRY.
Jurisdiction of subjects relating to 715
ANNOUNCEMENT OF VOTE. *See* VOTING.
ANSWER.
In an impeachment..... 612, 613
Right of accused to be heard before an investigating committee 803
APOLOGY OF MEMBERS TO THE HOUSE FOR DISORDER. *See* DECORUM.
APPEAL.
From decisions of Speaker..... 379, 627, 628
Debate on 628
Guaranty against arbitrary control of Speaker 629
House controls decisions of the Speaker by 379
From decisions of the Clerk at organization 643
None on a question of recognition and on counts by Chair 629, 949
None on decision as to dilatory motions..... 629, 903
None catastrophic quorum failure report (clause 5(c) of rule XX) 1024
None on refusal to entertain prohibited point of order of no quorum 629
None from responses to parliamentary inquiries 629
On timeliness of an objection 629

Section

APPEAL—Continued
On questions as to priority of business decided without debate 884
Withdrawal of 629
APPEARANCE.
Of respondent in an impeachment..... 608, 610, 611
Right of accused to be heard before investigating committee 803
APPELLATE JURISDICTION OF SUPREME COURT. *See* SUPREME COURT.
APPLICATION OF LAWS TO LEGISLATIVE BRANCH. *See* CONGRESSIONAL ACCOUNTABILITY.
APPOINTMENTS.
President makes 166
Power of Congress as to 166
In recess of the Senate by the President 167
Of select and conference committees, rules and practice as to .. 317, 637, 782
Of committee staff, *see* COMMITTEE STAFFS.
APPORTIONMENT.
Adjustment by districts..... 226, 227
First and last 15
Jurisdiction of matters relating to interstate compacts on apportionment of water for irrigation purposes 732
Jurisdiction of subjects relating to generally 724
Of Representatives among the several States 226
Old provision for 14
Questions as to elections in relation to congressional districts . 228
Reduction of basis of, for abridgment of the suffrage 226
Requirement that congressional districts be equally populated 229
APPROPRIATION BILLS, GENERAL.
Privilege and consideration of.
Considered in Committee of the Whole 973
Designated emergencies 1041
Exempt from Unfunded Mandates Reform Act 1127
Hearings and reports to be available three days (excluding Saturdays, Sundays, and legal holidays) in advance of consideration of bills 852
Not privileged against Calendar Wednesday 901
Offsetting amendments to 1042, 1063a
Point of order against motion to rise on an appropriation bill where the bill exceeds a section 302(b) allocation 1044b
Precedence of, in Committee of the Whole 977
Precedence of, in order of business 856
Privileged for report and consideration..... 853, 855
Public, placed on Union Calendar 828
Reported by Committee on Appropriations only 717

Section

APPROPRIATION BILLS, GENERAL—Continued
Privilege and consideration of—Continued
Report on must describe changes in existing law 847
Restrictions on conferees 1076
Vote on, by yeas and nays 1033
Authorizations, legislation, and limitations.
Authorization of law for appropriations 1036, 1038, 1045
Authorization for claims and salaries 1046
Authorization for committee expenses 763
Authorization for public works 1047
Burden of proof on those proposing appropriation on 1044
Continuation of a public work by appropriations 1048
Continuation of a public work, examples illustrating 1049
Continuation of a public work, new buildings at existing institutions as a 1050
Continuation of a public work, new vessels for naval and other services as in 1051
Legislation on appropriation bills:
Contingencies and congressional action 1055
Construing or amending existing law 1056
Generally 1052
Imposing duties or requiring determinations 1054
Mandating expenditures 1057
Retrenching expenditures in order (Holman rule)..... 1038, 1040, 1062
Rule prohibiting..... 1038–1040
Senate amendments..... 1076, 1058, 1084
Waivers; amending legislation permitted to remain 1058
Limitations on appropriation bills generally 1053
Limitations on, in order..... 1040, 1053
Effect of, on executive discretion 1054
Consistent with existing law..... 1040, 1056
Amendments at end of reading in Committee of the Whole 1040
Points of order on general appropriation bills 1044
Unauthorized appropriations and legislation on general appropriation bills 1036
Unexpended balances not to be included unless in continuation of public work already commenced..... 1037, 1063

APPROPRIATIONS.
Conditions of.
Advance, point of order against 1127
Annual, committee endeavor to insure 755
Estimates of, transmission and reference 827
Jurisdiction of 716
Necessary for drawing money from Treasury 143

Section

APPROPRIATIONS—Continued
Conditions of—Continued
None for armies for a longer term than two years 129
Propositions for, considered in Committee of the Whole 973
Senate amendments proposing, may not be agreed to by House conferees under certain conditions 1076
To be made by law 143
Committee on.
Budget Act procedures for, including referral to, of bills providing new entitlement authority 745
Must show, in report on general appropriation bill, effect of any provisions changing existing law 847
Staff for 772, 776, 778
Subcommittee markup of all appropriation bills before report of first regular appropriation bill 835
Rescissions of appropriations, jurisdiction over 716
Separate headings for rescissions and transfers of unexpended balances required in certain bills and reports 716
Sequential referral to, of bills containing new entitlement authority exceeding budget resolution allocation .... 1128 (sec. 401)
Exempted from the former rule proscribing committee sittings during five-minute rule 801
Budget hearings, within 30 days after transmittal of budget 745
Hearings and reports of, to be available three days (excluding Saturdays, Sundays, and legal holidays) before consideration of appropriation bills 852
Powers and duties concerning appointments, qualifications of staff 763, 773, 778, 779
To study existing permanent appropriations with view to reducing 747
To study organization and operation of agencies 743
Committees not having jurisdiction of.
May not report an appropriation 1065
Point of order may be made at any time 1065
Point of order may be made against amendment to Senate amendment 1065

APPROVAL.
Of bills by President. See also ENROLLED BILLS.
As to approval of concurrent resolutions by 396
Errors as to 106
Notice of 106
Of bills, effect of intervening recess on 814
Of joint resolutions 397
Of orders, resolutions, and votes, as to presentation for 115

Section

APPROVAL—Continued
Of bills by President—Continued
Parliamentary law as to presenting a bill for the King's assent 572
President's approval given by signature 104
Presentation of enrolled bills to 577
Signing of enrolled bills for presentation to the President . 575
Time and conditions of signature..... 104, 105, 111
In general..... 73, 621
Amendment precedes 74
Place of, in order of business 869
ARCHITECT OF THE CAPITOL.
Office of..... 1125e
Admitted to floor of the House 678
ARID LANDS.
Jurisdiction as to irrigation of 732
ARMED SERVICES, COMMITTEE ON.
History, jurisdiction and duties of 718
Special oversight functions of 744
ARMIES.
Congress to raise and support 129
Congress to make rules for 131
No appropriation for a longer term than two years 129
States not to keep troops in time of peace 148
ARMING.
Of the militia 133
ARMORIES.
Jurisdiction of subjects relating to 718
ARMS.
Right of people to keep and bear 209
ARMS EXPORT CONTROL.
Expedited procedures..... 1130(16)
ARMY.
Jurisdiction of bills relating to 718
Officers in, disqualified as Members 98
President, Commander in Chief of 160
Trial for crimes in 212
ARREST. *See also* ABSENCE.
House releases a Member under 305
Jefferson's discussion of privilege of Member of Congress as to..... 288, 289
Members liable to, for absence although attending a committee with leave to sit 324
Of Members for absence..... 1021–1023
Privileges of Members of Parliament as to 287, 305, 307
Privilege of Senators and Representatives from..... 90, 91

Section

ARREST—Continued
Speaker's power to order, doubtful 622
ARSENALS.
Power of Congress over places purchased for 134
Jurisdiction of subjects relating to 718
727
ART.
Works of, duty of Committee on House Administration as to ... 724
ARTICLES OF IMPEACHMENT. *See* IMPEACHMENT.
ASSAULTS.
Arrest and imprisonment in case of, on Member returning 91
Members punished for..... 62–66, 294
On clerk of a committee in the Capitol a question of privilege . 773
On Members for words spoken in debate 92
On Members, power of House to punish for 294
Proceedings in cases of, on the floor 367
Speaker takes Chair to quell disorder from, in Committee of the Whole..... 331, 332, 622
ASSAY OFFICES.
Jurisdiction of subjects relating to 722
ASSEMBLY.
Of Congress at least once every year..... 45, 242
Rights of people as to 208
ASSENT. *See* APPROVAL.
ATTAINDER.
No bill of, to be passed 139
States not to pass bill of 146
Limitations of, for treason 182
ATTENDANCE. *See also* ABSENCE; QUORUM.
Count of Members present to secure a quorum of record 1020
At committee meetings when House is in session 801
Jurisdiction of matters relating to 679
Leave for committee to sit does not release its members from, during call of the House 324
Names of absent, reported when quorum fails in Committee of the Whole 982
Members may be compelled to attend..... 52–55
Members privileged from arrest during..... 90, 91
Members to be present unless excused 671
Of Commons and House of Representatives at an impeachment trial..... 616, 617
Secured by call of the House 1014, 1021, 1025
ATTENDING PHYSICIAN.
Office of..... 1125d
ATTEST.
Of Clerk on bills, writs 648

INDEX

Section

ATTIRE.
Of Members 622, 962
ATTORNEYS.
Admission of, in investigations 348
Role in impeachment 601–620
AUDITING.
Of accounts against contingent fund (applicable accounts of the House) 724
AUTHORIZATION OF LAW. *See* APPROPRIATION BILLS.
AUTHORS.
Congress may provide for copyrights for 124
AVIATION PROGRAMS, FUNDING FOR.
Point of order D1064a
BAIL.
Excessive not to be required 215
BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT. *See* BUDGET.
BALLOT.
Rule for voting by 1034
House of Representatives elects President by 221
Members not to remain by Clerk's desk during count of 962
Presidential electors vote, by in several States 219
Record of, in Journal 72
Speaker required to vote on 631
BANKING AND FINANCIAL SERVICES, [NOW FINANCIAL SERVICES] COMMITTEE ON 722
BANKRUPTCY.
Power of Congress to make laws on 120
Jurisdiction of bills relating to 730
BAR, OF HOUSE.
Method of examining witnesses at 343
Trials at, and arraignment of contumacious witnesses at 344
BATTLEFIELDS.
Jurisdiction of bills relating to 732
BELLS (LEGISLATIVE CALL SYSTEM) 1016
BICENTENNIAL OFFICE OF HOUSE 669
BILL OF ATTAINDER.
None to be passed 139
States not to pass 146
BILLS.
Forms, printing, loss, alteration.
Distinction between a bill and a joint resolution 397
Indorsement of the title on an engrossed bill 431
Loss of 352
Improper alteration 352

Section

BILLS—Continued
Introduction of.
By request 826
Commemoratives prohibited 823
Cosponsorship of public 825
Cosponsorship of public, more than one Member designated as first sponsor 825
Obsolete provisions as to introduction and readings of..... 398–400
Signing of, by chief sponsor 825
Speaker's authority to reserve certain bill numbers 825
Reference of.
By Speaker to committees 816
Committal of, on third reading 494, 916, 994
Correction of, error of reference 824, 825, 869
Custody of, in committees 695
Delivery of bills to committees 403
House may send to any committee 816, 820
House bills returned with Senate amendments on a different subject..... 873, 874
Not to be brought back from committees on motion to reconsider 1011
Parliamentary law (largely obsolete) as to reference of 401
Public..... 816, 825
Recommittal of, to select or standing committees or Committee of the Whole..... 420, 994, 1001–1002c
Referral procedures, multiple referral or referral to ad hoc committee..... 816, 816a, 816b, 820
With amendments between the Houses 486, 528–528d, 873, 874, 916, 1002
Consideration by committees and report. See COMMITTEES.
In Committee of the Whole. See also AMENDMENTS; CALENDAR WEDNESDAY; COMMITTEE OF THE WHOLE.
Consideration of nonprivileged bills, after call of committees..... 882, 883
Construction of the rule requiring consideration in 973
Debate in Committee of the Whole 948, 957, 978, 979, 987
Designation of public works, consideration prohibited..... 1068a
Elimination of portions of general appropriation bills 1044
Forms of going into Committee of the Whole 328
General practice as to consideration 973
Old parliamentary usage as to consideration of matters as modified by House rules and practice 326
Order of House to consider certain bills in Committee of the Whole precludes report of others 335

Section

BILLS—Continued
In Committee of the Whole—Continued
Precedence of revenue and appropriation bills in Committee of the Whole 977
Precedence of motion to go into Committee of the Whole to consider general appropriation bills 856
Question of order on appropriation bills 1044
Reading and amendment under five-minute rule 980
Recommittal of bills to Committee of the Whole 420, 988, 1001
Revenue and appropriation bills considered in Committee of the Whole 973
Subjects not requiring consideration in Committee of the Whole 528a, 973
Subjects requiring consideration in Committee of the Whole 973
Unfinished business in Committee of the Whole 879
Withdrawal of amendments in Committee of the Whole 925
Consideration and amendment in House.
Action on, in the House after being reported from committee 423
Amended after second reading 428
Amendments of, before third reading 497
Amendments for joining and dividing 476
Amendment to the title of 922
Amendment to the title of, in "House as in Committee of the Whole" 427
As to possession of, by the House 437
Consideration of a preamble 414
Consideration of, when reported from Committee of the Whole 337
Filling blanks left in by the other House 478
House in perfecting does not agree to paragraph or sections of, individually 456
Order of considering and amending in the House 413
Obsolete requirement as to reading of amendments to 496
Parliamentary law as to amendment to the title 512
Presumed to have gone through the stages when reported from Committee of the Whole 335
Prohibition against retroactive income tax rate increase ... 1068
Transposition of sections of, by amendments 477
Reading, engrossment, and passage.
Reading, engrossment, and passage of 941
First and second readings 942
Manner of reading a bill the second time 428
Third reading by title after engrossment 941, 943

Section

BILLS—Continued
Reading, engrossment, and passage—Continued
Debate in relation to third reading 498
Test of strength on engrossment after amendment 429
Test of strength on a bill before amending 430
Obsolete requirements as to third reading and passage 492, 493
Putting the question on the passage of 499
Clerk certifies to passage of all 648
Question on rejection of, comes indirectly 484
Division of, not in order, on vote on engrossment or passage 921
Three-fifths vote to increase income tax rates 1067
Voting on 944
Yeas and nays automatically ordered on appropriation and tax measures and on concurrent resolution on the budget 1033
Speaker's discretionary authority to postpone further proceedings on the question of passage 1030
Effect of rejection or passage of.
Action on similar bill after rejection 944
Once rejected not to be brought up again at the same session 515
Exceptions to the rule against bringing up a matter once rejected 517
Expedients for changing the effect of bills once passed 516
Bills not altered after their passage 500
Use of joint resolution to correct error in bill sent to the President 518
Passage of supplementary bills 518
Obsolete parliamentary practice as to riders 495
Procedure on loss of 352
Improper alteration of 352
Action of the two Houses on.
Both Houses pass identical 873, 944
Fail when both Houses continue to insist or adhere 522
For raising revenue to originate in House 102
From the other House laid on the table 519
Information from the other House as to 520
Lost when conference report is not acted on 549
Not to be noticed in other House until communicated 308
Rejection of, communicated to the other House 568
Votes by which they are passed not communicated 567
When neglected by the other House 570

Section

BILLS—Continued
Enrollment and presentation to President for approval.
Enrollment, signing, and presentation to the President for approval 572–577
[Former] Duties of Committee on House Administration as to enrollment 577, 724, 754
Report as to accuracy of enrolled 625
Reports as to accuracy of enrolled, privileged 648
Rule of Parliament as to enrollment 573
Speaker signs enrolled 624, 625
Speaker declines to sign enrolled, when motion to reconsider is pending 1007
Speaker pro tempore signs under conditions 632
Speaker's signature vacated 625
Presented to the President for approval 104, 105, 110
Errors in when sent to the President 110
Become laws without President's approval under conditions 111–113
Effect of recess of Congress before approval 814
Method of approval 104, 105, 110
Method of disapproval 104–109
Notice of approval 106
Notice and action as to disapproval 104
When signed by President deposited with Administrator of General Services 105
When vetoed and passed deposited with Administrator of General Services 109
Private. See PRIVATE BILLS.
BILLS OF CREDIT.
States not to emit 146
BIOMEDICAL RESEARCH AND DEVELOPMENT.
Jurisdiction of bills relating to 721
BLANKS.
Rule as to filling by amendment 455
Amendments, filling as to time 475
Filling those left by the other House 478
Not counted in vote by ballot 1034
BLOOD, CORRUPTION OF.
For treason 182
BONDED DEBT.
Jurisdiction of subjects relating to 741
BOOKS.
Not to be taken from the Clerk's table during debate 364
Jurisdiction of matters relating to purchase of 724
BORROW.
Power of Congress to borrow money 118

Section

BOTANIC GARDEN.
Under control of Committees on House Administration and Transportation and Infrastructure 724, 739
BOUNDARY LINES.
Jurisdiction of bills relating to 729, 730
BOUNTIES.
Debt incurred for, certain not to be questioned 232
BREACH OF THE PEACE.
Members not privileged from arrest for..... 90, 91
Relation of privilege to cases of..... 305, 306
BRIBERY.
An impeachable offense 173
Power of House to punish attempts at, on Members..... 293, 294
BRIDGES.
Jurisdiction of bills relating to 739
Bills for construction of certain banned 822
BROADCASTING.
Press coverage of committee hearings 807–812
Of House proceedings, rule for 684
BUDGET.
Committee on.
History, composition, jurisdiction, and duties..... 719, 758
Special oversight functions of 748
Studies and reports required of 748
Staff for, former rule on appointment of 778
Submissions to, from standing committees 756
Quorum requirements in 800
Exempted from former rule proscribing committee sittings during five-minute rule 801
Privileged reports by 853
Concurrent resolution on.
Amendments to must be mathematically consistent and contain certain matter 990
Consideration of..... 1127 (sec. 305)
Considered read after general debate 990
Definition of..... 1127 (sec. 3)
Procedures contained in ..... 1127 (sec. 301)
Timetable for budget process..... 1127 (sec. 300)
Yeas and nays automatically ordered 1033
Congressional budget process.
Definitions ..... 1127 (sec. 3)
Timetable..... 1127 (sec. 300)
Advance budget and revenue authority ineligible for consideration before adoption of concurrent resolution..... 1127 (sec. 303)

Section

BUDGET—Continued
Congressional budget process—Continued
Budget Committee must handle budget legislation ..... 1127 (sec. 306)
Appropriation bills reported before June 10..... 1127 (sec. 307)
July adjournment not in order—
Until House passes appropriation bills..... 1127 (sec. 309)
Until reconciliation legislation completed .... 1127 (sec. 310)
Reports, summarized projections..... 1127 (sec. 308)
Reconciliation process..... 1127 (sec. 310)
Budget authority and revenue legislation to be within appropriate limits..... 1127 (sec. 311)
Rule establishing public debt limit as part of, rule for 1104
Provisions to improve fiscal procedures.
Bills providing certain entitlement authority may not be considered ..... 1128 (sec. 401)
Certain bills providing entitlement authority to be referred to Committee on Appropriations ... 747, 1128 (sec. 401)
Cost estimate by Congressional Budget Office.... 1128 (sec. 407)
Balanced Budget and Emergency Deficit Control Act 1128
Budget Enforcement Act of 1990 1129
Generally.
Hearings on by Appropriations Committee 746
Budget Act procedures by Appropriations Committee 747
Emergency designations in appropriation bills 1041
Year-ahead requests for new budget authority 1129
Point of order against motion to rise on an appropriation bill where the bill exceeds a section 302(b) allocation 1044b
Program review and evaluation 1010
Transmittal of budget by President 169
Congressional Budget Office, functions of..... 748, 845, 1081, 1119, 1127, 1128
Impoundment Control Act and line item veto authority.
Line item veto authority..... 1130(6b)
Procedures on rescission bills and impoundment resolutions ..... 1130(6a)
BUILDINGS, OFFICE.
Assignment of rooms in 1114
BUILDINGS, PUBLIC.
Appropriations for, as in continuance of a public work.... 1037, 1050
Power of Congress over places purchased for 134
Jurisdiction as to, generally 739
Jurisdiction as to buildings abroad 729
Jurisdiction as to marine hospitals 721
Jurisdiction of bills for penitentiaries 730

Section

BURDEN OF PROOF.
On proponent of amendment, as to germaneness 928
On those proposing items in a general appropriation bill 1044
BURMESE FREEDOM AND DEMOCRACY ACT.
Expedited procedures therein..... 1130(11)
BUSINESS. *See also* ORDER OF BUSINESS.
In general.
As related to election of Clerk 30
May be transacted only by quorum 52, 55, 510
Not transacted before approval of Journal 621
Parliamentary law as to that pending at the end of a session 592
Obsolete law as to, at end of a session 385
Resumption of business of a preceding session of Congress 814
Order of.
Jurisdiction of matters relating to 733
Unfinished. See UNFINISHED BUSINESS.
CABINET.
Majority of and Vice President to determine Presidential inability 255
President may require opinions from members of 161
Of President, gallery for use of 682
CALENDAR WEDNESDAY.
Rule for order of business on 900
Business of, protected by two-thirds vote 857
In order to consider President's veto 901
One committee can occupy but one day, except for unfinished business, until other committees called 901
Previous question ordered on bill undisposed of on Tuesday comes up as unfinished business Thursday 901
Privilege of general appropriation bills limited on 856, 901
CALENDARS.
Corrections Calendar, former, *see* CORRECTIONS CALENDAR, FORMER. .....
The three for reports of committees 828
Adverse reports..... 832, 893
For motions to discharge committees..... 830, 892
Former, for unanimous consent and decisions 899
Nonprivileged reports filed with the Clerk for reference to 831
Of Committee of the Whole, order of taking up bills on 977
Publication and distribution of 649
CALL OF COMMITTEES.
In order on Calendar Wednesday 900
Business on Calendar Wednesday protected by two-thirds vote 857
Interruption of, for consideration of nonprivileged bills in Committee of the Whole 882, 883

Section

CALL OF COMMITTEES—Continued
Place of, in order of business 869
Rule and practice for consideration of bills during..... 880, 881
Unfinished business in 876–879
CALL OF THE HOUSE. *See also* ABSENCE.
Motion for, in order in absence of quorum 55
After previous question is ordered 1029
Arrest of Members 1021, 1023
Call of the House 1025, 1026
Call of the House in the old form 1021–1024
Clerks to tell Members present 1025
Count of those not voting to make a quorum of record on a record vote 1020
Dispensing with, after quorum appears 1025, 1028
Electronic equipment for 1014
Motions during a call of the House 1024
Ordering and conducting the call of the House in the old form 1022
Power to compel attendance 52, 55
Rule of Parliament as to 311
Speaker may recognize for motion for at any time 1028
CALL TO ORDER.
For disorder in debate 960, 961
May interrupt Member having floor 393
CAMPAIGN CONTRIBUTIONS.
Jurisdiction of matters relating to 724
Prohibition on distribution of in Hall of House 683
CANALS.
Jurisdiction of matters relating to Panama Canal and the maintenance of 718
Jurisdiction of committees as to 739
CANALS, INTEROCEANIC.
Jurisdiction of matters relating to 718
CAPITATION TAX.
To be in proportion to census 140
CAPITOL.
Speaker's control of House wing of 623
Architect of, admitted to floor of the House 678
Jurisdiction as to matters relating to building 739
Preservation Commission..... 1125a
Police, duties of Sergeant-at-Arms as to 656
CAPTURES.
Congress to make rules concerning 127
CAUCUS.
Held in Hall of House 677

Section

CAUCUS—Continued
Party caucuses nominate Members for election to standing committees 757
Majority caucus nominates chairmen of standing committees .. 761
Membership is required for committee membership 760, 782
Early organizational 1126
CELEBRATIONS.
Jurisdiction of matters relating to 723
CEMETERIES, NATIONAL.
Jurisdiction of bills relating to 732, 740
CENSURE.
Course of a Member, when subject of debate as to 375
For assault on Member for words spoken in debate 94
Instances of 65
Of a Delegate 675
Of a counsel before investigating committees 803
Of Member when called to order in debate 960, 961
Procedure of punishment by 65
Punishment for personalities in debate 363
Reprimand 64
Speaker not to administer, of own authority 622
CENSUS.
Taken as basis of apportionment 15
Capitation or direct taxes to be proportioned to 140
Jurisdiction of subjects relating to 723
CEREMONIES.
As to participation of the House in 387, 388
Use of Hall of the House for 677
CERTIFICATES.
Of the electoral vote, transmittal and opening 151, 219
Currency, jurisdiction of subjects relating to 722
CHAIR.
Speaker takes it at hour of meeting, not waiting for ascertainment of a quorum 310, 621
Speaker takes, to restore order in Committee of the Whole 622
To be addressed when a Member desires to interrupt in debate 364
CHAIRMEN.
Of standing or select committee.
Of standing committees elected by the House 317, 761
Administers oaths to witnesses 343, 346, 805
Duties relating to appointment, qualification, compensation of staff 767, 771–781
May be delegated power to issue subpoenas 805
Presides over committee 317
Prior claim of, to recognition 953

Section

CHAIRMEN—Continued
Of standing or select committee—Continued
Procedure of, in investigations 803
Procedure of, in submitting reports from standing or select committees 418
Reports to the House by, must be made promptly 834
Resignation of, presents question of privilege 699
Signs subpoenas issued by committee (or subcommittee) ... 805
Speaker appoints, of select and conference committees 637
Term limits for committee and subcommittee 761
Usually reports from a standing or select committee.... 317, 415
Vacancy in the position of 761
Vice chairman presides in absence of 793
Of subcommittees.
Former authority to appoint staff 767
Of Committee of the Whole.
Selection of..... 327, 970
Seating of 328
Administers oaths to witnesses..... 343, 346
Always reports from Committee of the Whole 415
Causes roll to be called on failure of a quorum and reports unless proceedings are vacated 982
Functions of 971
Power to preserve order 970
Report of, alone recognized 335
Of joint committee.
Of a joint committee 325
CHALLENGE.
Of the right of a Member to take the oath..... 202, 203
CHAPLAIN.
Election and oath of 640
Offers prayer..... 640, 665
Place in order of business of prayer by 869
CHARGES.
Against a Member or Senator in course of an inquiry 321–323
Course of Member when charges against himself are debated .. 375
CHIEF ADMINISTRATIVE OFFICER.
Election, oath, and removal of 640
Duties of 661
Duty to cooperate in the performance of reviews and audits 663
Financial and operational reports to Committee on House Administration 662
CHIEF JUSTICE.
Pay of 86
Role in impeachment proceedings..... 608a, 615, 615a, 618

Section

CITIZENS.
Limitations on suits of, against States 218
Of the United States and the several States 225
Of States, judicial power extends to cases affecting certain 178
Privileges and immunities not to be abridged 225
Privileges and immunities of, in States other than their own ... 184
Right to vote of those eighteen years of age or older 257
Those of the United States as to voting 234
CITIZENSHIP.
As qualification of Representative 9, 10
As qualification of a Senator 35
As a qualification of the President of the United States 154
Reference to, as a qualification for suffrage 226
CIVIL AVIATION.
Jurisdiction over subjects related to generally 739
Jurisdiction over research and development 735
CIVIL LAW.
Jurisdiction of subjects relating to 730
CIVIL OFFICES.
May be removed by impeachment 173
Members not to be appointed to certain 96
CIVIL SERVICE.
Jurisdiction over all Federal Civil Service, including intergovernmental personnel 723
CLAIMS.
In general.
Amendments proposing settlement of certain, banned 822
Bills for settlement of certain, banned 822
Authorization of payment of, on general appropriation bills 1046
Bills referring to Court of Claims considered in Committee of the Whole 973
Consideration of, on Tuesdays 895
Constitution not to prejudice certain 188
Ex-Members interested in, not admitted to the floor 678
Jurisdiction of, generally 730
Jurisdiction of war claims 730
Jurisdiction of, paid from Indian funds 732
Jurisdiction of private land claims 732
Jurisdiction as to certain foreign 729
Jurisdiction of, against the United States 730
Jurisdiction relating to international and other 729
Reference of bills for private, restricted to certain committees 817
Relation of officers and employees of House to 1102
Those for slaves not to be paid 232

Section

CLAIMS—Continued
In general—Continued
Withdrawal of papers relating to 696
CLAIMS, COURT OF.
Status of reports of, on the calendars 828
CLASSES.
Of Senators 33
CLASSIFIED INFORMATION. *See* INFORMATION.
CLERICAL STAFF OF COMMITTEES. *See* COMMITTEE STAFFS.
CLERK.
Election and oath of.
Election, oath, and removal of 640
Election of, as related to business and adoption of rules 30, 59
Oath administered to, by Speaker 198
In absence of, designated official acts 651
Duties at organization of House.
Continues in office until successor is elected 642
Duties of, at organization of the House 643
Makes up the roll for organization 644
Officiates at election of Speaker..... 312, 643
Sergeant-at-Arms maintains order under direction of, pending election of Speaker 648
Legislative duties of.
Allowing no papers to be taken from the table or out of his custody 352
Amending section numbers of a bill 479
Announcing pairs 1031
Attesting and sealing writs, warrants, subpoenas 648
Authority to receive messages from the President and the Senate at any time House is not in session 652
Calendars, publication and distribution of 649
Call of the House..... 1021, 1025
Calling the roll 1015
Certifying to passage of bills 648
Collecting and transferring noncurrent records 695
Committees formerly to make accounting of funds to 780
Copies of amendments offered in Committee of the Whole 978
Custody of committee papers 695
Custody of oath not to disclose classified information 1095
Delivering resolutions of inquiry 865
Distribution of Journal and documents 647
Former insertions in the Congressional Record relating to committee staff 780
Engrossment and enrollment of bills 648
Introduction of bills 818

Section

CLERK—Continued
Legislative duties of—Continued
Making no changes in enrolling a bill 573
Motions to discharge committees 892
Noting Members to make a quorum on a vote of record 1020
Noting questions of order with the decisions in the Journal 647
Papers on file 696
Reading motions 904
Referring nonprivileged reports to calendars 831
Stands while he reads 428
Taking a vote by clerk tellers 1012
Taking a vote by the yeas and nays 504
Executive duties of.
Administration of vacant Member's office 653
As member of Federal Elections Commission 642
Delivery of documents 650
Deposits noncurrent records with General Services Administration 695
Discretionary authority as to printing 642
Duty to furnish to Members list of certain reports 646
Duty to cooperate in the performance of reviews and audits 655
Duty under the gift rule 1100
Financial and operational reports to Committee on House Administration 654
Formerly kept contingent and stationery accounts and furnished stationery 642
Formerly made certain contracts 642
Maintains House library 650
Maintains list of Members to act as Speaker pro tempore in the case of vacancy in Office of the Speaker 632
Role in payment of officers and employees 642
Receives testimony taken in election cases 642
CLERKS.
Of Members, allowance for 88
Of committees, *see* COMMITTEE STAFFS.
Of Speaker, Leaders, and Whips 88
CLERK'S DESK (OR TABLE).
Disorderly words taken down at 960, 961
Members may address the House from 945
Members not to write at, or take books or papers from, during debate 364
No Member to remain near, during record vote 962
CLOAKROOMS.
Exclusion of persons from 921

Section

CLOSING DEBATE. *See* DEBATE.
COAST GUARD.
Jurisdiction of matters relating to 739
Bills to correct certain discharge records banned 822
COAST GUARD ACADEMY.
Jurisdiction of matters relating to 739
COASTAL ZONE MANAGEMENT.
Jurisdiction over subjects related to 732, 739
CODE OF OFFICIAL CONDUCT. *See* OFFICIAL CONDUCT.
CODIFICATION.
Of laws, jurisdiction of, bills for 730
COEXISTING QUESTIONS. *See* QUESTIONS.
COIN.
Congress to regulate value of 121
Congress may provide punishment for counterfeiting the 122
States to make gold and silver only a tender for payment of debts 146
Power of Congress relating to coinage (including foreign) 121
Jurisdiction of subjects relating to 722
COLLEGES, AGRICULTURAL.
Jurisdiction of bills relating to 715
COMFORT.
To enemies of the United States 181, 232
COMMANDER IN CHIEF. *See* PRESIDENT.
COMMEMORATIVES PROHIBITED 823
COMMERCE.
Energy and Commerce, Committee on 721
Jurisdiction of subjects relating to financial aid to 722
Jurisdiction of subjects relating to, with foreign nations 729
Power of Congress to regulate 119
No regulation shall give preferences to any ports 142
COMMISSIONS.
Congressional Mailing Standards 1113
House Office Building 1114
U.S. Capitol Preservation..... 1125a
President to issue, to officers 172
For recess appointments of the President 167
Created by law, to sit in a recess after expiration of a Congress 589
Places on, not incompatible offices 98
Primary and supplemental expense resolutions for 763
COMMIT, MOTION TO. *See also* RECOMMIT.
Precedence and use of.
Precedence and general conditions of 911, 916, 1001–1002c
Debate on motion to, with instructions 917, 1002
Relation of, to early use of the previous question..... 448, 449

Section

COMMIT, MOTION TO—Continued
Precedence and use of—Continued
Has precedence of motion to amend 449
Instructions with 917, 1002b
May not be postponed 451
Not to be suppressed by another privileged motion 450
Not used in Committee of the Whole 916
Repetition of 918
Use of 446
Application of, to bills.
After previous question ordered, Committee on Rules limited as to 857, 1001
After previous question ordered 994, 1001, 1002
In order as to bill on third reading 494
Method of dividing a bill by, with instructions 476
Not applied to reports from Committee on Rules pending previous question 857
Opposition have preference in recognition for, after previous question is ordered 1001, 1002c
Ten minutes debate permitted on motion to recommit with instructions on bill or joint resolution 1001, 1002a
On bills with amendments between Houses 486, 528b, 528d, 916, 1002

COMMITTEE OF THE WHOLE.
In general.
House may attend impeachment trial in 617
No control over admission to floor 678
Powers and privileges of Delegates and Resident Commissioner in 675, 970
Procedure of the House as in 424–427
Rare case of investigation conducted by 343
Relations of, to the Congressional Record 688
Two continuing committees of 332
Chairman of.
Chairman preserves order 970
Functions of 971
Discretionary authority as to quorum calls 982
Discretionary authority as to five-minute votes on questions in sequence 984, 1032
Parliamentary method of selecting 327
Selection of Chairman 970
Quorum of.
Quorum of 329, 982
Call of, by electronic device or clerks 982, 1019
When failure of may be raised 982
Rising and reports as related to quorum 983

Section

COMMITTEE OF THE WHOLE—Continued
Quorum of—Continued
Short or notice quorum call at discretion of Chairman 982
Sitting, rising.
Former automatic de novo vote in House where Delegates' votes decisive 985
Informal rising to receive a message 330, 563
Informal rising for signing of enrolled bill 625
May take a recess only with consent of the House 586
Motion to rise privileged 334, 983
Motion to rise not in order during time yielded for general debate 979
Motion to rise prior amendments offered after reading of general appropriation bills 1040
Point of order against motion to rise on an appropriation bill where the bill exceeds a section 302(b) allocation 1044b
Report from Committee on Rules not in order after House votes to go into 857
Rising after disorder in 331
Rising when a quorum fails..... 982, 983, 1027
Rising with unfinished business 333, 334
Motions to go into.
Form of 328
Privileged motion to go into, to consider and general appropriation bills 856
Consideration of nonprivileged bills in, after call of, committees 882, 883
Nonprivileged public bills in, considered on Calendar Wednesday 900
Place in order of business for motions to consider nonprivileged bills in 869
Speaker's declaration into 972
Subjects considered in.
Subjects requiring consideration in 973
As to origination of business in 412
Bill must show on face falls within the rule 973
Conference report not referred to 550
Construction of the rule requiring consideration in 973
Elimination of portions of general appropriation bills by ... 1044
General practice as to consideration in 973
Old parliamentary usage as to consideration of matters in, as modified by House rules and practice 326
Questions of order on appropriation bill in 1044
Recommittal of bills to..... 420, 1001–1002c
Reference of Senate bills from Speaker's table to..... 873, 874

Section

COMMITTEE OF THE WHOLE—Continued
Subjects considered in—Continued
Senate amendments considered in 1072, 1073
Subjects not requiring consideration in 528a, 973
Procedure in, as to motions.
Amendments not to be withdrawn in 925
Application of House rules to 340, 992
Five-minute recorded vote in, immediately following quorum call 982
Five-minute recorded votes in, on questions in sequence 984, 1032
Unanimous consent to modify special orders entertained in 993
Motions for previous question and to adjourn not used in 333, 912
Motion to reconsider not in order in 1003
Recorded vote in 1012, 1030, 1032
Relations of motion to strike out enacting words to 988, 990
Yeas and nays not taken in 76
Debate in.
Closing the five-minute debate 987
General debate in 978
Hour rule of debate applicable to 957
Motion to close general debate 979
Relevancy of debate in 948
Ten minutes debate on amendments submitted in advance and printed in Record 987
Reading in. See also AMENDMENTS.
Reading of bill in 942
Reading of concurrent resolution on the budget in 990
Order of business in.
Order of business in 977
Calendars for the business of 828
Unfinished business in 879
Reports of, and consideration in House.
Action of the House on amendment reported from 423
Amendments of, considered in the House 336, 337
Bills from, considered in the House 338
Discharge of 339
Duties of Speaker and House as to reception of reports of . 335
Former automatic de novo votes in House where Delegates' votes decisive in Committee of the Whole 985
Recommitted when report ruled out by House 335
Parliamentary law as to reports from 334, 983
Disorder in.
Action in case of disorderly words in 960, 961

Section

COMMITTEE OF THE WHOLE—Continued
Disorder in—Continued
Disorderly words taken down in, reported to the House 369, 960, 961
Effect of breaking up of, by disorder 332, 622
Quarrels in, and duty of the Speaker as to 331
Questions of privilege in 667
Sergeant-at-Arms enforces order in 648
Speaker restores order in 622
COMMITTEE STAFFS.
Admitted to floor of House under certain conditions 678
Consultants and training 774, 1095
Subcommittee staff appointments formerly by chairman and ranking minority member 767
Expense resolution for committee staffs 763–d
Former clerical/professional staff distinction 779
Former professional/investigative staff distinction 777
Interrogation of witnesses 802
Staff of committees, number and appointment 767, 771–781
Reduction in staff for 104th Congress 773
Minority staff 767, 773, 779
Staff duties 773
Associate or shared staff 776, 779
Duties of House Administration as to 724, 773, 776, 779
Duties as to papers 695
Former reports on staff 780
Printed amendments submitted to 986
Rate of pay for 777
Staff for Committees on Appropriations and (formerly) Budget 776, 778
Permission of Committee on House Administration required for appointment of staff from Governmental agencies 779
Nonpartisan staff 780
COMMITTEE STENOGRAPHERS.
Appointment of 685
COMMITTEES.
Constitution and election of.
Appointment of Members under indictment or conviction to 305, 306
Clerks of, *see* COMMITTEE STAFFS.
Delegates and Resident Commissioner may vote in 675
Election of, by ballot 1034
Establishment of subcommittees limited 762
Former rule regarding election of ranking minority member to Budget Committee 719

Section

COMMITTEES—Continued
Constitution and election of—Continued
General power of Delegates and Resident Commissioner in 675, 676
House elects the standing committees on nominations by caucuses 757
Member-elect may be appointed on, before taking the oath 300
Members' committee assignments limited 760
Membership on, contingent upon membership in party caucus 760
Names and number of the standing..... 714–741
Old and modern requirements as to constitution of 402
Select committees, *see* SELECT COMMITTEES.
Rules and practice as to the appointment of..... 317, 757
Selection of chairmen of select and of standing committees 761
Serve through a Congress 317
Service of Resident Commissioner and Delegates on.... 675, 676
Speaker appoints select and conference committees..... 637, 782
Subcommittees limited 762
Term limits for chairmen of committees and subcommittees 761
Vacancies in, filled by election by House 762
Vice chairman of 793
Jurisdiction of, and reference to.
For jurisdiction and history of, individually, *see* JURISDICTION.
Act only on matters referred to them 412
Bills not to be brought back from, on motion to reconsider 1011
Commemoratives prohibited 823
Delivery of bills to 403
Duty of, in case of recommittal with instructions 420
Functions of, in correcting errors of reference of bills... 824, 825
Jurisdiction as to creation, and duties of 733
Jurisdiction of, as affected by errors in reference of bills ... 824, 825
Nearly all business of the House considered in 446
Papers not read in House on ordinary reference to 436
Parliamentary law (largely obsolete) as to reference of bills to 401
Private claims to be referred to certain 817
Private claims bills banned in certain cases 822
Receive petitions only through the House 320
Recommittal to select or standing, or of the Whole 420
Referral of bills and other matters, procedures for 816–816b
Sittings and procedure of.
Additional and special meetings 793

Section

COMMITTEES—Continued
Sittings and procedure of—Continued
Authorization to go to conference 791
Broadcasting and press coverage of meetings and hearings 807–812
Clerks of, *see* COMMITTEE STAFFS.
Debate in 318
Decorum in 369, 787, 803
Executive sessions of 796, 798, 803
Intelligence, Select Committee on, special procedures for .. 785
May be empowered to sit during recesses of a Congress 589
May only act when together 407, 793, 799
Former rule proscribing sitting during five-minute rule 324, 801
Meetings and action of 408, 793–805
Meeting when chairman fails to call 793
Meetings open to public 746, 798
Method of voting amendments to a bill in 417
Noting amendments to bill in committee 417
Parliamentary law governing consideration of bills in 412
Power of, over body and title of a bill 411
Power to sit and act 805
Presence of Member of the House in a select 410
Procedure in generally 427, 792
Proxy voting prohibited 797
Quorum of a select or standing 343, 409, 799, 800, 805
Quorum must be present when perjurious testimony is given to support charge of perjury 343, 409
Quorum to release testimony received in executive session 803
Quorum for taking testimony 800
Quorum for reporting a measure 799
Quorum for issuing a subpoena 343, 805
Vice chairman or ranking member presides in absence of chairman 761, 793
Reading of investigative or oversight reports waived 788
Recess of a committee 787
Reconsideration of a vote in 416
Record of actions by, to be kept 794
Regular meetings 793
Rise when the House sits unless leave be given to remain sitting (obsolete) 324
Rules of committee same as House 787
Rules of committees must be written and published in Record 791
Secrecy of procedure 319, 798, 803
Subcommittees subject to direction of full committee 787

Section

COMMITTEES—Continued
Sittings and procedure of—Continued
Subpoena power 805
Time of hearings and subject matter to be placed in daily Congressional Record and entered into committee scheduling service of House Information Resources 798
Transcripts of meetings and hearings paid from contingent fund (applicable accounts of the House) 789
Vice chairman 793
Votes in, available for inspection 794
Witnesses before committees, *see* WITNESSES.
Hearings.
Exclusion of Members and public from 798
Five-minute rule when examining witnesses in 802
On appropriation bills hearings and reports to be available three days in advance of consideration 852
Rules to be adhered to in..... 746, 798, 803
Broadcasting and press coverage of..... 807–812
Executive hearings open to noncommittee Members 798
Hearings open to public..... 746, 798, 803
Hearings to be preserved in Library of Congress 1107
Notice requirement for hearings 798
Five-minute rule applicable during interrogation of witnesses 802
Quorum must be present when perjurious testimony is given to support charge of perjury 343, 409
Quorum to release testimony received in executive session 803
Quorum for taking testimony 800
Quorum to close hearing to discuss or receive certain testimony or evidence..... 798, 803
Witnesses before committees, *see* WITNESSES.
Reports of, generally.
Action of the House on amendments reported from 423
Action of the House on reports from 422
Activities report 790
Adverse 831, 832, 853, 861, 893
Adverse reports from Committee on Rules 861, 893
Amendments reported by, should be germane 928
Authorization, signing, and validity of..... 407, 408, 415, 799, 831–852
Availability in electronic form 796
Availability of, prior to floor consideration 850, 851
By whom made..... 317, 834, 804, 850
Calendars on which reports of, await action of the House 828–899

Section

COMMITTEES—Continued
Reports of, generally—Continued
Calling up reports made in order by adoption of a resolution by the House 862
Direction of, for making its report 317, 415, 845
Filing of, by chairman or majority 834, 835
From Committee on Rules, not divisible 919
Hearings and reports of Appropriations Committee to be available three days in advance of consideration of bills 852
Joint Economic Committee, report of 1108
Layover requirements 850
Limitations on reports from Committee on Rules 857
Origin and effect of the rule giving privilege to certain reports 854
Placing adverse reports on the Calendars 853, 861, 832, 893
Practice as to reading reports of, in the House 435
Prior claim of Member in charge of bill to recognition 953
Prior right of Members of, to recognition for debate 955
Privileged reports of 853–868
Privilege of individual committees to report 855
Privilege of reports from Committee on Rules 857
Recommittal of 405, 420, 917, 1001–1002c
Reports to the House must be made promptly 834
Restriction on reporting bill containing an appropriation .. 1065
Select committee, report of 419
Speaker does not decide on sufficiency of 628
Submitting reports 317, 418
Single volume 837
Supplemental, filing of 804, 838
Reports, contents required in.
Appropriations Committee reports on general appropriation bills must state effect of any provision changing existing law 847
Congressional Accountability Act, requirements under 842
Constitutional authority statement 841
Cover must reflect inclusion of certain matters 804
Former "Dynamic estimate" of changes in revenues expected to result from enactment of "major" tax legislation (discretionary) 849
Macroeconomic analyses of tax proposals 849
Estimate of cost 844
Estimate and comparison of Congressional Budget Office 840
Estimate and comparison of funding levels 840, 844
Filing after hours if views 788

Section

COMMITTEES—Continued
Reports, contents required in—Continued
Former reporting requirement relating to committee staff 780
General performance goals and objectives 840
Investigative and oversight reports considered as read 788
Joint reports 788
Minority, supplemental, and additional views..... 804, 831, 833, 836
New budget authority and tax expenditures, statement as to 840
Obsolete provision for directing a committee to withdraw and report 404
Oversight findings and recommendations..... 742, 840
Oversight findings and recommendations of Committee on Government Reform 749
Report on bills amending or repealing statutes must show by typographical device parts of statute affected 846
Rules Committee reports on resolutions repealing or amending Rules of the House must show by typographical device parts of Rules affected 848
Resolutions of inquiry, requirements for reports of..... 864–867
Tax complexity..... 849, 1092
Unfunded Mandates 790, 843, 845, 1127
Vote totals and names on amendments and motion to report 839
To be in writing and to be printed 833
Oversight functions.
Ad hoc oversight committees 743
General oversight by committees as to laws within their jurisdiction..... 742–743
General oversight findings and recommendations to be included in reports 840
Establishment of oversight subcommittees required 743
Oversight of Committee on Government Reform 743
Former requirement that oversight findings of Committee on Government Reform be included in each committee's reports..... 749, 840
Oversight plans submitted to Committees on Government Reform and House Administration 743
General oversight of Committee on Appropriations..... 742, 743
Special oversight functions of Committees on Armed Services, Budget, Education and the Workforce, Energy and

Section

COMMITTEES—Continued
Oversight functions—Continued
Commerce, Homeland Security, International Relations, Resources, Science, and Small Business 744
Additional functions of committees 745
Budget hearings 746
Budget Act procedures 747, 1127
Budget Committee, additional functions of 748
Government Reform Committee, additional functions of 749
Requirement for oversight subcommittee 743
Discharge, instructions.
Motion to discharge and instruct 406, 892
Motion to discharge from consideration of vetoed bill 108
Motion to discharge under certain public laws 1130
Obsolete provision for direction to withdraw and bring back a bill 404
Recommittal with directions to report forthwith 405
Speaker usually does not judge of fidelity of, to instructions 628
Call of.
Place of, in order of business 869
Business on Calendar Wednesday protected by two-thirds vote 857
Calendar Wednesday 900
Morning hour 880
In general.
Availability of publications in electronic form 796
Conferences held by means of select joint 532
Correction of error in Journal by 583
Custody of papers of 695
Duties of, as to resolutions of inquiry 864, 867
Establishment of subcommittees limited 762
Expenses of, primary, additional, and interim funding 768
Exception to initial funding 766
Points of order in House against committee procedure 798
Records of, to be accessible to all Members 796
Reference in debate to proceedings of 360
Rights as to motions to suspend the rules 885
Verbatim meeting and hearing transcripts 794
Staff of. *See* COMMITTEE STAFFS.
COMMITTEES, JOINT.
Authorized by concurrent resolutions 396
Number and functions of 1108–1113
Authorized by concurrent resolutions 396
Compliance with clause 2(a) of rule XI 783
Conferences held by means of 532

Section

COMMITTEES, JOINT—Continued
Expiration of select 419
Taxation, formerly rendered "dynamic estimate" on "major" tax legislation 849
Taxation, renders "macroeconomic analyses" of tax proposals .. 849
Membership on contingent on party membership 782
Quorum, chairman, and voting in 325
COMMODITIES EXCHANGES.
Jurisdiction of subjects related to 715
COMMON DEFENSE.
Power of Congress to provide for 117
COMMON FAME.
As a ground for impeachment 605
As foundation for investigation 341
COMMON LAW.
Jury trial for suits at 214
Rules of, in courts 214
COMMUNICATIONS.
Rule for reference of 816, 873, 874
Executive, transmission of, to House 827
COMPACTS.
States not to make, without consent of Congress 148
Jurisdiction of, over interstate, generally 730
Jurisdiction of, relating to apportionment of waters for irrigation purposes 732
Jurisdiction of, over interstate energy 721
COMPENSATION. *See also* PAY.
For private property taken for public use 212
Of spouses of Members and employees 1095
COMPLIANCE, OFFICE OF. *See* CONGRESSIONAL ACCOUNTABILITY.
COMPULSORY PROCESS.
For obtaining witnesses 213
CONCUR, MOTION TO. *See also* AGREE, MOTION TO.
Relative to striking out enacting words 988
CONCURRENT RESOLUTIONS.
Nature and use of 396
As to approval of, by the President 396
Adjournment for more than three days by 84
On the budget 719, 990, 1127
Congressional disapproval provisions utilizing 1130
CONFEDERATION.
Validity of debts of 194
States not to make 146

Section

CONFEREES. *See* CONFERENCES.
CONFERENCES.
Objects and nature of.
By means of select committees 532
Effect of recess of Congress on 814
Free and simple in modern practice 540
Free or instructed 557
Over matters other than differences as to amendments 531
Obsolete provision as to conference on first reading 559
Parliamentary law as to free and simple 539
Parliamentary law as to purposes for which conferences may be held 558
Questions asked of other House by, rather than by message 569
Relations of adherence and conference under the parliamentary law and in Congress 528b, 528d, 553, 554
Usually asked over differences as to amendments 530
As to requests for.
Adherence does not prevent granting requests for 522
Generally 528a, 530, 533, 535, 1069–1093
Motions to request, precedence of..... 528a, 528b, 528d, 535, 1069, 1070
Motions to request, authorization in committee 791, 1070
Requests declined or neglected..... 534, 1070
Separate vote on certain amendments between the Houses when request is made..... 1070, 1072
Managers and their powers.
As affected by free and simple conference 539, 540, 557
Managers of, appointment, removal, and function 536, 637
Managers of, motion to instruct or discharge 541, 1079
Managers restricted to the disagreements of the two Houses 546, 1088
Managers may not agree to Senate amendments making appropriations 1076
Managers may not agree to Senate amendments to appropriation bills containing legislation 1076
May report a germane modification within the scope of disagreement where one House strikes out all after enacting clause of bill of other House and inserts new language 1088
Meeting and action of managers 548, 1093
Open conference meetings 1093
Quorum, evidence of 543
Reappointment of managers at second or subsequent 537
Remedy where managers exceed their authority 547
Speaker appoints 637

Section

CONFERENCES—Continued
Managers and their powers—Continued
Text to which both Houses have agreed not to be changed by managers unless by authority of both Houses 527, 1088
Vacancies in managers 538
Reports of managers.
Accompanying statement 1080
Accompanying statement, Speaker decides as to sufficiency of 628
Action on a report in the two Houses 549
As to consideration in Committee of the Whole 973
Consideration in House not in order until report available for three days and copies available at least two hours 1082
Considered as read if available 1085
Considered rejected if conferees have improperly closed meeting 1093
Debate on, equally divided between parties 1086
Effect of disagreement to a conference report 551, 954, 1091
Form of conference reports 542, 543, 1080
Have precedence of motion to reconsider 1003
High privilege of 1077
Legislation contained in amendments in disagreement, procedure for consideration 1084
Limited to scope of matter committed to conference 527, 546, 1088
Motions in order during action on a report 550, 1089–1091
May report germane modification of amendment in nature of substitute 1088
Nongermane matter contained in conference agreements, procedure for consideration 1089, 1090
Nongermane matter in amendments in disagreement, procedure for consideration 1089, 1091
Not to interrupt reading of Journal 621
Parliamentary law as to reports of managers 542
Partial reports 544
Postponing record votes on agreeing to 1030
Precedence of, over report from Committee on Rules 857
Printing in Record of amendment in total disagreement 1083
Recommittal of 550, 1001–1002c, 1088
Printing of reports and statements in the Record 1082
Rejection of, status of amendments after 551, 1089–1091
Reports of inability to agree 545, 1083
Retroactive income tax rate increase prohibited in 1068
Quorum, evidence of 543
Signing of 543
Speaker decides as to validity of reports 627

Section

CONFERENCES—Continued
Reports of managers—Continued
Statements relating to Federal unfunded mandates 1081, 1127
Three-day layover and two-hour availability before consideration 1082
Three-fifths vote to increase income tax rates 1067
To be in writing 542
To be entered in the Journal 542
Unamendable 542
When on constitutional amendments agreed to by two-thirds vote 192
Yeas and nays automatically ordered on adoption of certain 1033
Custody of papers in.
After an effective conference 555
When managers fail to agree 556
When asked before disagreement 552
CONFESSION.
In cases of treason 181
CONFIRMATION.
Congress, of President's nominee as Vice President 256
CONGRESS.
Meeting, term.
Meets once a year 45, 242
Term and adjournment of 6
Adjourns in July with certain exceptions 1106
Neither House to adjourn for more than three days or to another place without consent of the other 82, 82a, 84
Place of meeting, *see* PLACE.
Power of President to convene or adjourn Houses of 82, 171
President to give information of the state of the Union to . 168
Prohibited from adjourning sine die before completion of congressional budget process ..... 1127 (sec. 310)
Powers of—legislative and general.
Legislative 3
As to migration of importation of persons 137
Consent of, to acceptance of certain gifts 144
To establish patents and copyrights 124
To establish post offices and post roads 123
To make laws to carry its powers into effect 136
To provide for legislative veto of executive actions 1130
To regulate coinage, weights, and measures 121
To regulate commerce 119
To regulate naturalization and bankruptcy 120

Section

CONGRESS—Continued
Powers of—as to taxes, money, property, and territory.
To lay and collect taxes 117
To borrow money 118
Money to be drawn only on appropriations by 143
Over the seat of Government and ceded places 134, 135
Over the territory and other property of the United States 188
Powers of—as to war.
To declare war, grant letters of marque 127
To support armies 129
To provide a navy 130
To make rules for land and naval forces 131
To provide for calling out the militia 132
To provide for organization of militia 133
Relative powers of Congress and the President 128
Powers of—as to elections, sufferage.
As to apportionment and establishment of districts 226, 227
Determines time of choosing electors 153
May by law provide for cases where President-elect nor Vice President-elect shall qualify 244
May choose President and Vice President in certain cases 221–223
May confirm nomination to fill vacancy in Vice Presidency 253, 256
Instances where House and Senate have confirmed nominee as Vice President 256
May decide termination of Presidential disability 255
May provide for case wherein death occurs among those from whom House and Senate may choose President and Vice President 246
May provide for succession to Presidency or new election 155, 244
Power to make or alter regulations as to elections of Representatives 42
To legislate to enforce the 13th, 14th, 15th, 23d, and 24th amendments to the Constitution 224, 233, 234, 250, 251
To remove political disabilities 230
Powers of—as to courts.
Regulates jurisdiction of Supreme Court 179
To establish inferior courts 125, 177
To fix places for trial of crimes 180
To regulate the proving of acts, records, and judicial proceedings of the States 183
Powers of—as to the States.
As to admission, consolidation, or division of States 187
May revise and control certain State laws 147

Section

CONGRESS—Continued
Powers of—as to the States—Continued
No State to lay imposts or duties on exports or imports without consent of 147
Consent of, for certain acts of States as to duties, troops, war, and compacts 148
Powers of—to provide certain punishments.
Each House may punish its Members for disorderly behavior 62
To provide punishment for counterfeiting 122
To provide punishment for piracies 126
To declare punishment of treason 182
Powers of—as to amending Constitution.
As to amendments to the Constitution 190
To propose amendments to the Constitution or call a convention 190
Jurisdiction of proposed amendments to 730
Powers of—limitations on.
As related to writ of habeas corpus 138
As to religion, free speech, the press, or right of assembly and petition 208
Laws of, not binding on House in judging elections 51
Limitation on capitation or other direct tax 140
No bill of attainder or ex post facto law to be passed 139
No export duties to be laid 141
No preferences to be given as to commerce by water 142
No titles of nobility to be granted 144
CONGRESSIONAL ACCOUNTABILITY.
Approval of regulations with respect to..... 1130(26)
Committee reports accompanying measures must contain statement relating to 842
Former rule on application of laws to Congress 1101
Office of Compliance 1116
Point of order for insufficient committee report 842
Settlements under approval by House Administration 754
CONGRESSIONAL BUDGET OFFICE. *See* BUDGET.
CONGRESSIONAL DISAPPROVAL, LAWS PROVIDING MECHANISMS FOR ... 1130
CONGRESSIONAL OFFICES.
Compilation of 1113–1125c
CONGRESSIONAL RECORD.
Reports of debates.
Correction of 689, 967, 968
Duties of Joint Committee on Printing in relation to 1111
General control of Committee on House Administration over 728
Jurisdiction relating to improvement of 1111

Section

CONGRESSIONAL RECORD—Continued
Reports of debates—Continued
"Leave to print" in, including cost of 692
Not the official record of proceedings 69
Pledge of Allegiance printed in 687, 869
Power of Chairman of Committee of the Whole over 972
Privilege of Member to revise his remarks 691
Privilege of propositions to correct..... 685, 690
Relation of Committee of the Whole to 688
Remarks uttered not under recognition not printed in 687
Reporters of debates 685
Substantially verbatim account of remarks... 687, 691, 967, 968
Unparliamentary remarks printed in..... 687, 961
Matters recorded in.
Amendments to be offered during five-minute rule may be printed in advance, and given a numerical designation .. 987
Certain messages printed in 815
Clerk supervises daily insertions in 1111
Committee meetings and hearings inserted in 1111
Former "bullet" symbols in 692
House activities of previous day inserted in 1111
Index daily of proceedings of previous day 1111
Introduction of bills, petitions, resolutions entered in 818
Legislative program for the day to be inserted 1111
Messages from President entered in 875
Names of Members signing discharge petitions 892
Printing of conference reports in 1082
Reference of public bills, memorials entered in..... 825, 826
Substantially verbatim account of remarks..... 691, 967, 968
Titles of reported bills entered in 831
CONGRESSIONAL RESEARCH SERVICE 1117
CONSENT.
Unanimous. See UNANIMOUS CONSENT.
Of Congress.
For acceptance of certain gifts 144
For certain acts of States as to duties, troops, war, and compacts 148
No State to tax imports or exports without 147
Of a State.
Required before its equal suffrage in the Senate may be disturbed 190
CONSERVATION.
Energy resources, jurisdiction of matters relating to 721
Petroleum (naval), jurisdiction of matters relating to 718
Radium, jurisdiction of matters relating to 732
Soil, jurisdiction of matters relating to 715

Section

CONSERVATION—Continued
Wildlife, jurisdiction of matters relating to 732
CONSIDERATION, QUESTION OF.
Form and history of 906
Conditions of raising 862, 907
Not to be raised against a report from Committee on Rules 857
On Calendar Wednesday 901
Questions subject to 908
To dispose of points of order raised under the Unfunded Mandates Reform Act..... 909, 1127
Relation of, to other motions 907
Relation of, to points of order..... 909, 1077
Where quorum fails on yea-and-nay vote and adjournment intervenes 76
CONSISTENCY.
Speaker not to decide questions of..... 466, 628
CONSTITUENCY.
Apportionment and establishment of districts..... 226, 227
Status of, as related to right to take the oath 204
CONSTITUTION OF THE UNITED STATES.
Establishment.
Enumerated rights of, and those reserved to people 216
Established by the people 1
Formation of 2
Disabilities arising from violation of the oath to support ... 230
Jefferson's discussion of privilege of Members of Congress under the 288, 289
Judicial power extends to cases of law and equity arising under 178
Nothing in it to prejudice certain claims 188
Oath to support 196
Officers of House sworn to support 640
Powers delegated to the United States by 217
President sworn to preserve 158
Supreme law of the land 195
Ratification and amendment of.
Amendments to, jurisdiction over 730
Differences as to amendment to, committed to conference . 530
Extension of time for ratification of proposed amendment . 192
Joint resolution for amendment of, not approved by President 115
Limitation on amendment of 190
Methods of amending 190–192
Ratification of 207
The 27 amendments of..... 208–258
Two-thirds vote on conference report as to 549

Section

CONSTITUTION OF THE UNITED STATES—Continued
Ratification and amendment of—Continued
Yeas and nays not necessarily taken on amendments to 76
CONSTITUTIONAL CONVENTIONS.
Relation of, to State legislatures, in fixing times of elections 43
May be called for purpose of proposing amendments to Constitution 190
CONSTITUTIONAL PREROGATIVES.
Of House as to revenue legislation 102
Questions of, committed to conference 531
Questions relating to, treated as of privilege 698
Precedence of questions of 698
CONSTITUTIONAL PRIVILEGE.
Questions relating to 698–702
CONSTITUTIONS.
Those of States subordinate to that of United States 195
CONSULAR SERVICE.
Jurisdiction of subjects relating to 729
CONSULS.
President appoints 166
CONSULTANTS.
Training 774
Lobbying by 1095
Jurisdiction of Supreme Court in cases affecting 179
Judicial power extends to cases affecting 178
CONSUMERS.
Affairs and protection of, jurisdiction over 721
CONTEMPTS.
Committee reports on, privileged for immediate consideration without three-day layover 299, 699, 850
Power of the House to punish for 293–299
CONTESTANTS.
In election cases, admitted to the floor 678
Relations of, to incompatible offices 100
CONTESTED ELECTIONS.
Jurisdiction of matters relating to 724
Contests affected by death 18
Clerk receives testimony taken in contests 642
CONTINGENCY FUND (APPLICABLE ACCOUNTS OF THE HOUSE).
Duties of Committee on House Administration as to 724, 763
Clerk formerly kept account of disbursements out of 642
Commission and other entity expenses, payment from 763
Committee expenses, payment from 763
Committee transcripts, cost of printing paid from 789
Early organization caucuses funded from 1126
Privileged reports on 853

Section

CONTINUATION OF A PUBLIC WORK.
Appropriations for 1036, 1048–1051
Examples illustrating 1049
New buildings at existing institutions as a 1050
Unexpended balances may be appropriated for 1037, 1063
CONTRACT LABOR.
Jurisdiction of bills relating to 720
CONTRACTORS.
Not ineligible as Members 98
CONTRACTS.
Obligations of, no State to impair 146
Clerk formerly made or approved certain 644
CONTROVERSIES.
To which the judicial power extends 178
CONVENING OF CONGRESS.
At least once in every year 45, 242
Emergency postponement of reconvening of the House 83, 639
Laws appointing a different day for 243
Reconvening (recall) authority under adjournment resolution, to reconvene at another time or to another place, *See* RECONVENE. .....
CONVENTION.
To amend the Constitution, method of calling of 190
CONVICT LABOR.
Jurisdiction of bills relating to 720
CONVICTION.
Two-thirds vote for, in impeachments 38
Evidence for, for treason 181
For crime as basis for involuntary servitude 224
In impeachments 41, 619
Members should refrain from voting and committee participation following 939
COPYRIGHTS.
Copyright royalties, limitation on 1099
Jurisdiction as to bills relating to 730
CORPORATIONS.
Jurisdiction of subjects relating to 730
CORRECTION.
Bills for, of military and naval records are banned 822
Of Congressional Record 685, 689, 690, 744, 967, 968
Of reference of public bills, place of, in order of business 869
Of reference of bills from Speaker's table 873, 874
Of reference of bills, correction in errors 824
CORRECTIONS CALENDAR, FORMER.
Former rule providing for 898

Section

CORRIDORS.
Speaker's control of 623
CORRUPTION.
Of blood, for treason 182
COSPONSORSHIP, OF BILLS. *See* BILLS.
COST, LIMIT OF.
On public works 1047
COUGHING.
Not in order during debate 364
COUNSEL.
General, Office of 670
Floor privileges for respondent counsel in disciplinary proceeding 678
For accused in criminal prosecutions 213
In cases of expulsion 66
Admission of, in investigations..... 348, 803
May be censured and excluded from hearings 803
COUNT.
Electoral.
Constitutional provision for 219
Jurisdiction of matters relating to 728
In the Hall of the House 220
On a division or other vote.
Appeal from Chair's count prohibited..... 629, 630
Decision by voice of majority—tie votes 508
Decision of points of order during 507
Division of the House after determination by sound... 501, 1012
Duty of Speaker to make an honest count 1012
Interruption of, by demand for yeas and nays 77
Messages not received during rising vote or by tellers 562
Not to be interrupted by conference report 1077
Parliamentary provisions as to division, not applicable in the House 502
Questions of order arising during, decided peremptorily 628
Rule as to voting by division 1012
Two-thirds votes 509
Of a quorum.
Certain business suspended by failure of a quorum 510, 832
By Speaker, to ascertain as to quorum after previous question is ordered 1029
Not to be verified by tellers or on appeal..... 54, 629
Of House when absence of quorum is observed 310
On record vote and otherwise by Speaker..... 54, 1020
COUNTERFEITING.
Congress may provide punishment for 122

Section

COURTHOUSES.
Jurisdiction as to bills for construction of 739
COURTS.
Of the United States.
Appointment of officers of 166
Congress to constitute inferior 125
Determination of relevancy of materials subpoenaed from House 291a
Inferior, their judges 177
Judges bound by Constitution and laws 195
Judicial power vested in supreme and inferior 177
Jurisdiction of, in general 178
Jurisdiction of Supreme Court 179
Limitations of judicial power in suits of law or equity 218
Tenure, compensation of judges 177
Trials of suits at common law in 214
As related to proceedings of Congress.
Privilege of Members of Congress as to demands of 290, 291a, 697
Relations of Members of Parliament to 287
Relations of State courts to election cases 50
Status of reports of Court of Claims on calendars 828
Reference of claims to Court of Claims considered in Committee of the Whole 973
Judicial appearances on behalf of House 291b
Jurisdiction as to certain, in District of Columbia 723
Jurisdiction of subjects relating to 730
Jurisdiction as to, in foreign lands 729
In insular possessions and territories 732
CREDENTIALS. *See also* MEMBERS.
As related to the right of a Member to take the oath 204
Prima facie effect of, dependent on vacancy 23
House Administration Committee may consider questions as to..... 724, 728
CREDIT.
For public acts, records, and judicial proceedings of a State in other States 183
Power of Congress to borrow money on 118
States not to emit bills of 146
Jurisdiction of subjects relating to public 722
CRIMES.
Abridgment of suffrage for 226
As to what are high 175
Extradition for 185
High impeachable offenses 175
Involuntary servitude as punishment for 224

Section

CRIMES—Continued
Jurisdiction of subjects relating to 730
Members refrain from voting and committee action when convicted of 1095
Persons to be held to answer for, only on conditions 212
Trial of all, except in impeachments, to be by jury 180
CRIMINAL LAW.
Jurisdiction of subjects relating to 730
CRIMINAL PROSECUTIONS.
Rights of accused in all 213
Security as to accusations, and trial 212
CRITICISM. *See also* DEBATE.
Of the House and its proceedings, in debate 361
Of the Speaker 362
Of the motives of Members 363
CRUEL PUNISHMENTS.
Not to be inflicted 215
CURRENCY.
Jurisdiction of subjects relating to 722
CUSTODY.
Procuring attendance of witness in, from other House 345
CUSTOMHOUSES.
Customs, jurisdiction as to 741
Jurisdiction as to buildings for 739
Special oversight jurisdiction 744
DAIRY PRODUCTS.
Jurisdiction of bills relating to 715
DAMAGES TO PROPERTY.
Bills of payments for, banned with exceptions 822
DAMS.
Jurisdiction of subjects relating to 732, 739
DAY.
Journal dated as of legislative 69
Speaker takes Chair on each legislative 621
DEAN OF THE HOUSE.
Administers oath to Speaker 198
DEATH.
Bills for payment of certain claims against the United States for, banned 822
Ceremonies for deceased Members 724
Of officers of House, vacancies caused by may be filled temporarily by Speaker 640
Of Member, vacancy caused by 18
Of President or Vice President of United States 155, 244, 252
Of Speaker 28

Section

DEBATE.
Exhibits.
Use of in debate 622, 963, 964
Freedom of.
Members not to be questioned for, in another place 92
Members of Parliament exempted from question as to 287, 302, 309
Not to be interfered with by other House by notice of 308
Privilege of Members of Parliament as to 287
Obtaining the floor for.
Conditions under which a Member's right to the floor is subjected to the will of the House 355
Member to speak but once, except one Member in reply 959
Member who has spoken to the main question may speak to an amendment 465, 959
Member's right to close debate on amendment considered under five-minute rule 959
Morning-hour debates 951
Motion to be stated before 904
Obtaining the floor in debate 945
One-minute speeches 950
Oxford-style debates 952
Parliamentary law as to recognition by the Speaker 356
Procedure of the Member in seeking recognition 354
Recognition of Members by the Speaker for debate, generally 949–956
Right of a Member to be heard a second time 357
Special-order speeches 950
Rights of Member as to opening and closing in debate 958
The hour rule for debate 957
Interruptions of.
Interruptions in 364
Interruption of a Member in debate 946
Certain motions only in order when a question is under 911
Member having the floor in, not to be interrupted by motions 393
Member in, may be interrupted by conference report 1077
Messages received during 561
The call to order in debate 960, 961
Words taken down in debate 960, 961
Disorder in.
Calls to order 364, 960, 961
Disorder and interruptions during 364
Disorderly words taken down and reported from Committee of the Whole 369
Impertinent, superfluous, or tedious speaking 359

Section

DEBATE—Continued
Disorder in—Continued
Members censured for disorder in 65
Parliamentary law as to taking down disorderly words 368
Parliamentary method of silencing a tedious Member 365
Rules of debate restraint on captiousness of Members 285
Warm words and assaults 367
Personalities, references to other House, committees.
Criticism of the Speaker 362
Debate, proceedings, and Members of the other House 371, 372, 945
Decorum and abstention from personalities 361, 945
Duty of the Speaker to prevent expressions offensive to the other House 374
Language reflecting on the House 360
Motives of Members not to be arraigned 363, 945
Reference to proceedings of committees 360
Reference to the Executive 370, 945
Reference to presumptive major-party nominee for President 370
Reference to occupants of galleries 966
Relevancy of 945, 948
Closing of, in the House.
Effect of order of yeas and nays in closing 80
Effect of previous question on 994
Not precluded until the negative has been put 490
Limitations on.
Forty minutes of:
After previous question is ordered 999
On motion to suspend the rules 891
On certain nongermane amendments between the Houses 1070, 1072
On nongermane Senate amendments included in conference report 1089–1091
Recognition for 955
Limit of, on appeals 627, 629
Morning-hour debate 951
On conference reports, and on certain motions relating to amendments between the Houses 1084, 1086
On certain secondary motions 911
On question of order, within Speaker's discretion 628
On questions of privilege 698
On motion to instruct conferees 1078
On motion to reconsider 1010
On motion to strike out enacting words 989
On rescission bills and deferral resolutions ..... 1130(6a)

Section

DEBATE—Continued
Limitations on—Continued
Forty minutes of: —Continued
One-minute speeches 950
Oxford-style debates 952
Special-order speeches 950
Strictly enforced 957
Ten minutes of:
On amendments submitted in advance and printed in Record 987
On motion to recommit with instructions 1001, 1002a
Twenty minutes of:
On motions to discharge 892
Under various laws permitting congressional approval 1130
General debate in Committee of the Whole.
Closing of, in Committee of the Whole 978, 979
In Committee of the Whole under the old parliamentary usage 326
Five-minute debate.
Closing five-minute 987
Closing five-minute, in Committee of the Whole 987
Five-minute, on motion to dispense with Calendar Wednesday 900
Member's right to close debate on amendment considered under the five-minute rule 959
Reading and amendment under the five-minute rule 980
Recognition for, under the five-minute rule 980
Rule as to five-minute, in Committee of the Whole 978
Ten minutes on amendments previously printed in Record even though debate under is limited 987
Time not yielded under five-minute 980
Questions not debatable.
Amendment to title decided without 922
Appeals as to priority of business decided without 884
Correction of reference of public bills to be made without .. 825
Motions to adjourn, lay on the table, and for the previous question not debatable 911
Motion that Journal be read 621
Motion to discharge a committee not debatable (except under clause 2, rule XV)..... 406, 867
Under former rule XXX, questions as to reading of papers were determined without 965
Record of. See CONGRESSIONAL RECORD.
Relevancy of
Requirement of 945
Application of rule 948

Section

DEBATE—Continued
Relevancy of —Continued
Irrelevant remarks removed from Record by unanimous consent only 687
In general.
Course of the Member when business concerning himself is debated 375
In standing and select committees 318
Morning-hour debates 951
Obsolete practice as to adjournment of debate 444
Obsolete practice as to Member's advice during points of order 507
On bills, usually occurs before engrossment and third reading 498
One-minute speeches 950
Oxford-style debates 952
Participation of the Speaker in debate 358, 947
Quorum necessary during 54, 510
Special-order speeches 950
Under reservation of right to object to a unanimous-consent request 381, 872
DEBT.
Claims for slaves 232
Jurisdiction of subjects relating to bonded 741
None incurred in aid of insurrection to be paid 232
Power of Congress to pay public 117
States restricted as to tender in payment of 146
Validity of those contracted prior to the Constitution 194
Validity of debt of the United States not to be questioned 232
Debt limit, rule for establishment of statutory 1104
DECISIONS. *See* APPEAL.
DECLARATIONS OF WAR.
Congress to make 127
Jurisdiction as to 729
War Powers Resolution ..... 1130(2)
DECLINATION.
Of seat by Member 20
DECORUM. *See also* DEBATE.
As to sitting in place 353
Assaults and affrays 367
Attire 622, 962
Call to order for transgressions in 364, 960, 961
Clerk to preserve, at organization of the House 643
Committees, preservation of 369, 787, 803
Conduct of counsel in investigation 803
Conduct of Members in the Hall 962

Section

DECORUM—Continued
Decorum of Members in debate, *see* DEBATE.
Disorder in Committee of the Whole 331
Member may speak from any place on floor 945
Members' presence when business concerning Member debated 375
Movements of Member during voting 506
Power of House to punish and expel for breaches of 62
Exhibits, use of 622, 963, 964
Speaker preserves, on floor 331, 622
Smoking forbidden 962
Use of wireless telephone or personal computer forbidden 962
Wearing of hats forbidden 377, 962
DEDUCTIONS.
From the compensation of Members 86, 671
From the compensation of Members for State income taxes 648
DEFENSE.
Power of Congress to provide for public 117
Jurisdiction of subjects relating to public 718
Counsel for, in criminal cases 213
DEFENSE PRODUCTION.
Jurisdiction over subjects related to 722
DEFICIENCIES.
Jurisdiction of appropriations for 716
DEGREE.
Of amendments 922, 923
Of amendments between the Houses 529
DELEGATED POWERS.
Of the Constitution 217
DELEGATES.
Admitted to floor of House 678
Clerk formerly kept stationery accounts of 642
Clerk to distribute certain documents to 647
Compensation of 86
Former de novo votes in House where vote decisive in Committee of Whole 985
Elected to committees 675
Establishment and nature of office 675
From District of Columbia, formerly required to be elected to the former Committee on District of Columbia 675
From territory of American Samoa 675
Impeachment began at instance of a 603
May have been appointed a teller 1013
Formerly could be appointed Chairman, Committee of the Whole 970
May be appointed a conferee 676

Section

DELEGATES—Continued
May be appointed to select committee 676
May call a Member to order 960, 961
Powers and privileges of, on floor and in committee 603, 675, 676, 960, 970, 1030
Powers and privileges of, in Committee of the Whole 675
Rooms of, in office buildings 1114
Sergeant-at-Arms formerly disbursed pay of 648
Sworn 675
DEPARTMENT OF AGRICULTURE.
Jurisdiction of appropriations for, and bills relating to..... 715, 716
DEPARTMENT OF DEFENSE.
Jurisdiction of matters relating to 718
DEPARTMENT OF ENERGY.
Jurisdiction over general management of 721
DEPARTMENT OF JUSTICE.
Jurisdiction of subjects relating to 730
DEPARTMENTS. *See* EXECUTIVE DEPARTMENTS AND AGENCIES.
DESERTION.
Certain private bills to correct records are banned 822
DESIGNATION OF PUBLIC WORKS.
Consideration prohibited..... 1068a
DESK, CLERK'S. *See* CLERK'S DESK.
DILATORY MOTIONS.
Amendments printed in Record may not be 987
Forbidden pending report from Committee on Rules 857
Not to be entertained by the Speaker 903
One motion to adjourn only in order pending motion to suspend rules 890
Right to demand yeas and nays not to be overruled as 77
DIRECT TAX. *See also* TAXES AND TARIFFS.
DIRECTOR OF NON-LEGISLATIVE AND FINANCIAL SERVICES.
Former position and functions of 664
DISABILITIES.
Of President or Vice President..... 155, 244, 252
Political, arising from disloyalty 232
Consideration of bills removing 730
Of President-elect or Vice President-elect 244
DISAGREE, MOTION TO. *See* AMENDMENTS BETWEEN THE HOUSES.
DISAGREEMENT.
President may adjourn Congress in a certain case of 171
Stage of, *see* AMENDMENTS BETWEEN THE HOUSES.
DISAPPROVAL PROVISIONS.
Expedited procedures with respect to executive actions 1130

Section

DISCHARGE.
Motions to, of a committee 406, 892
Motions to, under certain public laws 1130
Motions as to Committee of the Whole not privileged 339
Motion to discharge a committee from consideration of vetoed bill 108
Of a committee, from a resolution of inquiry 867
DISCIPLINE.
Of the militia 133
Of Members 62, 806
DISCOVERIES.
Congress may provide exclusive rights to 124
DISEASE.
Jurisdiction of subjects relating to, generally 721
Of animals 715
DISORDER.
Disorderly words taken down 369, 960, 961
Galleries or lobby, cleared by Speaker for 622
In Committee of the Whole 331, 332, 622
May interrupt reading of Journal 621
Parliamentary law as to taking down disorderly words 368
Parliamentary law as to taking down words in Committee of the Whole 369
Power of Chairman of Committee of the Whole as to, in galleries and lobby 970
Power of each House to punish for 62–66
Proceedings in case of, on the floor 367
DISQUALIFICATION.
As judgment in impeachment 41, 619
Members not to hold incompatible offices 97–101
Service of Committee on Standards of Official Conduct 806
DISQUALIFYING INTEREST.
Of a Member as to voting 376, 671, 672
DISTRICT OF COLUMBIA.
In general.
Bills relating to, as unfinished business 879
Home Rule Act, disapproval procedures under ..... 1130(5)
Jurisdiction as to Government buildings within 739
Jurisdiction as to parks in 732
Power of Congress as to legislation over 134, 135
Representation in Electoral College of 250
Second and fourth Mondays for business of 894
Former Committee on.
Jurisdiction transferred 723

Section

DISTRICT OF COLUMBIA—Continued
Delegate from, powers of. See DELEGATES.
DISTRICTS.
Adjustment of, to apportionment 227
Questions as to elections in relation to 228
Requirement that districts be equally populated 229
DISTURBANCE.
Galleries or lobby cleared by Speaker for 622
Of another in debate not in order 364
DIVISION.
Of papers for reference.
Of matter for reference to committees..... 421, 816, 818
Of bills for reference 816
Voting by.
Rule as to voting by 1012
Business suspended by failure of quorum 510
Decision by voice of majority—tie votes 508
Decisions of points of order during 507
Division of the House after determination by sound... 501, 1012
Interruption of, by demand for yeas and nays 77
Messages not received during rising vote or vote by tellers 562
Not to be interrupted by conference report 1077
Parliamentary provisions as to division, not applicable in the House 502
Questions of order arising during, decided peremptorily 628
Repetition of demand for division 1012
Two-thirds votes 509
Of the question for a vote.
As related to debate on amendment 482
Into substantive propositions 919, 921
Jefferson's discussion of 481
Motion to recede and concur divisible 525, 528d
Motion to strike out and insert not divisible 920, 921
Offsetting amendments to appropriation bills indivisible..... 1042, 1063a
Parliamentary law as to 480
Principles governing 921
Resolutions or orders reported by Committee on Rules not divisible..... 919, 921
Resolutions electing standing committees not divisible 919
DOCKYARDS.
Power of Congress over places purchased for 134
DOCUMENTS.
Reading of those, accompanying President's message 170
Clerk to distribute certain, to Members 650

Section

DOMESTIC VIOLENCE.
States may ask protection from 189
DOORKEEPING.
Doorkeeping duties of Sergeant-at-Arms..... 380, 658
History of former Office of the Doorkeeper 663a
DOORS.
Of the House kept by Sergeant-at-Arms 380, 658
Closed on call of the House when ordered by Speaker 1019
DRUG TESTING.
Rule providing for drug testing of Members, officers, and employees 635
DUE PROCESS OF LAW.
No person to be deprived of life, liberty, or property without ... 212
No State to deprive a person of life, liberty, or property without 225
DUTIES. *See* TAXES AND TARIFFS.
ECONOMIC AND EDUCATIONAL OPPORTUNITIES, COMMITTEE ON. *See* EDUCATION AND THE WORKFORCE, COMMITTEE ON.
ECONOMIC COMMITTEE, JOINT 1108
ECONOMIC REPORT.
Time for filing of, by President 169
ECONOMIC STABILIZATION.
Jurisdiction over subjects related to 722
EDUCATION.
Jurisdiction of subjects on..... 720, 729
EDUCATION AND LABOR, COMMITTEE ON. *See* EDUCATION AND THE WORKFORCE, COMMITTEE ON.
EFFECTS.
Security of, as to searches and seizures 211
ELECTIONS.
Of officers of the two Houses.
Of officers of the House except Speaker..... 29, 640
Of officers of House, except that Speaker may fill vacancies temporarily by appointment 640
Of officers of the Senate 37
Of President pro tempore of the Senate 313
Of Speaker 26, 312
Of Speaker and other officers of House..... 26, 30
Of Speaker pro tempore 314
Motion to proceed to election of Speaker of higher privilege than motion to correct the roll 644
Rule for, by ballot 1034
Of Representatives. See also CONTESTED ELECTIONS.
Apportioned among the States according to numbers 226
Apportionment of, jurisdiction as to 730
Apportionment of (obsolete provision) 14

Section

ELECTIONS—Continued
Of Representatives—Continued
Apportionments, first and last and minimum basis of 15
By the people 5
Campaign contributions, jurisdiction of matters relating to 724
Clerk receives testimony taken in contests 642
Contests affected by death 18
Each House judge of 46–51
Election by districts 228, 229
Functions of State executive 24
Jurisdiction as to laws relating 724, 728
Of Members, questions relating to, considered by House Administration Committee 724, 728
Power of each House to judge as related to State laws 47–50
Power to judge as related to law of Congress 51
Prima facie title, enrollment by Clerk not conclusive as to 644
Qualifications of electors 7
Question of final right as related to oath 204
Questions as to elections in relation to congressional districts 228
Regulation of times, places, and manner of 42, 43
Federal Elections Commission, disapproval of regulations ..... 1139(17)
Special elections in extraordinary circumstances 17, 43, 53, 310
Suffrage not to be abridged for race, color 234
To fill vacancies 17
Of Senators.
Of Senators 32, 34, 236
Congress not to interfere as to place of choosing Senators . 42
Vice President votes in case of tie in cases of contest in Senate 36
Of President of the United States and Vice President 149–153, 219–223, 249
Of electors of President and Vice President 151
No person to be elected President more than twice 249
Power of Congress to provide for special, for President 155
Majority of electors required to choose a President of the United States 221
Qualifications of electors of President as to loyalty 230
Jurisdiction of matters relating to 724
Election of President by House in certain cases 221–223
Election of Vice President by Senate in certain cases ... 221–223

Section

ELECTIONS—Continued
Of Senators—Continued
Congress to provide for case wherein death occurs among those from whom House and Senate choose President and Vice President respectively 246
ELECTORAL COUNT.
Constitutional provision for 219, 220
Jurisdiction of matters relating to 724, 728
ELECTORAL VOTES.
Transmittal and count of 220
ELECTORS.
Of President, appointment and numbers of 151, 250
Of President, qualifications of loyalty 226
Of President, voting of, and count of the votes 219
Of Senators, qualifications of 236, 238
Qualifications of Electors 151, 152
ELECTRONIC EQUIPMENT AND FORM OF PUBLICATION.
Committee publications available in electronic form 796
Wireless telephone and personal computer forbidden in Chamber 962
Voting and quorum calls by, *see* VOTING.
EMANCIPATION.
Of slaves, no compensation for 232
EMERGENCY PLANNING, PREPAREDNESS, AND OPERATIONS.
Office of 1125c
EMOLUMENTS.
Conditions on acceptance of, by officers 144
Of civil office under United States, increase of during term bars Senators and Representatives 96
EMPLOYEES.
Admission of, to the floor 678–681
Appointed by officers of the House 640
Application of employment laws to legislative branch, *see* CONGRESSIONAL ACCOUNTABILITY.
Clerk formerly disbursed pay of 642
Code of conduct for 1095
Compensation, retirement, and benefits, jurisdiction over 724
Consultant contractors 1095
Sergeant-at-Arms responsible for conduct of his 658
Drug testing of, *see* DRUG TESTING.
Duties of Committee on House Administration as to 724
Former rule on fair employment practices 1101
Former, admission of to floor 678, 921
Nondiscrimination in relation to 1095
Of committees, *see* COMMITTEE STAFFS.
Of House, relations to claims 1102

Section

EMPLOYEES—Continued
Prohibition on distribution of campaign contributions by 683
Spouses of, employment of 1095
To be assigned only to duties for which they are appointed 640
ENACTING WORDS, STRIKING OUT.
Rule relating to motion 988
Practice as to use of motion 989
ENEMIES.
Treason to consist in adhering to or aiding 181
Aid or comfort to those of the United States 232
ENERGY AND COMMERCE, COMMITTEE ON 721
ENERGY MATTERS. *See also* NUCLEAR ENERGY.
Jurisdiction over.
Coastal zone management 732, 739
Commercial application of energy technology 721
Conservation of energy resources 721
Energy information generally 721
Energy research and development 735
Interstate energy compacts 721
Interstate transmission of power 721
Mineral resources of public lands and mining 732
National energy policy generally 721
Naval petroleum and oil shale reserves 718
Water power 739
Expedited procedures contained in energy-related laws 1130
ENGAGEMENTS.
Validity of those entered into before adoption of Constitution .. 194
ENGROSSMENT.
Of a bill, question on, and procedure 941, 943
Properly done after a bill is amended 428
Reading in full not required 941, 943
Test of strength on 429
Endorsement of the title on an engrossed bill 431
ENROLLED BILLS.
As to raising a question of privilege over delay of, in reaching the President 572
As to signing of, by Speaker pro tempore 625
Authority of pro tempore presiding officers to sign enrolled bills 576, 632
Clerk, duties in connection with 648
Conditions of signing by the Speaker 624, 625
Parliamentary law as to enrollment 573
Practice of the two Houses of Congress as to enrollment 574
Presentation of, to the President 577
Privileged reports relative to 853
Report as to accuracy 625

Section

ENROLLED BILLS—Continued
Signing of, for presentation to the President 575
Signature vacated 625
ENROLLING CLERK.
To make no changes in text of a bill 573
ENUMERATION.
Of people for apportionment 15
Capitation or direct taxes to be proportioned to 140
ENVIRONMENTAL RESEARCH AND DEVELOPMENT.
Jurisdiction over subjects related to 735
EQUAL PROTECTION.
Of law, guaranteed 225
EQUITY.
Judicial power extends to all cases of 178
Limitation of judicial power in suits of 218
EQUIVALENT QUESTIONS. *See* QUESTION; AMENDMENTS BETWEEN THE HOUSES.
ERRORS.
Cancellation of signatures of an enrolled bill for..... 575, 625
Correction of, in enrollment of a bill 573
Correction of, in messages 565
Correction of, in reference of a bill to a calender 828
Correction of, in reference of bills, petitions 824, 825
Correction of, in reference of bills from Speaker's table 873, 874
Correction of, in the Journal by a committee 583
In a yea-and-nay vote 1017
In bills sent to the President 110
In former vote by tellers 1013
Questions of privilege affect integrity of proceedings 698
Rectifying of, after report by tellers 503
Use of joint resolutions to correct bills sent to the President 518
ESTABLISHMENT.
Of religion, Congress to make no law respecting 208
ESTIMATES.
Of appropriations, transmission of, to Congress 827
ETHICS.
Code of Official Conduct 1095
Committee on Standards of Official Conduct, *see* STANDARDS OF OFFICIAL CONDUCT, COMMITTEE ON.
Financial disclosure 1103
Former Select Committee on 738
Unofficial office accounts prohibited 1096
Limitations on use of frank 1097
Limitations on outside earned income 1099
Sanctions for ethical violations..... 62–66

Section

EVIDENCE.
Methods of taking 341–348, 802, 803
Duties of committee clerks as to 695
EX-MEMBERS. *See* FORMER MEMBERS.
EX POST FACTO LAW.
None to be passed 139
States not to pass 146
EXAMINATION. *See* WITNESSES.
EXCESSIVE BAIL OR FINES.
Not to be required 215
EXCISES. *See* TAXES AND TARIFFS.
EXCLUSION.
Of certain private bills 822
Of commemoratives 823
Of Member for holding incompatible offices 101
Of Member-elect for disqualification 12, 205
Of petitions, bills for cause 819, 824
EXCUSES. *See* ABSENCE.
EXECUTIVE. *See* PRESIDENT; EXECUTIVE DEPARTMENTS AND AGENCIES.
EXECUTIVE COMMUNICATIONS.
Transmission to House 827
Reference of 816, 873, 874
EXECUTIVE DEPARTMENTS AND AGENCIES.
Appropriations Committee to study organization and operation of 742
Congress may vest appointment of certain inferior officers in heads of 166
Congressional review of agency rulemaking ..... 1130(28)
Gallery for use of heads of 682
Heads of, admitted to the floor of the House 678
Jurisdiction of matters relating to reorganization of 723
No employees of, detailed to committee may be employed on professional staff except under certain conditions 779
Of Government, power of Congress to legislate as to 136
Title 5, U.S.C. 3101; authority to authorize appropriation for salary of clerks 1046
Reference of papers from 873, 874
Resolutions of inquiry of 864–868
President may require opinions from officers of 161
Privilege of, as to papers from files 696
Expenditures in, jurisdiction as to 723
EXECUTIVE EXPENSES.
Jurisdiction of appropriations for 716
EXECUTIVE OF STATE.
May apply for protection against domestic violence 189

Section

EXECUTIVE OF STATE—Continued
Power to demand fugitives from justice 185
EXECUTIVE OFFICERS.
Bound by oath to support the Constitution 196
EXECUTIVE POWER.
Vested in the President 149
EXPEDITED PROCEDURES.
For consideration of measures reviewing executive actions 1130
EXHIBITS.
Use of in debate 622, 963, 964
EXPENDITURES.
Of public money, account to be published 143
EXPERIMENT STATIONS.
Jurisdiction of bills relating to 715
EXPLANATION.
Of Member called to order in debate 960, 961
Personal, made by unanimous consent 945
EXPORT CONTROLS.
Jurisdiction over subjects related to 729
EXPORT DUTIES. *See* TAXES AND TARIFFS.
EXPULSION.
Power of the two Houses to punish by 62, 63, 66
Course of Member when subject to debate as to 375
Of a Delegate, question as to 675
Of Member-elect before taking the oath 300
EXPUNGING.
Of entries of Journal 71
EXTRADITION.
Of fugitives from justice in any State 185
EXTRAORDINARY OCCASIONS.
Power of President to convene Congress on 171
FACT.
Privilege of the Speaker to speak as to 358
Jurisdiction of Supreme Court as to 179
FAIR EMPLOYMENT PRACTICES AND APPLICATION OF CERTAIN LAWS.
History of former rules 1101
FAITH.
For public acts, records, and judicial proceedings of a State in other States 183
FALSEHOOD.
Not to be charged on Members in debate 363
FAME, COMMON.
As foundation for investigation 341
As a ground for impeachment 605
FARM CREDIT ADMINISTRATION AND FARM SECURITY.
Jurisdiction of matters relating to 715

Section

FEDERAL MANDATES.
Statements for conference reports relating to 1081, 1127
Committee reports must contain effect of accompanying measures on 790, 843, 845, 1127
Effective date of Unfunded Mandates Reform Act 1127
Motion to strike 991
Question of consideration to dispose of points of order raised under the Unfunded Mandates Reform Act of 1995 ..... 910, 1127
Rules Committee activity report to include waivers relating to 790, 1127
Rules Committee may not waive certain points of order under Unfunded Mandates Reform Act of 1995 1127
FELONY.
Conviction of Member for, nonparticipation in committee and House business 1095
Senators and Representatives not privileged from arrests for 90, 91
Relation of privilege to cases of 305, 306
Congress to punish, on the high seas 126
Extradition for 185
FILES. *See* PAPERS.
FINANCIAL AUDITS.
By Inspector General 667
House officers to cooperate in performance of 655, 660, 663
Of House and joint entities 667
FINANCIAL DISCLOSURE.
By Members, officers, principal assistants, and committee professional staff 1103
Ethics in Government Act 1103
Financial audits of House and joint entities 667
FINANCIAL SERVICES, COMMITTEE ON 722
FINES.
Excessive, not to be imposed 215
As condition of discharging Member arrested for absence 55
FIRST READING. *See* READING.
FISHERIES.
Jurisdiction of subjects relating to 732
Marine Fisheries Conservation Act, expedited procedures under ..... 1130(22)
FIVE-MINUTE RULE.
Applicability to committee hearings 802
Closing of debate under 987
Former rule proscribing committee sittings during 324, 801
Debate must be on the subject 948
Debate on motion to dispense with Calendar Wednesday 900

Section

FIVE-MINUTE RULE—Continued
Debate on amendments submitted in advance and printed in Record 987
Debate on appeal in Committee of the Whole 629
Reading and amendment of bills under 980
Pro forma amendments 981
FIX THE DAY AND HOUR, MOTION TO. *See* ADJOURN, MOTION TO.
FLAG.
Jurisdiction of, subject of 730
Pledge of Allegiance..... 687, 869
FLOOD CONTROL.
Jurisdiction of subjects relating to 739
FLOOR, HALL OF HOUSE.
Abuse of privilege of 679
Admission of representative of press and radio to..... 693, 694
Admission when the House is not sitting 680
Prohibition on distribution of campaign contributions on..... 650a, 683
Decorum of Members on, *see* DECORUM.
Duty of Sergeant-at-Arms to clear of nonprivileged persons 658
Electoral count held in 220
Exhibits, use of, *see* EXHIBITS.
Persons and officials admitted during sessions of the House 678, 680, 681
Sergeant-at-Arms enforces rules relating to privilege of 658
Speaker preserves order on 331, 622
Use of 677
Yielding of, in debate, *see* DEBATE.
FOOD PROGRAMS FOR CHILDREN IN SCHOOLS.
Jurisdiction over subjects related to 720
FORCES.
Conditions to make rules for land and naval 131
Land or naval, trial for crimes in 212
FOREIGN AFFAIRS.
Arms Export Control Act, expedited procedures under ..... 1130(16)
International commodity agreements, jurisdiction over 729
International economic policy, jurisdiction over 729
International education, jurisdiction over 729
International financial and monetary organizations, jurisdiction over 722, 744
International fishing agreements, jurisdiction over 732, 744
International waters, jurisdiction over 729
Limitation on loans to foreign entities ..... 1013(32)
Non-proliferation and nuclear export agreements..... 729, 1130(10)
President's relations to 165
Termination of Cuban Economic Embargo..... 1130(27)

Section

FOREIGN AFFAIRS, COMMITTEE ON. *See* INTERNATIONAL RELATIONS, COMMITTEE ON.
FOREIGN COIN. *See* COIN.
FOREIGN GIFTS AND DECORATIONS.
Constitutional prohibition 144
House rules regarding 753, 1100
Law regulating acceptance 145
FOREIGN MINISTERS.
Admitted to the floor of the House 678
Gallery for use of 682
FOREIGN NATIONS.
Judicial power extends to cases affecting certain 178
Limitations on suits of subjects of, against 218
Power of Congress to regulate commerce with 119
States not to make engagements with, except on conditions 148
Titles, gifts from 144, 1100
FOREST RESERVES AND FORESTRY.
Jurisdiction of bills relating to 715, 732
FORFEITURE.
In cases of, treason 182
FORM OF GOVERNMENT.
Republican, guaranteed to the State 189
FORMER MEMBERS, ADMISSION TO FLOOR. *See* FLOOR.
FORMS.
Of putting question:
For viva voce vote 630
On question of consideration 906
On engrossment and third reading of a bill 941
On the passage of a bill 499
Of resolutions of inquiry 865
Of reports from Committee of the Whole 333, 334
Of salutation of reception of messages 564
Of going into Committee of the Whole 328
Of oath of Members 197
FORTHWITH.
Reference with instructions to report 917
FORTS.
Jurisdiction of matters relating to 718
Power of Congress over places purchased for 134
FORTY MINUTES' DEBATE. *See* DEBATE.
FOURTEEN DAYS.
Discharge of resolutions of inquiry 864–867
FRANKING PRIVILEGE.
House Commission on Congressional Mailing Standards 1113
Limitation on use of 1097

Section

FRAUD.
In introduction of a bill 821
FREE CONFERENCE. *See* CONFERENCE.
FREEDOM.
Of religion, speech, the press, and right of assembly and petition 208
FUGITIVES.
From justice, extradition of 185
From service or labor, return of 186
GALLAUDET COLLEGE.
Jurisdiction of bills relating to 720
GALLERIES.
As to right to demand clearing of 382
Distribution, admission, and control of 682
Members may not introduce occupants in, to House 966
Power of Chairman of Committee of the Whole as to order in .. 970
Speaker may order, to be cleared 622
The Press Gallery 693
The Radio/TV Gallery 694
GOVERNMENT ACCOUNTABILITY OFFICE, ASSISTANCE TO COMMITTEES 1115
GENERAL APPROPRIATION BILLS. *See* APPROPRIATIONS.
GENERAL COUNSEL.
Office of..... 670, 1125b
GENERAL DEBATE. *See* DEBATE.
GENERAL REVENUE SHARING.
Jurisdiction over 723
GENERAL SERVICES ADMINISTRATOR.
Bills that become law deposited with 105, 109
GENERAL WELFARE.
Power of Congress to provide for 117
GEOLOGICAL SURVEY.
Jurisdiction of legislation relating to 732
GERMANE.
Amendments required to be germane 928
Amendment being considered, which would have been subject to a point of order, may be perfected by amendments germane to it 1058
Amendments imposing conditions, qualifications, and limitations 940
Amendments to bills amending existing law 939
Burden of proof as to germaneness 928
Committee jurisdiction as test of germaneness 934
Fundamental purpose as test of germaneness 933
A general provision not germane to a specific subject 937

Section

GERMANE—Continued
Instructions to committees and amendments thereto must be germane 930
One individual proposition not germane to another 936
Parliamentary law as to germaneness 467
Proposition to which amendment must be germane 929
Senate amendments and matter contained in conference reports, separate vote if not germane..... 931, 1089, 1090
Specific subjects germane to general propositions of the class .. 938
Subject matter as test of germaneness 932
Various tests of germaneness are not exclusive 935
GIFTS.
Acceptance of by House Administration Committee 753
Foreign 144
Gift rule 1100
GOVERNMENT.
Economy and efficiency in, jurisdiction over 723
Intergovernmental relationships, jurisdiction over 723
Republican form of, guaranteed to the States 189
Right of people to petition 208
GOVERNMENT OPERATIONS, COMMITTEE ON. *See* GOVERNMENT REFORM, COMMITTEE ON.
GOVERNMENT REFORM, COMMITTEE ON.
History and jurisdiction of 723
General oversight functions of..... 743, 749
Former requirement that oversight findings of to be included in reports of other committees 840
Responsibility as to commemoratives 823
Executive agencies must submit to any information requested relating to matter within its jurisdiction..... 342, 723
GOVERNMENT, SEAT OF.
Power of President to convene Congress at another place.... 82, 82a, 84, 171
Power of Congress to legislate for 134
GOVERNORS OF STATES.
Admitted to the floor of the House 678
Fill certain vacancies in Senate 34
Issue writs to fill vacancies in representation 17, 24
May apply for protection against domestic violence 189
Power to demand fugitives from justice 185
GRAND JURY.
Indictment by, as related to trial for crime 212
GRANTS.
Of land, judicial power extends to cases affecting certain 178
GRIEVANCES.
Right of people to petition for redress of 208

Section

GROUNDS.
Jurisdiction as to occupied or improved 739
GUAM, DELEGATE FROM. *see* DELEGATES.
HABEAS CORPUS.
Suspension of writ of 138
HALL OF THE HOUSE. *See* FLOOR, HALL OF HOUSE; GALLERIES.
HARBORS.
Jurisdiction of subjects relating to the improvement of 739
HATCH ACT.
Jurisdiction over subjects related to 723
HATS.
Not to be worn by Members in the House 377, 962
HEADS OF DEPARTMENTS. *See also* DEPARTMENTS.
Admitted to the floor of the House 678
Congress may vest appointment of certain inferior officers in .. 166
Gallery for use of Cabinet 682
Rule for reference of papers from 873, 874
HEALTH.
Jurisdiction over subjects related to generally 721
Care and facilities supported by general revenues, jurisdiction over 721
Care supported by payroll deductions, jurisdiction over 741
Biomedical research and development, jurisdiction over 721
Public health and quarantine, jurisdiction over 721
Veterans' health care, jurisdiction over 740
Human nutrition, jurisdiction over 715
HEARINGS.
Exclusion of Members and public from 798
Five-minute rule when examining witnesses in 802
On appropriation bills hearings and reports to be available three days in advance of consideration 852
Rules to be adhered to in 746, 798, 803
HIGH CRIMES AND MISDEMEANORS, IMPEACHABLE OFFENSES. *See* IMPEACHMENT.
HIGH SEAS.
Punishment of piracies and felonies on 126
HISSING.
Not in order during debate 364
HISTORIAN.
Office of House 669
HOLIDAYS AND CELEBRATIONS.
Jurisdiction of bills relating to 723
HOLMAN RULE.
Decisions under Holman rule (in brief) 1062
HOMELAND SECURITY.
Committee on 723a

Section

HOMELAND SECURITY—Continued
Former select committees on 723b
HOMES, SOLDIERS'. *See* SOLDIERS' HOMES.
HONORARIUM.
Limitations on..... 1095, 1099, 1103
HOUR OF MEETING.
Speaker takes Chair at 621
Fixed 621
Standing order as to, expires with the session 386
Jurisdiction of orders as to daily 733
Motion to fix..... 911, 913
HOUR RULE.
Of debate 957
HOUSE ADMINISTRATION, COMMITTEE ON.
Allowances of Members and committees, authority to adjust 86, 88
Approval of reserve fund for committee expenses 763
Availability for one day of reports on committee expense resolutions..... 851, 764, 765
Chairman and four members serve on Joint Committee on the Library 1110
Chairman and four members serve on Joint Committee on Printing 1111
Details to committees from Government agencies permitted by 779
Duty as to acceptance of gifts 679d
Duty as to approval of certain employment settlements 679e
Duty as to relations of officers and employees to claims 1102
Duty as to direction of Inspector General 752
[Former] Duty as to enrolled bills 754
Duty as to termination of LSOs 88a
Former Subcommittee on Administrative Oversight 744
History, jurisdiction, and duties of..... 724, 750
Oversight responsibilities 743
Privileged reports from 853
Reports on committee expense resolutions..... 763, 764
Reports on election cases 853
Responsibilities relating to committee staff..... 776, 779
HOUSE AS IN COMMITTEE OF THE WHOLE.
Procedure in 424–427
Procedure in generally applicable to House committees..... 407, 792
HOUSE CALENDAR.
Certain bills placed on, to await action of House 828
Bills on, considered on Calendar Wednesday 900
Bills on, considered during "Morning Hour" 880

Section

HOUSE OF COMMONS.
Members of.
Common fame as ground for investigation of 341
Privilege of..... 287–289, 305, 307
Relation to the sovereign 309
Powers of and Procedure in.
Call of the House 311
Election of Speaker 312
Entry of votes in Journal of..... 581, 582
Jurisdiction of as to impeachments 601
Motion to strike 468
Parliamentary law as to the adjournment of the Lords and Commons 584
Possession of a bill by 437
Power to punish for contempt 296
Previous question 461, 463
Principles as to disagreeing, insisting, and adhering 521
Privileged motions 447
Proceedings in cases of assaults and affrays 367
Receipt of address 316
Rules as related to the privilege of minorities 283
Sessions of Parliament 588
Voting in..... 502, 505
HOUSE OF REPRESENTATIVES.
Part of Congress 3
Accounts, jurisdiction of matters relating to 724
Assignment of rooms in office buildings 1114
Attendance of, at an impeachment trial 617
Authority as to treaties..... 594–599
Bicentennial, Office of 669
Bills for raising revenue to originate in..... 102
Choice of President by..... 221, 222
Chooses Speaker and other officers 26–30, 640
Composed of Members chosen by people 5–7
Confirms nomination of Vice President 253
Contingent fund (applicable accounts of the House), leave to report on expenditures at any time 853
Contingent fund (applicable accounts of the House), jurisdiction of matters relating to 724
Door of, kept by Sergeant-at-Arms 380, 658
Early organization of 1126
Electoral votes to be counted in presence of 219
Employment of persons, jurisdiction of matters relating to 724
Has power of impeachment 31
Historian for 669
Indecent language against, not permitted in debate 360

Section

HOUSE OF REPRESENTATIVES—Continued
Its power to make rules ... 58–60
Leadership, compensation, and emoluments of ... 86, 89
Library, Clerk's ... 650
Library, jurisdiction of matters relating to ... 724
May it prescribe qualifications of Members? ... 12
Meets at 12 m ... 6, 621
Members, *see* MEMBERS.
Officers, *see* OFFICERS.
Place of meeting, *see* PLACE.
Power of President to convene or adjourn ... 171
Power to punish and expel its Members ... 62–66
Questions of privilege affecting ... 698–668
Required to keep a Journal ... 68
Rules, *see* RULES.
Services, jurisdiction of matters relating to ... 724
Use of Hall of ... 677
Vacancies in ... 17–25
HOUSE OFFICE BUILDINGS.
Administration of, jurisdiction of matters relating to ... 724
Assignment of rooms in ... 1114
Jurisdiction of matters relating to ... 739
HOUSE OFFICES.
Compilation of ... 1113–1125c
HOUSE RECORDING STUDIO. *See* RECORDING STUDIO.
HOUSE RESTAURANT. *See* RESTAURANT.
HOUSES.
Relation between two of Congress.
Provisions of Legislative Reorganization Act of 1946 applicable to both ... 1106–1107
Bill from one laid on the table in the other ... 520
Communicate fact of rejection of a bill ... 568
Complaint by one House of conduct of a Member of the other ... 373
Debate and proceedings in the other House not to be noticed in debate ... 371
Duty of the Speaker to prevent expressions offensive to the other House ... 374
Do not communicate votes by which bills are passed ... 567
Each judge of elections ... 46
Information transmitted as to bills ... 520
Messages between to be sent only when both are sitting ... 570
Messages from the President usually sent to both at once . 571
Neither should encroach on the other ... 308
Procedure when an inquiry in one, implicates a Member of the other ... 323

Section

HOUSES—Continued
Relation between two of Congress—Continued
Procuring attendance of witness in custody of other House 345
Questions asked by committee, not by message 569
Questions as to prerogatives committed to conference 531
Relations of, as to summoning Members or officers as witnesses 292
Right of each, to inspect Journal of the other 582
The other House and its Members not to be criticized in debate 372
Private.
Security of, as to searches and seizures 211
As to quartering of soldiers in 210
HOUSING.
Jurisdiction of matters relating to public and private 722
HOWARD UNIVERSITY.
Jurisdiction of matters relating to 720
HURRICANE KATRINA.
Select Committee on 1112b
IMMIGRATION.
Power of Congress over 137
Jurisdiction of subjects relative to 730
IDENTIFICATION OF DOCUMENTS, MINIMUM STANDARDS FOR.
Expedited procedures with respect to ..... 1130(32)
IMMUNITIES.
Of citizens not to be abridged 225
Of citizens in States other than their own 184
Of witnesses before committees 343
IMPEACHMENT.
Civil officers removable by 173
As to who is a civil officer 174
Nature of impeachable offenses 175
Later impeachment inquiries 176
Cases of, not to be tried by jury 180
House has sole power of 31
Senate alone tries 38
Conviction by two-thirds only 38
Judgment in cases of 41
President not to pardon in cases of 162
Jurisdiction of Lords and Commons as to 601
Parliamentary law as to accusation in 602
Inception of proceedings in the House of Representatives 603
A proposition to impeach a question of privilege 604
Investigation of charges 605
Procedure of committee in investigating 606
Common fame as ground for investigation with view to 341

Section

IMPEACHMENT—Continued
Carried to the Senate 607
The writ of summons for appearance of respondent 608
Exhibition and form of articles 609
Parliamentary law as to appearance of respondent 610
Requirements of the Senate as to appearance of respondent 611
Answer of respondent 612
Other pleadings 613
Examination of witnesses 614
Attendance of the Commons 616
Attendance of the House of Representatives 617
Voting on the articles in the trial 618
Judgment in 619
Not interrupted by adjournments 620
Continued before the Senate from session to session 592
IMPORTATION.
Of persons, power of Congress over 137
Of intoxicating liquors 248
IMPORTS. *See* TAXES AND TARIFFS.
IMPOSTS. *See* TAXES AND TARIFFS.
IMPOUNDMENT.
Control Act of 1974..... 1130(6a)
Impoundment resolutions, definitions, and procedures for consideration of..... 1130(6a)
Deferral of appropriations, jurisdiction over 716, 717
IMPRISONMENT.
Of person who assaulted a Member 91
As to termination of an order of 386
INABILITY.
Of President or Vice President..... 155, 254, 255
Of President-elect or Vice President-elect 244
INAUGURATION.
Ceremonies of 159
Joint Committee on 1112
Of President when day falls on Sunday 150
INCAPACITY. *See also* VACANCY.
Of Members-elect 205
Of the President 256
INCOME.
Limitation on outside earned 1099
INCOMPATIBLE OFFICES.
Relation of Members to 97–101
As to what are 98
Jurisdiction of matters relating to 730
INDEFINITE POSTPONEMENT.
Use of the motion for 443

Section

INDEX.
Of the Journal, Clerk to make 647
INDIANS.
Jurisdiction of subjects relating to 720, 732
Authority of House as to Indian treaties 598
Power of Congress to regulate commerce with 119
Excluded from basis of representation where not taxed 226
INDICTMENT. *See also* IMPEACHMENT.
Of grand jury as related to trial for crime 212
INFORMAL RISING OF COMMITTEE OF THE WHOLE. *See* COMMITTEE OF THE WHOLE.
INFORMATION.
Classified, oath not to disclose 1095
To be given to Congress by the President 169, 170
INHABITANCY.
As qualification of a Member 11
As qualification of a Senator 35
As qualification of the President of the United States 154
As modifying the vote of presidential electors 219
As a condition of citizenship in the United States and the States 225
INLAND WATERWAYS.
Jurisdiction of matters relating to 739
INQUIRY.
Resolution of.
As related to the Executive 868
Discharge of committee from 867
Form and delivery of 865
Privileged status of 866
Rule relating to 864
For an investigation. See INVESTIGATIONS.
Parliamentary.
No appeal from responses to 629
INSERT, MOTION TO. *See* AMENDMENT.
INSIST, MOTION TO. *See* AMENDMENTS BETWEEN THE HOUSES.
INSPECTION LAWS.
Rights of States to levy duties or imposts, to execute 147
INSPECTOR GENERAL.
Office of 667
INSTRUCTIONS. *See* COMMIT; CONFERENCE; DISCHARGE; RECOMMIT; RECOMMITTAL; REFER.
INSULAR AFFAIRS.
Jurisdiction of revenue matters 741
Jurisdiction of subjects relating to, generally 732

Section

INSULT.
Member censured for, to the House 65
Bills or petitions excluded for being insulting 818, 891
INSURRECTION.
Suppression of 132
Debts incurred in suppressing, not to be questioned 232
Debts incurred in aid of, not to be paid 232
Participation in, as a disqualification for office 230
INTELLIGENCE, PERMANENT SELECT COMMITTEE ON.
History and jurisdiction of 785
Oversight jurisdiction of 744
Procedures for disclosure of classified information..... 785, 1095
INTEREST.
Disqualifying personal, as to voting..... 376, 671, 672
INTERGOVERNMENTAL COOPERATION, JURISDICTION OVER 723
INTERNAL REVENUE TAXATION, JOINT COMMITTEE ON 1109
INTERNAL SECURITY.
Jurisdiction over 730
INTERNATIONAL RELATIONS, COMMITTEE ON.
History and jurisdiction of 729
Special oversight functions of 744
Reports private bills 817
INTEROCEANIC CANALS.
Jurisdiction of matters relating to 718
INTERPARLIAMENTARY AFFAIRS.
Office of 1124
INTERRUPTIONS.
Procedure as to, during debate 364
Member having the floor not to be interrupted by motions 946
Of Member having the floor in debate 945
Of Member having the floor, by a call to order 393
Of business or debate, by conference report 1077
Of a record vote 1018
Of record vote by recess not permitted 586
Of the call of committees 881
INTERSTATE COMMERCE.
Jurisdiction of bills relating to 721
INTERSTATE COMMERCE COMMISSION, JURISDICTION OVER 739
INTERSTATE COMPACTS. *See* COMPACTS.
INTERVENING QUESTIONS. *See* PRIVILEGED QUESTIONS; PRIVILEGE, QUESTIONS OF.
INTOXICATING LIQUORS.
Jurisdiction of bills relating to interstate commerce in 730
Jurisdiction as to sale of, in District of Columbia 723
Transportation and importation under the 21st amendment 248

Section

INTRODUCER, RIGHT TO SPEAK TWICE. *See* DEBATE.
INTRODUCTION OF BILLS. *See* BILLS.
INVASIONS.
Repelling of 132
States to be protected against 189
Suspension of writ of habeas corpus for 138
INVENTORS.
Congress may provide for patents for 124
INVESTIGATION. *See also* COMMITTEES; CONTEMPT; COUNSEL; IMPEACHMENT; WITNESSES.
Common fame as a ground for 341
Earlier and later practice as to, inquiries at the bar of the House 344
Jurisdiction of resolutions ordering 733
Method of obtaining testimony of a Member of the other House 347
Procedure when a Member or Senator is involved 321–323
Procuring attendance of a witness in custody of the other House 345
INVOLUNTARY SERVITUDE.
Not to exist except for punishment for crime 224
IRRIGATION AND RECLAMATION.
Jurisdiction of subjects relating to 732
ISLAND POSSESSIONS.
Jurisdiction of matters relating to 732
JEFFERSON'S MANUAL.
As source of general parliamentary law 60
Part of rules of House 1105
Purposes and methods of preparation of (footnote) 283
Text of 283–620
JEOPARDY.
Of life and limb, not to occur twice 212
JOINT COMMITTEES. *See* COMMITTEES, JOINT.
JOINT RESOLUTIONS.
Nature and use of 397
Clerk certifies to passage of 648
For amendments to Constitution, not approved by President ... 115
Division of, not in order on vote on engrossment or passage 921
Signed by Speaker 624
Use of, to correct an error in a bill sent to the President 518
Used for abrogating treaties 599
Used for amendment to the Constitution 191
JOINT RULES.
Jurisdiction as to 733
Abrogated 61, 316
Reference to 1105

Section

JOINT SPONSORSHIP. *See* BILLS; MEMORIALS.
JOURNAL.
The official record.
Clerk to publish and distribute 647
House required to keep and publish 68
Not to go out of Clerk's custody 352
Secrecy of portions of 68
The official record 69, 582
Entries in.
Record of proceedings only 70
Clerk to note questions of order in 628, 647
Conditions under which reports are printed in 422
Control of House over 71
Of amendments 580
Of certain messages 815
Of conference reports 542
Of hour of adjournment 790
Of introduction of bills, petitions, and resolutions in 818
Of Members noted to make a quorum 1020
Of messages from President 875
Of motions 902
Of motions (obsolete provisions as to) 578
Of motions to discharge committees 892
Of names of absentees when quorum fails in Committee of the Whole 982
Of names of Members appearing during call of the House . 1021
Of President's objection to a vetoed bill 104
Of questions and answers in, at examinations at the bar of the House 343, 344
Of questions postponed or laid on the table 579
Of record of votes 72
Of former recorded teller votes in Committee of the Whole or in House 1013
Of reference of public bills, memorials 825, 826
Of report of enrolled bills presented to the President 577
Of titles of reported bills 831
Of votes in, in the House of Commons 581
Of yeas and nays generally 75–80
Of yeas and nays on vetoed bill 104
Relations of, to presence of a quorum 55, 1027
Words of censure 65
Reading of.
For approval 621
As related to quorum 55, 1027
Business not transacted before 621
Disorder during 621

Section

JOURNAL—Continued
Reading of—Continued
Interruption of 621
Member sworn in before 201, 621
Motion to adjourn before 621
Motion that, be read in full only upon rejection of Speaker's approval 621
Place in order of business 869
Reading of, not interrupted by conference report 1077
Reading of, may be interrupted by a question of privilege . 710
Amendment and approval.
Amendment of..... 74, 621
Approval of, by House 73, 621
Correction of, through a committee 583
Postponement of record vote on, approval of 1030
Preliminary approval by Speaker 621
JUDGES.
Bound by Constitution and laws 195
Of Supreme Court, President appoints 166
Of Supreme Court, admitted to the floor 678
Of Supreme Court, gallery for use of 682
Tenure and compensation of 177
As to impeachable offenses by 174–176
JUDGMENT IN IMPEACHMENTS. *See* IMPEACHMENT.
JUDICIAL EXPENSES.
Jurisdiction of appropriations for 716
JUDICIAL OFFICERS.
Bound by oath to support the Constitution 196
JUDICIAL POWER.
Jurisdiction of Supreme Court 179
Limitations of, in suits in law and equity 218
Scope of 178
Vested in supreme and inferior courts 177
JUDICIAL PROCEEDINGS.
States reciprocally to give full faith and credit to 183
Jurisdiction of subjects relating to 730
JUDICIARY, COMMITTEE ON THE.
History and jurisdiction of 730
Reports private claims bills 730, 817
Records transferred to from former Committee on Internal Security 730
JURISDICTION.
Of committees of the House.
Conferred by uncorrected error in reference of public bill .. 825
Not conferred by erroneous reference of private bill 824
Of the Permanent Select Committee on Intelligence 744, 785

Section

JURISDICTION—Continued
Of committees of the House—Continued
Referrals to assure each committee opportunity to report on subjects within 816
Of the standing committees, severally.
Agriculture 715
Appropriations 716
Armed Services 718
Budget 719
Energy and Commerce 721
District of Columbia, former Committee on 723
Education and the Workforce 720
Financial Services 722
Government Reform 723
House Administration 724
International Relations 729
Judiciary 730
Merchant Marine and Fisheries, former Committee on 718, 732, 735, 739
Post Office and Civil Service, former Committee on 723
Resources 732
Rules 733
Science 735
Small Business 736
Standards of Official Conduct 737
Transportation and Infrastructure 739
Veterans' Affairs 740
Ways and Means 741
Of the United States.
As related to citizenship 225
Slavery and involuntary servitude forbidden in places under 224
Of the Supreme Court.
Original and appellate, of Supreme Court 179
JURORS.
All cases of crimes to be tried by, except in impeachments 180
Grand, indictment by, as related to trial for crime 212
Privilege of Members of Congress as to summons as 290, 291
Privilege of members of Parliament as to summons as 287
Relation of trial by, to impeachment 615
Right to trial by, in criminal prosecutions 213
Suits at common law tried by 214
JUSTICE.
An object of the Constitution 1
Extradition of fugitives from 185

Section

KINGS.
Gifts, titles, to be accepted on conditions 144
LABOR.
Return of fugitives from 186
Jurisdiction of regulation or prevention of importation of contract labor 720
Jurisdiction of matters relating to transportation labor 739
Jurisdiction of subjects relating to, generally 720
LAND FORCES.
Congress to make rules for 131
LANDS.
Alaska National Interest Lands Conservation Act, expedited procedures under ..... 1130(20)
Federal Land Policy and Management Act, expedited procedures under ..... 1130(21)
Indian, jurisdiction as to 732
Irrigation of, jurisdiction as to 732
Judicial power extends to cases affecting certain grants 178
Jurisdiction as to occupied or improved grounds 739
Jurisdiction of private claims to 679, 817
Mineral, jurisdiction of matters relating to 732
Public, jurisdiction of matters relating to 732
LAW.
As related to legislative functions.
As agency for prescribing qualifications 12
As related to power of House to elect officers 29, 30
Application of laws to legislative branch, *see* CONGRESSIONAL ACCOUNTABILITY.
Appropriations to be made by 143
Authority to administer oaths conferred by 59
Bill to be approved before becoming 104
Civil and criminal, jurisdiction of subjects related to 730
Fixes compensation of Representatives and Senators 86
Meeting of Congress by 45, 279
Of Congress as related to power to judge elections 51
Of State as related to House's power of judging elections 48–50
Passed over veto by two-thirds 104
Procedures contained in, for congressional vetoes of executive action 1130
Relation of, to power to determine rules 59, 388, 1130
Revision of, jurisdiction of subjects relating to 730
That of 1789 relating to administration of oath at organization 198
Parliamentary.
General, before adoption of rules 60

Section

LAW—Continued
Parliamentary—Continued
Jefferson's Manual as a statement of the parliamentary ... 284
Relations of the parliamentary law to the early practice of Congress 285
Making and execution of.
Congress to provide for calling forth militia to execute 132
Power of Congress to make 136
President to see that laws are faithfully executed 172
When made in pursuance of the Constitution the supreme law of the land 195
Relations of judicial power to.
Congress may fix places for trial of certain crimes by 180
Judicial power extends to all cases of 178
Jurisdiction of Supreme Court as to 179
Jury trial for suits at common 214
Limitation of judicial power in suits of 218
Of United States, judicial power extends to cases arising under 178
Rules of, in courts 214
Guarantees of liberty and property.
Due process of, no person to be deprived of life, liberty, or property without 212
Due process of, no person to be deprived of life, liberty, or property by a State without 225
Equal protection of, guaranteed 225
Impairing obligations of contract, no State to pass 146
No ex post facto, to be passed 139
States not to pass ex post facto 146
In General.
Application of laws to legislative branch, *see* CONGRESSIONAL ACCOUNTABILITY.
Certain, of States subject to revision and control of Congress 147
Of nations, offenses against 126
Punishment of, additional to impeachment 41
Treaties abrogated by 599
LAW LIBRARIAN.
Admitted to floor of the House 678
LAW REVISION COUNSEL.
Office of, establishment and duties of 1120
LAY ON THE TABLE, MOTION TO.
Conditions, precedence, and effect of.
Precedence and general effect and conditions of 911, 914
Conditions of, repetition of 918
Effect of, as to main question and secondary questions 914

Section

LAY ON THE TABLE, MOTION TO—Continued
Conditions, precedence, and effect of—Continued
May intervene before Member in charge begins debate 955
Not debatable 911
Not in order in Committee of the Whole 914
Older and modern use of 445
Relations to other motions.
May be applied to other secondary motions 914
Not in order after previous question is ordered 914
Relations of, to motion to reconsider 1009
Relations of, to the previous question 998
Application of.
Applicable to bills from the other House 519
Applicable to preamble of a resolution 414
Applicable to vetoed bill 108
Applicable to Senate amendments 528d
Not applied to a conference report 550
LEADERSHIP.
Bipartisan Legal Advisory Group, members of 670
Coordination of oversight plans 743
Joint recall authority 84
Member of on Budget Committee 758
Special order hours 950
Staff allowances 89
Staff floor privileges 678
Clearance of certain unanimous-consent requests 857
LEAVE FOR COMMITTEES TO REPORT AT ANY TIME. *See* COMMITTEES.
LEAVES OF ABSENCE. *See* ABSENCE.
LEAVE TO PRINT IN CONGRESSIONAL RECORD. *See* CONGRESSIONAL RECORD.
LEGAL TENDER.
States restricted as to making 146
LEGISLATION.
On general appropriation bills prohibited, *see* APPROPRIATION BILLS.
Power of Congress as to District of Columbia and ceded places 134
Power of Congress to legislate to enforce the 13th, 14th, and 15th amendments..... 224, 233, 234
Territorial, revision of, jurisdiction as to 732
LEGISLATIVE CALL SYSTEM 1016
LEGISLATIVE COUNSEL, OFFICE OF 1118
LEGISLATIVE DAY.
Speaker takes Chair on each 621
Journal dated as of 69

Section

LEGISLATIVE EXPENSES.
Jurisdiction of appropriations for 716
LEGISLATIVE OVERSIGHT BY STANDING COMMITTEES. *See* COMMITTEES.
LEGISLATIVE POWERS. *See also* CONGRESS, POWERS OF.
Of Congress 117, 136
Vested in Congress 3
LEGISLATIVE SERVICE ORGANIZATIONS 88a
LEGISLATIVE VETO.
Laws providing mechanisms for congressional disapproval 1130
LEGISLATURES OF STATES.
Function of, in prescribing times of elections of Representatives 42, 43
As related to qualifications of Electors 7
Choose Senators (obsolete) 32
Constitutional convention to be called on application of 190
In recess of, governor appoints Senator (obsolete) 34
May apply for protection against domestic violence 189
May empower State executive to make temporary appointment of Senator 236
Power as to joining or dividing of their States 187
Direct manner of appointment of electors of President 151
Power of Congress over places purchased with consent of 134
Members of, bound by oath to support the Constitution 196
Ratification of constitutional amendments by 190
LETTERS OF MARQUE.
And reprisal, Congress to grant 127
States not to grant 146
LIBERTY.
An object of the Constitution 1
No person to be deprived of it without due process of law 212
No State to deprive a person of, without due process of law 225
LIBRARIAN.
Preserves committee hearings 1107
Of Congress, admitted to floor of House 678
Assistant in Law Library admitted to floor of House 678
LIBRARY. *See also* CONGRESSIONAL RESEARCH SERVICE.
Of Congress, jurisdiction of Committee on House Administration as to 727
Of Congress, jurisdiction of matters relating to buildings and grounds 739
Of Clerk's office, certain books and documents to be retained in 650
Preserves committee hearings 1107
Joint Committee on 1110

Section

LIE.
Not to be charged against Member in debate 363
LIFE.
No person to be deprived of it without due process of law 212
No State to deprive a person of, without due process of law 225
Persons not to be put twice in jeopardy of 212
LIGHTHOUSES.
Jurisdiction of subjects relating to 739
LIMITATIONS.
On general appropriation bills, *see* APPROPRIATION BILLS.
On outside earned income 1099
On use of frank 1097
LINE ITEM VETO AUTHORITY.
Presidential authority ..... 1130(6b)
LISTS.
Presidential electors to make certain 219
LOANS (FOREIGN).
Jurisdiction of matters relating to 729, 730
LOBBY.
Speaker may order, to be cleared 622
Power of Chairman of Committee of the Whole as to order in .. 970
LOBBYING.
By committee consultants 1095
Jurisdiction of matters relating to 730
Gifts from lobbyists 1095, 1100, 1103
LOSS OF A BILL. *See* BILLS.
LOYALTY.
As related to the oath and qualifications 205, 230
Removal of disabilities as to 231
MACE.
Symbol of Sergeant-at-Arms 657
MAGAZINES.
Power of Congress over places purchased for 134
MAIL.
Delivery of 668
Jurisdiction of bills relating to 723
House Commission on Congressional Mailing Standards 1113
MAJORITY.
Required in elections.
Necessary for election on ballot vote 1034
Of Senators for choice of a Vice President 263
President chosen by 263
Speaker elected by 27, 312

Section

MAJORITY—Continued
In procedure of the House.
Constitutes quorum of a standing or select committee for certain actions 409, 798, 799, 805
Constitutes quorum of House 52, 53
Decisions of the House reached by 508
May reconsider a vote ordering yeas and nays 79
Questions as to priority of business decided by 884
To send bill to conference on motion 791, 1069, 1070, 1071
Rules to be a restraint on 283
Special requirements as to two-thirds vote 509
MANAGERS OF A CONFERENCE. *See* CONFERENCE.
MANNER OF ELECTIONS. *See* ELECTIONS.
MANUAL, JEFFERSON'S. *See* JEFFERSON'S MANUAL.
MARINE AFFAIRS.
Jurisdiction over subjects related to 732
MARINE HOSPITALS.
Jurisdiction as to 721
MARITIME JURISDICTION.
Judicial power extends to cases of 178
MARQUE, LETTERS OF.
Congress to grant 127
States not to grant 146
MASS MAILING.
Franking of 1097
MEASURES.
Congress to fix standard of 121
Jurisdiction of subjects relating to 735
MEDICARE COST CONTAINMENT.
Expedited procedures with respect to ..... 1130(31)
MEETING.
Of Congress.
Once every year 45, 242
Laws appointing different day for 243
Power of President to convene 171
Other power to convene 171
Time of 6
Jurisdiction of bills to change date of 730
Duties of Clerk at organization of the House 643–645
Administration of the oath at organization 198–204
Of the House.
Speaker takes Chair at hour of 621
Standing order as to daily hour of, expires with the session 386
Jurisdiction of orders as to 733

Section

MEETING—Continued
Of committees.
Of committees 407, 793, 805
Former rule proscribing committee sittings during five-minute rule 324, 801
Of managers of a conference 548
Of presidential electors in the several States 262
Power to sit and act inside United States 805
When chairman refuses to call 793
MEMBERS.
Election of. See ELECTIONS; CONTESTED ELECTIONS.
Vacancies by death, resignation. See VACANCIES.
Qualifications of. See QUALIFICATIONS.
Relations of, to oaths. See OATH.
Compensation, seats, rooms, and clerks.
Admission to floor of House, *see* FLOOR.
Clerk to distribute certain documents to 649
Clerk formerly kept stationery accounts of 642
Clerk to furnish to, a list of certain reports 646
Committee on House Administration may adjust certain allowances 86, 88
Compensation of 85–88, 258
Compensation may not vary until intervening Congress 258
Family and card galleries for use of 682
Franking privilege 1097, 1113
Jurisdiction over subjects related to 724
Jurisdiction over travel matters of 724
Mileage of, determined by a committee 85, 724
Nondiscrimination in employment by 1095
Members' Representational Allowance 88
Outside earned income of 1099
Rooms of, in office building 1114
Sergeant-at-Arms formerly disbursed pay and mileage of .. 648
Spouses of, employment of 1095
Travel on official business, designation by Speaker 636
Unofficial office allowances prohibited 1096
Privilege of.
Questions of privilege affecting, defined by rule 698
Arrest, privilege of Members from 90, 91
Arrest, parliamentary law as to arrest of a Member 307
Attitude of the House as to demands of the courts 291, 697
Privilege of Members 698
Jefferson's discussion as to going and returning 289
Jefferson's discussion as to rights of courts to summon as witnesses and jurors 290
Jefferson's review of privilege of members of Parliament ... 287

Section

MEMBERS—Continued
Privilege of—Continued
Members of Congress under the Constitution 288
Neither House to exercise authority over those of the other 373
Not to be questioned in another place for speech or debate 92, 93
Scope of privilege of speech and debate..... 93, 301
Parliamentary law as to questioning for speech or debate . 302
Parliamentary law of privilege as related to treason, felony 305
Power of the House to punish for attempts against..... 293, 299
Precedence of questions of personal privilege 698
Privilege of, of Parliament 287
Raising questions of privilege 698
Relations of, to privilege 301
Relations of the courts to parliamentary privilege 303
Rule for responding to subpoenas 697
Relations of sovereign to members of Parliament 309
Status of Member-elect as to 300
Attendance of. See ATTENDANCE.
Decorum of. See DECORUM.
Drug testing of. See DRUG TESTING.
Introduction of bills and petitions by. See BILLS; PETITIONS.
In debate. See DEBATE.
Right to seat.
Leave to report matters relating to at any time 853
Rights of, as to motion.
Conditions of motion to reconsider by 1003, 1004
In charge of bill, relations of, to previous question 997
Motions reduced to writing on demand of 902
Rights of, as to motions to discharge committees 892
Rights of, as to motions to suspend the rules..... 885, 888
Rights to demand question of consideration 906
Rights to have papers read.
Do not necessarily have a right to have papers read on plea of privilege 433
Former rights of, as to reading of papers in their places 434, 964, 965
Right of, to have paper read once 432, 964
But no right where question is not put 433
General rights as to procedure.
As to right to attend a select committee 410
As to right to attend committee hearing 798
Impeachment may be instituted on responsibility of 603
May appeal from decisions of Speaker 627, 629

Section

MEMBERS—Continued
General rights as to procedure—Continued
May not enter protests on the Journal 70
Right of, to cause a secret session 969
Right of, as to calling up bills taken from committees on motions to discharge 892
Rights of, as to placing adverse reports on the calendar 832, 893
Rights of, to demand the execution of a subsisting order 381, 872
Rights of, to inspect the Journal 582
Rights of, access to committee files 796
Voting of. See VOTING.
In general.
Memorial Day for deceased, jurisdiction of matters relating to 724
Prohibition on distribution of campaign contributions in Hall of House 683
MEMBERS-ELECT.
Admitted to floor of the House 678
Election of, to an incompatible office 99
Punishment of 62–66
Franking privilege 1113
Oath of, as related to quorum 56
Questions as to seating under disabilities of fourteenth amendment 231
Relations of, to incompatible offices 98–101
Status of, as to privilege, oath, committee service 300
MEMORIALS.
Introduction and reference of 816, 818, 825
Joint sponsorship of 825
Correction of reference of 824, 825
Duties of Speaker and Members in presenting 818
Exclusion of 824
Introduction by request 826
Nature of 389
MERCHANT MARINE.
Jurisdiction of, subjects relating to 718, 739
MERCHANT MARINE AND FISHERIES, FORMER COMMITTEE ON.
Former jurisdiction transferred 718, 732, 735, 739
MESSAGES.
Usages as to.
As to neglected bills 570
At organization of two Houses 56
Between the Houses as to vetoed bills 106
Certain, entered in Journal and Record 815

Section

MESSAGES—Continued
Usages as to—Continued
Certain required by law 169
Confidential, from the President or Senate 969
Correction and return of messages 565
Disposal of messages after reception 566
From the Senate, reference of 873, 874
From the Senate, Clerk may receive in adjournment 652
Information by message as to bills passed 567
Information by message as to rejection of bills 568
Informal rising of Committee of the Whole, to receive 330, 563
Questions asked by conference, not by message 569
Quorum not required during receipt of 1027
Received during a record vote 1018
Received, but not read in absence of quorum 55
Received during debate 561
Reception during voting, absence of a quorum 562
Salutation of messengers by the Speaker 564
Sent only when both Houses are sitting 560
Of the President.
Clerk may receive in period of adjournment 652
To Congress 168, 169, 571
Notice of approval of bills by President sent by 106
Reception and action on 170
Reading and action on, when bill is vetoed 107
Entered on Journal and Record 875
Rule of reference of 873–875
Reference and distribution of annual 875
METRIC SYSTEM.
Jurisdiction of matters relating to 735
MIGRATION.
Of persons, power of Congress as to 137
MILEAGE, ALLOWANCE OF.
Of Representatives 86
Sergeant-at-Arms formerly disbursed 648
Committee on House Administration ascertains 724
MILITARY ACADEMY.
Jurisdiction of matters relating to 718
MILITARY AFFAIRS.
Jurisdiction of subjects relating to 718
MILITARY AND NAVAL RECORDS.
Bills to correct, banned 822
MILITARY BASES.
Disapproval procedures relating to closures and realignments of ..... 1139(25)

Section

MILITARY PARKS.
Jurisdiction of subjects relating to 732
MILITARY RESERVATIONS.
Jurisdiction of matters relating to 718
MILITIA.
Congress to provide for calling forth 132
Congress to provide for organizing, arming, and disciplining ... 133
Right to bear arms 290
President Commander in Chief of, in certain cases 160
Trials for crimes in 212
MINERALS.
Jurisdiction of matters relating to 732
MINERS, WELFARE OF.
Jurisdiction of matters relating to 720, 732
MINES AND MINING.
Jurisdiction of subjects relating to 732
MINISTERS, PUBLIC.
Duty of President to receive 172
Foreign, admitted to the floor of the House 678
Gallery for use of foreign 682
Judicial power extends to cases affecting 178
Jurisdiction of Supreme Court in cases affecting 179
President appoints 166
MINORITY.
Committee staff for, *see* COMMITTEE STAFFS.
Debate equally divided for, on conference reports and amendments in disagreement 1086
Of managers of a conference may not submit a report 543
Reference of views of, on committee reports to Calendar 831
Rules for the protection of 283
Signing and filing of views of 833, 804
MINTS.
Jurisdiction of subjects relating to 722
MISDEMEANORS.
As to what are 175
Impeachable offenses 173, 175, 176
MONDAYS.
First, in December of meeting of Congress (obsolete) 45
Every Monday for suspension of rules 885
Second and fourth, for District of Columbia bills and motions to discharge committees 892, 894
MONEY.
Account of public, to be published 143
Appropriations of, considered in Committee of the Whole 973
Congress to coin and regulate the value of 121
Jurisdiction over deposit of public 741

Section

MONEY—Continued
No appropriation of, for armies for longer term than two years 129
Not to be drawn from Treasury except on appropriation 143
Power of Congress to borrow 118
Proper application of, and enforcement of payment of, jurisdiction as to 723
Public bills appropriating, placed on Union Calendar 828
States not to coin or issue 146
MONUMENTS.
Jurisdiction of bills relating to 732
MORNING HOUR.
Rule and practice for consideration of bills in..... 880, 881
For call of committees, place of, in order of business 869
Unfinished business in 879
Interruption of 882, 883
Debates 951
MOTIONS.
In general.
Calls for orders of the day, obsolete 393
Certain, only in order in absence of quorum..... 55, 1022
Conditions of withdrawal 904
Considered to be pending as to recommendations of Committee of the Whole 338
For practice as to, in rejection and second reading of bills . 484
In some cases considered as pending 945
In order during call of the House..... 1024, 1026
Incidental questions intervening during consideration of main question 457
Intervening questions relating to reading of papers, obsolete 459
Matters of privilege as intervening questions..... 457
None to be made except by rising and addressing the Chair 394
Not to interrupt Member having the floor 393
Obsolete parliamentary law as to entry of, in the Journal . 578
Parliamentary law as to making and reading 392
Parliamentary law as to withdrawal of..... 392, 460
Reading or statement of..... 392, 904
Reduced to writing and entered on the Journal 902
Repetition of motions 918
Second not required for ordinary 392
Usually required before debate may proceed 945
Coexisting and equivalent.
Jefferson's discussion of coexisting 483
Equivalent, in general 485

Section

MOTIONS—Continued
Coexisting and equivalent—Continued
Where negative of one amounts to affirmative of another 485–488
Dilatory.
Debate for 10 minutes not allowed when offering of amendments printed in Record is 987
Dilatory motions not admitted pending motion to suspend the rules 890
Forbidden pending report from Committee on Rules 857
Right to demand yeas and nays not to be overruled as 77
To be ruled out generally 903
In Committee of the Whole.
To adjourn and for the previous question not in order in Committee of the Whole 333, 334
To close general debate 979
To reconsider, not used in Committee of the Whole 416
To strike out enacting words 988, 989
Those admitted in "House as in Committee of the Whole" 425–427
To rise and report at conclusion of reading general appropriation bill 1040
Putting the question on. See PUTTING THE QUESTION.
Privileged motions, generally. See also PRIVILEGED QUESTIONS.
General principles of priority of motions 449
Jefferson's discussion of certain privileged motions 441
Laws attaching privilege to congressional disapproval procedures 1130
Matters of privilege as intervening business 458, 698–713
Obsolete intervening questions relating to reading of papers 459
Obsolete parliamentary law governing orders of the day ... 440
Obsolete provisions as to priority of privileged motions 448
One privileged or secondary motion not to be suppressed by another 450
Precedence and conditions of 911–917
Privileged interruptions of daily order of business..... 870, 871
Privileged motions in the Senate and in Parliament 447
Theory as to privileged motions 438
For motions in order when question is under debate, see:
ADJOURN, MOTION TO.
PREVIOUS QUESTION, MOTION FOR.
POSTPONE, MOTION TO.
REFER, MOTION TO; REFERENCE.
AMEND, MOTION TO; AMENDMENTS.

Section

MOTIONS—Continued
Question of consideration. See CONSIDERATION, QUESTION OF.
Motion to instruct conferees. See CONFERENCES.
Motion to recommit. See RECOMMIT, MOTION TO; COMMIT.
Motion to reconsider. See RECONSIDER, MOTION TO.
Motion to suspend the rules. See SUSPENSION OF RULES.
Motions used in adjusting amendments between the Houses. See AMENDMENTS BETWEEN HOUSES; CONFERENCES.
Motions relating to reading of papers and amendments. See READING.
Motion to discharge a committee. See DISCHARGE.
Miscellaneous motions. See also PRIVILEGED QUESTIONS.
By Majority Leader under former rule proscribing committee sittings during five-minute rule 801
For a recess..... 586, 911, 913
For a recess in committee 787
Motion to strike Federal unfunded mandate 991
To read the Journal 621
To rescind a special order not privileged under the rules .. 734
MOTIVES.
Of Members not to be arraigned 363
MOVER.
Right of, to speak twice 959
Right to close debate on amendment considered under five-minute rule 959
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; AND NATIONAL SPACE COUNCIL.
Jurisdiction of 735
NATIONAL ARCHIVES.
Jurisdiction of subjects relating to 723
NATIONAL CEMETERIES.
Jurisdiction of bills relating to 732
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION FISHERIES RESEARCH LABORATORY.
Jurisdiction of bills transferring interest in 735
NATIONAL PARKS.
Jurisdiction of bills relating to 732
NATIONAL SCIENCE FOUNDATION.
Jurisdiction of 735
NATIONAL WEATHER SERVICE.
Jurisdiction of 735
NATURAL RESOURCES, COMMITTEE ON. *See* RESOURCES, COMMITTEE ON.
NATURALIZATION.
Power of Congress to establish rule of 120
Relations to citizenship 225

Section

NATURALIZATION—Continued
Jurisdiction as to 730
NAVAL AFFAIRS.
Jurisdiction of subjects relating to 718
NAVAL AND MILITARY RECORDS.
Private bills to correct, banned 822
NAVAL VESSELS.
Appropriations for, as in continuance of a public work 1050
NAVIGATION.
Between States not to be hampered by duties 147
Jurisdiction of matters relating to pollution of navigable waters 739
Jurisdiction of matters relating to public works for the benefit of 739
Jurisdiction of subjects relating to generally 739
NAVY.
Bills to correct certain records banned 822
Congress to provide and maintain 130
Congress to make rules for 131
Jurisdiction of matters relating to 718
President, Commander in Chief of 160
States not to maintain 148
Trial for crimes in 212
NAVY YARDS.
Jurisdiction of matters relating to 718
Power of Congress over places purchased for 134
NEGATIVE.
Of one question amounting to the affirmative of another 485–488
NEUTRALITY.
Jurisdiction of subjects relating to 729
NEWSPAPERS, ADMISSION TO THE FLOOR. *See* FLOOR.
NOBILITY.
Titles of, not to be granted 144
No State to grant title of 146
Foreign gifts and decorations accepted with consent of Congress 145
NOTES.
Jurisdiction of subjects relating to 722
NUCLEAR ENERGY.
Jurisdiction over.
Jurisdiction of Committee on Energy and Commerce 721
Military applications 718
Non-proliferation and export agreements 729
Regulation of domestic industry 721
Research and development 735
Oversight jurisdiction..... 721, 744

Section

NUCLEAR ENERGY—Continued
Expedited procedures.
Nuclear non-proliferation provisions of the Atomic Energy Act ..... 1130(10)
Nuclear waste fund fees ..... 1130(15)
Nuclear Waste Policy Act ..... 1130(22)
OATH. *See also* AFFIRMATION.
Of Senators, Representatives, officers, and employees of the House.
Administration of, at organization of the House 198
Administration, as related to quorum 53, 56, 200
Administered to Member before reading of Journal 621
As related to qualifications 9
Challenge of right to take 202–204
Consideration of objections to taking of 203
Dean administers to Speaker 198
Disabilities arising from violation of 230
Form of 197
Function of Speaker in administering 231
Member-elect named on committee, expelled, or permitted to resign before taking 63, 66, 300
Names of Members not entered on roll for yeas and nays until sworn 300
Not to disclose classified information 1095
Of Chief Justice in impeachments 615a
Of Senators, for trial of impeachment 38, 615b
Officers of House sworn 640
Precedence of 198
Privilege of administration of 201
Quorum not required during administration of 1027
Relation of credentials to right to take 204
Sanity and loyalty as related to 205
Senators, Representatives, and other officers bound by 196
In general.
Of President of the United States 158
Right to administer, given by law rather than by rule 59
Speaker, Members, and chairmen may administer to witnesses 343, 346, 805
In support of certain warrants 211
OBJECTIONS. *See also* UNANIMOUS CONSENT.
Challenge of right of a Member to take the oath 202, 205
Ten Members required under former rule proscribing committee sittings during five-minute rule 801
Of President to a bill 104
To administration of oath to Members by the Speaker 199

Section

OBLIGATION.
Of contracts, State not to pass bills impairing 146
OBSCENITY.
Bills for petitions rejected for 818, 824
OCCASIONS, EXTRAORDINARY.
Power of President to convene Congress on 171
Other power of convening 171
OCEANOGRAPHY.
Jurisdiction over subjects related to 735
OFFENSES.
Power of President to grant pardons for 162
Against law of nations 126
OFFICE.
In general.
As to meaning of word 97, 98
Acceptance of, conditions of, from certain sources 144
Acceptance of gifts by holders of, conditions of 144
Compilation of House and Congressional offices..... 1113–1125c
Electors, no person holding office of trust or profit under United States to be an elector 151
Impeachment from 173, 174
Jurisdiction as to abolition 723
Of judges, held during good behavior 177
Religious test for, none required under United States 196
Term of President's 149, 150, 249
Incompatible.
As to what are incompatible 98
Appointment of Members-elect to 99
Holding of, under the United States disqualifies Member 97–101
Jurisdiction of matters relating to 730
Members not to be appointed to certain 96
Procedure in case of acceptance of, by Member 101
Relations of contestants to 100
OFFICE ACCOUNTS.
Prohibition of unofficial 1096
OFFICE BUILDINGS.
Assignment of rooms in 1114
OFFICE OF TECHNOLOGY ASSESSMENT 1121
OFFICERS.
Of the United States.
Accountability of, jurisdiction as to 723
Bound by oath to support the Constitution 228
Civil, may be removed by impeachment..... 173, 174
Congress may determine agency for appointing of inferior 166
Of departments, President may require opinions from 161

Section

OFFICERS—Continued
Of the United States—Continued
Of the militia 133
Of United States, as related to legislative power 136
Of United States, and the States, qualifications of as to loyalty 230
President appoints 166
President to commission 172
Senators not civil officers who may be impeached 174
Of the House of Representatives.
Audits of 667
Clerk formerly disbursed pay of 642
Compensation, retirement, and benefits, jurisdiction over . 724
Continue in office until successors are chosen 640
Drug testing of, *see* DRUG TESTING.
Election of, and terms 26–30, 640
Election of, except Speaker 29, 640
Neither House to exercise authority over those of the other 373
Nondiscrimination in employment by 1095
Oath, administered to, by Speaker 198, 199
Oversight of 744
Privilege of floor extended to present and former 678
Prohibition on distribution of campaign contributions by .. 683
Relations to claims 1102
Removal of 315, 640
Vacancies, Speaker may fill by temporary appointment of 640
Of the Senate.
Vice President and his vote 36
Choice of President pro tempore and other officers 37
OFFICIAL CONDUCT.
Code of, for Members, officers, and employees 1095
Committee on Standards of 737
Financial disclosure 1103
Outside earned income 1099
Revisions of remarks in debate, standard of 967, 968
Use of Frank 1097
Unofficial office accounts 1096
OFFICIAL RECORD.
Journal as 582
OFFICIAL REPORTERS.
Of debates, appointment and removal of 724, 685
ONE-FIFTH.
Of those present order yeas and nays 75, 78
Of quorum order recorded vote (or formerly teller vote) 1012
ONE-MINUTE SPEECHES 950

Section

OPENING.
Of debate, rights of Member as related to closing 958
OPINIONS.
President may require from heads of departments 161
Not entered on Journal 70
OPPOSITION.
Preference in recognition given to, for motion to recommit after previous question is ordered 911
Right to prior recognition passes to, when essential motion is lost 954
ORDER.
Of the House and preservation of.
Breach of, for Speaker to refuse to put a question in order 304
Call to, for disorder in debate..... 960, 961
Call to, may interrupt Member 393
Clerk to preserve, at organization of the House..... 643, 645
Necessity of rules for preservation of 285
Parliamentary law as to taking down disorderly words ... 368, 369
Power of Chairman of Committee of the Whole to preserve, in galleries and lobby 970, 971
Proceedings in case of disorder on the floor 367
Sergeant-at-Arms maintains, under direction of the Speaker 648
Sergeant-at-Arms bears mace while enforcing 657
Speaker calls House to 621
Speaker preserves, on floor, in lobby, and galleries 622
Speaker may restore in Committee of the Whole..... 331, 332, 622
Questions of.
As to delay in decision of questions of 378
Clerk to decide at organization of the House..... 643, 645
Clerk to note in Journal 649
Decided by Speaker..... 624, 628
Decision of, during a division 507
Decisions of questions of, by Chairman of Committee of the Whole 972
House controls decisions of, by appeal 379
Intervening questions of 457
Practice governing Speaker in deciding 628
Raising of, on appropriation bills in Committee of the Whole 1044
Raising of, at any time against appropriation in legislative bills or amendments 1065
Raising of, at any time against tax or tariff in certain bills or amendments 1066

Section

ORDER—Continued
Questions of—Continued
Relation of question of consideration to 909
Reserving, as to general appropriation bills 1044, 1035
Speaker to be heard first in matters of 358
Time of raising, as to consideration of bills in Committee of the Whole 973
ORDER OF BUSINESS. *See also* BUSINESS.
Rule and conditions of.
The rule prescribing 869
Advantage of an order of 349
Conditions of the old and modern orders of business 350
Early discretion of Speaker as to 349
Jurisdiction as to 733
Obsolete parliamentary law governing orders of the day ... 440
Recognition by the Speaker in accordance with requirements of 949–956
Right of a Member to demand the execution of a subsisting order 381, 872
The calendars on which reports of committees await action of the House 828–899
Interruptions of.
Business of District of Columbia on second and fourth Mondays 894
Business on Tuesdays for consideration of the Private Calendar 895
Call of Committees on Calendar Wednesday 900
Call of Committees on Calendar Wednesday protected by two-thirds vote 857, 900
Consideration of amendments between Houses, when privileged 528–528d
Consideration of a motion to reconsider 1005
Effect of privileged reports on 854
Effect of special orders on Tuesday business 895
High privilege of general appropriation bills 856
Interruption by request for unanimous consent 872
Intervening questions as to privilege on reading of papers 458, 459
Intervening questions of order 457
Intervention of private business on Tuesday 895
Making and use of special orders 734
Motion for leave for a committee to sit during sessions not privileged 324
Precedence of questions of privilege 698–713
Privilege of conference reports 1077
Privileged interruptions of order of business 870

Section

ORDER OF BUSINESS—Continued
Interruptions of—Continued
Privileged interruptions specified 871
Privileged legislative veto provisions 1130
Privileged reports from certain committees 853–868
Speaker's table.
Business on, disposal of 528a, 873
Matters on, for action by the House or by Speaker alone ... 874
Messages on, parliamentary law as to disposal of 566
Messages from the President on, consideration of 170
Messages from the President on, reference of 875
Unfinished business.
Rule for unfinished business 876
Business unfinished in periods set apart for classes of business 879
Construction of rule as to unfinished business 877
Consideration of unfinished business 876–879
Priority of unfinished business in Committee of the Whole 977
Precedence of a question on which previous question is ordered 877
Procedure in the morning hour 881
Rules and practice for call of committees 880, 881
The morning hour for the call of committees 880
Call of Committees—Interruption to go into Committee of the Whole.
Conditions of the motion to go into Committee of the Whole at the end of one hour 883
Interruption of the call of committees by motion to go into Committee of the Whole House on the state of the Union 882
Rule for consideration of bills in Committee of the Whole after call of committees 882, 883
Orders of the day.
Orders of the day now obsolete 384
Parliamentary law as to proceeding with orders of the day 383
In Committee of the Whole.
On calendars of Committee of the Whole 977
ORDERS.
As to presentation of, to President for approval 115
Nature and use of, as compared with resolutions 395
Standing, reference to 1105
As to termination of, with reference to the end of the session .. 386
Execution of a subsisting order not to be demanded while a Member has the floor in debate 393
Obsolete reference to, in order of business 869

Section

ORDERS—Continued
Right of a Member to demand the execution of a subsisting order 381, 872
ORDERS, SPECIAL.
Application of motion to postpone to 734, 915
Effect of, on Tuesday business 895
Privilege of reports of 853, 857
Use and method of making 734
ORGANIZATION OF THE TWO HOUSES OF CONGRESS.
Administration of the oath at 198
Clerk's duties at 643, 645
Clerk makes up the roll of Members-elect for 644
Challenge of the right to take the oath 202–204
Early organization 1126
Election of Speaker and other officers 26–30
Election of Speaker and Clerk as related to adoption of rules .. 59
House has adjourned for more than one day before election of the Speaker 83
Messages received before 562
President's power to convene Congress 171
Other power to convene 171
Procedure before adoption of rules 60
Quorum in two Houses as related to 56
Relation of credentials to the right to take the oath 204
Right of the House to determine its order of proceeding in effecting 388
Sanity and loyalty as related to the oath 205
Speaker's function in administering oath at 199
Taking oath as related to presence of quorum 56, 200
Vice President votes in case of tie as to 36
Yeas and nays may be ordered before 76
OUTER CONTINENTAL SHELF LANDS ACT.
Expedited procedures under ..... 1130(23)
OUTSIDE EARNED INCOME.
Limitations on 1099
OXFORD-STYLE DEBATES.
Structure of 952
PAIRS.
Forms and announcement of 1031
Not to be announced out of order 1015
In order in Committee of the Whole 1031
PANAMA CANAL.
Jurisdiction of subjects relating to 718
PAPERS.
Security of private.
Security of, as to searches and seizures 211

Section

PAPERS—Continued
In possession of the House.
Attitude of one House as to the demands of the other for .. 292
Certain, not to go out of Clerk's custody 352
Certain, in Clerk's custody, not open to public 642
Court demands for 291
Noncurrent deposited with Archivist 695
Not to be taken from the Clerk's table during debate 364
Oath not to disclose classified records 1095
Of committees, custody of 695, 796
President allowed to withdraw certain, accompanying a message 571
Withdrawal of, from files 696
Relations of, to conference.
Custody of, when a conference is asked before disagreement 552
Custody of, after an effective conference 555
Custody of, when managers fail to agree 556
House must possess, before acting on a conference report . 549
Request for a conference always by House possessed of 530
Reading of.
By consent of the House under former rule XXX 965
Committee reports not read except on order or in debate .. 435
Criticizing the Senate or Senators not to be read 372
Intervening questions as to 459
Member not always privileged to read 434, 964, 965
Not necessarily to be read on plea of privilege 433
Objections to under former rule XXX 964, 965
On demand of a Member 964
On reference 436
Parliamentary law as to 432
President's messages 188
Return of to other House.
Privileged status of requests for return of papers 565
PARAGRAPHS.
Amendment of bills by 413, 980
Amendments should be germane to 929
House does not agree to, severally in perfecting a bill 456
Reading of bills by 413, 980
Transposition of, in a bill by motion to amend 477
PARDONS.
Power of President to grant 162, 164
PARKS, DISTRICT OF COLUMBIA.
Jurisdiction over subjects related to 732
PARKS, MILITARY.
Jurisdiction of bills relating to 732

Section

PARKS, NATIONAL.
Jurisdiction of bills relating to 732
PARLIAMENT. *See* HOUSE OF COMMONS.
PARLIAMENTARIAN.
Office of 1122
Precedents compiled by 1122
PARLIAMENTARY INQUIRIES.
No appeal from responses to 629
Recognition to propound 628
PARLIAMENTARY LAW.
As used before adoption of rules 60
Jefferson's Manual as a statement of 284
Relations of, to the early practice of Congress 286
PASSAGE OF BILLS. *See* BILLS.
PASSAGES.
Speaker's control of, in House wing 623
PATENTS.
Power of Congress to provide for 124
Jurisdiction of subjects relating to 730
PAY.
Clerk formerly disbursed that of employees and certifies that of Members in recess 642
Cost of living adjustments 86
Of committee staff, *see* COMMITTEE STAFFS.
Of department officers, jurisdiction as to 729
Of judges 177
Of Members during recess, Clerk certifies to (obsolete) 647
Of officers and employees, Clerk formerly disbursed 642
Of President of the United States 157
Of Representatives and Senators ..... 85, 86, 258, 1130(12)
Of Speaker and leadership 86, 89
Of witnesses 813
Pay orders ..... 1130(12)
Quadrennial commission ..... 1130(12)
Sergeant-at-Arms formerly disbursed that of Members 648
PENALTIES.
For absent Members 52
PENITENTIARIES.
Jurisdiction of subjects relating to 730
PENSIONS.
Certain bills for, banned 822
Debt incurred for certain, not to be questioned 232
Jurisdiction of appropriations for 716
Of all wars, jurisdiction of bills for 740
Pension Reform Act, disapproval procedures in ..... 1130(8)

Section

PEOPLE.
Establish the Constitution 1
Powers reserved to, by the Constitution 216
Quartering soldiers among 424
Representatives chosen by 5
Right of, to keep and bear arms 209
Rights reserved to 217
Security of, as to accusations, trials, and property 212
Security of, as to searches and seizures 211
Their right of assembly and petition 208
PERJURY.
To sustain a conviction of, a quorum of a committee must be in attendance when perjurious testimony is given 343, 409
PERSON.
Security of, as to searches and seizures 211
PERSONAL EXPLANATIONS.
Made by unanimous consent 945
PERSONAL INTEREST.
Disqualifying as to voting 376, 671, 673
PERSONAL PRIVILEGE.
Method of presentation of questions of personal, as distinguished from general 698
Precedence of questions of 698–668
Privilege of the Member 698
Procedure of Member in presenting question of 945
PERSONALITIES.
Arraignment of motives of Members not in order 363
Member must refrain from, in debate 945
Members censured for 65
Not permitted in debate 361
PERSONS.
No State to deprive, of life, liberty, or property unlawfully, or deny equal protection of the laws to 225
PETITION.
Introduction and reference of 816, 818
Division of, for reference 421, 816
Duties of Speaker and Members in presenting 819
Correction of reference of 824
Exclusion of 824
Nature of 389
Parliamentary law as to reception of 391
Received by committees only through the House 320
Right of petition guaranteed 208
Signing and presentation of 390
PICTURES.
Jurisdiction as to 724

Section

PICTURES—Continued
Taking of, in committee hearings 811
PIRACIES.
Congress to punish 126
PLACE.
Ceremonial functions in another place 82, 82a
Neither House to adjourn to another, without consent of other House 82, 82a, 84
Power of President to convene Congress away from seat of Government 82, 82a, 171
PLACES OF ELECTIONS.
Regulation of 42, 43
PLEADINGS.
In an impeachment 612, 613
PLEDGE OF ALLEGIANCE 869
POCKET VETO.
Bills retained by President after Congress adjourns 112
Effect of adjournment to day certain 113
POINTS OF ORDER.
Decisions on.
Chairman of Committee of the Whole decides 971
Clerk to decide, at organization of the House 643, 645
Constitutional 60, 628
Procedure if point of order against motion to rise and report an appropriation bill where bill exceeds section 302(b) allocation is sustained 1044b
Decisions of, during a division 507
House by appeal controls decisions on 379
Obsolete practice as to Members' advice on 507
Power of Speaker to delay decisions 378
Practice governing Speaker in deciding 628
In general.
Clerk to note certain, in Journal 649
In House on procedure in committee 798
On appropriation bills 1044
On conference reports 547, 1089–1091
On nongermane portions of conference reports and amendments in disagreement 1089–1091
On resolutions, raised before reading completed 628
Relation of.
To conference reports 547
To general appropriation bills 1044
To retroactive increases in income tax rates 1068
To motions to amend 924
To committee procedure 798, 799, 842, 843
To question of consideration 909, 910, 1127

Section

POINTS OF ORDER—Continued
Reserving of.
Against general appropriation bills 1035, 1044
Against conference reports 547
Time of raising.
At any time against an appropriation in legislative bills or amendments 1065
At any time against tax or tariff provisions in certain bills or amendments 1066
Former rule with respect to reporting a measure from committee 839
On appropriation bills in Committee of the Whole 1044
On consideration of bills in Committee of the Whole 973
On conference reports where conferees met in closed session 1093
On motions to amend 924
On resolutions 628
With respect to committee procedure 798
Waivers. See RULES.
POLICE, CAPITOL. *See* CAPITOL.
POLITICAL DISABILITIES.
Arising from disloyalty 230
Consideration of bills removing 895
Jurisdiction of bills relating to 730
POLL TAX.
Right to vote not denied for failure to pay 251
POPULATION.
The basis of representation 226
Jurisdiction over population and demography generally 723
PORTS.
Of one State not to be favored 142
POSSESSION.
Of a bill by the House 437
POST OFFICE AND CIVIL SERVICE, FORMER COMMITTEE ON.
Jurisdiction transferred 723
POST OFFICES.
Congress may establish 123
Jurisdiction of subjects relating to 723
Jurisdiction as to buildings for 739
POST ROADS.
Congress may establish 123
Jurisdiction of subjects relating to construction 739
POSTAL SAVINGS BANKS.
Jurisdiction of bills relating to 723
POSTMASTER.
Former election and oath of 668

Section

POSTMASTER—Continued
Former superintendent of House post office 668
POSTPONE, MOTION TO.
Precedence and general conditions of 911, 915
Application of previous question to 450
Applied to motion to resolve into Committee of the Whole 915
As to application to a special order 805
Debate on 911
Discussion of relations of, to early use of the previous question 448, 449
May be amended 453
Nature of the motion to postpone to a day certain 444
Not to be applied to other secondary motions 451
Not to be entertained after previous question is ordered 915
Not to be suppressed by another privileged motion 450
Relation of, to motion to amend 449
Relations of, to the previous question 998
Repetition of 918
Use of, to put off indefinitely 443, 1130
POWERS.
Of Congress—General legislative.
Legislative 3
As to migration or importation of persons 137
Consent of, to acceptance of certain gifts 144, 145
No preferences to be given as to commerce by water 142
To establish patents and copyrights 124
To establish post offices and post roads 123
To make laws to carry its powers into effect 136
To provide punishment for counterfeiting 122
To regulate coinage, weights, and measures 121
To regulate commerce 119
To regulate naturalization and bankruptcy 120
To provide for disapproval of executive action 1130
Of Congress—As to elections and political disabilities.
As to apportionment and establishment of districts 226, 227
Determines time of choosing electors 153
May by law provide for case where neither President-elect nor Vice President-elect shall qualify 244
May provide for succession to presidency or new election 155, 244
Power to make or alter regulations as to election of Representatives 42
To remove political disabilities 230
Of Congress—Over revenue and expenditures.
To lay and collect taxes 117
To borrow money 118

Section

POWERS—Continued
Of Congress—Over revenue and expenditures—Continued
Money to be drawn from Treasury only on appropriations 143
Limitation on capitation or other direct tax 140
No export duties to be laid 141
Of Congress—As to commerce, currency, mails, patents.
To regulate commerce 119
To regulate bankruptcy 120
To regulate coinage, weights, and measures 121
To provide punishment for counterfeiting 122
To establish post offices and post roads 123
To establish patents and copyrights 124
No preferences to be given as to commerce by water 142
Of Congress—As to courts, crimes.
To regulate jurisdiction of Supreme Court 179
To establish inferior courts..... 125, 177
To regulate the proving of acts, records, and judicial proceedings of the States 183
To fix places for trial of certain crimes 180
To provide punishment for piracies 126
To declare punishment of treason 182
As related to writ of habeas corpus 138
No bill of attainder or ex post facto law to be passed 139
Of Congress—As to wars.
To declare war, grant Letters of Marque 127, 163
To support armies 128
To provide a navy 130
To make rules for land and naval forces 131
To provide for calling out the militia 132
To provide for organization of militia 133
War Powers Resolution..... 1130(2)
Of Congress—Jurisdiction over territory and property.
To exercise jurisdiction over seat of Government and ceded places 134
Over the territory and other property of the United States 188
Of Congress—As to immigration and naturalization.
As to migration or importation of persons 137
To regulate naturalization 120
Of Congress—As related to States and people.
To revise and control certain State laws 147
As to admission, consolidation, or division of States 187
Not to interfere with religion, free speech, the press, or right of assembly and petition 208
No titles of nobility to be granted 144
Those delegated and those reserved to States and people .. 217

Section

POWERS—Continued
Of the House of Representatives.
To confirm Vice President 253
To elect its Speaker and other officers 26–30, 640
To judge elections of its Members 46–51
To punish and expel its Members 62–66
To make rules 58–60
To punish for contempt 293–299
As to treaties 594, 599
Of impeachment 31
Senate tries impeachments 38
Of President, courts, and States.
Executive, vested in President of the United States 149
Judicial, vested in the courts 177–179
Judicial, limitation on, in suits in law or equity 218
Of the States, limitations on, as to certain subjects 146–148
Reserved to States and people 217
PRAYER. *See also* CHAPLAIN; CLERK.
Offered by Chaplain 640
Chaplain opens each day's sitting with 665
By the Chaplain, place of, in order of business 869
Quorum in relation to 1027
PREAMBLE.
Amended after the body of the resolution has been considered, and after engrossment of joint resolution 414
As to application of previous question to 996
As to separate vote on 414
Of a resolution may be laid on table 414
PRECEDENCE.
Of intervening business.
Certain privileged questions which interrupt the order of business 870, 871
Intervening questions as to reading papers 458
Intervening questions of order 457
Of conference reports 1077
Of conference report over report from Committee on Rules 857
Of a proposition to administer the oath to Members 233
Of a question on which the previous question is ordered ... 878
Of questions of privilege 458, 698–668
Of questions of privilege as related to pending business 698–668
Of revenue and appropriation bills in Committee of the Whole 977
Questions as to, decided by a majority without debate 884

Section

PRECEDENCE—Continued
Of motions.
For disposition of amendments between the Houses, *see* AMENDMENTS BETWEEN HOUSES.
General provisions of the priority of 449
Obsolete provisions as to priority of privileged 448
Secondary or privileged 911–917
To adjourn 911
To adjourn to day or time certain 911
To amend 926
To amend Journal precedes approval 74
To amend over motions to agree or disagree 528–528d
To amend over motions to strike out or agree 456
To discharge committees 892
To dispense with further proceedings under a call of the House 1019, 1022
To go into Committee of the Whole to consider appropriation bills 856
To read the Journal 621
To reconsider 1005
To strike out enacting words of a bill 988, 989
To suspend the rules 887
PRECEDENTS.
Compilation of 1122
Place of, in the law of the House 351
Delay in decision of a question of order in order to examine 378
PREFERENCES.
Not to be given to ports of one State over another 142
PREROGATIVES.
Of House as to revenue legislation 102
Questions related to, treated as of privilege 698
Questions of, committed to conference 531
PRESENTMENT.
Of grand jury as related to trial for crime 212
PRESENTS.
Conditions as to acceptance of, by officers 144
PRESIDENT OF THE SENATE.
Vice President 36
President pro tempore 37
Electoral votes transmitted to 153
PRESIDENT OF THE UNITED STATES. *See also* EXECUTIVE.
Relations of, to Congress—In general.
Admitted to the floor of the House 678
Gallery for use of 682
Houses may request him to transmit constitutional amendments to the States 191

Section

PRESIDENT OF THE UNITED STATES—Continued
Relations of, to Congress—In general—Continued
May convene or adjourn Congress under certain conditions 171
May notify Congress of ratification of a constitutional amendment 191
President pro tempore chosen when Vice President becomes 37
Reference to, in debate 370
War powers of Congress and the President ..... 128, 1130(2)
Relations of, to Congress—Messages and information from.
Address by and to 316
Clerk may receive messages from, when House adjourned 652
Confidential messages from 969
Declaration of inability to discharge duties of office 254
Gives Congress information and makes recommendations . 168
Messages from, usually sent to both Houses at once 571
Messages required by law 169
Reception of messages from 170
Resolutions of inquiry as related to 865, 868
Rule for reference of messages from 873, 876
Transmits budget during first 15 days of session 169
Transmitting proposed rescissions and deferrals of budget authority ..... 1130(6a)
Relations of, to Congress—Approval of bills by.
Approval or disapproval of bills by 104
Approval, act of, as to time and manner 105, 110
Approval, notice of, sent by message 106
Approval of concurrent resolutions by 396
Approval of joint resolution by 397
As to presentation of orders, resolutions, and votes for approval 115
Bills that become law without approval 111
Constitutional amendments, President does not sign joint resolution submitting 191
Effect of recess on 814
Enrolled bills, signing of, for presentation to the President 575
Enrolled bills, authority of pro tempore presiding officers to sign 576
Enrolled bills, presentation of, to the President 577
Enrollment of bills, parliamentary law as to 573
Enrollment of bills, practice of the two Houses of Congress as to 574
Errors in bills sent to the President 110
Line item veto authority ..... 1130(6b)

Section

PRESIDENT OF THE UNITED STATES—Continued
Relations of, to Congress—Approval of bills by—Continued
Parliamentary law as to presenting a bill for the King's assent 572
Pocket veto 112
Pocket veto, effect of adjournment to a day certain on 113
Veto, action on 108, 109
Veto, two-thirds of Members present and voting and not two-thirds of entire membership sufficient to pass a bill over 109
Office and general powers and duties.
Appoints public officers 166
Commander in Chief of Army and Navy 160
Commissions officers 172
Executive power vested in 149
Executes the laws 172
Fills vacancies in offices during recesses of Senate 167
Grants reprieves and pardons 162
Holds office four years 149
Jurisdiction of bills relating to office of 730
Makes treaties 165
Opinions of his advisers 161
Receives ambassadors 172
Term of 149, 150, 241
Election, oath, impeachment, inability.
Chief Justice presides when tried on impeachment 38
Compensation of 157
Congress to provide for case wherein death occurs among those from whom the House chooses a President 246
Election of, by the House in certain cases 221–223
Electors for choice of 151
Grounds for impeachment of 175, 176
Inability of 252, 254, 255
Inauguration of 159
Limitation on right of electors to vote for 219
May be impeached 173, 176
Meeting of electors of, and transmission and count of votes for 219
No person to be elected President more than twice 249
Oath of 158
Qualification of 154
Qualifications of electors of, as to loyalty 230
Qualifications of electors, questions as to 152
Time of choosing electors and action of 153
Removal, death, resignation, or disability of 155, 252–256
Vice President as acting President 252, 254, 255

Section

PRESIDENT-ELECT OF THE UNITED STATES.
Death or failure to qualify 244
PRESIDENT PRO TEMPORE.
Chosen by Senate in certain cases 37
Election and tenure of 313
Presides in certain impeachments 615a
PRESS.
Coverage of committee hearings and meetings 807–812
Freedom of, guaranteed 208
Members of, admission to the floor, *see* FLOOR.
Admission to press gallery 693
PREVIOUS QUESTION, MOTION FOR.
Uses of.
The rule of the 994
History, uses of the parliamentary 463
Obsolete use of 442
Not in order in Committee of the Whole 333, 334
Use of, in House as in Committee of the Whole 427
Precedence of.
Among other secondary motions 911
Of Parliament 461
Questions on which it is ordered, as unfinished business .. 877
Questions of order pending the motion for 1000
Relations of, to failure of a quorum 1029
Application of.
General application of 994, 996
To debatable secondary and privileged motions 450
Moving and putting of.
Considered as ordered on certain preferential motions to insist 1084
Effect of, on debate 999
Forty minutes of debate after ordering of 891, 999
Forty minutes debate not allowed when ordered on motion not debatable 979, 891, 999
Manner of putting 462
Moving on nongermane Senate amendments contained in conference reports or reported in disagreement 1089–1091
Not debatable 911
Recognition passes to Member leading opposition when voted down 954
Right to move 997
Right to close debate not to be exercised after ordering of . 959
Speaker's discretionary authority to postpone further proceedings on 1030
Effect of, on amendment.
Effect of, on amendments in general 994

Section

PREVIOUS QUESTION, MOTION FOR—Continued
Effect of, on amendment—Continued
Order of, on motion to agree to Senate amendments prevents motion to amend but not to refer 486
Prevents amendment when ordered on motion to approve Journal 74
Relations of, to other motions.
General relation of, to other motions..... 998, 1002
Having been moved on a motion to adhere, the motion to recede not admitted 525
Having been moved on a motion to insist, a motion to recede and concur admitted 525
May not be postponed 451
Motion to amend not applicable to the 452
Motion to commit after it is ordered 1002
Motion to commit pending, not applied to reports of Committee on Rules pending previous question 857
Motion to recommit after ordering of, limitation on Committee on Rules 857
Motion to recommit in connection with and right of opposition as to 911, 1001, 1002c
Motion to lay on table not in order after ordering of 914
Relation of motion to reconsider to 1005, 1006
PRIMA FACIE TITLE.
Credentials as related to a Member's right to take the oath 204
Effect of credentials as related to vacancy 23
PRINCES.
Titles, gifts from, to be accepted on conditions only 144
PRINTING. *See* CONGRESSIONAL RECORD.
General provisions as to.
Discretion of Clerk as to 642
Of committee transcripts, paid for by contingent fund (applicable accounts of the House) 789
Of reports when referred to calendars 831
Privileged reports from Committee on House Administration on 853
Reports of committees to be printed 833
Joint Committee on.
Duties of, as to Congressional Record 686, 1111
History, jurisdiction, and duties of 1111
Membership on 1111
PRIORITY. *See* PRECEDENCE.
All questions relating to priority of business to be decided without debate 884
PRIVATE BILLS.
As unfinished business 879

Section

PRIVATE BILLS—Continued
Certain, banned 822
Correction of error in reference 824
Dispensing with call of calendar 895, 897
Introduction and reference of 816, 817, 818
Interruption of regular order on Tuesdays for consideration of the Private Calendar 895
Pension bills 822, 895
Placed on Private Calendar when reported 828
Restriction on reference of certain 817, 822
PRIVATE CLAIMS. *See* PRIVATE BILLS.
PRIVATE PENSION BILLS. *See* PRIVATE BILLS.
PRIVATE PROPERTY.
Not to be taken without compensation 248
PRIVILEGE OF FLOOR. *See* FLOOR.
PRIVILEGE, QUESTIONS OF.
Definition, precedence, and consideration of.
Consideration of 713
Constitutional privilege 698, 702
Distinction between questions of privilege and privileged questions 707
Definition and precedence of questions of 698–700, 709, 711
Intervention of questions of 458
Precedence of questions of personal 699, 708, 711
Relation of, to quorum 712
Relation of, to the order of business 871
Raising of.
Breach of privilege reported from Committee of the Whole 335
Debate on 699
Members not necessarily entitled to have papers read on plea of 433
Method of presentation of questions of general and personal 698–707
Preliminary decision of Speaker as to questions of 628
Procedure when raised by floor leaders 699, 713
Procedure when raised by Member 699, 945
Questions of, in relation to a quorum 712
Question of, taken from the table 914
Time and place of consideration designated by Speaker 699
Affecting the House—In general.
Abuse of privilege of the floor 679
Administration of the oath to Members 201
Assault on clerk of a committee a question of 773
Attitude of one House as to demands of the other for attendance or papers 292

Section

PRIVILEGE, QUESTIONS OF—Continued
Affecting the House—In general—Continued
Attitude of the House as to demands of the courts 291
Breach of, for one House to encroach or interfere as to the other 308
Demand of courts for papers 291a, 697
Jefferson's discussion of privilege as related to rights of courts to summon witnesses and jurors 290
Judicial appearances on behalf of House 291b
Procedure for response to subpoenas 697
Proposition to impeach a high question of 604
Relations of the Sovereign to the Parliament and its members 309
Relations of the courts to parliamentary privilege 303
Resolution for removal of an officer of the House a question of 315
Affecting the House—Relating to procedure.
Breach of privilege for the Speaker to decline to put a question which is in order 304
Censure or expel as questions of 67
Censure for personalities in debate a question of 363
Correction of Congressional Record a question of 685, 690
Correction of an error in a message a question of 565
Discharge of committees from questions of 406
Error in reference of a bill to a calendar a question of 828
Hour rule of debate applies to 957
May not be invoked to effect change in rules of the House 706
Messages received, while question of, is before House 562
Previous question applies to questions of 996
Proposal to enter protest on the Journal not a matter of ... 70
Question of, raised by fraudulent introduction of a bill 821
Raising a question of, over delay of an enrolled bill in reaching the President 572
Reception of President's message while question of, is pending 170
Resolutions providing for adjournment for more than three days 84
Affecting the House—Contempts.
Question of privilege 299, 702, 713
Jefferson's discussion of power of the House to punish for contempts 293–299
Affecting the Member.
Of the Member 698
Assault on Member returning to House a breach of 91
Jefferson's discussion of privilege of Members of Congress 287–289

Section

PRIVILEGE, QUESTIONS OF—Continued
Affecting the Member—Continued
Members not to be questioned in another place for speech or debate 92
Scope of the privilege of speech and debate 93, 301
Parliamentary law as to the arrest of a Member 306
Parliamentary law of privilege as related to treason, felony 305
Parliamentary law as to questioning for speech 302
Practice of the House as to Members indicted or convicted 306
Relations of Members and others to privilege and the waiving thereof 301
Senators and Representatives privileged from arrest 90, 91
Status of the Member-elect as to privilege 300
Of citizens.
Not to be abridged by the States 225
In States other than their own 184
Questions relating to:
Organization 701
Constitutional prerogatives 702
Official conduct 703
Integrity of proceedings 704
Comfort and convenience 705
PRIVILEGED QUESTIONS.
Theory and examples of.
The theory as to 438
Distinction between questions of privilege and privileged questions 707
Incident questions, like points of order, which intervene during consideration of the main question 457
Intervening questions relating to reading of papers 459
Laws providing congressional disapproval by privileged resolution 1130
Matters privileged to interrupt the daily order of business 870, 871
Matters of privilege as intervening questions 458
May not interrupt a call of committees 881
Not to be called up on Calendar Wednesday 900, 901
Obsolete parliamentary law governing orders of the day ... 440
Presence of nonprivileged matter destroys privileges 855
Resolutions of inquiry 866, 867
Reports as.
Of certain committees 853–868
Conference reports 1077
Method of submitting to the House 418, 854
Nonprivileged, reference of, to calendars 831

Section

PRIVILEGED QUESTIONS—Continued
Reports as—Continued
Precedence of conference report over report from Committee on Rules 857
Reference of, to calendars 828
Right to report at any time gives right to consider at any time (subject to requirement of availability for three days)..... 853, 854
Motions as—General principles.
Precedence and conditions of..... 911–917
General principles of priority of motions 449
In general, one privileged motion not to be suppressed by another 450
Jefferson's discussion of certain privileged motions 441
Obsolete provisions as to priority of privileged motions 448
Privileged motions in the Senate and in Parliament 447
For motions as—When question is under debate, see:
ADJOURN, MOTION TO.
PREVIOUS QUESTION, MOTION FOR.
POSTPONE, MOTION TO.
REFER, MOTION TO; REFERENCE.
AMEND, MOTION TO; AMENDMENTS.
Motions as—Various. See also MOTIONS.
By Majority Leader under former rule proscribing committee sittings during five-minute rule 801
Motions to dispose of amendments between Houses, *see* AMENDMENTS BETWEEN THE HOUSES.
Motions to proceed to election of Speaker of higher privilege than motion to correct the roll 644
Motions requesting conferences 528a, 535
Motions to consider bills made in order by a resolution adopted by the House 850
Motion to consider omnibus private bills in order on third Tuesday 895
Relation of motion to consider to other motions..... 1003, 1005
To close general debate in Committee of the Whole 979
To discharge a committee from consideration of vetoed bill 108
To go into Committee of the Whole to consider general appropriation bills 856
To read the Journal 621
To recess in committee 787
To recess in House 586, 911, 913
To strike out the enacting words of a bill 988, 989
To suspend the rules 885–888
Motions as—Certain not. See also MOTIONS.
Motion to recess formerly not a 586

Section

PRIVILEGED QUESTIONS—Continued
Motions as—Certain not—Continued
Motion to rescind not a 734
PROCEEDINGS.
Certain of the House not to be criticized in debate 360
Each House determines rules of 58
House governs Journal entries 71
House required to publish a journal of 67
Journal a record of, only 70
States reciprocally to give full faith and credit to judicial 183
Committee, *see* COMMITTEES.
PROCESS.
Of law required to deprive a person of life, liberty, or property 225
Writ of summons for appearance of respondent in an impeachment 608, 611
For obtaining witnesses 213
PROFESSIONAL STAFFS OF COMMITTEES. *See* COMMITTEE STAFFS.
PROFIT.
No one holding office of, to accept certain gifts, titles 144
PRO FORMA AMENDMENT.
In Committee of the Whole 981
PROOF, BURDEN OF.
On those proposing an amendment, as to germaneness 928
On those proposing items on general appropriation bills 1047
PROPERTY.
Appropriations of, considered in Committee of the Whole 973
Disclosure of 1103
No person to be deprived of, without due process of law 212
No State to deprive a person of, without due process of law 225
Power of Congress to make rules and regulations as to public . 188
Private, not to be taken without compensation 212
Public bills appropriating, placed on Union Calendar 828
PROPOSER, RIGHT TO CLOSE DEBATE. *See* DEBATE.
PROSECUTIONS.
Rights of accused in all criminal 213
Security as to accusations and trial 212
PROTECTION.
Equal, of the laws guaranteed 225
PROTESTS.
Not entered on Journal as a matter of right 70
PROXY VOTING IN COMMITTEES. *See* COMMITTEES.
PUBLIC BILLS. *See* BILLS.
PUBLIC BUILDINGS AND GROUNDS.
Appropriations for, as in continuance of a public work 1050
Jurisdiction as to, generally 739
Jurisdiction as to, abroad 729

Section

PUBLIC BUILDINGS AND GROUNDS—Continued
Jurisdiction as to marine hospitals 721
Jurisdiction of bills for penitentiaries 730
Jurisdiction as to immigrant stations 730
Jurisdiction as to Patent Office 730
PUBLIC CREDIT.
Jurisdiction of subjects relating to 722
PUBLIC DEBT. *See also* DEBT.
Claims for loss or emancipation of slaves not to be paid 234
Limit, rule establishing as part of congressional budget process 1104
None incurred in aid of insurrection or rebellion to be paid 234
Validity of that of the United States not to be questioned 234
PUBLIC DEFENSE. *See* DEFENSE.
PUBLIC HEALTH. *See* HEALTH.
PUBLIC LANDS.
Jurisdiction of matters related to 732
PUBLIC MONEY. *See* MONEY.
PUBLIC SAFETY. *See* SAFETY, PUBLIC.
PUBLIC WORKS.
Authorization of appropriations for 1047
Appropriations in continuation of 1036, 1037, 1048–1051
Designation of prohibited 1068a
PUBLIC WORKS AND TRANSPORTATION, COMMITTEE ON. *See* TRANSPORTATION AND INFRASTRUCTURE, COMMITTEE ON.
PUBLICATION.
Of accounts of receipts and expenditures of public money 143
Of Journals of each House 68
PUERTO RICO. *See* RESIDENT COMMISSIONER.
PUNISHMENTS.
Censure or reprimand, of a Member 63–65
Congress may provide, for counterfeiting 122
Cruel and unusual, not to be inflicted 254
Each House may provide, of its Members for disorderly behavior 62
Expulsion, *see* EXPULSION.
For assault on Member for words spoken in debate 92
For disclosure of intelligence information 785
Involuntary servitude as 224
Member liable to, when called to order in debate 960, 961
Of a Delegate 675
Of piracies and felonies on the high seas 164
Of the law additional to impeachment 41
Power of the House to punish for contempt 293–299
Committee on Standards of Official Conduct, *see* STANDARDS OF OFFICIAL CONDUCT, COMMITTEE ON.

Section

PUNISHMENTS—Continued
Speaker may not inflict 622
PUTTING THE QUESTION.
By the chairman in committees 317
By the Speaker 630
Decorum during 962
Duty of Speaker as to 304
Effect of, in ending debate 490
First in the affirmative and then the negative 489
Informal 491
Messages not received during 562
Point of no quorum may be raised during 982, 1027
Speaker rises while 428
Forms of:
For vote by clerk tellers or by electronic device 1012
For previous question 462
For question of consideration 906
In examinations at the bar of the House 343, 344
Of final, in an impeachment trial in Senate 618
On engrossment and third reading of a bill 941
On a motion to strike out 468
On motion to strike out and insert 470
On the passage of a bill 499
QUALIFICATIONS.
Of Representatives.
As electors of President 151
As related to a Member's right to take the oath 204
As to sanity and loyalty as 205
Conviction of crime as related to voting and participation in committee business 1095
House Administration Committee may consider questions relating to 724
In case of disqualification minority candidate not seated ... 13
Incompatible offices, *See* INCOMPATIBLE OFFICES.
No religious test required for office under United States ... 196
Of Representatives 9–11
Of Senators, Representatives, electors of President, officers of the United States, and State officers as to loyalty 230
Other than those of Constitution 12
Power of each House, to judge as to 46–51
Removal of disabilities under fourteenth amendment 231
Of Senators, President, Vice President.
As to inhabitancy modifying votes of presidential electors . 219
Of electors of President 151, 152
Of officers and employees 1102

Section

QUALIFICATIONS—Continued
Of Senators, President, Vice President—Continued
Of President of the United States 154
Of Senators as to age, citizenship, and inhabitancy 35
Of Vice President 221
For suffrage.
Of electors of Representatives 7
Reference to 226
QUARANTINE.
Jurisdiction of subjects relating to 721
QUARRELS.
In Committee of the Whole 331
Intervening questions relating to 458
Members may be pledged not to prosecute 367
QUASI COMMITTEE.
Procedure in 424–427
QUESTION.
Coexisting and equivalent questions.
Equivalent in general 485
Equivalent on amendments between the Houses 486
Jefferson's discussion of coexisting 483
No equivalent questions on motions to recede, insist, and adhere 488
On agreeing to a conference report the negative of agreeing equals the affirmative of disagreeing 550
The motions to agree and disagree as related to motions to amend 487
Where affirmative of one amounts to negative of another 485–488
Putting of. *See* PUTTING THE QUESTION.
Division of. *See* DIVISION.
Relation of, to debate.
Member to confine himself to the 945
Member who has spoken to, may speak also to amendment 959
Of order. *See* POINTS OF ORDER.
Of consideration. *See* CONSIDERATION, QUESTION OF.
Of privilege. *See* PRIVILEGE.
In general.
As to reading of papers 459
Asked of other House by conference rather than by message 569
Former practice as to, in rejection and second reading of bills 484
Members of Parliament exempted from, as to debate 287, 302, 309

Section

QUORUM.
How constituted.
Announcement of adjustment to 1024a, 1024b
Committees may fix one-third or more as quorum for certain actions 800
Committees may fix two or more as quorum to take testimony and to close certain hearings 800
Constituted by a majority 52
Consists of a majority of standing or select committee or subcommittee to report, to issue subpoenas, or to close meetings or hearings 409, 798, 799, 805
Interpretation of meaning of majority 53
Must be present when perjurious testimony is given to support charge of perjury 343, 409
Of the Committee of the Whole 329, 982
Of House of Representatives and Senate in voting for President and Vice President of the United States 221
Of a joint committee 325
Of Senators in an impeachment trial 615b
Quorum in committees to report 799
"Provisional quorum" in catastrophic circumstances 17, 53, 310, 1024a
Count of.
Theory of quorum present and Speaker's count 54, 628
When necessary.
After failure of, must be of record before transaction of business 55
Effect of failure of, as to motions in order pending a motion to suspend the rules 890
Enrolled bills not signed in absence of 625
Failure of, on second of motion to suspend the rules 888
Necessary during debate and other business (obsolete) 310
Of House, necessary for business 52
Quorum not required in certain situations 1027
Quorum not required in the House unless pending motion or proposition put to vote 1027
Quorum not required in Committee of the Whole, after once ascertained on that day, unless pending motion or proposition put to vote 982
Relations of, to acts of House 55
Relations of, to reception of messages 55, 56
Relations of motion to reconsider to 1003
Reporting a measure in committee 799
Voting, debate, and other business suspended by failure of (obsolete) 510

Section

QUORUM—Continued
Call of the House.
Arrest of Members 1023
Call of the House 1025, 1026
Call of the House in the old form 1021
Call of the House after previous question is ordered 1029
Count of those not voting to make a quorum of record on a record vote 1020
Dispensing with call after quorum responds 1023
Motions during a call of the House 1024
Ordering and conducting the call of the House in the old form 1022
Power to compel attendance 52, 55
Use of clerks to record 1019
Use of electronic equipment to record 1014
Point of order as to.
Before adoption of rules 60
Before approval of Journal 621
Failure of, on yea-and-nay vote to be noted 76
Former rule with respect to reporting a measure from committee 839
Making point as to 54
Not in order before Chaplain offers prayer.... 56, 621, 869, 1027
Point as to, may be dilatory 903
Prohibition against making in certain situations 982, 1027
Right of a Member to have the House told when a quorum is not present 382
Time of making point of 55
Withdrawal of point as to 55
Motions in absence of.
Excuses, but not leaves of absence, granted by less than ... 671
Less than may order yeas and nays 76
Motions in order in absence of 55
Questions of privilege in the absence of 698
Right to demand yeas and nays not waived by demand for 77
In Committee of the Whole.
Discretionary during general debate in 982
Not required, after once ascertained on that day, unless pending motion or proposition put to vote 982
Of Committee of the Whole consists of 100 Members 982
Procedure in case of failure of 982
Rising and reports of, as related to 983
Short or notice quorum 982
Relation of, to organization.
As related to right of Member to take oath 56, 232
At organization of the two Houses 56

Section

QUORUM—Continued
Relation of, to organization—Continued
Relations of, to business of two Houses at organization 56
In general.
At calling of House to order 621
Clerk to furnish Members a list of certain 646
Relations of, to calling of the House to order when Speaker takes the Chair 310
Relations of Journal to absence of 55
Relations of, to reading of Journal 55
One-fifth of, orders recorded vote (or former vote by tellers) 1012
RADIO GALLERY. *See* GALLERIES.
RADIO SERVICE.
Jurisdiction of bills relating to, generally 721
RAILROADS.
Jurisdiction over 739
RAILWAY-MAIL SERVICE.
Jurisdiction of subjects relating to 723
RAISING REVENUE. *See* REVENUE.
RAMSEYER RULE. *See* COMMITTEES.
RATIFICATION.
Of the Constitution 207
Of amendments to the Constitution 190
Procedure of Senate in ratifying treaties 600
READING.
Of papers.
Member not always privileged to read a paper in his place 434, 964, 965
Intervening questions as to 459
Objections to reading of papers under former rule XXX 964, 965
Of papers on which the House is to vote 392, 964
Of such as criticize the Senate or Senators not in order 372
On reference 436
Papers not necessarily to be read on plea of privilege 433, 964
Papers read on demand of a Member 964
Papers read by consent of the House under former rule XXX 965
Parliamentary law as to 432, 964
Reports of committees not read except in order or in debate 435
Of bills, resolutions, conference reports.
Rule for 941

Section

READING—Continued
Of bills, resolutions, conference reports—Continued
A bill read in Committee of the Whole not read in full when taken up in House 338
Amendments before third 497
Committal of, on third 494
Debate in relation to third 498
Engrossed copy, reading in full not required 941, 943
First and second 941, 942
Manner of reading a bill the second time 428
Obsolete requirements as to 399, 400
Obsolete requirements as to third 492, 493
Of a bill in Committee of the Whole 942
Of bills for amendment under the five-minute rule 980
Of concurrent resolution on the budget 990
Of conference reports and amendments in disagreement, dispensed with 1082, 1083
Of Journal, not interrupted by conference report 1077
Of Journal, place of, in order of business 869
Of President's messages and accompanying documents 188
Of a veto message 107
Raising points of order before completing reading of resolution 628
Raising points of order before completing reading of amendment 924
Speaker sits while reading, but the Clerk stands 428
Third reading after engrossment 943
Of amendments.
Motions to dispense with reading 986
REAPPROPRIATIONS.
Citations relating to 1037, 1063
Not in order on general appropriation bill unless in continuation of public works already commenced 1037, 1063
REASONS.
Not entered on Journal 70
REBELLION.
Debts incurred in suppressing, not to be questioned 234
Debts incurred in aid of, not to be paid 234
Participation in, as a disqualification for office 230
Suffrage may be abridged for 226
Suspension of writ of habeas corpus for 138
RECAPITULATION.
Of a vote, Speaker's discretion as to 1015
RECEDE, MOTION TO.
Precedence of 486, 528–528d, 1089, 1091

Section

RECEDE, MOTION TO—Continued
Motion to recede and concur takes precedence of motion to recede and concur with amendment or insist 525, 528d
Motion to recede and concur divisible..... 525, 528d
Not equivalent of either insisting or adhering when decided in negative 488
One House not to recede from its own amendment with an amendment 526
Parliamentary law as to receding 523, 528–528d
Practice of the House as to receding from its own amendment to a bill of the other House 524
Practice of the House as to receding from disagreement to amendment of the other House 525
RECEIPTS.
Of public money, account of, to be published 143
RECEPTION.
Duty of President to receive ambassadors 172
RECESS. *See also* ADJOURNMENT.
In general.
Of Congress 590
Of a Congress, effect on pending business 814
Of Congress, issue of subpoenas during 342
Of Congress, jurisdiction of resolutions relating to 733
Of Senate, power of President to fill offices during 167
Of Senate, emergency recess and reconvening 639
Of House, during day's sitting, conditions of 586
Of House, Speaker's authority to declare..... 638, 639
Of House, emergency recess and reconvening 83, 639
Of a committee 787
Motion for.
Status of..... 586, 911, 913
Limitation of, on Calendar Wednesdays 900
RECLAMATION.
Jurisdiction of matters relating to 732
RECOGNITION.
To call up a bill made in order by a resolution adopted by the House 715
For debate and amendment under the five-minute rule 980
For motions to discharge committees on second and fourth Mondays 892
For motion to go to conference 1069, 1070
For the motion to reconsider 1004
For the previous question 997
For question of privilege..... 698–668
Loss of right to recognition by Member in charge 954
Parliamentary law as to Speaker's duty in 356

Section

RECOGNITION—Continued
Preliminary action of Member in seeking 945
Preference in, to be given to opposition for motion to recommit after previous question is ordered..... 911, 917, 1001, 1002
Prior right of Members of the committee to recognition for debate 955
Procedure of the Member in seeking 354
Under former rule requiring a second on the motion to suspend the rules 889
Speaker's power of..... 949–956
Speaker's power of with respect to Senate amendments..... 1070, 1072
Speaker governed by usage in..... 356, 953, 956
Speaker not to recognize Members to introduce occupants of galleries to House 966
No appeal from Speaker's decision in 356
Exceptions to the usages constraining the Speaker as to recognitions 956
Right to speak a second time 357
RECOMMENDATIONS.
President to make, to Congress 168
RECOMMIT, MOTION TO. *See also* COMMIT, MOTION TO.
Precedence and general conditions of..... 911, 916, 1001–1002c
After previous question is ordered, privilege and effect of..... 994, 1001, 1002
Debate on, with instructions..... 1001, 1002
Germaneness test with respect to 929
In order as to bill on third reading 494
Instructions with 917, 1001, 1002b
Instructions to strike out amendment adopted by the House not in order 917
Instructions may be amended by substituting different instructions..... 917, 1002
Instructions must be germane to bill before the House 930, 1002
Speaker does not usually decide as to whether or not committees have followed 628
Limiting by Committee on Rules 857
May be applied to a conference report under certain circumstances 550, 1001, 1002
Method of dividing a bill by, with instructions 476
Not used in Committee of the Whole 916
Not applied to reports from Committee on Rules pending previous question 857
One motion to, in order after previous question is ordered 911, 1001, 1002

Section

RECOMMIT, MOTION TO—Continued
Repetition of motions 918
Recognition to offer..... 911, 917, 1001, 1002c
RECOMMITTAL.
Of bills to select or standing committees 420
Duty of committee in case of 917
Of bills amending or repealing statutes when committee reports fail to comply with rule 846
Of bills to Committee of the Whole 420
Of report from Committee of the Whole when ruled out in the House 335
When House nonconcurs in recommendation of Committee of the Whole to strike out enacting words 988
Speaker does not usually decide as to whether or not committees have followed 628
RECONSIDER, MOTION TO.
Rule for the motion and its precedence 1003
Discussion of procedure of 1005
Application of 1006
Application of, to bills in committee 1011
As to use in a standing or select committee..... 416, 1005
Debate on 1010
Delegates and Resident Commissioner not to make 741
Effect of 1007
Enrolled bills not signed pending 625
Maker of 1004
May be held dilatory 903
May be applied to vote refusing yeas and nays or ordering yeas and nays (if not executed)..... 79, 1007
Not used in Committee of the Whole 416
Relations of, to motion to lay on the table 1009
Relations of, to the previous question..... 1005, 1006
Repetition of..... 1006, 1007
Vote on 1008
Vote on ordering yeas and nays may be reconsidered by less than a quorum 76
RECONSIDERATION.
Bill once rejected not to be brought up again the same session 515
Early Senate practice as to 513
Exceptions to the rule against bringing up a matter once rejected 516
Expedients for changing the effect of bills once passed 516
Of a vetoed bill by the two Houses 104
Member voting "present" not counted in determining the two-thirds 109

Section

RECONSIDERATION—Continued
Two-thirds of those voting, a quorum present, sufficient to pass bill 109
Passage of supplementary bills 518
Parliamentary law as to 514
RECONVENING.
Emergency reconvening of the House, Speaker's authority ... 83, 639
Reconvening of Congress by joint leadership under recall authority in adjournment resolutions 82, 84
RECORD. *See also* CONGRESSIONAL RECORD.
The Journal as 582
RECORD VOTE.
Changes and corrections of votes 1017
Count of those voting to make a quorum of record on a record vote 1020
Electronic device 1014, 1019
In committee, formerly used as proof quorum present when reporting 839
In Committee of the Whole on the failure of quorum 982
Interruptions of the record vote 1018
Manner of, during call of the House 1022
Not to be interrupted for conference report 1077
Not to be interrupted by arrival of time for recess 586, 1018
Oath administered to a Member during 201
Postponement of, by Speaker 1030
Speaker may recognize for motion for call of House at any time 1028
RECORDED VOTE.
Ordered by one-fifth of quorum in House 1012
By electronic device or by tellers 1012
Ordered by 25 in Committee of the Whole 984, 1012
Repetition of demand for 1013
Vote by considered vote by yeas and nays 1012
RECORDING STUDIO.
Establishment and composition of House Recording Studio 1125
RECORDS. *See* PAPERS.
RED CROSS.
Jurisdiction as to affairs of 729
REDRESS.
Of grievances, right of people to petition for 208
REFER, MOTION TO. *See also* RECOMMIT, MOTION TO.
Precedence and status of.
Precedence and general conditions of 911, 916
Has precedence of motion to amend 449
May not be postponed 451
Not to be suppressed by another privileged motion 450

Section

REFER, MOTION TO—Continued
Precedence and status of—Continued
Repetition of 918
Use of.
General use of..... 401, 446
Not used in Committee of the Whole 916
Admitted in "House as in Committee of the Whole" 425, 427
In relation to motion to strike out enacting words 988
In relation to amendments between Houses..... 528–528d
In order as to bill on third reading 494
Motion applicable to a vetoed bill 108
Instructions with 917
Instructions may be amended..... 917, 929, 1002
Instructions must be germane to bill before the House and not to general law sought to be amended 1002
Method of dividing a bill by, with instructions 476
Relations of, to previous question.
Application of previous question to 450
Relations of, to the previous question..... 486, 998
After previous question is ordered, privilege and effect of..... 994, 1002
Minority has preference in recognition for, after previous question is ordered..... 1001, 1002c
After previous question is ordered, Committee on Rules limited as to 57
Not applied to reports from Committee on Rules pending previous question 857
Discussion of relations of, to early use of the previous question 448, 449

REFERENCE.
Of bills. See BILLS.
Of memorials, petitions.
By Speaker..... 816, 825, 873
By Members..... 816, 818
Private claims referred to certain committees 817
Of communications, rule for..... 816, 873, 874
Of messages of the President, rule for..... 816, 873–875
Of executive documents 827
Papers not read in House on ordinary reference to committee 436
Correction of errors in reference of.
Errors in 824
Correction of, for public bills 825
Of public bills, place of correction of, in order of business .. 869
Change of, for errors in 824

Section

REFERENCE—Continued
Correction of errors in reference of—Continued
Correction of, in case of bills referred from Speaker's table 873, 874
Of bill to a calendar, error in, a question of privilege 828
REGENTS.
Do not hold incompatible offices 98
REGULAR ORDER.
Improper use of demand for 381
Right of the Member to demand 381, 382, 872
Not to be demanded while a Member has the floor in debate ... 393
REGULATIONS.
Power of Congress to make, concerning territory and other property 188
Power of Congress to make, as to jurisdiction of Supreme Court 179
REJECTION.
Effect of 515, 517
Bill is lost when a conference report is not agreed to 549
Bills fail when both Houses continue to insist or adhere 522
Of a bill, action on similar bill 944
Of a bill, communicated to the other House 568
Of bills, question on, comes indirectly 484
Status of amendments after rejection of conference report 551
Striking out enacting words of a bill equivalent to 988
RELATIVES.
May not be employed by Members 88
RELEVANCY OF DEBATE. *See* DEBATE.
RELIGION.
Congress to make no law respecting establishment of, or free exercise of 208
Religious tests not required for officers under United States 196
REMONSTRANCE.
Nature of 389
REMOVAL.
Of President from office 155
Of Speaker 315
RENEGOTIATION.
Jurisdiction over subject related to 722
REPETITION.
Of motions, general rules as to..... 911, 918
Of motion to reconsider..... 1006, 1007
Of motion to strike out and insert 471, 472
Of motion to request a conference 535
Of demand for yeas and nays 77
Of motion to reconsider vote ordering yeas and nays 79

Section

REPETITION—Continued
Of a question once determined 514
Of amendments 468
REPORTERS.
Of debates 685
Of debates, duties of Committee on House Administration as to 724
Press, admission to the floor, *see* FLOOR.
REPORTS.
Of committees. See COMMITTEES.
From Committees of the Whole. See also COMMITTEE OF THE WHOLE.
As related to amendments adopted 336
As to breach of privilege 335
Bill presumed to have passed necessary stages 335
Bills from, considered in the House 338
Chairman alone makes reports 335
Consideration of amendments from, in the House 337
Discharge of Committee of the Whole 339
Minutes of Clerk in lieu of, when Committee is discharged 339
Not to be amended by the House 335
Of disorderly words taken down 369, 960, 961
Of motion to strike out the enacting words 988
Recommitted when ruled out in House 335
Of Chairman when Committee rises before a matter is concluded 333, 334, 983
Quorum not required after Committee of the Whole has risen and before report made to House 1027
When a quorum fails 982
Of managers of conferences. See CONFERENCES.
In general. See also CLERK; SERGEANT-AT-ARMS; CHIEF ADMINISTRATIVE OFFICER.
Of Members, officers, and employees on financial disclosure 1103
From heads of departments, rule for reference of 873, 874
From heads of departments to be studied by committees 744–749
Rectification of errors after report of tellers 503
REPRESENTATION.
Office of General Counsel 670, 1125b
Reduction of, for abridgement of the right of suffrage 226
REPRESENTATIVES.
Election, privilege, and duties. See MEMBERS.
House of.
Part of Congress 3

Section

REPRESENTATIVES—Continued
House of—Continued
Attendance at an impeachment trial 617
Authority as to treaties 594–599
Bills for raising revenue to originate in 102
Choice of President by 221, 222
Chooses Speaker and other officers 26–30
Composed of Members chosen by people 5, 7
Confirms Vice President 253
Electoral votes to be counted in presence of 219
Has power of impeachment 31
Indecent language against, not permitted in debate 360
Convening time 6
Power of President to convene or adjourn 171
Questions of privilege affecting 698, 700
Required to keep a Journal 68
Rules as to use of Hall 677
The office building 1114
Vacancies in 17–25
REPRIEVES.
Power of President to grant 162
REPRIMAND.
Of a Member 64
REPRISAL.
Letters of, Congress to grant 127
States not to grant 146
REPUBLICAN FORM OF GOVERNMENT.
Guaranteed to the States 189
REQUEST.
For a conference.
Declined or neglected 534
Made by the House possessed of the papers 530
Motions to 528a, 535, 791, 1069, 1070
Practice as to making 533
Usual but not essential that names of managers be transmitted with 536
Bills introduced by.
Introduction of bills, resolutions by 826
RESCIND, MOTION TO.
Not privileged under rules governing the order of business 734
As to entries on Journal 71
RESCISSION.
Of appropriations, jurisdiction of Appropriations Committee 716
Separate headings required on in certain bills and reports 716
Rescission bills, definition and procedure for consideration of under Impoundment Control Act ..... 1130(6a)

Section

RESERVATION.
Of rights of people 216
Of points of order on general appropriation bills..... 1035, 1044
Of objection to unanimous-consent request 872
RESERVED POWERS.
Of the State and people 217
RESIDENCE.
As a condition of citizenship in the United States and the State of 225
RESIDENT COMMISSIONER.
Admitted to floor of House 678
Clerk to distribute certain documents to 649
Compensation of 86
Elected to committees 675
Former de novo vote in House where vote of decisive in Committee of the Whole 985
From Puerto Rico, power and privileges of 675, 676, 970
May be appointed to select and conference committees 676
Formerly could be appointed Chairman, Committee of the Whole 970
Of Puerto Rico, admitted to the floor 678
Powers and privileges in Committee of the Whole 675, 970
Rooms of, in office building 1114
RESIGNATIONS.
As related to procedure for punishments..... 63–66
From committees, privilege of and debate on..... 701
Of chairman of a committee, selection of a successor 761
Of Member-elect before taking oath 300
Of President of the United States or Vice President..... 155, 156
Of Speaker 28
Procedure for considering 700
Vacancy from 19
Vacancies caused by, in Senate 34
RESOLUTIONS.
Commemoratives.
Prohibited 823
Simple, of the House—Nature and forms of.
As to presentation of, to President for approval 115
Consideration of a preamble 414
Introduction by request 826
Introduction and reference of private 818
Introduction of public 825
Nature and use of, as compared with others 395
Raising a question of privileges of the House 698
Reference of 816
Of inquiry 864

Section

RESOLUTIONS—Continued
Simple, of the House—Nature and forms of—Continued
Use, to disapprove Executive actions 1130
Simple, of the House—Of inquiry.
Discharge of a committee from a resolution of inquiry 867
Forms of resolutions of inquiry and delivery thereof 865
Privileged status of resolutions of inquiry 866
Resolutions of inquiry as related to the Executive 868
Simple, of the Senate.
Not referred in House 874
Concurrent.
Adjournment for more than three days by concurrent resolution 84
Reference of 816
Their use 396, 1130
Joint.
Their use 397, 1130
Clerk certifies to passage of 648
Division of, not in order on vote on engrossment of passage 921
Reference of 816
Signed by Speaker 624
Used for abrogating treaties 599
Used for amendments to the Constitution 291
Use of, correct an error in a bill sent to the President 518
RESOURCES, COMMITTEE ON.
History and jurisdiction of 732
Special oversight functions of 744
RESTAURANT.
Of House, jurisdiction of matters relating to 739
Of House, management of 725
Retrenching expenditures, amendment providing new legislation in order on appropriation bill 1036–1062
RETURN.
Of a message sometimes asked 565
RETURNS.
Power of House to judge as to 46–51
REVENUE.
Power to raise.
Account of receipts of public money to be published 143
Capitation or direct taxes to be proportioned to census 140
Export duties forbidden 141
General power of Congress to raise 117
Not to be raised on commerce by water between States 142
Power of States as to raising of 147, 148
Regulations of, not to favor ports 142

Section

REVENUE—Continued
Power to raise—Continued
Retroactive income tax rate increases prohibited 1068
Consideration of bills for raising.
Amendments must relate to particular item 940
Bills for raising, to originate in House 102
Bills raising, placed on Union Calendar 828
Bills raising, considered in Committee of the Whole 973
Consideration in order on third Tuesday 895
Jurisdiction of subjects relating to 741
Jurisdiction as to oleomargarine 715
Point of order against certain bills or amendments carrying taxes or tariffs 1066, 1076a
Precedence of bills raising, in Committee of the Whole 977
Precedence of, in order of business 856
Vote on measures raising income tax rates 1033, 1067
REVENUE SHARING, GENERAL.
Jurisdiction over 723
REVENUE TREATIES.
Authority of House as to 597
REVISION OF THE LAWS.
Jurisdiction of subjects relating to 730
Law Revision Counsel, Office of 1120
RIDERS.
Nongermane Senate amendments 1089–1091
Rule forbidding, on general appropriation bills, *see* APPROPRIATIONS.
On bills, obsolete parliamentary practice as to 495
RIGHTS.
Of the people under the Constitution.
Those enumerated in Constitution and others retained by the people 216
As to quartering of soldiers 210
As to searches and seizures 211
Excessive bail or fines and cruel punishments prohibited .. 215
Of citizens of the United States as to privileges and immunities 225
Of citizens of the United States to vote 235
Of persons to life, liberty, property, and equal protection of the laws 225
Of religion, speech, free press, assembly, and petition 208
Security as to accusations, trials, and property 212
To a fair trial by jury 213
To jury trial in suits at common law 214
To bear arms 209
To vote, of citizens eighteen years of age or older 257

Section

RIGHTS—Continued
Certain, of Members of the House.
Members not always entitled to read papers in their places 434, 964, 965
Members not necessarily entitled to have papers read on plea of privilege 433
Of Member to have paper read 432
Of Members, to call to order in debate 960, 961
Of Members to demand division of the House after vote by sound 501
Of Members to demand the execution of a subsisting order 381, 872
Of Members to inspect the Journal 582
RISING. *See also* COMMITTEE OF THE WHOLE.
Of a Committee when the House sits 324
RIVERS AND HARBORS.
Jurisdiction of subjects relating to 739
Precedence of bills to improve, in Committee of the Whole .. 977
ROADS.
Post, jurisdiction of subjects relating to 739
Jurisdiction as to highways and their safety in general 739
ROLL CALL.
Members not to remain near Clerk's desk during roll call 962
Method of call of the roll for the yea-and-nay vote 1015
ROLLS.
Of Members-elect, Clerk makes up 644
Duty of Clerk as related to qualifications 9
Names of Members not entered on yea and nay, until sworn ... 300
Speaker's name not on that from which yeas and nays are called 631
ROOMS.
Assignment of, in office buildings 1114
Control of, in House wing 623
Duty of Committee on House Administration as to 724
Exclusion of persons from those leading to the Hall 678, 680
RULES.
House makes its own.
Abrogation of joint rules 61, 316
As related to privileges of minorities 283
Congressional Budget Act rules may be changed by the House 1127
Each House makes its own 58–60
Early parliamentary law as related to 286
House's construction of its power to adopt 388
Jefferson's Manual, part of 1105

Section

RULES—Continued
House makes its own—Continued
Jefferson's views as to power to make 387
Jurisdiction as to 733, 734
Necessity of 285
Not to be changed by report from Committee of the Whole 335
Power to administer oaths not conferred by 59
Power to make, not impaired by rule or law..... 59, 388
Power to make, constitutionality of 60
Procedure before adoption of 60
Those of the House in effect in Committee of the Whole so far as applicable 340, 992
Committee on.
History, jurisdiction, and powers of 682
Limitations on reports from 857
Member of serves on Budget Committee 758
Activity reports of 790
Exempted from former rule proscribing committee sittings during five-minute rule 801
Must specify reported waivers 863
Privileged reports of 857
Report from, providing special order of business not divisible 857
Report may be considered immediately by two-thirds vote 857
Certain reports may be considered immediately without two-thirds vote 857, 1087
Reports, adverse, from 861, 893
Reports from, on resolutions repealing or amending rules of House must show by typographical device parts of rules affected 848
Right to report at any time confined to privileged matters 853, 857
Suspension of. See SUSPENSION OF RULES.
Power of Congress to make certain.
Congress to make, for land and naval forces 131
Congress to make, concerning captures on land and water 127
Power of Congress to make, concerning territory and other property 188
RUMOR.
As a ground for impeachment 605
As foundation for investigation 341
RURAL DEVELOPMENT AND ELECTRIFICATION.
Jurisdiction of subjects related to 715
SAFETY, PUBLIC.
As related to suspension of writ of habeas corpus 138

Section

SALARIES.
Of Representatives and Senators ..... 85–88, 258, 1130(12)
Of Speaker 86
Jurisdiction as to, of legislative employees 724
Authorization of appropriations for, in general appropriation bills 1046
SANITY.
As related to the oath and qualifications 205
SAVINGS BANKS, POSTAL.
Jurisdiction of bills relating to 723
SCIENCE.
Congress may promote, by patent and copyright laws 124
SCIENCE, COMMITTEE ON.
History, jurisdiction, and duties of 735
Special oversight functions of 744
SCIENCE, SPACE, AND TECHNOLOGY, COMMITTEE ON. *See* SCIENCE, COMMITTEE ON.
SEAL.
Of the House, Clerk affixes 648
SEARCHES.
As related to security of persons, papers 211
SEAT OF GOVERNMENT.
Power of Congress to legislate for 134, 135
Power of President to convene Congress at another place 82, 82a, 171
District of Columbia denominated as 135
SEATS.
Obsolete requirement that a Member sit in his place 353
SECOND.
Not required for ordinary motions 392, 904
Formerly required on motions to suspend the rules 889
Of motion to adjourn on new call of House 1025
Yeas and nays not taken on vote to 77
SECOND READING.
Of a bill, obsolete requirement as to 400
Of bills to be in full 941, 942
Manner of reading a bill a second time 428
SECONDARY MOTIONS. *See also* MOTIONS.
Application of motion to amend to other 927
Discussion of use and relations of 437–464
In general, one not to be suppressed by another 450
Precedence and conditions of 911–917
SECRECY.
Of portions of the Journal 68
Of committee procedure 319

Section

SECRET SESSIONS.
Rule for and procedure in 785, 969
Of committees, banned with certain exceptions 798
SECRETARY OF STATE.
Bills that become laws deposited with (obsolete)..... 105, 109
SECRETS.
Of the House, oath of officers to keep (obsolete) 640
SECTIONS.
Amendment of bills by 413
Amendments should be germane to 928
Clerk amends numbers of, in a bill 479
House does not agree to severally, in perfecting a bill 456
Reading of bills by 980
Transportation of, in a bill by amendment 477
SECURITIES.
Congress may provide punishment for counterfeiting 122
Jurisdiction over depository institution securities 722
Jurisdiction over exchange 722
SECURITY.
Of the people as to searches and seizures 211
SEIZURES.
As related to security of persons, papers 211
SELECT COMMITTEES.
Ad hoc to consider legislation 816b
Former Aging 784
Compliance with clause 2(a) of rule XI 783
Conferences held by means of 532
Ethics 738
Former Select Committees on Homeland Security 723b
Hurricane Katrina 1112b
Membership contingent on party membership 782
Permanent Select Committee on Intelligence..... 744, 785, 1112a
Speaker appoints 637
Reports, dissolution, and revival of 419
SENATE.
Part of Congress 3
Concurs in treaties by two-thirds vote 165
Congress not to interfere as to place of choosing Senators 42
Composition of 32
Division into classes 33
Election of Senators 32, 42, 236
Electoral votes transmitted to President of 219
Electoral votes to be counted in presence of 219
Filling vacancies in..... 34, 236
May amend revenue bills 102
No State to be deprived of equal suffrage in, without consent .. 191

Section

SENATE—Continued
Power of President to appoint officers during recess of 167
Permissible references to Senate action 945
President pro tempore 37
Procedure in ratifying treaties 600
Qualifications of Senators 35, 230
References to debate and proceedings therein, criticisms of not generally in order in the House 371–374, 945
Vice President 36
Tries impeachments 38–41
SENATE AMENDMENTS. *See* AMENDMENTS BETWEEN THE HOUSES; CONFERENCES.
SENATE BILLS.
Rule for reference of 816, 873, 874
Consideration of, from Speaker's table with reference to Committee of the Whole 873, 874
SENATE RESOLUTIONS.
Simple resolutions of Senate not referred in House 874
SERGEANT-AT-ARMS.
Doorkeeping duties 380, 658
Duty to cooperate in the performance of reviews and audits 660
Duties of, on call of the House 1021, 1023, 1025
Election, oath, and removal of 640
Enforces authority of House in House and in Committee of the Whole 648
Enforces rules as to decorum on floor 962
Financial and operational reports to Committee on House Administration 659
Formerly disbursed pay and mileage of Members 86, 648
Makes up roll of Members-elect in certain cases 648
Of the Senate, admitted to the floor of the House 678
The Mace as symbol of his office 657
SERVICE.
Fugitives from, return of 186
SERVITUDE.
Involuntary, not to exist except as punishment for crime 224
Suffrage not to be abridged for previous condition of 234
SESSIONS. *See also* ADJOURNMENTS.
Sessions and recesses (adjournments) of Congress 82–84, 590
Adjournment of Congress during August in certain situations . 1106
Adjournment prohibited before completion of congressional budget process 1127
Close of, as related for constitutional day of meeting of Congress 45, 242
Conference asked at one and concluded at next 533

Section

SESSIONS—Continued
Congress adjourns not later than last day of July in certain situations 1106
Congress may extend session beyond July 1106
Effect of adjournment on action on a veto 107
Executive, of committees, banned with certain exceptions 798
Impeachments continue from one to another 620
Manner of closing session by action of the two Houses..... 242, 591
Obsolete law as to business at end of 385
Of Congress, resumption of business of a preceding 814
Of Parliament 588
Parliamentary law as to business at the termination of a session 592
Relations of, to adjournments for more than three days 84
Rule for secret, of the House 969
Sitting committees in recesses, and creation of commissions to sit after Congress adjourns 589
Termination of, as affecting approval of bills 577
SEVEN DAYS.
Any member of standing committee may call up bill after resolution making bill in order has been adopted for more than . 862
Any member of Rules Committee may call up special rule after it has been on calendar for 861
Filing of committee report within, after written request 834
See clause 2, rule XV, relating to motion to discharge 892
Special committee meetings to be called within, upon request of committee majority 793
SEX DISCRIMINATION.
Discrimination in employment 1095
Right of suffrage 240
SHIPS.
Of war not to be kept by States in time of peace 148
SIGNATURE.
Approval of bill by President valid only with 105
As to signing of enrolled bills by Speaker pro tempore 632
Of enrolled bills for presentation to the President 575, 576
Of enrolled bill canceled..... 575, 625
Of bills, effect of recess of Congress on 814
Of conference reports 543
Of prime sponsor of bill at introduction 821
Of reports of committees and minority views 408, 833
Of writs, warrants, acts, subpoenas 624
Speaker declines to sign a bill when motion to reconsider is pending 1007
Speaker does not sign bills in absence of a quorum (obsolete) .. 625

Section

SIMPLE CONFERENCES. *See* CONFERENCES.
SIX DAYS.
Last, of session, status of motion to reconsider during 1003
Last, of session, suspension of rules during 885
Conference report not required to be printed in Record on last..... 1082, 1083
SLAVERY.
Not to exist in the United States 224
Suffrage not to be abridged for previous condition of 234
No claims to be paid for 232
SMALL BUSINESS.
Generally.
Assistance and protection, jurisdiction over 736
Participation in Federal contracts, jurisdiction over 736
Committee on.
History and jurisdiction of 736
Special oversight functions of 744
SMITHSONIAN INSTITUTION.
Jurisdiction of matters relating to 724, 739
SMOKING.
Forbidden on floor of House 962
SOCIAL SECURITY.
Jurisdiction over health care and facilities supported by payroll deductions 741
Jurisdiction over health care supported by general revenues ... 721
Jurisdiction of, generally 741
SOLDIERS.
As to quartering of 210
Of the World War, jurisdiction of matters relating to 740
SOLDIERS' HOMES.
Jurisdiction of matters relating to 718
SPEAKER.
Election of.
Chosen by the House..... 26, 312
Chosen by majority on rollcall vote by surname..... 27, 640
Election of, as related to adoption of rules 59
Election of, in case of death or resignation 28
Election or appointment of Speaker pro tempore 314, 632, 634
Former four-term limit 635a
Has the power to name a Speaker pro tempore under conditions 632, 634
House has adjourned for more than one day before election of Speaker 83

Section

SPEAKER—Continued
Election of—Continued
Motion to proceed to election of, of higher privilege than motion to correct the roll 644
Nominations for, precedence of 27, 60
Removal of 315
Sergeant-at-Arms maintains order pending election of 648
Relations of, to oath.
Administers oath to Members and officers 198
As to power to direct a Member whose right to be sworn is challenged, to step aside 203
Functions of, in administering the oath to Members 199
May administer oaths to witnesses 343
Oath, administered to, by Dean of House 198
Preserves order and decorum.
Preserves order and decorum 622
Censure inflicted by, on order of House 65
Duty of, as to accommodating differences among Members 367
May cause lobby or gallery to be cleared for disorder 622
May not censure or punish a Member 622, 960, 961
May not recognize Members to introduce occupants in galleries 966
May not entertain requests to extend floor privileges 679
Parliamentary law as to naming a Member by, for disorder 366
Power of, as to abuse of privilege of the floor 679
Power to order arrest 622
Sergeant-at-Arms maintains order and executes commands of House under direction of 648
Decides questions of order.
Decides questions of order 627, 628
Advice from Members while deciding a question of order during a division 507
Authority of, to delay decision or a question of order 378
House by appeal controls decisions on 379, 627, 629
May not decide questions of consistency as to amendments 466
Not to pass on sufficiency of a committee's report 833
Not to pass on constitutionality of pending measures 628
Practice governing, in deciding questions of order 628
Questions not for his decision 628
Duties of, as to quorum.
Actual count of, to ascertain quorum after previous question is ordered 1029
Count of quorum by 54

Section

SPEAKER—Continued
Duties of, as to quorum—Continued
Duties of, when Committee of the Whole rises without a quorum 982
May order the noting of Members to make quorum on vote of record 1020
May recognize for call of the House 1028
Required to notice failure of quorum on yea-and-nay vote . 76
Takes Chair at hour of meeting, not waiting for ascertainment of quorum 310
Duties of, as to sittings and adjournment.
Takes the Chair 621
Calls House to order 621
May declare recesses 83, 638, 639
Declares adjournment at end of Congress 6
Pronounces adjournment 587
Right of, to cause secret session 969
Conduct of.
As a witness before a committee 346
Former four-term limit 635a
Functions of, at examinations at the bar of the House 343, 344
Reprimand of 64
Rules a restraint on caprice of 285
Duties, generally.
Authority, duties, and privileges as to use of galleries 682, 694
Authority to implement broadcasting of House proceedings 684
Certifies to compensation of Members 86
Directed to notify governor of State in case of certain vacancies 22
Drug testing of Members, officers, and employees 635
Duties of, general control of Hall, corridors, and rooms 623
Ex officio member of Permanent Select Committee on Intelligence 785
May designate Members, officers, and employees to travel on official business of the House, on vouchers approved by him 636
Office for Legislative Floor Activities 1123
Appointment of committees by.
Appoints select and conference committees 637
Removes conference committees 637
Appointment of officers of House temporarily by.
Appoints temporarily to fill vacancies 640

Section

SPEAKER—Continued
Relations to petitions, bills, and order of business.
Authority to reserve certain bill numbers 825
Declines to sign a bill when motion to reconsider is pending 1007
Directs Clerk as to reference of nonprivileged report to calendars 831
Duties as to referring matters from Speaker's table 873, 874
Duties of, in presenting petitions 818
Duty as to reception and reference of executive communications 816, 827
Duty to exclude certain bills, memorials 818, 822, 823
Duty of, when validity of a report is questioned 408
Early discretion of, as to the order of business 349
Exercises discretion about interrupting pending business to receive a message 562
Functions of, in relation to request for unanimous consent 872
Makes reference of public bills, memorials 816, 825
Messenger saluted by 564
Objects to action on a bill without reading 942
Sign acts, writs, subpoenas 624, 626
Signing of enrolled bills by 575, 624
Powers and duties as to recognition.
Speaker's power of recognition 949–956
Designates time and place for consideration of questions of privilege 698
Discretion to recognize for motion for call of House 1028
Discretion to recognize for motion to send bill to conference 528a, 1069, 1070
Discretion to recognize authorized committee member to call up bill made in order by resolution 715
Duty of, as to entertaining questions of privilege 698–668
Duty as to recognition for motion to reconsider 1004
Exceptions to the usages constraining the Speaker as to recognitions 956
Former duty as to recognizing for second of motion to suspend the rules 889
Function of, in recognizing for debate 354
Limitation on power to entertain motion for recess on Wednesdays 900
Limitation on power of, to entertain motions pending report of Committee on Rules 857
Loss of right to recognition by Member in charge 954
No appeal from his recognition 356, 629
Not to entertain dilatory motions 903

Section

SPEAKER—Continued
Powers and duties as to recognition—Continued
Not to entertain motion to suspend the rules as to use of Hall of House 677
Not to entertain motions or requests to suspend rule relating to admission to the floor 678
May entertain one motion to adjourn pending motion to suspend rules 890
Power to entertain motions to suspend rules limited 885
Preliminary action of Member in seeking recognition 945
Principles as to recognition for motion for the previous question 997
Prior right of Members of the committee to recognition for debate 955
Required to give preference to opposition for motion to recommit after previous question is ordered..... 1001, 1002c
Speaker governed by usage in recognition 953
With respect to former Consent Calendar 899
Relations of, to debate.
Criticism of in debate..... 362, 960, 961
Duty as to calling to order in debate 960, 961
Duty of, to suppress reflections on motives 363
Duty of, to prevent expressions in debate offensive to the other House 374
Participation of, in debate 358
To be addressed when a Member desires to interrupt in debate 364
Puts the question.
Decorum while he is putting the question 962
Duty of, to state motions 904
Formal and informal putting of the question by..... 489–491
Must put a question which is in order 304
Putting of the question by, and taking the vote 630
Reads sitting but rises to put a question 428
Duty and rights as to voting.
Formerly appointed tellers 1013
Discretionary authority to postpone certain proceedings 1030
Discretionary authority to reduce electronic vote to five minutes 1032
Discretionary authority to use electronic device in taking vote..... 1012, 1032
Duty of, when an order of yeas and nays is demanded 78
Duty to divide the House on demand of a Member after vote by sound 501
Forbidden to entertain a request to record a vote after the record vote 1015

Section

SPEAKER—Continued
Duty and rights as to voting—Continued
Has not usually decided as to vote of a Member personally interested 672
His vote on a record vote 1015
His vote ordinarily and in case of tie..... 631, 1015
Not deprived of vote by rule 59
Procedure of, in taking a vote of yeas and nays 504
Relations to Committee of the Whole.
Appoints Chairman of Committee of the Whole and leaves Chair 970
Declaration of resolve into Committee of the Whole pursuant to special order 972
Duty of, as to recognition of a report from a Committee of the Whole 335
Function of, when the House goes into Committee of the Whole 328
May take the Chair to restore order in Committee of the Whole..... 331, 332, 622
Remains in the Chair in House as in Committee of the Whole 424
Takes the Chair at informal rising of Committee of the Whole to receive a message 330, 563
Powers and duties of, as to conferences.
Functions and duty of, in appointing and removing managers of a conference 536, 637, 782
May rule out a conference report where managers exceed their authority 547
Duties as to Journal and Record.
Approves Journal 621
May cause Journal to be read 621
Duties as to reporters of debates and committee stenographers 685
May not prevent House from amending Journal 71
Relations of, to Congressional Record..... 685, 691
Vacancy in office of. See VACANCIES *and* SPEAKER PRO TEMPORE.
SPEAKER'S OFFICE FOR LEGISLATIVE FLOOR ACTIVITIES.
Establishment of 1123
SPEAKER PRO TEMPORE.
Appointed by the Speaker or elected by the House..... 632, 634
Choice of 314
Chosen on removal of Speaker 315
Competency of, to administer oath to Members 199
SPEAKER'S TABLE.
Business on, place in order of business 869

Section

SPEAKER'S TABLE—Continued
Must be authorized by committee in formal meeting to make motion 874
Rule for disposition of business on 873, 874
Senate bill must be substantially same as House bill as reported from House committee 874
Senate bill to be called up, House bill must correctly be on House Calendar 874
SPECIAL ORDERS. *See also* RULES.
Effect of, on Tuesday business 895
Oxford-style debates 952
Privilege of reports of 853, 855, 857
Quorum calls not in order during speeches 1027
Relation of motion to postpone to 734, 915
Rules Committee must specify waivers contained in 863
Speeches 950
Use of, and method of making 734
SPEECH.
Freedom of, guaranteed 208
Members not to be questioned in another place for 92
Members of Parliament exempted from question as to 287, 302, 309
Not to be noticed by the other House 308
SPITTING.
Not in order during debate 364
SPOUSES.
Of Members and employees, employment of 1095
ST. ELIZABETH'S HOSPITAL, JURISDICTION OF 723
STAFFS OF COMMITTEES. *See* COMMITTEE STAFFS.
STANDARD.
Congress to fix, for weights and measures 121
STANDARDS OF OFFICIAL CONDUCT, COMMITTEE ON.
Approval of copyright royalty contracts 1099
Composition of 759
Duties and procedures of as to standards of conduct and investigations 806
Duties under the gift rule 1100
Employing agency under Foreign Gifts and Decorations Act 737
Exempted from former rule proscribing committee sittings during five-minute rule 801
History and jurisdiction of 737
Inspector General makes certain reports to 667
Privileged reports from 853
Sanction Committee may recommend 62–66

Section

STANDING COMMITTEES. *See* COMMITTEES.
STANDING ORDERS.
Duration of 386
STATE EXECUTIVE.
Fills certain vacancies in Senate (obsolete) 34
Issues writs to fill vacancies in representation..... 17, 24
May be empowered by legislature to make temporary appointment of Senator 236
STATE OF THE UNION.
President to inform Congress of 168
STATEMENT.
Accompanying conference report, rule as to 1080
Of receipts and expenditures of public money to be published .. 143
STATES.
Relations to the two Houses.
Admission of, jurisdiction of bills for 732
Authority of, as to establishment of congressional districts 227
Clerk to distribute Journal to legislative bodies of 647
Constitutional convention to be called on application of legislatures of 192
Governors of, admitted to the floor of the House 678
House of Representatives votes by, in choosing President . 221
Legislatures prescribe time of elections 42, 43
May not prescribe qualifications of Members 12
None to be deprived of equal suffrage in Senate without its consent 191
People of the several, to choose Representatives 5
Qualifications of electors of Representatives of, in 7
Ratification of constitutional amendments by 192
Representation to be apportioned among 226
State laws related to House's power to judge elections..... 48–50
Two Senators from each 32
Relations of, to President.
Appoint electors of President 151
Electors of, limited as to votes for President and Vice President 219
Meeting of presidential electors in 219
President Commander in Chief of militia of, in certain cases 160
Relations of, to courts, crimes.
Judges in, bound by Constitution of the United States 195
Judicial power extends to cases affecting 178
Jurisdiction of Supreme Court in cases affecting 179
Limitations as to certain suits against 218

Section

STATES—Continued
Relations of, to courts, crimes—Continued
Relations of, as to extradition 185
To give full faith and credit to public acts, records, and judicial proceedings of one another 183
Trials for crimes in 180
Citizenship and suffrage in, and authority of.
Citizenship of 225
No State by law to abridge the privileges and immunities of citizens 225
Not to abridge suffrage for race, color 235
Not to deprive any person of life, liberty, or property unlawfully, or deny equal protection of the laws 225
Privileges and immunities of the citizens of 184
Admission, consolidation, or division of 187
Authority as to militia 133
Certain claims of, not to be prejudiced by the Constitution 188
Duties not to be levied by, on commerce by water 142
Eighteen-year-old persons and older granted suffrage 257
Jurisdiction of bills as to compacts between, in general 730
Jurisdiction of compacts between, of waters for irrigation purposes 732
Jurisdiction of compacts over interstate energy 721
Jurisdiction of matters relating to boundaries 730
Necessity of militia for security of 209
No tax or duty on articles exported from 141
Not to pay any debt incurred in aiding insurrection or rebellion 234
Officers of, bound by oath to support the Constitution 196
One not to enter into agreement or compact with another except on condition 148
Ports of, not to be given preferences 142
Power of Congress to regulate commerce among 119
Power of Congress over places purchased with consent of . 134
Powers of, as to migration or importation of persons 137
Powers of, as to treaties, alliances, confederations, and other functions, limited 146–148
Powers reserved to, by the Constitution 217
Qualifications of officers as to loyalty 232
Relations of, as to fugitives from service or labor 186
United States to guarantee republican form of government and protect from invasion and domestic violence 189
STATIONERY.
Clerk formerly furnished 642
Clerk formerly kept accounts of Members and Delegates as to . 642

Section

STATIONERY—Continued
For Members 88
STATISTICS.
Jurisdiction of bills relating to, generally 723
Jurisdiction of matters relating to labor 720
STATUARY.
Jurisdiction as to 724
STATUTES.
Revision of, jurisdiction as to 730
STATUTORY LIMIT ON PUBLIC DEBT.
Rule providing for 1104
STENOGRAPHERS.
Admission of unofficial 693
Of Committees, appointment of 685
Official reporters of debates 685
STRIKE OUT ENACTING WORDS.
Rule governing motions to 988
Practice as to use of motions to 989
STRIKE OUT, MOTION TO.
Application of 472
Conditions of striking out an amendment already agreed to 474
Effect of affirmative vote on motion to, and insert 473
Federal unfunded mandate 991
Motion to strike out and insert not divisible 920
Negative decision of, not bar to further amendment 920
Perfecting before voting on 469
Practice of Parliament and the House as to 468
Priority of perfecting amendments over 456
Repetition of the motion to, and insert 471
SUBCOMMITTEES. *See also* COMMITTEES.
Limited number may be established 762
May authorize and issue subpoenas 805
Oversight function of 743
Staff for 767
Subject to full committee control 787
SUBJECTS.
Of foreign states, limitations on suits of, against States 218
Judicial power extends to cases affecting those of foreign states 178
SUBPOENAS.
Clerk seals and attests all 648
From courts for papers of House 291, 697
Issue of, during recess of Congress 342
Procedure for response to subpoenas 697
Signed by Speaker 624, 626
Standing committees and their subcommittees may issue 805

Section

SUBPOENAS—Continued
Authorizing and signing committee subpoenas 805
SUBSTANTIVE PROPOSITIONS.
As related to division of the question 919, 921
SUBSTITUTE AMENDMENT.
Amendment of 923
As to division of 920
Rule as to offering of 922
Time of offering in "House as in Committee of the Whole" 427
SUFFRAGE.
Abridgment of a cause of reduction of representation 226
Of States in the Senate 190
Right to, not to be abridged for race, color, or sex..... 234, 236
Right to, not to be abridged by poll tax 251
SUITS.
As to jury trial for those at common law 214
Limitation of judicial power in cases of law or equity 219
SUMMONS.
Writ of, in an impeachment..... 608, 611
SUNDAY.
Not taken into account in adjournment for three days or less .. 83
Excepted from the ten-day limit as to bills presented to President 111
When inauguration day falls on 150
SUNDRY CIVIL EXPENSES.
Jurisdiction of appropriations for 716
SUPPLEMENTAL BUDGET.
Transmittal of 169
SUPREME COURT.
Admission to Floor, *see* FLOOR.
Gallery for, *see* GALLERIES.
Judges of 682
Jurisdiction of 179
Repository of judicial power 177
Tenure and compensation of judges of 177
SUSPENSION.
Of writ of habeas corpus 138
SUSPENSION OF RULES.
Consideration of 886a
Consideration on certain suspension days of former Consent Calendar 899
If quorum not present when former vote on ordering second taken by tellers, vote then had under call of the House by yeas and nays 889
Motion for, as unfinished business 879
Motion for, entertained after yeas and nays are demanded 80

Section

SUSPENSION OF RULES—Continued
Nature of the motion 886
One motion to adjourn in order pending 890
Postponement of votes until designated time 1030
Precedence of the motion 887
Recognition by Speaker for motion on 956
Rule governing the motion for 885
Rule relating to admission to the floor not to be suspended 678
Formerly, second required 889
Speaker not to entertain motion to suspend rule relating to use of the Hall of the House 677
When in order 885
Withdrawal of 889a, 905
Forty minutes of debate on motions on 891
TABLE.
Speaker's.
Rule for disposition of business on..... 873, 874
Business on, place in daily order 869
Clerk's.
No Member to remain near, during voting 962
Members not to take papers from, or write there during debate 364
Papers on, not to go from Clerk's custody 352
Laying of adverse reports on 832
Motion to lay on the. *See* LAY ON THE TABLE.
TAKING DOWN WORDS.
Parliamentary law as to 368, 369, 960, 961
TAXES AND TARIFFS.
Capitation or direct, to be proportioned to census 140
Committees not having jurisdiction of, may not report a tax or tariff 1066
Amendments to bills reported, may not carry 1066
Former dynamic estimate of changes in revenues 849
Exempt foundations and trusts, jurisdiction over 741
Export taxes prohibited 141
Income taxes 235
Limitation on rights of States to impose duties..... 142, 147, 148
Old apportionment of 14
On persons migrating or imported 137
Point of order against certain bills and amendments carrying 1066, 1076a
Power of Congress to lay and collect 117
To be uniform 117
Propositions for, considered in Committee of the Whole 973
Formerly, report on "major" tax legislation may include "dynamic estimate" 849

Section

TAXES AND TARIFFS—Continued
Report on tax proposal must include "macroeconomic analysis" 849
Retroactive income tax rates prohibited 1068
Tax complexity analysis 849, 1092
Vote on measures raising income tax rates 1033, 1067
TECHNOLOGY ASSESSMENT.
Office of 1121
TELEVISING.
Committee meetings and hearings 807–812
House proceeding 684
TELLERS.
Clerk tellers.
Clerks to serve as, on quorum calls and recorded votes 1012, 1019
Rule and practice 1012
Appointment of 1012
Chair may be counted on a vote by 631
Demand for, may be held dilatory 903
May be demanded after refusal of yeas and nays 80
May not be ordered to verify count of quorum 54
Ordered by a fifth of a quorum 1012
Rule and practice as to voting by 1012
Generally.
Appointment of, for electoral count 220
Clerk appoints, for election of Speaker 312
Former demand for and vote by 1012
Former duty of Member to serve as teller 1013
Formerly motion to suspend the rules seconded on vote by 889
Messages not received during vote by 562
Rectification of error after report of 503
Relation of, to point as to quorum 54
Sometimes used in ordering yeas and nays 504
Yeas and nays may be demanded during vote by 77
TEN DAYS.
Limit as to bills presented to President 111
TENDER, LEGAL.
States restricted as to making 146
TERM.
Beginning of President's term 150, 241
Of Congress 6
Of Member elected to fill vacancy 25
Of President of the United States 149, 281
Of Representatives 5, 6
Of Senators 32
Of Speaker (former term limit) and other officers 26, 635a
Of Speaker expires with the Congress 643

Section

TERM—Continued
Of two years for appropriations for armies 171
TERRITORIES.
Jurisdiction of matters relating to boundaries of 730
Jurisdiction of matters relating to courts of 730
Jurisdiction of matters relating to generally 732
Power of Congress to make rules and regulations concerning .. 188
Privilege of Delegates from, *see* DELEGATES.
TESTIMONY.
Methods of taking, by the House and committees 341–348, 798, 800, 802, 803
Power of the House to compel 295
Procedure when it implicates a Member of the other House, *see* WITNESSES.
Quorum to receive, *see* WITNESSES.
Required to secure conviction for treason 181
Witnesses before committees, *see* WITNESSES.
TESTS.
Of strength usually taken first on the engrossment of a bill 429
Of strength may be taken before bill is amended 430
Religious, not required for office under United States 196
TEXT OF A BILL.
House and not Speaker passes on questions relating to that to which both Houses have agreed 466
Perfection of, before striking out or agreeing 456
That to which both Houses have agreed not to be changed by either House alone or by the conference 527
THANKS.
Of Congress, persons receiving, admitted to the floor 678
THIRD READING OF A BILL.
Amendments before 497
Committal of a bill on 494
Debate in relation to 498
Obsolete parliamentary law as to, of bills 493
Obsolete requirements as to reading and passage of bills ... 492, 943
Question on, and procedure 941, 943
THREE DAYS. *See* ADJOURNMENT; COMMITTEES; CONFERENCES.
TIE VOTE.
Decision on 508
In Subcommittee on Administrative Oversight 744
Question lost on 631
Speaker's vote in case of 631, 1015
Vote of Vice President in case of 36
TIME.
Of adjournment, power of President as to 171
Amendments, filling blanks as to 475

Section

TIMES OF ELECTIONS.
Regulation of 42, 43
TITLES.
Of bills.
Amendment of 922
Amendment of in "House as in Committee of the Whole" .. 427
Endorsement of, on an engrossed bill 431
Of reported bills entered in Journal and Record 831
Parliamentary law as to amendment of title to a bill 512
Power of a committee as to 411
Of Journals.
Of Journal 69
Of nobility.
Conditions on acceptance of, from foreign sources 144, 145
No State to grant 146
None to be accepted by officers of United States..... 144, 145
None to be granted 144, 145
TONNAGE.
States not to levy duties on 148
TORT CLAIMS.
Bills for certain, banned 822
TRADE.
Expedited procedures with respect to..... 1130(11A)–(11J)
Termination of Cuban economic embargo ..... 1130(27)
U.S. participation in the WTO ..... 1130(11)
Under the Trade Act of 1974..... 1130(11)
TRADEMARKS.
Jurisdiction of bills relating to 730
TRADING WITH THE ENEMY.
Jurisdiction over subjects related to 729
TRANSFERS OF UNEXPENDED BALANCES.
Jurisdiction of subjects related to 716
Separate headings for in certain bills and reports 716
TRANSPORTATION AND INFRASTRUCTURE, COMMITTEE ON.
History, jurisdiction, and duties of 739
TRANSPOSITION.
Obligation limitations 1064
Aviation programs, funding for 1064a
Of portions of a bill by motion to amend 477
TRAVEL.
Of Members and employees.
By retiring or defeated Members 1098
Use of committee funds for travel 769
Use by committees of foreign currencies owned by the United States 769
Reports by committees on use of foreign currencies 770

Section

TRAVEL—Continued
Of Members and employees—Continued
Expense resolutions for committee travel 1098
Speaker may designate Members, officers, and employees to travel on official business of the House, on vouchers approved by him 636
Generally.
Travel and tourism, jurisdiction over subjects related to ... 721
TREASON.
An impeachable offense 173
Aid to enemies of the United States 81, 230
Definition of 181
Extradition for 185
Power of Congress to declare the punishment of 181
Relations of privilege to case of 305
Senators and Representatives not privileged from arrest for 90
Testimony for conviction of 181
TREASURER OF THE UNITED STATES.
Disburses pay of Members in certain cases 86
TREASURY.
Compensation of Representatives and Senators paid out of 85
Duties and imposts on imports or exports levied by States to go to 147
Money not to be drawn from, except on appropriation 143
Jurisdiction as to subjects relating to 741
TREATIES.
Abrogated by law 599
Authority of the House as to revenue 596
Authority of the House as to, in general 596
Authority of the House as to, does not give rise to question of privilege 702
General action of the House as to 595
General nature of 593
House approves Indian 598
Jefferson's discussion of, under the Constitution 594
Judicial power extends to cases arising under 178
Jurisdiction of those relating to revenue 741
President makes, with concurrence of Senate 165
Procedure of the Senate as to 600
States not to make 146
Supreme law of the land 195
TREATY RIGHTS.
Jurisdiction as to bills relating to 729
TRIAL.
At bar of House for contempts 344
By jury in suits at common law 214

Section

TRIAL—Continued
For capital or infamous crimes 212
For crimes to be in State where committed or where Congress may direct 180
Of crimes to be by jury, except in cases of impeachment 180
Persons not to be put twice in jeopardy 212
Rights as to, in criminal prosecutions 213
TRIBUNALS.
Congress to constitute inferior 125
TROOPS.
States not to keep, in time of peace 148
TRUST.
No one holding office of, to accept certain gifts 144, 145
Public, no religious test required for under United States 196
TRUST FUNDS.
Jurisdiction of subjects relating to 741
TRUSTS.
Jurisdiction of subjects relating to 730
TUESDAY.
Interruption of regular order on the first and third Tuesdays for consideration of the Private Calendar 895
Motions to suspend rules on 885
TWENTY-MINUTES' DEBATE.
On certain motions to discharge committees 892
TWO-THIRDS VOTE. *See* VOTING.
TWO WEEKS.
Last, of session, rule for Calendar Wednesday not to apply to . 900
UNANIMOUS CONSENT.
Amendments between Houses considered by 528a
Former calendar for bills to be considered by 899
Consideration in House as in Committee of the Whole by 424
Correction of reference of public bills may be made by 825
Interruption of the order of business for 872
Ordinary function of Speaker as to recognition of requests for 872, 956
Practice of Speaker as to recognition of requests for 956
Private claims to be referred to certain committees only by 817
Request as to admission to the floor not to be entertained 678
Required for withdrawal of amendment in Committee of the Whole 978
Reservation of objection to 872
Right of Member to demand execution of subsisting order 381, 872
UNFINISHED BUSINESS.
Rule for considering of 876
Construction of the rule as to 877

Section

UNFINISHED BUSINESS—Continued
Business in periods set apart for classes of business 879
Private, on Tuesdays 895
Place of, in daily order of business 869
Postponed votes 1030
Priority of, in Committee of the Whole 977
Question of consideration does not recur as 907
Resumption of business of a preceding session of Congress 814
UNFUNDED MANDATES. *See* FEDERAL MANDATES.
UNION.
An object of the Constitution 1
Execution of laws of 132
States of, guaranteed republican form of government and protection from invasion and domestic violence 189
UNION CALENDAR.
Rule and practice for considering bills on, after call of committees 882, 883
Bills placed on 828
Bills on, considered by unanimous consent in House as in Committee of the Whole 424
Bills on, considered on Calendar Wednesday 900
Referral of State of the Union message to 168
Removal of bill from by Speaker 973
UNITED STATES CAPITOL PRESERVATION COMMISSION. *See* CAPITOL.
UNOFFICIAL OFFICE ACCOUNTS.
Prohibited 1096
UNUSUAL PUNISHMENTS.
Not to be inflicted 215
URBAN DEVELOPMENT.
Jurisdiction over subjects related to 722
USAGE.
Governing the Speaker in recognitions 953
USELESS PAPERS.
Disposition of, jurisdiction 724
VACANCIES.
In membership of House.
Accounting for 1024b
Clerk administers office 653
Continuation of pay of clerical assistants 88
Declared for holding incompatible offices 101
Special elections in extraordinary circumstances 17, 43, 53, 310
From action of House 22, 205
From death 18
From declination 20

Section

VACANCIES—Continued
In membership of House—Continued
From incapacity 205
From resignation 19
From withdrawal 21
Functions of State executive as to 24
Governor issues writs to fill 17
In general 17–25
Questions as to existence of 23
Term of Member elected to 25
"Provisional quorum" in catastrophic circumstances 17, 53, 310, 1024a
In general.
In managers of a conference 538
In Office of Clerk 30
Of House officers, Speaker may fill temporarily 640
In Office of Speaker 28, 632
In Office of Vice President 353
In Office of President 155, 244–246, 252, 256
In offices, President to fill, during recess of Senate 167
In Senate 34
On Committees, filling of 757, 793
VACATING.
Of Speaker's signature to enrolled bill 625
VALIDITY.
Of the public debt not to be questioned 234
VESSELS. *See also* SHIPS.
Appropriations for, as in continuance of a public work 1051
Bound from State to State 142
Jurisdiction of subjects relating to 739
Jurisdiction of bills relating to mutiny and destruction of 730
VETERANS' AFFAIRS, COMMITTEE ON.
History, jurisdiction, and duties of 740
Other committees consolidated with 740
VETO.
Of a bill by the President 104
Consideration and action on vetoed bill in House 104, 107–109
Line item veto authority of the President ..... 1130(6b)
Members answering present not considered in determining two-thirds 109
Two-thirds of those voting, a quorum present, sufficient to pass bill 109
In order to consider on Calendar Wednesday 901
Pocket veto 112
Effect of adjournment to day certain as to pocket veto 113

Section

VICE PRESIDENT.
Admitted to the floor of the House 678
Confirmation of President's nominee to fill vacancy 253, 256
Election of 151, 153, 246, 253, 256
Election of, by the Senate in certain cases 221–223
Limitation on right of electors to vote for 219, 220
May be impeached 173
Meeting of electors of, and transmission and count of votes for 219, 220
Official duties of President devolve on, in certain cases 155, 252, 254, 255
President of Senate with a vote in case of tie 36
Presides in certain impeachments 615a
Qualifications of 221
Qualifications of electors, as to loyalty 230, 231
Removal, death, resignation, or inability of 155
Term of 150, 241
To act as President if the House of Representatives fails to choose 221
VIEWS OF MINORITY.
Signing of 833
Reference of, to calendars 831
Right to file 804
VIOLENCE.
Domestic, States may ask protection from 189
VIOLENT CRIME REDUCTION TRUST FUND 1128
VIRGIN ISLANDS.
Delegate from, powers and privileges, *see* DELEGATES.
VISITORS TO INSTITUTIONS.
Do not hold incompatible offices 98
VIVA VOCE VOTE.
Rules require officers of House, except Speaker, to be elected by 640
Usage to elect Speaker by 27, 640
VOCATIONAL EDUCATION.
Jurisdiction of subjects relating to 720
VOTES.
As to presentation of, to President for approval 115
By which a bill is passed not communicated to the other House 567
Delegates not to vote in House 675
Delegates and Resident Commissioner, voting in committees and formerly in the Committee of the Whole 675, 985
Each Senator to have one 32

Section

VOTES—Continued
Former de novo votes in House where Delegates' votes decisive in Committee of the Whole 985
Methods of recording in Journal 72, 75
Not to be noticed in the other House 308
Of Chief Justice in impeachments 615a
Of electors of President, giving of 153
Of Speaker not taken away by rule 59
Of Speaker ordinarily and in case of tie 631
Of Vice President in case of tie 36
Of States in the Senate 190
Recorded vote considered vote by yeas and nays 1012
Speaker's authority to postpone 1030
Transmittal and count of electoral 219, 220
Transmittal of, of electors of President 153
Yeas and nays entered on Journal by order of one-fifth 75–78
Yeas and nays on vetoed bill entered on Journal 104

VOTING.
Duties and rights of Members, Delegates, and Resident Commissioner in.
Absent Members' votes not announced 1031
Member may demand count of Members to make quorum on record vote 1020
Change of a vote 511, 1014, 1017
Disqualifying personal interest 376, 671, 673
Control of vote by Member 672
Duties and rights of Delegates and Resident Commissioner in committees and formerly in Committee of the Whole 675, 985
Former de novo votes in House where Delegates' votes decisive in Committee of the Whole 985
May not authorize any other individual to cast his vote 674
Members convicted of certain crimes 1095
Members required to vote 671
Parliamentary law as to giving of votes 505
Proxy voting in committees prohibited 797
Relation of reading of papers to under former rule XXX 964, 965
Right of Member to have read once a paper on which he is to vote 432, 964
Withdrawal of a vote or correction of error in 1017
Right of, to demand a division of House after vote by voice 501
Right to demand yeas and nays not to be overruled as dilatory 77
When Member involved in the cause of an inquiry 321–323
When Member involved in the course of an inquiry 321–323

Section

VOTING—Continued
Decisions by majority—tie.
Decision by voice of majority—tie votes 508
Three-fifths vote.
On measures raising income tax rates 1067
Two-thirds vote.
In general 509
Calendar Wednesday, to dispense with business on 857, 900
Constitution, on proposed amendments to 190, 192
Constitution, on amendment of other House to proposed amendment to 192
Constitution, to agree to conference report on a proposed amendment to 192, 549
Expulsion, for 62
Impeachment, for conviction on 38
Political disabilities, to remove 230, 231
Private Calendar, to dispense with on first Tuesday each month 895
Report from Committee on Rules, to consider immediately 857
Not required for immediate consideration of certain reports from Committee on Rules..... 850, 1082, 1083
Suspension of the rules, on 885
Treaties, Senate concurs in, by 165
Veto, to pass bill over a..... 104, 109
By electronic system.
Use in House 1014
Use in Committee of the Whole 982
Bell and light indications 1016
Procedure when voting system inoperable 1014a
Five-minute votes.
On postponed questions 1030
On questions in sequence in House 1032
On questions in sequence in Committee of the Whole 984
By sound and by division.
Division of the House after determination by sound 501
Messages not received during vote by division 562
Method of viva voce, and by division 1012
Parliamentary provisions as to division not applicable in the House 502
Repetition of demand for division 1012
By recorded vote. See RECORDED VOTE.
By tellers. See TELLERS.
Former rule for voting by 1012
By yeas and nays. See YEAS AND NAYS.
By ballot.
Rule for 1034

Section

VOTING—Continued
On bills, amendments.
As related to debate on amendment 482
Former de novo votes in House where Delegates' votes decisive in Committee of the Whole 985
On amendments, order and principle of 922
On articles in an impeachment 618
On several stages and passage of a bill 944
Postponing record votes 1030
Requirements as to, on a motion to reconsider 1008
Right to debate not precluded until negative is put 482
Test of strength may be taken on a bill before amendment 430
Test of strength usually made on engrossment of a bill 429
Division. See DIVISION.
In election of officers.
Electors, Presidential, chosen by ballot 219, 220
Officers of House, except Speaker 640
President, House elects, by ballot 221
President, majority required in Electoral College or in House to elect 221
Speaker 27, 312
Speaker elected by majority 27, 312
Vice President, in Senate in choice of 221
In general.
Bell and light system to indicate type of vote 1016
Business suspended by failure of a quorum 510
Decisions of points of order during 507
In joint committees 325
Limitations on presentation of conference report during 1077
Managers of two Houses vote separately at a conference ... 548
Members not to remain by Clerk's desk during 962
Movement of Members during voting 506
Postponed votes, Speaker's authority 1030
Recording of votes by electronic equipment 1014
Right of suffrage not to be abridged for race, color, sex, poll tax 234, 240, 251
"Straw votes" prohibited 1012
WAIVER. *See also* RULES.
Of privilege, not permitted to Members 814
WAR.
Declaration of, Congress to make 127
Quartering of soldiers in houses during 210
States not to engage in, except on conditions 148
Treason to consist of levying of, against United States 181
Trial for crimes in forces during 212
Jurisdiction of bills declaring 729

Section

WAR—Continued
Jurisdiction of matters relating to soldiers of the World Wars . 740
Jurisdiction as to pensions arising from 740
Relative powers of Congress and the President ..... 128, 1130(2)
WAR CLAIMS.
Jurisdiction of bills relating to 730
WARRANTS.
Clerk seals and attests all 648
Certain, to issue only on certain conditions 246
For arrest of absent Members 1023, 1026
Signed by Speaker 624, 626
WARSHIPS.
Not to be kept by States in time of peace 148
WATER.
Jurisdiction of matters relating to common carriers by 739
Jurisdiction over water transportation generally 739
Jurisdiction of matters relating to water power 739
Jurisdiction of matters relating to supply of, for reclamation projects 732
Jurisdiction of matters relating to interstate compacts relating to apportionment of, for irrigation purposes 732
Jurisdiction of water conservation related to agriculture 715
WATERWAYS, INLAND.
Jurisdiction of matters relating to 739
WAYS AND MEANS, COMMITTEE ON.
Exempted from former rule proscribing committee sittings during five-minute rule 801
History and jurisdiction of 741
Report from on "major" tax legislation formerly included "dynamic estimate" 849
Report on tax proposal must include "macroeconomic analysis" 849
WEATHER SERVICE, NATIONAL.
Jurisdiction over subjects related to 735
WEDNESDAYS.
Wednesday Calendar.
Rule for order of business on 900
Business of, protected by two-thirds vote 857
In order to consider a veto message of the President 901
One committee can only occupy one day except to dispose of unfinished business 901
Previous question ordered, bill undisposed of on Tuesday, goes over until Thursday 901
Privilege of general appropriation bills limited on 856, 900
Suspensions *See* SUSPENSION OF RULES.
Entertained on Wednesdays 885

Section

WEIGHTS.
Congress to fix standard of 121
Jurisdiction of subjects relating to 735
WELFARE, GENERAL.
An object of the Constitution 1
Power of Congress to provide for 117
WELFARE OF MINERS.
Jurisdiction of matters relating to 720
WILDLIFE.
Jurisdiction of matters relating to conservation of 732
WITHDRAWAL.
Of motions, votes.
Of motions generally 392, 904, 905
Parliamentary law of as to motions 460
Amendment reported from Committee of the Whole not subject to 335
Of motion to amend 922, 925
Of motion to amend in Committee of the Whole 978
Of motion to amend in "House as in Committee of the Whole" 427
Of motion to reconsider 1003
Of motion to suspend the rules 889
Of point of no quorum 55
Of vote 1017
Of Members, resignations, papers.
By President of paper accompanying a message 571
Of a Member 22
Of Member when a matter concerning himself arises... 375, 376
Of papers from files 696
Of resignation not permitted 19
Of witnesses, counsel, and parties during examination at bar of the House 343
WITNESSES.
Members as.
Members as witnesses 346
Method of obtaining testimony of a Member of the other House 347
Power of one House to summon Members or officers of the other 292
Privilege of Members of Congress as to summons as.... 290, 292
Privilege of Members of Parliament not to be summoned as 287
In examinations by the House.
Administration of oaths to 343, 346, 805
Admission of counsel in 348, 803
Arraignment of contumacious 344

Section

WITNESSES—Continued
In examinations by the House—Continued
Earlier and later practice as to inquiries at the bar of the House 344
Examination of, in the House and in committee 343
Immunity of 343
Pay of 813
Power of the House to compel testimony 295
Procuring attendance of, when in custody of the other House 345
The production of, at an inquiry 342
Before committees.
Committee rules to be furnished to 803
Minority 802
Interrogation of..... 343, 802, 803
"Truth in testimony," curriculum vitae and disclosure statements 798
Testimony, advance statements of..... 798, 803
Quorum must be present when perjurious testimony is given to support charge of perjury 343, 409
In criminal cases.
Compulsory process for obtaining 213
Examination of, in an impeachment 614
Necessary to convict for treason 181
No person to be against self in criminal case 212
Right to confront, in criminal prosecutions 213
WORDS TAKEN DOWN.
Procedure in case of..... 960, 961
Parliamentary procedure in taking down disorderly..... 368, 369
WORK INCENTIVE PROGRAMS.
Jurisdiction over subjects related to 720
WORKS, PUBLIC. *See* PUBLIC WORKS.
WRITING.
By Members at the Clerk's table during debate forbidden 364
Motion reduced to, on demand of a Member 902
Reports of committees to be in 833
WRITINGS.
Congress may provide exclusive rights to 124
WRITS.
Signed by Speaker..... 624, 626
Clerk seals and attests all 648
Of election to fill vacancies 17
Of habeas corpus, suspension of 138
Of summonses in an impeachment..... 608, 611
YACHTS.
Jurisdiction of bills relating to 739

Section

YEAS AND NAYS.
Automatically ordered.
On measures making general appropriations and increasing income tax rates 1033
On measures making general appropriations and increasing income tax rates 1093
Measures vetoed by the President 104
Demanding and ordering.
Conditions of ordering 76, 504
Demanding of 77
Demand for, not to be held dilatory 903
Effect of the order of 80
In order in "House as in Committee of the Whole" 427
Less than quorum may order 76
One-fifth may order entry of, on Journal 75, 78
Ordered during call of the House 1019
Reconsideration of the ordering of 79
Vacating order for 76
Voting by.
By the Speaker 631, 1015
Changes and corrections of votes 1017
Combining the yea-and-nay vote with a call of the House . 1025
Count of those not voting to make a quorum of record on a record vote 1020
Failure of quorum on, to be noticed 76
General provisions as to voting by 504
In committees on amendments and motions to report a bill, vote totals and names included in report 839
Interruptions of the record vote 1018
Messages received during vote by 562
Method of call of the roll for the yea-and-nay vote 1015
Names of Members not entered on roll for, until sworn 300
Not to be interrupted by arrival of time for a recess 586
Not to be interrupted by conference report 1077
Qualifying in order to vote 1015
Recorded vote considered vote by 1012
Use of electronic device to record 1014
YIELDING.
Of Member having floor for motions or questions 946
Of time not permitted under five-minute debate 980
ZOOLOGICAL PARK.
Jurisdiction of subjects relating to 739

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