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to pay, out of any money in the Treasury not otherwise appropriated, to Colonel (doctor) Paul A. Kelly. . . .

With the following committee amendment:

Strike all after the enacting clause and insert:

That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Sheila M. Jackson, SSN 529–76–6000, of Lehi, Utah, the sum of $30,000. . . .

An amendment was offered:

Amendment offered by Mr. Sensenbrenner to the committee amendment: On page 3 after line 4 add the following new section:

Sec. 2. No amount in excess of 15 per centum of the sum appropriated by the first section of this Act shall be paid to or received by any agent or attorney in consideration for services rendered in connection with the claims described in the first section. . . .

THE SPEAKER:[16] The Chair will ask the gentleman from Wisconsin, Is this amendment to the committee amendment?

MR. [F. JAMES] SENSENBRENNER [Jr., of Wisconsin]: Yes, and it has been approved by the committee, Mr. Speaker.

THE SPEAKER: The question is on the amendment offered by the gentleman from Wisconsin (Mr. Sensenbrenner) to the committee amendment.

The amendment to the committee amendment was agreed to.

THE SPEAKER: The question is on the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

THE SPEAKER: Does the gentleman from Iowa (Mr. Harkin) desire to address the amendment?

MR. [TOM] HARKIN [of Iowa]: Not the amendment, Mr. Speaker, but the bill itself.

THE SPEAKER: Does the gentleman object to the bill?

MR. HARKIN: I will ask unanimous consent that the bill be passed over without prejudice, Mr. Speaker.

THE SPEAKER: The gentleman's request comes too late.

MR. HARKIN: Then, Mr. Speaker, I would oppose the amendment.

THE SPEAKER: The amendment has been agreed to. The committee amendment as amended, has also been agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

§ 2. Factors Bearing on Consideration; Points of Order Against Consideration; Special Rules and Unanimous-consent Agreements

The term "consideration" as used herein means the process by which the House deliberates, while in session, on a proposition on which action is to be taken or refused by the House.[17] The pur-

16. Thomas P. O'Neill, Jr. (Mass.).

17. The scope of the term "consideration" as herein discussed is narrower than

pose of this discussion is to summarize the general principles of consideration of any matter before the House or Committee of the Whole as well as the ways in which consideration may be prevented or postponed. The reader is advised to consult relevant chapters of this work for specific rules governing the consideration of particular resolutions, bills, motions, or other questions.

How a matter is considered depends on the way it is brought to the floor, on the nature and precedence of the proposal, and on agreements reached by the membership and leadership on the method of consideration. Generally, questions are not considered on the floor unless reported or discharged from House committees.[18] Certain time periods are a condition precedent to consideration in the House after the committee has reported the matter in question.[19] And the House may reject a proposal to consider a matter by a final or temporary decision against consideration.[20]

The first and most important element affecting how a matter is to be considered is the mandate of the standing rules and House precedents as they apply to any specific bill, resolution, or motion, or the mandate of statutory provisions[1] that may affect consideration of particular matters. Consideration of a measure may not be in order if certain rules have been ignored or violated as the bill progressed through the committee process and was reported to the House, and points of order against consideration may be sustained based on such violations.[2]

Another major factor affecting consideration is whether a special rule from the Committee on Rules

the term "debate" as used in this chapter. "Debate" refers to all discussion on the floor of the House, whether or not related to a proposal for action.

18. Matters not reported from committee may be considered by unanimous-consent request, suspension of the rules (see Ch. 21, supra), by discharge procedures (see Ch. 18, supra), and by a resolution from the Committee on Rules (see § 2.28, infra).

19. See Rule XI clause 2(l)(6), *House Rules and Manual* § 715 (1995) for layover requirements of committee reports, and Rule XXVIII clause 2(a), § 912a, for layover requirements of conference reports. For committee consideration and reporting, see Ch. 17, supra.

20. For the question of consideration as a method of refusing consideration, see § 5, infra.

1. See, for example, proceedings as affected by provisions of the Budget Act, discussed in §§ 2.35 et seq., infra.

2. See §§ 2.6, 2.7, 2.8, 2.15, 2.16, infra.

has been adopted which governs the procedures for consideration of the matter.[3] The following factors also bear heavily on consideration: whether the proposal has been referred to the House or Union Calendar;[4] whether the proposal is called up from the Private or Discharge Calendar or called up under suspension of the rules or on the District of Columbia day;[5] whether the proposal is privileged under a standing rule, by statute, or under the Constitution of the United States;[6] whether the proposal is considered by unanimous-consent agreement or under the general rules of the House; and whether such a unanimous-consent agreement includes a waiver of points of order against consideration.[7] As an example, where a unanimous-consent agreement has provided for consideration of a bill, the bill may nevertheless be subject to certain points of order directed against its consideration, unless the unanimous-consent agreement has specifically provided that "all points of order against consideration of the bill" be waived. Such provision will preclude points of order even directed against consideration of the bill.[8]

Finally, it should be noted that, in addition to the points of order discussed in this section and the "question of consideration" discussed elsewhere,[9] the motions made in order by Rule XVI, clause 4,[10] can be utilized to stop or

3. Where a special rule adopted by the House prescribes the order of consideration of amendments to a bill in Committee of the Whole, the House (but not Committee of the Whole) may by unanimous consent alter the order of consideration. See 133 CONG. REC. 11829, 100th Cong. 1st Sess., May 8, 1987 (request of Mr. Aspin).

See forms, infra, for examples of special rules making consideration in order and providing the method of consideration. For the consideration of the special rule itself, see §§ 2.22–2.24, infra.

4. See Ch. 19, supra, for consideration in the Committee of the Whole (normally Union Calendar bills) and Ch. 24, supra, for consideration of bills and resolutions.

5. See Ch. 22, supra, for calendars. For the procedure under suspension of the rules, see Ch. 21, supra.

6. See Ch. 21, supra, for privileged motions and questions. Some matters are privileged by statute, such as the disapproval of reorganization plans submitted by the President (see § 3.6, infra).

7. Unanimous-consent requests for the consideration of a proposal in a certain way take forms too numerous to mention herein. For examples, see §§ 3.3–3.5, 4.3, 4.4, infra.

8. See § 2.6, infra.

9. See § 5, infra.

10. See *House Rules and Manual* § 782 (1995).

delay consideration. A motion in the House to lay a proposition on the table cuts off debate and, if ordered, acts as a final adverse disposition of the matter before the House.[11] The motions to postpone and to refer may also be applied in the House to prevent immediate consideration; such motions are, however, debatable within narrow limits.[12]

Forms

Form of resolution making in order the consideration of a Union Calendar bill in the House under a procedure precluding amendment.

> *Resolved*, That immediately upon the adoption of this resolution the House shall proceed to the consideration of H.R. 3835, and any points of order against said bill or any provisions contained therein are hereby waived. That after general debate, which shall be confined to the bill and shall continue not to exceed four hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture, the previous question shall be considered as ordered on the bill to final passage without intervening motion except one motion to recommit.

Note: H.R. 3835 was a bill on the Union Calendar providing agricultural relief.[13]

Form of resolution making in order the consideration for general debate of a resolution in the Committee of the Whole under a procedure precluding amendment.

H. RES. 738

> *Resolved*, That upon the adoption of this resolution it shall be in order to move, clause 27(d)(4) of rule XI to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 735) confirming the nomination of Gerald R. Ford, of the State of Michigan, to be Vice President of the United States. After general debate, which shall be confined to the resolution and shall continue not to exceed six hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the Committee shall rise and report the resolution to the House, and the previous question shall be considered as ordered on the resolution to final passage.[14]

Form of resolution making in order the consideration of a joint resolution in the House.

HOUSE RESOLUTION 872

> *Resolved*, That immediately upon the adoption of this resolution the

11. See § 7.11, infra. The motion to lay on the table takes precedence over the question of consideration (see § 5.2, infra).

12. See Rule XVI, clause 4, and comments thereto, *House Rules and Manual* §§ 782–789 (1995).

A motion to postpone further consideration of a privileged resolution (in this instance, to censure a Member) is debatable for one hour controlled by the Member offering the motion. See § 24.14, infra.

13. 77 CONG. REC. 665, 73d Cong. 1st Sess., Mar. 21, 1933. See also H. Res. 111, 77 CONG. REC. 2176, 73d Cong. 1st Sess., Apr. 22, 1933.

14. 119 CONG. REC. 39807, 93d Cong. 1st Sess., Dec. 6, 1973.

House shall proceed to the consideration of (S.J. Res. 175), a joint resolution to extend the time within which contracts may be modified or canceled under the provisions of section 5 of the Independent Office Appropriation Act 1935, and all points of order against said joint resolution are hereby waived.[15]

Form of resolution making in order the consideration of a private Senate bill (on the Speaker's table) in Committee of the Whole.

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 1173) to authorize the appointment of Dwight David Eisenhower to the active list of the Regular Army, and for other purposes. After general debate, which shall be confined to the bill, and shall continue not to exceed one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Note: A private Senate bill requiring consideration in Committee of the Whole House, messaged to the House after a similar House bill has been reported and referred to the Private Calendar (the Calendar of the Committee of the Whole House), is not privileged under clause 2, Rule XXIV.[16]

Form of resolution making in order the consideration of a private bill in Committee of the Whole.

HOUSE RESOLUTION 511

Resolved, That immediately upon adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for consideration of H.R. 9766, a bill to authorize the deportation of Harry Renton Bridges. That after general debate, which shall be confined to the bill and shall continue not to exceed 1 hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Immigration and Naturalization, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendment the Committee shall rise and report the same to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.[17]

Form of resolution making in order the consideration of a measure from the Committee on Rules in Committee of the Whole.

H. RES. 1021

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for

15. 79 CONG. REC. 14652, 74th Cong. 1st Sess., Aug. 24, 1935.

16. 107 CONG. REC. 3911, 87th Cong. 1st Sess., Mar. 14, 1961.

17. 86 CONG. REC. 8181, 76th Cong. 3d Sess., June 13, 1940.

the consideration of the joint resolution (H.J. Res. 1117) to establish a Joint Committee on Environment and Technology. After general debate, which shall be confined to the joint resolution and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Rules, the joint resolution shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the joint resolution for amendment, the Committee shall rise and report the joint resolution to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the joint resolution and amendments thereto to final passage without intervening motion except one motion to recommit.[18]

Form of resolution waiving points of order against the consideration of a conference report and the disposition of an amendment in disagreement.

Resolved, That upon the adoption of this resolution it shall be in order to consider without the intervention of any point of order the conference report on the bill (H.R. 9499) making appropriations for foreign aid and related agencies for the fiscal year ending June 30, 1964, and for other purposes, and that during the consideration of the amendment of the Senate numbered 20 to the bill, it shall be in order to consider, without the intervention of any point of order, a motion by the Chairman of the Managers on the part of the House to recede and concur in said Senate amendment numbered 20 with an amendment.[19]

Form of resolution taking a House bill with Senate amendments from the Speaker's table and making in order the consideration of those amendments in the House.

Resolved, That immediately upon the adoption of this resolution, the bill H.R. 12740 making supplemental appropriations for the fiscal year ending June 30, 1961, and for other purposes, with the Senate amendments thereto, shall be taken from the Speaker's table and the Senate amendments considered in the House.[20]

Cross References

The Committee of the Whole generally, see Ch. 19, supra.

Control and distribution of debate on special orders from the Committee on Rules, see § 26, infra.

Effect of special orders on control and distribution of time for debate, see § 28, infra.

Effect of special orders and unanimous-consent agreements on duration of debate in the Committee of the Whole, see § 80, infra.

Passage and consideration of bills generally, see Ch. 24, supra.

Effect of special orders and unanimous-consent agreements on duration of debate in the House, see § 71, infra.

Recognition for consideration of bills, see § 16, infra.

Recognition for consideration of resolutions and special orders, see § 18, infra.

Recognition for consideration of Senate amendments, conference reports, and amendments in disagreement, see § 17, infra.

Recognition for unanimous-consent consideration of bills, see § 10, infra.

18. 116 CONG. REC. 16973, 91st Cong. 2d Sess., May 25, 1970.

19. 109 CONG. REC. 25495, 88th Cong. 1st Sess., Dec. 23, 1963.

20. 106 CONG. REC. 15775, 86th Cong. 2d Sess., July 2, 1960.

Special orders, suspension of the rules, and the order of business, see Ch. 21, supra.

Consideration of Matter Not Privileged as Requiring Special Rule or Unanimous Consent

§ 2.1 The Speaker indicated in response to a parliamentary inquiry that he lacked authority to permit consideration in the House, other than on a day when motions to suspend the rules were in order, of a matter which was not privileged under the rules, in the absence of action by the committee with legislative jurisdiction and by the Committee on Rules.

The Speaker,[1] in proceedings on Feb. 16, 1977,[2] indicated that he could not on his own initiative effectuate House consideration of a resolution disapproving the President's recommendation for salary increases for certain government officials (including Members of Congress), there being no mechanism under the rules or under applicable law[3] permitting privileged consideration of such resolutions.

MR. [ROBERT E.] BAUMAN [of Maryland]: . . . Mr. Speaker, I should like to personally appeal to the Speaker, since he is in the chair—a gentleman for whom I have the greatest respect—if he in any way could use the considerable powers at his command as the leader of the majority party and as the Speaker of our House, this one Member is asking him to do so in order to bring this legislation to the floor for a vote.

THE SPEAKER: The Chair is sure that the gentleman from Maryland, being one of the most erudite students of the laws and the rules of this House, knows that there is no way that the Speaker of the House personally can bring this legislation to the floor. If there is, would the gentleman make the Chair aware of it? . . .

MR. BAUMAN: Mr. Speaker, I should be glad to draft a resolution this afternoon and send it to the Speaker's office for introduction, directing the Committee on Post Office and Civil Service to be discharged immediately from further consideration of whichever appropriate disapproval resolution the Speaker chooses. Such a resolution could be called up for action in the House under a special rule, which I am sure the Speaker could direct the Committee on Rules to adopt this afternoon. . . .

[I recall] an occasion just a few years ago when the energy legislation was being considered and within the space of one evening we voted three or four times on special resolutions of this nature that were rushed through the Committee on Rules, brought to the

1. Thomas P. O'Neill, Jr. (Mass.).
2. 123 CONG. REC. 4503, 4504, 95th Cong. 1st Sess.
3. Pub. L. 90–206.

floor of the House, brought up under a suspension procedure, I believe, and then voted upon, when the bills the resolutions made in order were not even on the floor in printed form.

THE SPEAKER: Those matters were brought up under suspension, and motions to suspend the rules are not in order during the balance of the week.

Parliamentarian's Note: The President's salary increase recommendations were scheduled to become effective on Feb. 20, 1977, in the absence of adoption by either House of a resolution disapproving all or a part of those recommendations. Since the law provided no procedure for consideration of such resolutions in the absence of a report from the Committee on Rules of a special resolution permitting consideration, and since motions to suspend the rules were no longer in order that week, the Speaker had no authority save recognition for a unanimous-consent request. Pub. L. 95–19, subsequently enacted on Apr. 12, 1977, now requires separate recorded votes within 60 calendar days on each of the President's recommendations in each House.

§ 2.2 Where there is no procedure under the rules permitting privileged consideration of a resolution, and where motions to suspend the rules are not in order, the resolution may be considered only by unanimous consent.

During the proceedings in the House on Feb. 17, 1977,[4] the following occurred:

MR. [BERKLEY] BEDELL [of Iowa]: Mr. Speaker, I ask unanimous consent for the immediate consideration of the resolution (H. Res. 115) disapproving the recommendations of the President with respect to the rates of pay of Federal officials transmitted to the Congress for the fiscal year ending September 30, 1978, which was introduced by the gentleman from Iowa (Mr. Grassley).

The Clerk read the resolution as follows:

H. RES. 115

Resolved, That the House of Representatives, in accordance with section 225(i) of the Federal Salary Act of 1967 (81 Stat. 643; Public Law 90–206), hereby disapproves all of the recommendations of the President of the United States within the purview of subparagraphs (A), (B), (C), (D), and (E) of section 225(f) of the Federal Salary Act of 1967, transmitted by the President to the Congress in the budget for the fiscal year ending September 30, 1978.

THE SPEAKER:[5] Is there objection to the request of the gentleman from Iowa?

MR. [JAMES A.] BURKE of Massachusetts: Mr. Speaker, I object.

THE SPEAKER: Objection is heard....

MR. [JAMES C.] WRIGHT [Jr., of Texas]: Mr. Speaker, I move that when the House adjourns today it adjourn to meet on Monday next.

4. 123 CONG. REC. 4579–81, 95th Cong. 1st Sess.

5. Thomas P. O'Neill, Jr. (Mass.).

THE SPEAKER: The question is on the motion.

The question was taken and the Speaker announced that the ayes appeared to have it.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I object to the vote on the ground that a quorum is not present.

THE SPEAKER: Does the gentleman demand the yeas and nays or object to the vote?

MR. BAUMAN: Mr. Speaker, I demand the yeas and nays.

THE SPEAKER: May the Chair announce so the Members may understand, this is a question on adjourning to Monday next. If the House fails to adjourn to Monday we will meet tomorrow at 11 a.m. In the event there is no quorum tomorrow the House will meet on Saturday at 11 a.m. I just want the Members to understand the procedure and what may happen.

The gentleman from Maryland has asked for the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 109, nays 224, not voting 18, as follows: . . .

So the motion was rejected. . . .

MR. [SAMUEL L.] DEVINE [of Ohio]: Mr. Speaker, I make this parliamentary inquiry as a result of the vote not to adjourn over until Monday and the announcement that the House would reconvene at 11 o'clock tomorrow. Are there any circumstances that the Chair could perceive under which the pay raise legislation would be considered by the House tomorrow?

THE SPEAKER: The only possibility would be if unanimous consent were asked, and the Chair would recognize a gentleman or gentlewoman for that purpose, and if there were not an objection, then there would be a vote. That would be the only possibility. The Chair has been informed that there will be objections.

Consideration of Bills by Unanimous Consent To Be Cleared With Leadership

§ 2.3 The Speaker on occasion has reiterated his policy of conferring recognition upon Members to permit consideration of bills and resolutions by unanimous consent only when assured that the majority- and minority-elected floor leadership and committee and subcommittee chairmen and ranking minority members have no objection.

Several Members having propounded unanimous-consent requests to permit consideration of various legislative measures by a day certain under an "open rule" procedure, the Speaker on Jan. 25, 1984,[6] reiterated the Chair's policy of conferring recognition upon Members to permit consideration of bills and resolutions only when assured that the majority and minority floor and committee and subcommittee leaderships

6. 130 CONG. REC. 354, 355, 98th Cong. 2d Sess.

have no objection. This policy was intended in part to prevent the practice whereby one side might force the other to go on record as objecting to propositions regarding which they have only procedural or technical objections rather than substantive opposition.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I ask unanimous consent that an open rule permitting consideration of House Joint Resolution 100, the voluntary school prayer constitutional amendment, be called up for immediate consideration within the next 10 legislative days.

MR. [BILL] ALEXANDER [of Arkansas]: Mr. Speaker, I object.

THE SPEAKER:[7] Objection is heard.

The Chair will read the following statement:

> As indicated on page 476 of the House Rules and Manual, the Chair has established a policy of conferring recognition upon Members to permit consideration of bills and resolutions by unanimous consent only when assured that the majority and minority floor leadership and committee and subcommittee chairmen and ranking minority members have no objection. Consistent with that policy, and with the Chair's inherent power of recognition under clause 2, rule XIV, the Chair, and any occupant of the Chair appointed as Speaker pro tempore pursuant to clause 7, rule I, will decline recognition for unanimous-consent requests for consideration of bills and resolutions without assurances that the request has been cleared by that leadership. This denial of recognition by the Chair will not reflect, necessarily, any personal opposition on the part of the Chair to orderly consideration of the matter in question, but will reflect the determination upon the part of the Chair that orderly procedures will be followed, that is, procedures involving consultation and agreement between floor and committee leadership on both sides of the aisle. . . .

MR. WALKER: Mr. Speaker, do I understand now that the unanimous-consent procedure cannot be used by anyone to bring legislation to the floor unless that has been specifically cleared by both the majority and the minority leadership; is that correct?

THE SPEAKER: That has been the custom and it will continue to be the custom. . . .

MR. WALKER: I just want to clarify then that the entire matter then of utilizing unanimous-consent requests for any kind of legislative business, such as bringing up legislation, will be denied to all parties.

THE SPEAKER: Unless the Chair has assurances that proper clearance has taken place. . . .

MR. [NEWT] GINGRICH [of Georgia]: . . . The Speaker mentioned fairness on both sides and both sides be knowledgeable. . . . [C]ould the Chair describe how fairness to both sides and how both sides might be knowledgeable might proceed? . . .

THE SPEAKER: The Chair intends to go through the legitimate leadership of the gentleman's side of the aisle, and the elected leadership on the other side of the aisle.

MR. GINGRICH: So in the future the legitimate leadership on our side of the aisle might legitimately expect to be informed?

THE SPEAKER: The Chair considers the legitimate leadership as the leader-

7. Thomas P. O'Neill, Jr. (Mass.).

ship that was elected, not caucuses within the party.

§ 2.4 Pursuant to the Speaker's previously announced policy, the Chair declined to recognize a Member to request unanimous consent for the consideration of an unreported measure, where the request had not been cleared with the minority leadership.

On June 6, 1984,[8] the following proceedings occurred in the House:

> MRS. [KATIE] HALL of Indiana: Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of House joint resolution (H.J. Res. 247) to designate April 24, 1984, as National Day of Remembrance of Man's Inhumanity to Man, and ask for its immediate consideration.
>
> Mr. Speaker, I have an amendment at the desk.
>
> MR. [ROBERT S.] WALKER [of Pennsylvania]: A parliamentary inquiry, Mr. Speaker.
>
> THE SPEAKER PRO TEMPORE:[9] The Chair understands that this has not been cleared by the leadership on the minority side. Since the Speaker has made the statement that those types of requests would not be entertained, under such circumstances the Chair does not recognize the gentlewoman.

Parliamentarian's Note: Beginning in 1981, the Speaker enunciated a policy for the consideration by unanimous consent of bills not reported from committees.[10] The Speaker declines to recognize for such requests without assurances that the matter to be called up has been "cleared" by the Majority and Minority Leaders and the chairman and ranking minority member of the appropriate committees.[11]

—Reported Bill

§ 2.5 Under an extension of guidelines announced by the Speaker on the opening day of the Congress, the Chair will decline to recognize for a unanimous-consent request for the consideration of a (reported) bill unless assured of clearances from both majority and minority floor and committee leaderships (guidelines heretofore applicable to consideration of unreported measures).

On July 23, 1993,[12] the Chair discussed the role of the leadership in determining whether re-

8. 130 CONG. REC. 15174, 98th Cong. 2d Sess.

9. John P. Murtha (Pa.).

10. See 127 CONG. REC. 31590, 97th Cong. 1st Sess., Dec. 15, 1981.

11. See *House Rules and Manual* § 757 (1995).

12. 139 CONG. REC. _____, 103d Cong. 1st Sess.

quests for the consideration of bills would be allowed.

MR. [STEVE] GUNDERSON [of Wisconsin]: Mr. Speaker, my parliamentary inquiry is this: Is it possible to ask unanimous consent to bring H.R. 2667 for its immediate consideration?

THE SPEAKER PRO TEMPORE:[13] The leadership on both sides of the aisle has to agree to allow that unanimous-consent request.

MR. GUNDERSON: . . . Is it possible to bring an appropriation bill to the floor for consideration without a rule?

THE SPEAKER PRO TEMPORE: Yes, if it is privileged and it has been reported and available for 3 days and is called up by the committee.

MR. GUNDERSON: Can the 3-day rule be waived?

THE SPEAKER PRO TEMPORE: By unanimous consent, yes.

MR. GUNDERSON: Mr. Speaker, is it possible to move that H.R. 2667 be brought up for immediate consideration? . . .

Any member of the committee, Mr. Speaker, could make that motion?

THE SPEAKER PRO TEMPORE: The chairman or a member authorized by the committee. . . .

MR. GUNDERSON: Mr. Speaker, I have one further parliamentary inquiry.

Is it possible to ask unanimous consent at any time during the day to bring up an appropriation bill for its immediate consideration?

THE SPEAKER PRO TEMPORE: The chairman or his designee could bring the bill up.

MR. GUNDERSON: . . . If, for example, I were to move or ask unanimous consent to do that and the Chair did not recognize me, would it be possible at that point to literally appeal the ruling of the Chair for another Member to bring it up?

THE SPEAKER PRO TEMPORE: Under a previous agreement between the leaderships of the Democrat and Republican side, only the chairman of the committee would be recognized to bring up the bill after agreement of both leaderships by a unanimous-consent request. Another Member would not be recognized for that reason, and the denial of recognition to make a unanimous-consent request is not appealable.

MR. GUNDERSON: . . . The chairman of the Appropriations Committee can bring up H.R. 2667 for immediate consideration at any time?

THE SPEAKER PRO TEMPORE: Prior to the 3-day availability, he could bring it up by unanimous consent, but as the gentleman knows, these things are traditionally handled with the concurrence of both leaderships and very carefully orchestrated before unanimous consent is requested in order to be sure that it is adhered to.

§ 2.6 Where unanimous consent has been given for the immediate consideration of a bill, a point of order may nevertheless subsequently be sustained based on the absence of a quorum in the committee when the bill was reported, and in such case the bill is recommitted.

13. John P. Murtha (Pa.).

On Oct. 11, 1968,[14] the following proceedings took place:

> MR. [THADDEUS J.] DULSKI [of New York]: Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 1507) to include firefighters within the provisions of section 8336(c) of title 5, United States Code, relating to the retirement of Government employees engaged in certain hazardous occupations. . . .
>
> THE SPEAKER:[15] Is there objection to the request of the gentleman from New York?

Mr. John M. Ashbrook, of Ohio, at this point made a point of order based in part on the absence of a quorum when the bill was passed by the Post Office and Civil Service Committee. The Speaker indicated that the proper time to make the point of order would be after unanimous consent was given (and before actual consideration began). After the point of order was subsequently made, the Speaker addressed the chairman of the committee as follows, and made his ruling:

> THE SPEAKER: The Chair would like to ask the gentleman from New York if a quorum was present in his committee when the bill was reported?
>
> MR. DULSKI: Mr. Speaker, the gentleman from Ohio is correct. There was no quorum present.
>
> THE SPEAKER: Under those circumstances, the Chair sustains the point of order and the bill is recommitted to the Committee on Post Office and Civil Service.

Parliamentarian's Note: A unanimous-consent request that explicitly waives all points of order against consideration of the bill would preclude objections to consideration of the bill such as those raised by Mr. Ashbrook. In one instance,[16] in fact, the Chair ruled that, where the House granted unanimous consent for the consideration of a bill and specified that "all points of order against the said bill" be considered as waived, such waiver precluded various points of order based on objections to consideration of the bill. To ensure the broadest scope of such waiver, it is advisable that the waiver apply to "all points of order against the bill and its consideration." In the Oct. 11, 1968, precedent above, the unanimous-consent request for immediate consideration did not include waivers of points of order, but merely would have permitted privileged consideration immediately under the five-minute rule of a bill which was on the Union Calendar and would otherwise re-

14. 114 CONG. REC. 30751, 90th Cong. 2d Sess.

15. John W. McCormack (Mass.).

16. See 93 CONG. REC. 9095, 9396, 80th Cong. 1st Sess., July 16 and July 19, 1947.

quire consideration in Committee of the Whole.

Suspension of Rules—Effect on Points of Order

§ 2.7 A motion to suspend the rules and pass a bill suspends all rules in conflict with the motion and points of order against consideration on the grounds that the bill was reported from committee without a quorum, or that the committee report is unavailable, will not lie against a bill brought up under suspension.

On Sept. 16, 1968,[17] Speaker John W. McCormack, of Massachusetts, ruled that a motion to suspend the rules and pass a bill suspended all rules in conflict with the motion, and that a point of order against consideration because no committee report was available would not lie:

> MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, I make a point of order against consideration of S. 3133.
>
> THE SPEAKER: On what ground?
>
> MR. HALL: Mr. Speaker, on the ground that there is no report available for consideration of the Members, nor is there one available after diligent search.
>
> THE SPEAKER: The Chair will state the pending motion is to suspend the rules, and, accordingly, that being so, the Chair overrules the point of order.

Speaker McCormack later held on the same day[18] that a motion to suspend the rules and pass a bill suspended the rule requiring a quorum of a committee present when a bill is reported and precluded a point of order against consideration based on that defect:

> THE SPEAKER: Is a second demanded?
>
> MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, at the proper time I ask to be recognized to make a point of order against consideration of this bill.
>
> THE SPEAKER: The Chair will state that if the gentleman proposed to make a point of order, this is the time to make it.
>
> MR. GROSS: Mr. Speaker, I make a point of order against the consideration of the bill (H.R. 19136) on the ground that it violates rule XI, clause 26(e), in that it was reported from the committee without a quorum being present.
>
> THE SPEAKER: The Chair will state that the motion to suspend the rules suspends all rules, including the rule mentioned by the gentleman from Iowa.

§ 2.8 A point of order that a bill was reported from committee in the absence of a quorum is properly raised in the House when the bill is called up for consideration,

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17. 114 CONG. REC. 26965, 26966, 90th Cong. 2d Sess.

18. *Id.* at p. 27030.

but the point of order does not lie when the bill is called up under suspension of the rules.

On Oct. 7, 1968,[19] during special-order speeches, Mr. Durward G. Hall, of Missouri, raised a parliamentary inquiry as to points of order proposed to be made against the consideration of bills to be called up that day under suspension of the rules. Speaker John W. McCormack, of Massachusetts, responded that the proper time to raise a point of order that a quorum of the committee was not present when the bills were reported, was when the bills were called up for consideration.

> MR. HALL: . . . Mr. Speaker, I submit that the bills S. 1507, S. 1190, H.R. 17954, and H.R. 7406 all were improperly reported. Mr. Speaker, my parliamentary inquiry is this: At what point in the proceedings would it be in order to raise the question against these bills as being in violation of rule XI, clause 26(e) inasmuch as they are scheduled to be considered under suspension of the rules, which would obviously suspend the rule I have cited?
>
> Mr. Speaker, I ask the guidance of the Chair in lodging my point of order against these listed bills so that my objection may be fairly considered, and so that my right to object will be protected. Mr. Speaker, I intend to do so only because orderly procedure must be based on compliance with the rules of the House which we have adopted.
>
> THE SPEAKER: The Chair will state that any point of order would have to be made when the bill is called up. . . .
>
> MR. HALL: Mr. Speaker, a further parliamentary inquiry. Would it not be in order, prior to the House going into the Consent Calendar or suspension of the rules, to lodge the point of order against the bills at this time?
>
> THE SPEAKER: The point of order could be directed against such consideration when the bills are called up under the general rules of the House. The rules we are operating under today as far as these bills are concerned, concerns suspension of the rules, and that motion will suspend all rules.[20]

Unanimous Consent To Consider Measure While Another Pending

§ 2.9 The House may by unanimous consent consider a legislative proposition while another is pending.

On Oct. 14, 1978,[1] the following proceedings occurred in the House:

19. 114 CONG. REC. 29764, 90th Cong. 2d Sess.

20. See also 72 CONG. REC. 10593–96, 71st Cong. 2d Sess., June 12, 1930, where it was held that the proper time to raise a point of order of noncompliance with the Ramseyer rule was when the motion was made to go into the Committee of the Whole to consider a bill under the provisions of an open rule already adopted and not waiving points of order against the bill.

1. 124 CONG. REC. 38287, 38318, 38319, 95th Cong. 2d Sess.

MR. [FERNAND J.] ST GERMAIN [of Rhode Island]: Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 1439) providing for concurring in the Senate amendments to the bill (H.R. 14279) with amendments.

The Clerk read as follows:

H. RES. 1439

Resolved, That upon the adoption of this resolution the bill (H.R. 14279) to extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions, with the Senate amendments thereto, is taken from the Speaker's table to the end (1) that the House concur, and it does hereby, in the Senate amendment to the title with an amendment as follows: . . .

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Speaker, I demand a second.

THE SPEAKER PRO TEMPORE:[2] Without objection, a second will be considered as ordered.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I object, and on that I demand tellers. . . .

So a second was ordered.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The gentleman from Rhode Island (Mr. St Germain) will be recognized for 20 minutes, and the gentleman from California (Mr. Rousselot) will be recognized for 20 minutes. . . .

MS. [ELIZABETH] HOLTZMAN [of New York]: Mr. Speaker, I send to the desk a concurrent resolution (H. Con. Res. 755) directing the Secretary of the Senate to make a correction in the enrollment of the Senate bill (S. 1487) to eliminate racketeering in the sale and distribution of cigarettes, and for other purposes, and ask unanimous consent for its immediate consideration.

The Clerk read the concurrent resolution as follows:

H. CON. RES. 755

Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill (S. 1487) to eliminate racketeering in the sale and distribution of cigarettes, and for other purposes, the Secretary of the Senate shall make the following correction. . . .

MR. ROUSSELOT: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. ROUSSELOT: Mr. Speaker, can we have another matter called up with one matter pending?

THE SPEAKER PRO TEMPORE: The Chair will advise the gentleman from California that it has to be called up by unanimous consent, which was the request.

Consideration of Bill on Following Day or Any Day Thereafter

§ 2.10 The House agreed to a unanimous-consent request propounded by the Minority Leader providing for the consideration of a bill in the House on the following day or any day thereafter.

2. William H. Natcher (Ky.).

The following unanimous-consent request was agreed to in the House on Sept. 28, 1982:[3]

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Speaker, I ask unanimous consent that it be in order on Wednesday, September 29, 1982, or any day thereafter to consider in the House the bill, H.R. 6838.

THE SPEAKER PRO TEMPORE:[4] Is there objection to the request of the gentleman from Illinois?

There was no objection.

Parliamentarian's Note: On Sept. 29, 1982,[5] the Speaker recognized the Minority Leader to call up the reported bill in the House for consideration under the hour rule, and subsequently recognized the Minority Leader in opposition to a motion to recommit with instructions offered by the ranking minority member of the reporting committee.

Continuing Appropriations—Points of Order Waived Against Consideration

§ 2.11 A special rule has waived points of order against consideration of a joint resolution making continuing appropriations, particularly the point of order based on the three-day layover requirement, and has provided for its consideration in the House, with not to exceed two hours of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations.

The following proceedings occurred in the House on Nov. 16, 1981:[6]

MR. [JOHN J.] MOAKLEY [of Massachusetts]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 271 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 271

Resolved, That upon the adoption of this resolution it shall be in order to consider, clause 2(l)(6) of rule XI to the contrary notwithstanding, the joint resolution (H.J. Res. 357) making further continuing appropriations for the fiscal year 1982, and for other purposes, in the House. Debate on said joint resolution shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations, and the previous question shall be considered as ordered on the joint resolution to final passage without intervening motion except one motion to recommit. . . .

3. 128 CONG. REC. 25533, 97th Cong. 2d Sess.
4. John G. Fary (Ill.).
5. See the proceedings discussed in § 8.22, infra.
6. 127 CONG. REC. 27613, 97th Cong. 1st Sess.

MR. MOAKLEY: Mr. Speaker, House Resolution 271 is the rule providing for consideration of House Joint Resolution 357 which makes further continuing appropriations for fiscal year 1982. . . .

Mr. Speaker, House Resolution 271 is a simple rule. It waives clause 2(l)(6) of rule XI which would otherwise force this continuing resolution to layover for 3 days, excluding Saturday and Sunday. The committee has granted this waiver because it feels that the Appropriations Committee report and the resolution are straightforward and easily comprehended.

Unanimous Consent To Consider Private Senate Bill With Nongermane Amendment

§ 2.12 By unanimous consent, the House agreed to consider a private Senate bill reported from the Committee on the Judiciary with a nongermane amendment in the nature of a substitute converting it into a public bill.

On Oct. 14, 1978,[7] during consideration of S. 2247 in the House, the following proceedings occurred:

MR. [PETER W.] RODINO [Jr., of New Jersey]: Mr. Speaker, I ask unanimous consent for the immediate consideration of the Senate bill (S. 2247) for the relief of Eugenia Cortes, as reported from the Committee on the Judiciary. . . .

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The Clerk read the Senate bill as follows:

S. 2247

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Eugenia Cortes shall be held and considered to be within the purview of the first proviso to section 312(1) of that Act and may be naturalized upon compliance with all of the other requirements of title III of that Act. . . .

MR. RODINO: Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Rodino: Strike all after the enacting clause and insert: That the first proviso contained in paragraph 1 of section 312 of the Immigration and Nationality Act is amended by striking out "or to any person who on the effective date of this act is over 50 years of age". . . .

The amendment was agreed to.

The Senate bill was ordered to be read a third time, was read a third time, and passed.

Parliamentarian's Note: The bill would ordinarily have been referred to the Private Calendar when reported, but was viewed as a public bill in essence since reported with an amendment in the nature of a substitute of a public character.

7. 124 CONG. REC. 38217, 38218, 95th Cong. 2d Sess.

Points of Order Against Consideration When Special Rule for Consideration Has Been Adopted

§ 2.13 The Speaker overruled a point of order against the consideration of a bill based on its alleged inconsistency with existing law, the House having adopted a resolution making in order the consideration of the bill.

On Mar. 27, 1958,[8] Mr. Wayne N. Aspinall, of Colorado, moved that the House resolve itself into the Committee of the Whole for the consideration of H.R. 8290, authorizing the construction of a national monument. Mr. H. R. Gross, of Iowa, objected to the consideration of the bill on the ground that it contradicted previous legislation passed in the 83d Congress:

> Mr. Speaker, I make a point of order against the consideration of the proposed legislation, H.R. 8290, on the grounds that it does not conform to, and is in fact violative of, Public Law 742, of the 83d Congress, volume 68, part I, United States Statutes. . . .
>
> Mr. Speaker, I submit that it is abundantly clear that the legislation proposed for consideration at this time, H.R. 8290, does not conform to and is in violation of Public Law 742 of the 83d Congress, for the reason that Public Law 742 provides and makes mandatory that plans must be approved—there must be a meeting of the minds—of the legally constituted agencies and commissions and thereafter, and only thereafter, shall these plans be submitted to Congress for legislative authorization.

Speaker Sam Rayburn, of Texas, overruled the point of order:

> The Chair is ready to rule.
>
> The occupant of the chair has been here a long time. He has never had the conception that one Congress could tie the hands of a later Congress and the Chair does not believe so in this case. If that doctrine were followed, then it would mean the Congress could pass a law saying, "This law shall not be touched for a number of years." Another Congress comes in and has a different idea. The Chair thinks each Congress should have the opportunity to work its will. . . . Furthermore, the House has already adopted a special rule for the consideration of this bill.

§ 2.14 A resolution to consider a special and therefore nonprivileged appropriation measure having been agreed to, a point of order against consideration does not lie.

On Aug. 21, 1951,[9] the House agreed to House Resolution 397, providing for the consideration of House Joint Resolution 320,

8. 104 Cong. Rec. 5631, 85th Cong. 2d Sess.

9. 97 Cong. Rec. 10481, 82d Cong. 1st Sess.

amending an act making temporary appropriations. Mr. Clarence Cannon, of Missouri, then moved that the House resolve itself into the Committee of the Whole for the consideration of the joint resolution. Mr. John E. Rankin, of Mississippi, made a point of order against consideration, which was overruled by Speaker Sam Rayburn, of Texas:

> MR. RANKIN: Mr. Speaker, I make a point of order against consideration of the joint resolution on the ground that the authorization has expired, and that there is no authorization for this appropriation.
>
> THE SPEAKER: The resolution just adopted makes in order the consideration of the joint resolution, and, therefore, the point of order does not lie.
>
> The Chair overrules the point of order.

Parliamentarian's Note: General appropriation bills are privileged for consideration, under Rule XI, clause 4(a), and only such bills are subject to points of order for carrying unauthorized appropriations, under Rule XXI, clause 2. Such points of order must be made in Committee of the Whole when the offending paragraph is read, and not against consideration of the entire bill. "Special" appropriation bills are not privileged and require special rules, but no points of order lie under clause 2 of Rule XXI in the Committee of the Whole or against consideration.

§ 2.15 Where the House adopts a resolution providing for "the immediate consideration of a bill" then pending before a House committee, a point of order against consideration on the ground that the Ramseyer rule has not been complied with does not lie, since that rule pertains only to bills reported by a committee and not to bills brought before the House by other means.

On Aug. 19, 1964,[10] the House adopted House Resolution 845, providing for the consideration of H.R. 11926, limiting the jurisdiction of federal courts in apportionment cases. The bill, which had been referred to the Committee on the Judiciary, had not been reported from that committee.

Following the adoption of the resolution, Mr. James G. O'Hara, of Michigan, made a point of order against consideration of the bill on the ground that no report had been made with a "comparative print" required by House rules showing changes made by the bill in existing law. Speaker John W.

10. 110 CONG. REC. 20221, 20222, 88th Cong. 2d Sess.

McCormack, of Massachusetts, overruled the point of order on the grounds that the rule applies only to bills reported out of committee:

MR. O'HARA of Michigan: Mr. Speaker, I make a point of order against the consideration of the bill H.R. 11926.

THE SPEAKER: The gentleman will state his point of order.

MR. O'HARA of Michigan: Mr. Speaker, I make a point of order against the consideration of H.R. 11926 on the ground that the bill has not been properly reported in that it purports to amend title 28 of the United States Code, that is, the act of June 25, 1948, chapter 646, but it fails to show in its report or in an accompanying document a comparative print of that part of the bill making and amending the statute or part thereof proposed to be amended as required by part 3, rule XIII, of the House of Representatives.

THE SPEAKER: The Chair is prepared to rule.

Rule XIII, clause 3, provides, "whenever a committee reports a bill or a joint resolution repealing or amending any statute or part thereof it shall include in its report or in an accompanying document the text of the statute or part thereof which is proposed to be repealed;". It will be noted that the rule only applies when a committee reports a bill. In this case the Committee on the Judiciary did not file a report on H.R. 11926. Therefore, that rule does not apply to the present situation.

In addition, the resolution before the House provides for the House immediately to resolve itself into the Committee of the Whole House on the State of the Union for the consideration of this particular bill.

The Chair overrules the point of order.

§ 2.16 A point of order that a bill was reported from committee in the absence of a quorum is in order pending a vote on the motion that the House resolve itself into the Committee of the Whole for the consideration of the bill, where the bill is being considered pursuant to a Committee on Rules resolution which does not waive that point of order.

On Oct. 11, 1968,[11] after the House had adopted House Resolution 1256, providing for the consideration in the Committee of the Whole of S. 2511, Mr. William R. Poage, of Texas, moved that the House resolve itself into Committee to consider the bill. Mr. Paul Findley, of Illinois, made a point of order against consideration of the bill on the grounds that the Committee on Agriculture had acted without a quorum when it had reported out the bill. Speaker John W. McCormack, of Massachusetts, sustained the point of order.

11. 114 CONG. REC. 30739, 90th Cong. 2d Sess.

Resolution Directing Chairman To Request Special Rule Held Not Privileged

§ 2.17 A resolution directing the chairman of the Select Committee on Committees to request the Committee on Rules to report to the House a special rule providing for the consideration of the resolution reported by the select committee, and directing the Committee on Rules to immediately consider such request, was held not to present a question of the privileges of the House under Rule IX as affecting the "integrity of the proceedings of the House," although it was alleged that the chairman of the select committee had neglected to take all necessary steps to bring the measure to a vote as required by Rule XI clause 2(l)(1)(A).

On June 27, 1974,[12] it was demonstrated that a Member may not, by raising a question of the privileges of the House under Rule IX, attach privilege to a question not otherwise in order under the rules of the House.

MR. [JOHN B.] ANDERSON of Illinois: Mr. Speaker, I offer a resolution (H. Res. 1203) involving a question of privileges of the House, and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1203

Whereas on January 31, 1973, the House of Representatives voted to establish a ten-member, bipartisan Select Committee on Committees charged with conducting a "thorough and complete study of rules X and XI of the Rules of the House of Representatives; and

Whereas the select committee was further "authorized and directed to report to the House . . .

Whereas on March 21, 1974, the select committee reported House Resolution 988 in conformance with its mandate; and

Whereas the chairman of the select committee has failed to seek a rule making House Resolution 988 in order for consideration by the House; and

Whereas, clause 27(d)(1) [now clause 2(l)(1)(A)] of House Rule XI states, "It shall be the duty of the chairman of each committee to report or cause to be reported promptly to the House any measure approved by his committee and to take or cause to be taken necessary steps to bring the matter to a vote;" . . .

Resolved, That the chairman of the select committee be directed to forthwith seek a rule making in order for consideration by the House, House Resolution 988; and be it further

Resolved, That the House Committee on Rules be directed to give immediate consideration to such request. . . .

MR. [THOMAS P.] O'NEILL [Jr., of Massachusetts]: Mr. Speaker, I make the point of order that the resolution offered by the gentleman from Illinois does not raise the question of privilege. . . .

12. 120 CONG. REC. 21596–98, 93d Cong. 2d Sess.

MR. ANDERSON of Illinois: Mr. Speaker, I desire to be heard on the point of order. My question of privilege arises under rule IX which provides that, and I quote:

> Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity and the integrity of its proceedings. . . .

Mr. Speaker, I rest my question of privilege on that clause which declares those questions privileged which relate to the integrity of the proceedings of the House. It is my contention that there has been a deliberate attempt to delay House consideration of House Resolution 988, the so-called Bolling-Martin Committee Reform Amendments of 1974, and that this intentional delay not only interferes with and flouts the integrity of the proceedings of this body, but is in clear violation of clause 27(d)(1) of rule XI of the Rules of the House.

Under that rule, and I quote:

> It shall be the duty of the chairman of each committee to report or cause to be reported promptly to the House any measure approved by his committee and to take or cause to be taken necessary steps to bring the matter to a vote. . . .

THE SPEAKER:[13] The Chair is ready to rule.

The gentleman from Illinois (Mr. Anderson) has submitted a resolution which he asserts involves a question of the privileges of the House under rule IX. Following the preamble of the resolution, the resolution provides that:

> *Resolved*, That the chairman of the Select Committee be directed to forthwith seek a rule making in order for consideration by the House, House Resolution 988, and be it further
>
> *Resolved*, That the House Committee on Rules be directed to give immediate consideration to such request.

As indicated in "Hinds' Precedents," volume III, section 2678, Speakers are authorized to make a preliminary determination as to those questions presented which may involve privileges. As reaffirmed by Speaker McCormack on October 8, 1968 (Record p. 30214 to 30216) when a Member asserts that he rises to a question of the privileges of the House, the Speaker may hear the question and then, if the matter is not one admissible as a question of privilege of the House he can refuse recognition.

The Chair has listened to the arguments concerning the privileged status of this resolution and has examined the precedents of the House in this regard. It will be noted that the gentleman from Illinois has relied heavily on section 2609, volume III of "Hinds' Precedents," in which it was held by Speaker Reed that a report having been ordered to be made by a select committee but not being made within a reasonable time, a resolution directing the report to be made raised a question of the privileges of the House.

That case is distinguishable from the present instance in that in this instance the chairman has made the report and the resolution is pending on the calendar of the House and it does not become privileged until the House has adopted a resolution reported from the Committee on Rules providing for the consideration of House Resolution

13. Carl Albert (Okla.).

988. The Chair does not feel that a question of privilege of the House under rule IX should be used as a mechanism for giving privilege to a motion which would not otherwise be in order under the Rules of the House, in this case, namely, a motion to direct the Committee on Rules to take a certain action.

The Chair now would refer to Hinds' Precedents, volume III, section 2610, wherein Speaker Crisp ruled that a charge that a committee had been inactive in regard to a subject committed to it did not constitute a question of privilege of the House. . . .

The rules did not provide at the time of Speaker Reed's ruling, as is now the case in clause 27(d)(2) of Rule XI, for a mandatory filing of the reports within 7 calendar days after the measure has been ordered reported upon signed request by a committee majority.

In the instant case, however, the Select Committee on Committees has filed its report and the Chair is not aware that the chairman of the Select Committee on Committees has in any sense violated the rule cited by the gentleman from Illinois. For these reasons, the Chair holds that the gentleman's resolution does not present a question of the privileges of the House under [rule] IX and the resolution may not be considered.

The Chair sustains the point of order.

Other Business May Be Precluded by Special Rule

§ 2.18 A resolution providing that on a certain day the Speaker shall recognize a Member to call up a bill for consideration may by its provisions preclude the consideration of other business on that day.

On May 12, 1936,[14] Speaker Joseph W. Byrns, of Tennessee, construed the effect of House Resolution 123, adopted on the preceding day and making in order on May 12, the consideration of a bill not reported from the Committee on Agriculture:

The resolution stated:[15]

HOUSE RESOLUTION 123

Resolved, That upon the day succeeding the adoption of this resolution, a special order be, and is hereby, created by the House of Representatives, for the consideration of H.R. 2066, a public bill which has remained in the Committee on Agriculture for 30 or more days, without action. That such special order be, and is hereby, created, notwithstanding any further action on said bill by the Committee on Agriculture, or any rule of the House. That on said day the Speaker shall recognize the Representative at Large from North Dakota, William Lemke, to call up H.R. 2066, a bill to liquidate and refinance existing agricultural indebtedness at a reduced rate of interest, by establishing an efficient credit system, through the use of the Farm Credit Administration, the Federal Reserve banking system, and creating a Board of Agriculture to supervise the same, as a special order of business, and to

14. 80 CONG. REC. 7097, 7098, 74th Cong. 2d Sess.

15. *Id.* at pp. 7026, 7027.

move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of said H.R. 2066. After general debate, which shall be confined to the bill and shall continue not to exceed 6 hours, to be equally divided and controlled by the Member of the House requesting the rule for the consideration of said H.R. 2066 and the Member of the House who is opposed to the said H.R. 2066, to be designated by the Speaker, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill, and the amendments thereto, to final passage, without intervening motion, except one motion to recommit. The special order shall be a continuing order until the bill is finally disposed of.

The proceedings on May 12 were as follows:

THE SPEAKER: The Chair may say that under the rule nothing is in order this morning except the consideration of the bill which was provided for by rule yesterday. However, with the unanimous consent of the House, the Chair will recognize Members to correct the Record. The Chair does not believe that, technically speaking, anything is in order this morning except the consideration of the bill just mentioned. . . .

Under the express provisions of the rule there is nothing in order this morning except a motion by the gentleman from North Dakota to go into the Committee of the Whole for the consideration of the bill. The Chair is not responsible for the rule, but it is up to the Chair to construe it.[16]

Question of Consideration Determined by House

§ 2.19 The question as to whether the House will consider a resolution making in order the consideration of a bill is a matter for the House to decide and not the Chair.

On May 13, 1953,[17] Speaker Joseph W. Martin, Jr., of Massachusetts, ruled that a point of order against a resolution providing for the consideration of a bill, on the ground that the bill sought to amend a nonexisting act, was a matter for the House to determine:

MR. [MICHAEL A.] FEIGHAN [of Ohio]: Mr. Speaker, I make a point of order against the consideration of this rule [H. Res. 233] because it attempts to make in order the consideration of the bill H.R. 5134, which is a bill to amend a nonexisting act. [The "Submerged Lands Act".]

THE SPEAKER: The Chair will state that the point of order that has been

16. For the privilege and precedence of reports from the Committee on Rules related to the order of business and consideration, see Rule XI clauses 4(a)-4(e) and comments thereto, *House Rules and Manual* §§ 726–731(a) (1995).

17. 99 CONG. REC. 4877, 83d Cong. 1st Sess.

raised by the gentleman from Ohio is not one within the jurisdiction of the Chair, but is a question for the House to decide, whether it wants to consider such legislation.

The Chair overrules the point of order.

Parliamentarian's Note: Also, dilatory motions including the question of consideration, may not be raised against a privileged report from the Committee on Rules.

Two-thirds Vote To Consider Special Rule on Same Day Reported

§ 2.20 A resolution from the Committee on Rules may be considered on the same day as reported if the question of consideration is supported by two-thirds of the Members present and voting, a quorum being present.

On Nov. 14, 1975,[18] a resolution from the Committee on Rules was reported, providing that upon the adoption of the resolution it would be in order to take a Senate bill from the Speaker's table and consider it in the House. Following the adoption of the resolution making the consideration of the Senate bill in order, the Member calling up the Senate bill was recognized for one hour:

MR. [RICHARD] BOLLING [of Missouri], from the Committee on Rules, reported the following privileged resolution (H. Res. 866, Rept. No. 94–666), which was referred to the House Calendar and ordered to be printed.

H. RES. 866

Resolved, That immediately upon the adoption of this resolution it shall be in order to take from the Speaker's table the bill S. 2667, to extend the Emergency Petroleum Allocation Act of 1973, and to consider said bill in the House.

MR. BOLLING: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 866 and ask for its immediate consideration.

THE SPEAKER:[19] The Clerk will report the resolution.

The Clerk read the resolution.

THE SPEAKER: The question is, Will the House now consider House Resolution 866?

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: The Chair is certain that a quorum is present. The Chair will count.

Two hundred and forty-one Members are present, a quorum.

MR. ROUSSELOT: Mr. Speaker, I demand a division.

18. 121 CONG. REC. 36638, 36641, 94th Cong. 1st Sess.

19. Carl Albert (Okla.).

On a division (demanded by Mr. Rousselot) there were—yeas 171, noes 14.

So (two-thirds having voted in favor thereof), the House agreed to consider House Resolution 866.

THE SPEAKER: The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

THE SPEAKER: The Chair recognizes the gentleman from West Virginia (Mr. Staggers).

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, pursuant to House Resolution 866, I call up the Senate bill (S. 2667) and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The Clerk read the Senate bill as follows:

S. 2667

A BILL TO EXTEND THE EMERGENCY PETROLEUM ALLOCATION ACT OF 1973

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(g)(1) of the Emergency Petroleum Allocation Act of 1973 is amended by striking out each date specified therein and inserting in lieu thereof in each case "December 15, 1975". . . .

MR. STAGGERS: Mr. Speaker, I move the previous question on the Senate bill.

The previous question was ordered.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

§ 2.21 The House, by a two-thirds vote, agreed to consider a privileged resolution reported from the Committee on Rules on the same day reported.

On Oct. 17, 1974,[20] Speaker Carl Albert, of Oklahoma, recognized John Young, of Texas, to call up House Resolution 1456. The proceedings were as follows:

MR. YOUNG of Texas, from the Committee on Rules, reported the following privileged resolution (H. Res. 1456, Rept. No. 93–1470) which was referred to the House Calendar and ordered to be printed:

H. RES. 1456

Resolved, That immediately upon the adoption of this resolution the House shall consider the joint resolution (H.J. Res. 1167) making further continuing appropriations for the fiscal year 1975, and for other purposes. After general debate, which shall be confined to the joint resolution and shall continue not to exceed one hour, the previous question shall be considered as ordered on the joint resolution to final passage without intervening motion except one motion to recommit.

MR. YOUNG of Texas: Mr. Speaker, by direction of the Committee on Rules I call up House Resolution 1456 and ask for its immediate consideration.

THE SPEAKER: The Clerk will report the resolution.

The Clerk read the resolution.

THE SPEAKER: The question is, Will the House now consider House Resolution 1456?

20. 120 CONG. REC. 36020, 36021, 93d Cong. 2d Sess.

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. GROSS: Mr. Speaker, does not consideration of this rule require unanimous consent?

THE SPEAKER: The Chair will state to the gentleman from Iowa that it requires a two-thirds vote to consider the resolution. The Chair was about to put the question. . . .

MR. [WAYNE L.] HAYS [of Ohio]: Mr. Speaker, I am a little curious as to how this resolution got out of the Committee on Appropriations, since I understand the committee did not meet. How did it get before the Committee on Rules?

THE SPEAKER: The Chair will state that a request was made that the Committee on Rules consider a rule on the introduced version.

MR. HAYS: But how did it get before the Committee on Rules?

THE SPEAKER: Because House Resolution 1456 was reported by the Committee on Rules, and the Committee on Rules has authority to report as privileged a resolution discharging another committee from a measure referred to that committee. . . .

THE SPEAKER: . . . Shall the House consider the resolution?

The question was taken, and the Speaker announced that the ayes appeared to have it.

MR. HAYS: I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 210, nays 14, not voting 210, as follows: . . .

So (two-thirds having voted in favor thereof) the House agreed to consider House Resolution 1456. . . .

THE SPEAKER: The gentleman from Texas (Mr. Young), is recognized for 1 hour. . . .

MR. YOUNG of Texas: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

Parliamentarian's Note: Pursuant to Rule XI clause 4(a), the Committee on Rules may report as privileged a resolution on the "order of business" which has the effect of discharging another committee from consideration of a measure referred to it.

§ 2.22 Under the rules of the House, objection to consideration of a report from the Committee on Rules on the same day reported will not lie where such consideration has been agreed to by an affirmative vote of two-thirds of the Members voting.

On Dec. 21, 1963,[1] Mr. Ray J. Madden, of Indiana, called up by the direction of the Committee on Rules House Resolution 598, providing for the consideration of a

1. 109 CONG. REC. 25408, 88th Cong. 1st Sess.

conference report. Mr. Madden asked for the immediate consideration of the resolution, and Mr. Frank T. Bow, of Ohio, objected to such consideration on the grounds "that under rule XI, section 22, of the rules of the House this rule is not laid over before the House for 24 hours."

Speaker John W. McCormack, of Massachusetts, indicated that objection to consideration of the resolution would not lie:

> The Chair will state that clause 22 of Rule XI provides, in substance, that the House may consider a resolution on the same day reported, if by a two-thirds vote.

The Speaker put the question on the immediate consideration of the resolution to the House, which agreed thereto.

On May 26, 1964, Speaker McCormack ruled that where immediate consideration was asked for the consideration of a Committee on Rules resolution (H. Res. 736) on the same day reported, a vote on consideration was immediately in order:[2]

> MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. GROSS: Does this require unanimous consent?
>
> THE SPEAKER: It requires a two-thirds vote.
>
> MR. GROSS: Mr. Speaker, is there any way to ascertain the reason for this request?
>
> THE SPEAKER: If the House decides to consider it, then the debate will be under the 1-hour rule on the resolution.
>
> MR. GROSS: Is there no way of ascertaining what is being done here, Mr. Speaker? Is there no time available?
>
> THE SPEAKER: The Chair will state at this point that it is a matter of consideration. If consideration is granted, which requires a two-thirds vote, then the resolution will be considered under the 1-hour rule.
>
> The question is, Will the House now consider House Resolution 736?

§ 2.23 When a resolution from the Committee on Rules is called up the same day it is reported, no debate thereon is in order until the House agrees to consider the resolution.

On May 26, 1964,[3] Mr. Richard Bolling, of Missouri, called up a resolution from the Committee on Rules reported on the same day and asked for its immediate consideration. In response to a parliamentary inquiry, Speaker John W. McCormack, of Massachusetts, ruled that the pending question was the consideration of the reso-

2. 110 CONG. REC. 11951, 88th Cong. 2d Sess.

3. 110 CONG. REC. 11951, 88th Cong. 2d Sess.

lution, such consideration to be determined by a two-thirds vote, and that no debate was in order until the House agreed to consider the resolution, at which time one hour's debate would be had on the resolution itself.

§ 2.24 Where the Committee on Rules reports a resolution making a bill a special order of business, a two-thirds vote is required to consider the resolution on the same day reported.[4]

4. See for example 113 CONG. REC. 31904–06, 90th Cong. 1st Sess., Nov. 9, 1967; 110 CONG. REC. 11951, 88th Cong. 2d Sess., May 26, 1964; 108 CONG. REC. 16759, 87th Cong. 2d Sess., Aug. 16, 1962; 90 CONG. REC. 8999, 9000, 78th Cong. 2d Sess., Dec. 7, 1944.

Rule XI clause 4(b), *House Rules and Manual* § 729a (1995) provides as follows: "It shall always be in order to call up for consideration a report from the Committee on Rules on a rule, joint rule, or the order of business (except it shall not be called up for consideration on the same day it is presented to the House, unless so determined by a vote of not less than two-thirds of the Members voting, but this provision shall not apply during the last three days of the session)."

A resolution reported from the Committee on Rules may suspend the requirements of a two-thirds vote to consider Committee on Rules reports on the same day reported. See, for example, 78 CONG. REC. 10239–41, 73d Cong. 2d Sess., June 1, 1934.

—Report From Committee on Rules Filed Before House Convenes May Be Considered

§ 2.25 Pursuant to Rule XI clause 4(b), a privileged report from the Committee on Rules may be considered on the same legislative day as reported only by a two-thirds vote, but a report filed by that committee, pursuant to unanimous-consent permission, at any time prior to convening of the House on the next legislative day may be called up for immediate consideration on that new legislative day, and a two-thirds vote is not then required.

On July 31, 1975,[5] Speaker Carl Albert, of Oklahoma, responded to several parliamentary inquiries relating to the situation described above:

> MR. [JOHN J.] RHODES [of Arizona]: Mr. Speaker . . . it is my understanding the other body will probably vote on this matter by 9:30 or 9:40. . . . If that is the situation, we can expect the matter to be messaged over here sometime soon after 10:00, and it would be my hope at that time the matter would be given attention

5. 121 CONG. REC. 26243–47, 94th Cong. 1st Sess.

immediately by the Rules Committee. . . . Mr. Speaker, if I may address a parliamentary inquiry, is my understanding correct that if the House recesses subject to the call of the Chair, that bills can be received from the other body, and the matter referred to the Rules Committee without calling the House back into session? . . .

THE SPEAKER: If [the bill] comes over it can be referred to the Committee on International Relations or held at the table but not referred to the Committee on Rules. . . .

MR. RHODES: Mr. Speaker, could not the Rules Committee meet immediately and report a resolution, taking the matter from the Speaker's table, bypassing the Committee on International Affairs and reporting the matter directly. Is it not possible?

THE SPEAKER: That is a possible procedure. . . .

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: . . . Mr. Speaker, is it not correct to say that if a unanimous-consent request to allow the Committee on Rules until midnight to file a report on the Turkish aid issue now being debated by the other body, was granted, that the House could then adjourn and at the same time work its will because then, if the Committee on Rules files a report, it could be considered then under the rules of the House, and if they did not file a report, the issue would be moot?

THE SPEAKER PRO TEMPORE: The Chair will state that that is an accurate statement of the situation, as the Chair understands it. . . .

MR. [DANTE B.] FASCELL [of Florida]: Mr. Speaker, there have been some remarks made that the House would be denied its will and there would be no way to consider the matter in the event the other body agreed to some legislation tonight. Am I correct in the proposition that if a bill is passed by the other body tonight, there is a procedure under the rules whereby the matter could be considered tomorrow? . . .

THE SPEAKER: The Chair will state this. The regular rule is that a report from the Rules Committee has to go over 1 day or it takes a two-thirds vote for consideration on the day reported. The other way is that a unanimous-consent request can be made, and if the Committee on Rules can file it by 10 o'clock tomorrow, and the House adjourns tonight, then it will take a majority vote for consideration tomorrow after the House meets, just as it always does on a subsequent legislative day.

—Point of Order That Report Not Printed Does Not Lie

§ 2.26 Under Rule XI clause 4(b), it is in order to call up a privileged report from the Committee on Rules relating to the order of business on the same day reported if consideration is granted by a two-thirds vote, and a point of order that the report has not been printed does not lie.

On Feb. 2, 1977,[6] the following proceedings occurred in the House:

6. 123 CONG. REC. 3344, 3349, 95th Cong. 1st Sess.

Mr. [James J.] Delaney [of New York], from the Committee on Rules, reported the following privileged resolution (H. Res. 231, Rept. No. 95–6), which was referred to the House Calendar and ordered to be printed: . . .

MR. DELANEY: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 231 and ask for its immediate consideration.

THE SPEAKER:[7] The Clerk will report the resolution.

The Clerk read the resolution.

THE SPEAKER: The question is, Will the House now consider House Resolution 231? . . .

MR. [W. HENSEN] MOORE [of Louisiana]: Mr. Speaker, I make the point of order that the resolution has not been printed.

MR. DELANEY: Mr. Speaker, if the gentleman will yield, this is merely to consider taking up the rule.

MR. MOORE: Mr. Speaker, I would like to make the point of order that I believe under this rule we are waiving all points of order; is that not correct?

MR. DELANEY: Mr. Speaker, if the gentleman will yield further, that matter will be taken up at the proper time. This is merely for consideration, at this particular time, of House Resolution 231.

THE SPEAKER: The Chair will state that the point of order of the gentleman from Louisiana (Mr. Moore) is not well taken and is therefore overruled.

There is no requirement that this resolution be printed before it can be called up, although the Chair ordered the resolution printed when it was filed and referred to the House Calendar.

The question is, Will the House now consider House Resolution 231?

The question was taken; and (two-thirds having voted in favor thereof) the House agreed to consider House Resolution 231.

THE SPEAKER: The gentleman from New York (Mr. Delaney) is recognized for 1 hour. . . .

MR. DELANEY: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

THE SPEAKER: The question is on the resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. MOORE: Mr. Speaker, I demand a recorded vote.

A recorded vote was refused.

So the resolution was agreed to.

Special Rule Reported Where House Refused To Consider Bill Called Up Under Motion Procedure

§ 2.27 Refusal of the House to consider a bill called up under a motion procedure would not prevent the reporting of a resolution by the Committee on Rules making the bill a special order of business.

On May 4, 1960,[8] Speaker Sam Rayburn, of Texas, responded as

7. Thomas P. O'Neill, Jr. (Mass.).

8. 106 CONG. REC. 9417, 86th Cong. 2d Sess.

follows to a parliamentary inquiry prior to the call of committees under the Calendar Wednesday procedure:

> MR. [CHARLES A.] HALLECK [of Indiana]: In the event that the motion to consider the bill should not prevail in the House, would it still be possible if a rule were reported by the Rules Committee for the bill to be brought before the House at a later date under a rule?
>
> THE SPEAKER: The Chair would think the House could adopt any rule reported by the Committee on Rules.

Special Rule for Consideration of Unreported Bills

§ 2.28 The Committee on Rules has reported and the House has adopted resolutions making in order the immediate consideration of bills which had not been reported by the committee to which referred.

On Aug. 19, 1964,[9] the Committee on Rules reported a resolution, which was adopted by the House with an amendment, providing for immediate consideration of a bill pending before the Committee on the Judiciary but not yet reported:

> *Resolved,* That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11926) to limit jurisdiction of Federal courts in reapportionment cases. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.
>
> THE SPEAKER:[10] The Clerk will report the committee amendments.
>
> The Clerk read as follows:
>
> > Committee amendments: Lines 1 and 2, page 1, strike the words "it shall be in order to move that," and line 2, page 1, after the word "House" insert "shall immediately".
>
> THE SPEAKER: Without objection, the committee amendments are agreed to.
>
> There was no objection.

On June 24, 1965,[11] the Committee on Rules reported and the House adopted House Resolution 433, making in order the immediate consideration of a joint reso-

9. 110 CONG. REC. 20213, 20221, 88th Cong. 2d Sess. For other examples, see Ch. 18, supra.

10. John W. McCormack (Mass.).

11. 111 CONG. REC. 14705, 14706, 89th Cong. 1st Sess.

lution referred to the Committee on Banking and Currency but not yet reported:

Resolved, That, upon the adoption of this resolution, the House shall immediately resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the House joint resolution (H.J. Res. 541) to extend the Area Redevelopment Act for a period of two months. After general debate, which shall be confined to the resolution and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Banking and Currency, the resolution shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the resolution for amendment, the Committee shall rise and report the resolution to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the resolution and amendments thereto to final passage without intervening motion except one motion to recommit.

Parliamentarian's Note: The Committee on Banking and Currency was in agreement on consideration of the joint resolution (although it had not been reported) and had requested the special rule from the Committee on Rules.[12]

Special Rule for Consideration of Resolution on Confirmation of Vice President

§ 2.29 A resolution was reported from the Committee on Rules, providing for consideration in the Committee of the Whole of a resolution reported from the Committee on the Judiciary, on confirmation of the nomination of the Vice President, waiving points of order against consideration of the resolution for not having been reported for three calendar days and providing that the previous question be ordered in the House upon completion of general debate in the Committee of the Whole.

The following resolution was reported on Dec. 19, 1974:[13]

H. RES. 1519

Resolved, That upon the adoption of this resolution it shall be in order to move, clause 28(d)(4) of rule XI to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 1511) confirming Nelson A. Rockefeller as Vice President of the United States.

12. See § 2.15, supra, for the ruling that points of order against consideration of a bill based on defects in reporting procedures may not be made where the bill was not reported from committee but made in order by a special rule.

13. 120 CONG. REC. 41419, 93d Cong. 2d Sess.

After general debate, which shall be confined to the resolution and shall continue not to exceed six hours, to be equally divided and controlled by the chairman and the ranking minority member of the Committee on the Judiciary, and Representative Robert W. Kastenmeier, of Wisconsin, the Committee shall rise and report the resolution to the House, and the previous question shall be considered as ordered on the resolution to final adoption or rejection.

Measure Called Up Without Motion, Under Special Rule

§ 2.30 Where the House adopts a special rule providing for the immediate consideration of a measure in the House, the Speaker directs the Clerk to report the measure without its being called up by motion.

On Oct. 17, 1974,[14] the following resolution was agreed to, for purposes of providing for immediate consideration of a joint resolution making continuing appropriations for fiscal 1975:

H. RES. 1456

Resolved, That immediately upon the adoption of this resolution the House shall consider the joint resolution (H.J. Res. 1167) making further continuing appropriations for the fiscal year 1975, and for other purposes. After general debate, which shall be confined to the joint resolution and shall continue not to exceed one hour, the previous question shall be considered as ordered on the joint resolution to final passage without intervening motion except one motion to recommit. . . .

MR. [JOHN] YOUNG of Texas: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

THE SPEAKER:[15] The Clerk will read the joint resolution.

The Clerk read as follows:

H.J. RES. 1167

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) clause (c) of section 102 of the joint resolution of June 30, 1974 (Public Law 93–324), is hereby amended by striking out "September 30, 1974". . . .

Order of Consideration of Amendments Under Special Rule

§ 2.31 Where a special rule does not specify the order in which two amendments in the nature of a substitute, allowed by the rule, are to be considered, the Chair determines the order through his power of recognition.

14. 120 CONG. REC. 36020, 36021, 93d Cong. 2d Sess. For further discussion of proceedings relating to consideration of the special rule, see § 2.21, supra.

15. Carl Albert (Okla.).

For an illustration of a special rule not specifying the order in which amendments in the nature of a substitute are to be considered, and the subsequent action of the Chair in exercising his power of recognition, see the proceedings of July 17, 1974,[16] relating to a resolution[17] providing for consideration of H.R. 11500, the Surface Mining Control and Reclamation Act of 1974.

MR. [RICHARD] BOLLING [of Missouri]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1230 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1230

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for consideration of the bill (H.R. 11500) to provide for the regulation of surface coal mining operations in the United States, to authorize the Secretary of Interior to make grants to States to encourage the State regulation of surface mining, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed four hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interior and Insular Affairs now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be read for amendment by titles instead of by sections, and all points of order against title IV and against section 701(a) of said substitute for failure to comply with the provisions of clause 4, rule XXI are hereby waived. It shall be in order to consider without the intervention of any point of order the text of the bill H.R. 12898 if offered as an amendment in the nature of a substitute for said amendment recommended by the Committee on Interior and Insular Affairs for the bill H.R. 11500. It shall also be in order to consider without the intervention of any point of order the text of the bill H.R. 11500 if offered as an amendment in the nature of a substitute for said amendment recommended by the Committee on Interior and Insular Affairs for the bill H.R. 11500. At the conclusion of the consideration of the bill H.R. 11500 for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute recommended by the Committee on Interior and Insular Affairs. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions. After the passage of H.R. 11500, the Committee on Interior and Insular Affairs shall be discharged from the further consideration of the bill S. 425, and it shall then be in order in the House

16. 120 CONG. REC. 23642, 93d Cong. 2d Sess.

17. H. Res. 1230.

to move to strike out all after the enacting clause of the said Senate bill and insert in lieu thereof the provisions contained in H.R. 11500 as passed by the House.

THE SPEAKER:[18] The gentleman from Missouri (Mr. Bolling) is recognized for 1 hour.

Recognition for Committee Amendments to First Title—Bill Open to Amendment at Any Point

§ 2.32 Where a bill consisting of several titles was considered as read and open to amendment at any point under a special "modified closed rule" permitting germane amendments only to certain portions of titles but permitting committee amendments to any portion of the bill, the Chair first recognized a Member to offer committee amendments to title I and then recognized other Members to offer amendments to that title.

On Aug. 7, 1974,[19] during consideration of the Federal Election Campaign Act of 1974 (H.R. 16090) in the Committee of the Whole, Chairman Richard Bolling, of Missouri, made the following statement:

THE CHAIRMAN: No amendments, including any amendment in the nature of a substitute for the bill, are in order to the bill except the following:

In title 1: Germane amendments to subsection 101(a) proposing solely to change the money amounts contained in said subsection, providing they have been printed in the Congressional Record at least 1 calendar day before being offered; and the text of the amendment to be offered on page 13, following line 4, inserted in the Congressional Record of August 5, 1974, by Mr. Butler.

In title 2: Germane amendments to the provisions contained on page 33, line 17, through page 35, line 11, providing they have been printed in the Record at least 1 calendar day before being offered; and the amendment printed on page E5246 in the Record of August 2, 1974.

In title 4: Germane amendments which have been printed in the Record at least 1 calendar day before they are offered, except that sections 401, 402, 407, 409 and 410 shall not be subject to amendment; and the text of the amendment printed on page H7597 in the Congressional Record of August 2, 1974.

Amendments are in order to any portion of the bill if offered by direction of the Committee on House Administration, but said amendments shall not be subject to amendment.

Are there any Committee on House Administration amendments to title I?

MR. [FRANK] THOMPSON [Jr.] of New Jersey: Mr. Chairman, I offer three

18. Carl Albert (Okla.).

19. 120 CONG. REC. 27258, 27259, 93d Cong. 2d Sess.

committee amendments to title I of the bill and I ask unanimous consent that they be considered en bloc.

THE CHAIRMAN: Is there objection to the request of the gentleman from New Jersey?

There was no objection.

THE CHAIRMAN: The Clerk will report the committee amendments.

The Clerk read as follows:

Committee amendments: . . .

THE CHAIRMAN: The question is on the amendments offered by the gentleman from New Jersey (Mr. Thompson).

The committee amendments were agreed to.

THE CHAIRMAN: Are there further committee amendments to title I?

MR. [PIERRE S.] DU PONT [IV, of Delaware]: Mr. Chairman, I offer an amendment to title I.

The Clerk read as follows:

Amendment offered by Mr. du Pont: Page 2, line 16, strike "$5,000" and insert in lieu thereof "$2,500".

MR. DU PONT: Mr. Chairman, as required by the rule adopted by the House today, my amendment was published at pages E5306 and E5307 of yesterday's Record.

Amendment, Made in Order by Special Rule, Offered From Floor

§ 2.33 Pursuant to a special rule providing for the consideration of the text of a bill as an amendment in the nature of a substitute, to be read by titles as an original bill immediately after the reading of the enacting clause of the bill to which offered, the Chair recognized a Member to offer the amendment in the nature of a substitute from the floor before it could be considered under the rule.

On Sept. 19, 1974,[20] Chairman Thomas M. Rees, of California, recognized James T. Broyhill, of North Carolina, who then offered an amendment in the nature of a substitute:

The Clerk read the title of the bill.

THE CHAIRMAN: When the Committee rose on Tuesday, September 17, 1974, all time for general debate had expired.

Pursuant to the rule, immediately after the reading of the enacting clause, it shall be in order to consider the text of the bill H.R. 16327 as an amendment in the nature of a substitute for the bill, and said substitute shall be read for amendment by title.

The Clerk will read the enacting clause.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. . . .

MR. BROYHILL of North Carolina: Mr. Chairman, under the rule, I offer the following amendment in the nature of a substitute, which is to the text of the bill (H.R. 7917).

20. 120 CONG. REC. 31727, 93d Cong. 2d Sess.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Broyhill of North Carolina: That this Act may be cited as the "Consumer Product Warranties-Federal Trade Commission Improvements Act".

TITLE I—CONSUMER PRODUCT WARRANTIES

DEFINITION

Parliamentarian's Note: Mr. Broyhill was a minority member of the committee and had introduced the bill made in order by the rule. The Chair recognized him when the chairman of the then Committee on Interstate and Foreign Commerce did not immediately seek recognition.

Equal Privilege of Motions To Resolve Into Committee of Whole Pursuant to Separate Special Rules

§ 2.34 Motions that the House resolve into the Committee of the Whole for initial or further consideration of separate bills pursuant to separate special rules adopted by the House are of equal privilege, and the Speaker may exercise his discretionary power of recognition as to which bill shall be next eligible for consideration.

On Sept. 22, 1982,[1] where the Committee of the Whole had risen following completion of general debate but prior to reading of a bill for amendment under the five-minute rule, the Speaker Pro Tempore indicated in response to a parliamentary inquiry that he would exercise his power of recognition to permit consideration of another bill, rather than return to that bill under the five-minute rule.

MR. [WALTER B.] JONES of North Carolina: Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

THE CHAIRMAN: Does the gentleman wish to make a motion at this point?

MR. JONES of North Carolina: Yes, Mr. Chairman. I make a motion that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. Bennett) having assumed the chair, Mr. Simon, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5543) to establish an ocean and coastal resources management and development fund and to require the Secretary of Commerce to provide to coastal States national ocean and resources management and development block grants from sums in the fund, had come to no resolution thereon.

MR. JONES of North Carolina: Mr. Speaker, I have a parliamentary inquiry. . . .

1. 128 CONG. REC. 24690, 24691, 97th Cong. 2d Sess.

Was not the bill supposed to have been read while we were sitting in the Committee of the Whole, read for amendments? . . .

THE SPEAKER PRO TEMPORE:[2] The Committee has risen now, and the Chair does not know of any way of automatically going back at this point to do that. If the Committee of the Whole had proceeded to consider the bill for amendment, it would have conflicted with a determination made by the leadership as to the legislative schedule, so the House should not resume consideration of the bill anyway at this point. In other words, the leadership had indicated that we would have general debate only today. . . .

MR. JONES of North Carolina: Mr. Speaker, another parliamentary inquiry, or statement. I was assured by the leadership that if there were no amendments, we would conclude the bill. I do not anticipate any amendments. . . .

THE SPEAKER PRO TEMPORE: The Committee of the Whole has risen. There is nothing in a parliamentary way the House could do to reserve consideration except to consider a motion to resolve into the Committee of the Whole for the further consideration of the bill.

MR. JONES of North Carolina: A parliamentary inquiry, Mr. Speaker. Would I have the privilege as the Chairman of this committee to move that the House resolve itself into the Committee once again?

THE SPEAKER PRO TEMPORE: . . . Somebody has sent for the gentleman from California (Mr. Waxman), who will make a motion of equal privilege to arrive, and he is undoubtedly on his way. The Chair would be glad to respond to any further conversation that the gentleman would want to have on this subject which would be in order, until the gentleman arrives. . . .

The Chair is following the wishes of the leadership and, therefore, would not recognize any Member for the purpose of moving that the House resolve itself into the Committee of the Whole for further consideration of the bill at this time. . . .

The gentleman from California (Mr. Waxman) has now arrived, and he is recognized.

MR. [HENRY A.] WAXMAN [of California]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6173) to amend the Public Health Service Act.

Special Rule for Consideration of Budget Resolution

§ 2.35 A resolution reported from the Committee on Rules provided for consideration at any time in Committee of the Whole of the concurrent resolution containing not only targets for aggregates and functional categories for the ensuing fiscal year and revisions of the second budget resolution for the present fiscal year (as contemplated by then section 3(a)(4) of the Congressional Budget Act), but also containing binding

2. Charles E. Bennett (Fla.).

reconciliation instructions for two future fiscal years (thereby destroying any privilege under section 305(a)); incorporated procedures applicable to consideration of privileged budget resolutions; made in order specified amendments, to be considered in a certain order and all to be in order even if previous amendments to the same portion of the resolution had been adopted; and made in order amendments to achieve mathematical consistency pursuant to section 305(a) of the Budget Act; and provided that if more than one amendment in the nature of a substitute were adopted, only the last would be reported to the House.

The following proceedings occurred in the House on Apr. 30, 1981:[3]

MR. [RICHARD] BOLLING [of Missouri]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 134 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 134

Resolved, That at any time after the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the concurrent resolution (H. Con. Res. 115) revising the congressional budget for the United States Government for the fiscal year 1981 and setting forth the congressional budget for the United States Government for the fiscal years 1982, 1983, and 1984, and the first reading of the resolution shall be dispensed with. The provisions of subsection 305(a) of the Congressional Budget Act of 1974 and rule XXIII, clause 8,[4] of the Rules of the House of Representatives shall apply during the consideration of the concurrent resolution in the House and in the Committee of the Whole: *Provided, however*, That no amendment to the resolution shall be in order except the following amendments, which shall be considered only in the following order if offered, which shall all be in order even if previous amendments to the same portion of the concurrent resolution have been adopted, and which shall not be subject to amendment except pro forma amendments for the purpose of debate: (1) an amendment printed in the Congressional Record of April 29, 1981, by, and if offered by, Representative Hefner of North Carolina . . . (3) the amendment in the nature of a substitute printed in the Congressional Record of April 29, 1981, by, and if offered by, Representative Obey of Wisconsin; and (4) the amendment in the nature of a substitute printed in the Congres-

3. 127 CONG. REC. 7993, 8003, 97th Cong. 1st Sess.

4. The applicability of these provisions made it unnecessary to write a complete rule for consideration, since they provided that the resolution be considered as having been read and the previous question be considered as ordered on final adoption without intervening motion.

sional Record of April 29, 1981, by, and if offered by, Representative Latta of Ohio. It shall also be in order to consider the amendment or amendments provided for in section 305(a)(6) of the Congressional Budget Act of 1974 necessary to achieve mathematical consistency. If more than one of the amendments in the nature of a substitute made in order by this resolution have been adopted, only the last such amendment which has been adopted shall be considered as having been finally adopted and reported back to the House.

THE SPEAKER:[5] The gentleman from Missouri (Mr. Bolling) is recognized for 1 hour.[6]

Parliamentarian's Note: The right of the Budget Committee to file privileged reports and to call them up (under clause 4(a), Rule XI and section 305(a)(1) of the Budget Act) extends only to concurrent resolutions on the budget as defined in section 3 subsection (4) and section 301(a) of that Act. The inclusion of reconciliation instructions directing changes in entitlements and in spending for ensuing fiscal years was considered to have destroyed the privilege of the concurrent resolution in the above instance because going beyond the scope of the concurrent resolution as prescribed by the Budget Act. The current section 301 of the Budget Act has enlarged the scope of the concurrent resolution on the budget.

Point of Order Under Budget Act

§ 2.36 It is not in order to consider an amendment, including an amendment recommended in a conference report, which provides new entitlement authority to become effective before the first day of the fiscal year beginning in the calendar year in which the bill was reported, under section 401(b)(1) of the Congressional Budget Act (Public Law 93–344).

During consideration of H.R. 10339 (Farmer-to-Consumer Direct Marketing Act of 1976) in the House on Sept. 23, 1976,[7] the following proceedings occurred:

MR. [JOSEPH P.] VIGORITO [of Pennsylvania]: Mr. Speaker, I call up the conference report on the bill (H.R. 10339) to encourage the direct marketing of agricultural commodities from farmers to consumers. . . .

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Speaker, I make a point of order. . . .

Section 401(b)(1) of the Congressional Budget and Impoundment Control Act (Public Law 93–344) provides as follows:

5. Thomas P. O'Neill, Jr. (Mass.).

6. See Ch. 13, § 21, supra, for detailed discussion of procedures under the Congressional Budget Act.

7. 122 CONG. REC. 32099, 32100, 94th Cong. 2d Sess.

(b) Legislation Providing Entitlement Authority.—

(1) It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(C) (or any amendment which provides such new spending authority) which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.

The text of the conference agreement as set forth in the amendment adding a new section 8 is as follows:

EMERGENCY HAY PROGRAM

Sec. 8. In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed $50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977.

It is clear from a literal reading of this proposed language that certain livestock owners will be entitled to a hay subsidy immediately upon enactment of this bill. . . .

In any event it is a new spending authority effective before October 1, 1976, which marks the beginning of fiscal year 1977 but occurs in the calendar year in which the conference report is being called up in the House. . . .

MR. VIGORITO: Mr. Speaker, my understanding is that if this program is an entitlement program under section 401 of the Budget Act, the funding could not be given an authorization in this bill until the beginning of the next fiscal year, or, in this case, October 1, 1976. If that is the case, I would think that we could develop legislative intent here in that none of the funding would begin in this bill until fiscal year 1977. As a practical matter, the bill will probably not have cleared the President prior to that time, anyway, and consequently we will not be delaying the impact of the bill for any substantial length of time. We have less than a week before October 1 comes about. . . .

THE SPEAKER:[8] The Chair is having difficulty with the argument made by the distinguished gentleman from Pennsylvania, because, as the Chair understands it, theoretically and legally it would be possible to begin the payments before October 1, 1976, which would be in violation of the Budget . . . Control Act, as the entitlement to those payments might vest prior to October 1. . . .

The Chair thinks that under the present circumstances he should insist that the gentleman consider another procedure, because he thinks it can be worked out. Therefore, the Chair must sustain the point of order. . . .

The conference report is no longer before the House. The gentleman can dispose of the Senate amendments under another procedure.

Parliamentarian's Note: When a conference report is ruled out on a point of order, the Chair directs the Clerk to report the Senate

8. Carl Albert (Okla.).

amendments remaining in disagreement for disposition by motion. The above conference report having been ruled out on a point of order, the House subsequently adopted a privileged motion to recede and concur with an amendment which postponed the effectiveness of the entitlement until after the commencement of the fiscal year beginning in the calendar year in which the bill had been reported.

§ 2.37 Section 303(a) of the Congressional Budget Act prohibits the consideration in either House of any bill or amendment thereto (including a conference report) containing "new spending (entitlement) authority" which becomes effective during a fiscal year prior to the adoption of the first concurrent resolution on the budget for that fiscal year; and a conference report containing new spending "entitlement" authorities to become effective in fiscal years 1978–1980 in amounts increased over fiscal year 1977 was ruled out on a point of order under that section, since the first concurrent resolutions 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 which became effective in the fiscal year (1977) for which a concurrent resolution had been adopted.

The definition of new spending "entitlement" authority contained in section 401(c)(2)(C) of the Congressional Budget Act (and incorporated by reference into the prohibition in section 303(a) against consideration of future year entitlement bills and amendments) includes revenue sharing spending authority in the form of entitlements, as the exception from the definition of new spending authority accorded to revenue sharing programs in section 401(d)(2) does not apply to new "entitlement" authority for future fiscal years but only to entitlements immediately vesting as defined in section 401(c)(2)(C). A ruling by the Speaker to such effect was made on Sept. 30, 1976: (9)

> MR. [JACK] BROOKS [of Texas]: Mr. Speaker, I call up the conference report on the bill (H.R. 13367) to extend and amend the State and Local Fiscal Assistance Act of 1972, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

9. 122 CONG. REC. 34074–76, 94th Cong. 2d Sess.

The Clerk read the title of the bill.

A portion of the conference report was as follows:

SEC. 5. EXTENSION OF PROGRAM AND FUNDING.

(a) IN GENERAL.—Section 105 (relating to funding for revenue sharing) is amended. . . .

(3) by inserting immediately after subsection (b) the following new subsection:

"(c) AUTHORIZATION OF APPROPRIATIONS FOR ENTITLEMENTS.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Trust Fund to pay the entitlements hereinafter provided—

"(A) for the period beginning January 1, 1977, and ending September 30, 1977, $4,987,500,000; and

"(B) for each of the fiscal years beginning October 1 of 1977, 1978, and 1979, $6,850,000,000.

"(2) NONCONTIGUOUS STATES ADJUSTMENT AMOUNTS.—There are authorized to be appropriated to the Trust Fund to pay the entitlements hereinafter provided—

"(A) for the period beginning January 1, 1977, and ending September 30, 1977, $3,585,000; and

"(B) for each of the fiscal years beginning on October 1 of 1977, 1978, and 1979, $4,923,759."; and

(4) by inserting "; AUTHORIZATIONS FOR ENTITLEMENTS" in the heading of such section immediately after "APPROPRIATIONS". . . .

MR. [BROCK] ADAMS [of Washington]: Mr. Speaker, I raise a point of order against the conference agreement on H.R. 13367, to extend the State and Local Fiscal Assistance Act of 1972. The conference agreement contains a provision, not included in the House bill, which provides new spending authority for fiscal years 1978 and 1979 over the amounts provided for fiscal year 1977. This new entitlement increment for succeeding fiscal years violates section 303(a) of the Congressional Budget Act which provides in part:

> It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) which provides— . . . new spending authority described in section 401 (c)(2)(C) to become effective during a fiscal year . . . until the first concurrent resolution on the budget for such year has been agreed to pursuant to section 301.

By increasing the fiscal year 1978 entitlement by $200 million over the amounts for fiscal year 1977, H.R. 13367 does provide new spending authority to become effective for a fiscal year for which a budget resolution has not been adopted. It would thereby allow that new spending increment to escape the scrutiny of the fiscal year 1978 budget process. While section 303 provides an exception for new budget authority and revenue changes for a succeeding fiscal year, entitlement programs were expressly omitted from the exception by the House-Senate conference on the Congressional Budget Act.

MR. [FRANK] HORTON [of New York]: Mr. Speaker, I rise in opposition to the point of order.

The applicable provision of the Budget Act in this matter concerns section 303(d)(1). This provision provides an exception for any bills on the full fiscal year for which the current resolution applies. The $200 million increase contained in the conference report begins in fiscal year 1978, the next fiscal year beyond 1977, the year for which our present budget resolution applies.

The $200 million increase, since it begins in fiscal year 1978, technically conforms with the Budget Act and deserves to be retained in the conference report. I might say to the membership that in making this point of order, this was brought up in the conference and we purposely did not provide for any increase in fiscal year 1977. We purposely skipped the first three-quarters. We agreed upon a term of 3¾ years for the Revenue Sharing Act to be in effect, but we skipped the first three-quarter year and applied a $200 million increment for the first fiscal year thereafter, namely, 1978, and for each of the 3 years subsequent thereto; or a total of $600 million. So, we purposely skipped this fiscal year 1977 so that we would not violate the budget resolution. . . .

MR. ADAMS: Mr. Speaker, in response to the comments made by the gentleman from New York (Mr. Horton), the provision that he refers to regards new budget authority, not entitlement programs where there is a reference over to the Committee on Appropriations and it is controlled in that fashion. This committee in its wisdom and the vote of the House was that this should be an entitlement program, and the violation is to the budget statute and process. We have applied this to all other committees of the House, that entitlement programs for the fiscal year, where we are changing the entitlement—and we have had this come up before—must be considered in the budget resolution for the fiscal year involved. This committee wishes for fiscal year 1978 to bring forth something for fiscal year 1978 that can be done in the budget cycle of that year. But it is out of order to bring it up and try to put it into the process at this point. . . .

MR. [CLARENCE J.] BROWN of Ohio: Mr. Speaker, I refer to Public Law 93–344 of the 93d Congress which was enacted July 12, 1974, and I refer to page 22 of that legislation, section 401(d)(2). Section 401(d) is entitled "Exceptions." Subsection (d)(2), under "Exceptions," says as follows:

> Subsections (a) and (b) shall not apply to new spending authority which is an amendment to or extension of the State and Local Fiscal Assistance Act of 1972, or a continuation of the program of fiscal assistance to State and local governments provided by that Act,"—meaning the Local Fiscal Assistance Act of 1972—"to the extent so provided in the bill or resolution providing such authority.

Mr. Speaker, it seems to me clearly designed in that legislation that the Local Fiscal Assistance Act of 1972 was meant to contain an exception from the entitlement procedure, a procedure which was in fact used in that legislation of 1972, the first Revenue Sharing Act, and I see no other way to read it except that we would provide an exception to sections 401 (a) and (b) in accordance with the legislation that the Congress previously passed.

The act provides—and this is what the conference provided for—an entitlement, and the entitlement is in fact both an authorization and an appropriation. It provided for the funds for that purpose into the future. For the first year it did not result in any breaking of the Budget Resolution passed by this House in accordance with the Committee on the Budget.

So, Mr. Speaker, I see no way by which the extension of the Revenue

Sharing Act could be prohibited, because this exemption which was provided is in the law. . . .

THE SPEAKER:[10] The Chair is ready to rule.

The gentleman from Washington (Mr. Adams) makes a point of order against the conference report on the bill H.R. 13367 on the ground that section 5(a) of the conference report provides new spending authority and entitlement increment for fiscal years 1978 and 1979 over the amounts provided for in fiscal year 1977, in violation of section 303(a) of the Congressional Budget Act of 1974.

The gentleman from New York (Mr. Horton) and the gentleman from Ohio (Mr. Brown) rebut this argument by contending that a mere incremental increase in an entitlement for subsequent fiscal years is not new spending authority as prescribed in section 401(c)(2)(C) to become effective during the subsequent fiscal years, but rather, a continuation of the spending authority for fiscal year 1977, which is permitted under section 303(a).

The Chair has examined the conference report, and section 5(a) is structured so as to provide separate authorization for entitlement payments for each of the fiscal years 1977, 1978, and 1979, with a higher authorization for 1978 and 1979 than for 1977.

In the opinion of the Chair, such a separate increase in entitlement authorizations is new spending authority to become effective during those subsequent fiscal years, which may not be included in a bill or an amendment prior to the adoption of the first concurrent resolution for fiscal years 1978 and 1979, which does not come within the exception contained in section 303(b) for new budget authority, and which does not come within the section 401(d) revenue-sharing exception—applicable only to . . . spending authority as defined in subsections (a) and (b) of section 401(c)—cited by the gentleman from Ohio.

The Chair therefore sustains the point of order against the conference report.

10. Carl Albert (Okla.).

Special Rule Waiving Provisions of Budget Act

§ 2.38 By special rule, the House can waive the various provisions of the Budget Act which would otherwise prohibit consideration of an authorization bill, conference report, or appropriation bill.

For an example of a special rule waiving points of order against a bill authorizing new budget authority, see H. Res. 355, considered on Nov. 4, 1983.[11]

MR. [GILLIS W.] LONG of Louisiana: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 355 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 355

Resolved, That at any time after the adoption of this resolution the

11. 129 CONG. REC. 30925, 98th Cong. 1st Sess. See Ch. 13, § 21, supra, for discussion of the Congressional Budget Act generally.

Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4196) to stabilize a temporary imbalance in the supply and demand for dairy products. . . . All points of order against the consideration of the bill for failure to comply with the provisions of section 402(a) of the Congressional Budget Act of 1974 (Public Law 93–344) are hereby waived, and all points of order against the bill for failure to comply with the provisions of clause 5, rule XXI are hereby waived. . . .

On July 31, 1981,[12] a special rule, H. Res. 203 provided for a waiver of points of order against consideration of a conference report on the budget.

MR. [RICHARD] BOLLING [of Missouri]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 203 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 203

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 4331) to amend the Omnibus Reconciliation Act of 1981 to restore minimum benefits under the Social Security Act. . . . After the disposition of H.R. 4331, it shall be in order to consider, any rule of the House to the contrary notwithstanding, the conference report on the bill (H.R. 3982) to provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for fiscal year 1982, said conference report shall be considered as having been read and shall be debatable for not to exceed two hours, equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget, and all points of order against said conference report are hereby waived.

The proceedings of Feb. 9, 1982,[13] also related to the waiver of points of order under the Budget Act. The special rule agreed to on that day waived points of order against initial consideration of two special appropriation bills containing new budget authority and outlays in excess of the ceiling in the second concurrent resolution in the budget for the current fiscal year, and waived the same points of order against consideration of conference reports thereon if not in excess of total budget authority and outlays contained in the joint resolutions as initially reported to the House by the Committee on Appropriations.

MR. [RICHARD] BOLLING [of Missouri]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 355 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 355

Resolved, That upon the adoption of this resolution it shall be in order

12. 127 CONG. REC. 18872, 97th Cong. 1st Sess.

13. 128 CONG. REC. 1263, 1264, 1270, 97th Cong. 2d Sess.

to consider, section 311(a) of the Congressional Budget Act of 1974 (Public Law 93–344) to the contrary notwithstanding, the following joint resolutions: H.J. Res. 389, making an urgent supplemental appropriation for the fiscal year ending September 30, 1982, for the Department of Agriculture, and H.J. Res. 391, making an urgent supplemental appropriation for the Department of Labor for the fiscal year ending September 30, 1982. It shall be in order to consider, section 311(a) of the Congressional Budget Act of 1974 to the contrary notwithstanding, a conference report on either of said joint resolutions if the report does not provide budget authority in excess of that provided by the joint resolution as reported to the House by the Committee on Appropriations and if the report would not cause budget outlays to exceed the budget outlays which would be caused by the joint resolution as reported to the House by the Committee on Appropriations.[14]

THE SPEAKER PRO TEMPORE:[15] The gentleman from Missouri (Mr. Bolling) is recognized for 1 hour.

MR. BOLLING: . . . Section 311(a) of the Budget Act prohibits the consideration of any bill, resolution, amendment or conference report providing additional new budget or spending authority that would result in the breach of the ceiling of total new budget authority or total budget outlays set forth in the most recently agreed to concurrent resolution on the budget for the current fiscal year.

Yesterday, the Committee on the Budget, as required by section 311(b) of the Budget Act, certified to the Speaker the current level of spending. These current level estimates indicate that there is some $4.4 billion in budget authority under the ceiling set forth in Senate Concurrent Resolution 50, the second budget resolution agreed to by the House on December 10, 1981. Outlays are some $42.8 billion in excess of the ceiling already. Consequently, the urgent supplemental appropriation bills for the Commodity Credit Corporation and the employment services portion of the unemployment compensation bill would breech the ceilings set forth in the second budget resolution. Without the waivers, the appropriation bills would be subject to a point of order and the House could be prevented from considering these critical matters.

The rule waives section 311(a) of the Budget Act against the initial consideration of the two joint resolutions by the House. It would further provide for a waiver of the same section of the Budget Act against consideration of any conference report on either of the resolutions provided that the conference report figures do not exceed the budget authority of or outlays resulting from the joint resolutions as they were reported from the House Committee on Appropriations. In other words, to expedite consideration of these matters, the Rules Committee proposes to grant waivers to the conference reports in advance, but only so long as the figures in the bills are not increased beyond the levels as reported from committee.[16]

14. For a similar resolution relating to appropriations for the Department of Health and Human Services, see *Id.* at pp. 1270, 1271 (H. Res. 356).

15. Benjamin S. Rosenthal (N.Y.).

16. *Parliamentarian's Note:* Although points of order under the Budget Act are waived, points of order under the

§ 2.39 By unanimous consent, the House agreed to consider (prior to the stage of disagreement) a motion in the House to concur in a Senate amendment to a special appropriation bill without intervening motion and to waive all points of order against consideration of the Senate amendment, which contained new budget authority in excess of the ceiling established by the second concurrent resolution on the budget for fiscal 1982, in violation of section 311 of the Congressional Budget Act.

On Feb. 10, 1982,[17] the following proceedings occurred in the House:

MR. [JAMES C.] WRIGHT [Jr., of Texas]: Mr. Speaker, I ask unanimous consent that it shall be in order today or any day thereafter, any rule of the House to the contrary notwithstanding, to consider a motion in the House to take from the Speaker's table the joint resolution (H.J. Res. 389) making an urgent supplemental appropriation for the Department of Agriculture for the fiscal year ending September 30, 1982, with the Senate amendment thereto, and to concur in said Senate amendment, and that the previous question shall be considered as ordered on said motion to final adoption without intervening motion. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, pursuant to the unanimous-consent request just granted, I move to take from the Speaker's table the joint resolution (H.J. Res. 389) making an urgent supplemental appropriation for the fiscal year ending September 30, 1982, for the Department of Agriculture, with a Senate amendment thereto and concur in the Senate amendment.

The Clerk read the Senate amendment, as follows:

> Senate amendment: Page 1, after line 12, insert:
>
> Sec. 2. (a) The following sum is appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1982, namely: . . .
>
> For an additional amount for "Low Income Energy Assistance", $123,000,000.
>
> (b) None of the funds appropriated under this joint resolution shall be used, obligated, or expended for the purposes of section 2604(f), 2605(k), 2607(b)(1), or 2607(b)(2) of the Omnibus Budget Reconciliation Act of 1981.

THE SPEAKER:[18] The gentleman from Mississippi (Mr. Whitten) is recognized for 1 hour.

Parliamentarian's Note: The Senate amendment contained the text of a separate House-passed urgent supplemental appropriation (H.J. Res. 392) against which points of order under section 311 of the Budget Act had been sepa-

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standing rules of the House may be available unless they are also specifically waived.

17. 128 CONG. REC. 1462, 1463, 97th Cong. 2d Sess.

18. Thomas P. O'Neill, Jr. (Mass.).

rately waived during initial consideration in the House.

Amendment Striking Out Rescission as Causing New Authority To Exceed Limit

§ 2.40 Section 311(a) of the Budget Act precluding any amendment "providing additional new budget authority" which would cause the appropriate level of total new budget authority or budget outlays to be exceeded has been interpreted to prohibit consideration of an amendment striking out a rescission of existing budget authority where its effect is to increase the net total new budget authority in the bill (an amount calculated by offsetting rescissions in the bill against new appropriations).

Where an appropriation bill already contained new budget outlays in excess of the total level permitted by the applicable second concurrent resolution on the budget for that fiscal year, but was permitted to be considered by 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 new budget authority in the bill to be increased, was ruled out in violation of section 311(a), as further exceeding the total outlay ceiling in the second budget resolution. The proceedings of May 12, 1981,[19] during consideration of H.R. 3512, supplemental and continuing appropriations, rescissions, and deferrals for fiscal 1981, were as follows:

The Clerk read as follows:

PAYMENTS IN LIEU OF TAXES

(RESCISSION)

Of the funds appropriated under this head in the Interior and Related Agencies Appropriations Act, 1981 (Public Law 96–514) and previous Interior Department Appropriations Acts $108,000,000 are rescinded.

MR. [MANUEL] LUJAN [Jr., of New Mexico]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Lujan: Page 57 strike out line 7 through line 12.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I reserve a point of order against the amendment. . . .

Mr. Chairman, I insist on my point of order.

THE CHAIRMAN PRO TEMPORE: The gentleman will state his point of order.

MR. YATES: Mr. Chairman, I make a point of order against the amendment.

I make a point of order against the gentleman's amendment because it

19. 127 CONG. REC. 9314, 9315, 97th Cong. 1st Sess. For discussion of the Congressional Budget Act, see Ch. 13, § 21, supra.

provides additional budget authority and budget outlays in excess of the budget authority and budget outlay totals agreed to in the latest concurrent budget resolution and is in violation of section 311 of the Congressional Budget Act (Public Law 93–344).

The gentleman's amendment proposes to delete language (to reduce an amount) in the bill which has the effect of providing budget authority and budget outlays in excess of the current budget ceilings for fiscal year 1981. Section 311 of the Congressional Budget Act states that it shall not be in order to consider any amendment providing additional budget authority or spending authority the adoption of which would cause the appropriate level of total budget authority of total budget outlays set forth in the most recently agreed to concurrent resolution on the budget to be exceeded.

As we all know, on March 18, 1981, Mr. Jones, chairman of the House Budget Committee, placed in the Congressional Record the reestimates of budget authority and budget outlays required of him by the Congressional Budget Act which indicate that the fiscal year 1981 budget authority ceiling has been exceeded by $19.6 billion and the budget outlay ceiling has been exceeded by $27.6 billion. The House has recently passed a measure adjusting those ceilings upward but that measure must still be worked out in conference with the Senate.

With these reestimates in place and in the absence of a new resolution having been agreed to raising these ceilings, there is no room left to provide any additional budget authority or outlays. In fact, these budget levels are currently in deficit by billions of dollars.

The gentleman's amendment therefore exceeds the current budget ceilings and is in violation of section 311 of the Congressional Budget Act. It is out of order.

THE CHAIRMAN PRO TEMPORE: Does the gentleman from New Mexico care to respond to the point of order?

MR. LUJAN: I would like to address the point of order; I certainly would, Mr. Chairman.

What the gentleman says is absolutely correct, but I think we are forgetting one fact here. The previous amendment that just passed reduced that budget amount by $376 million. Certainly, $108 million would fit very nicely under that figure of $376 million.

THE CHAIRMAN PRO TEMPORE: The Chair is prepared to rule. The amendment offered by the gentleman from New Mexico proposes to strike a rescission of funds contained in the bill.

The amendment, by striking the amount of the rescission in the bill, has the effect of increasing the net amount of new budget authority contained in the bill as a whole, and also has the obvious effect of increasing total outlay levels further above the ceiling currently in place for fiscal year 1981, contained in House Concurrent Resolution 448 of the 96th Congress. As indicated in the letter from the Budget Committee to the Speaker inserted in the Record of March 18, 1981, the outlay ceiling for fiscal year 1981 as of that date had already been exceeded by $27 billion: Thus, despite adoption of the prior amendment, the amendment falls within the prohibition stated in section 311 of the Budget Act, as indicated in a ruling by the Pre-

siding Officer in the other body on June 27, 1980, wherein an attempt was made to reduce a rescission in last year's supplemental appropriation bill.

The Chair, therefore, sustains the point of order raised by the gentleman from Illinois (Mr. Yates).

Parliamentarian's Note: Amendments which propose to strike out rescissions of existing budget authority arguably do not technically provide additional new budget authority (since the original appropriation was presumably accrued as new budget authority); but because they were calculated to offset new budget authority in the bill under consideration in determining the total amount of new budget authority and outlays, it was considered advisable to interpret them as covered by section 311(a).

Motion To Postpone Consideration

§ 2.41 A motion to postpone consideration of a measure being considered in the House is in order after the measure is under consideration but before the manager has been recognized to control debate thereon (the measure being "under debate" within the meaning of clause 4, Rule XVI, and the Member in charge not being taken from the floor).

On May 30, 1980,[20] during consideration of House Joint Resolution 554 (supplemental Federal Trade Commission appropriation for fiscal year 1980) in the House, the following proceedings occurred:

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, pursuant to the rule adopted a few moments ago, I call up the joint resolution (H.J. Res. 554) making an appropriation for the Federal Trade Commission for the fiscal year ending September 30, 1980, for consideration in the House.

The Clerk read the joint resolution, as follows:

H.J. RES. 554

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sum is appropriated . . . for the fiscal year ending September 30, 1980. . . .

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Ashbrook moves to postpone further consideration of House Joint Resolution 554 until June 10, 1980.

MR. WHITTEN: Mr. Speaker, I move that the motion offered by the gentleman from Ohio (Mr. Ashbrook) be laid on the table.

THE SPEAKER PRO TEMPORE:[1] The question is on the motion to table.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it. . . .

20. 126 CONG. REC. 12821, 12822, 96th Cong. 2d Sess.

1. Michael L. Synar (Okla.).

[T]he motion to table the motion to postpone consideration was agreed to.

Parliamentarian's Note: Under clause 4, Rule XVI, all the motions except the motion to amend may be made in the House after consideration of a measure has begun and before the Member in charge has control of the floor. An amendment may not be offered until the Member in charge yields the floor for that purpose or the previous question is voted down.

Disapproval Resolutions Under Statute—Motion To Postpone Motion To Resolve Into Committee of Whole

§ 2.42 Although a motion that the House resolve itself into Committee of the Whole is not ordinarily subject to the motion to postpone indefinitely,[2] the motion may be offered pursuant to the provisions of a statute, enacted under the rulemaking power of the House, which allows such a motion in the consideration of a resolution disapproving a certain executive action.

On Aug. 18, 1982,[3] the House adopted a motion to postpone indefinitely a motion to resolve into the Committee of the Whole for the consideration of a resolution, reported adversely by the Committee on Ways and Means, disapproving extension of presidential authority to waive freedom of emigration requirements affecting re. Romania, pursuant to section 152(d) of the Trade Act of 1974,[4] thereby approving extension of presidential authority.

MR. [SAM M.] GIBBONS [of Florida]: Mr. Speaker, pursuant to section 152(d)(1) of the Trade Act of 1974, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for immediate consideration of the resolution (H. Res. 521), disapproving extension of Presidential authority to waive freedom of emigration requirements with respect to the Socialist Republic of Romania.

The Clerk read the title of the resolution.

MR. [BILL] FRENZEL [of Minnesota]: Mr. Speaker, pursuant to section 152(d)(3) of the Trade Act of 1974, I move that consideration of House Resolution 521 be postponed indefinitely.

THE SPEAKER:[5] The question is on the motion offered by the gentleman from Minnesota (Mr. Frenzel).

The motion was agreed to.

A motion to reconsider was laid on the table.

THE SPEAKER: The matter is postponed.

Similarly, on Mar. 10, 1977,[6] the House had adopted a motion

2. See 6 Cannon's Precedents § 726.
3. 128 CONG. REC. 21934, 97th Cong. 2d Sess.
4. Public Law 93–618, 88 Stat. 1980.
5. Thomas P. O'Neill, Jr. (Mass.).
6. 123 CONG. REC. 7021, 95th Cong. 1st Sess.

to postpone indefinitely a motion to resolve into the Committee of the Whole for the consideration of a resolution, reported adversely by the Committee on Ways and Means, disapproving a presidential determination denying import relief to the United States honey industry, pursuant to section 152(d)(1) and (d)(3) of the Trade Act of 1974:

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Speaker, pursuant to section 152(d)(1) of the Trade Act of 1974, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of House Concurrent Resolution 80, to disapprove the determination of the President denying import relief under the Trade Act of 1974 to the U.S. honey industry.

The Clerk read the title of the concurrent resolution.

MR. [WILLIAM A.] STEIGER [of Wisconsin]: Mr. Speaker, pursuant to section 152(d)(3) of the Trade Act of 1974, I move to postpone indefinitely the motion that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of House Concurrent Resolution 80.

MR. VANIK: Mr. Speaker, I ask unanimous consent to address the House for 1 minute before we proceed.

THE SPEAKER:[7] Is there objection to the request of the gentleman from Ohio?

There was no objection.

MR. VANIK: Mr. Speaker, on February 9 the Subcommittee on Trade ordered that House Concurrent Resolution 80 be reported unfavorably to the full committee. House Concurrent Resolution 80 provides for congressional disapproval of the determination by the President not to provide import relief to the U.S. honey industry under section 203 of the Trade Act of 1974. . . .

THE SPEAKER: The question is on the motion offered by the gentleman from Wisconsin (Mr. Steiger).

The motion was agreed to.

A motion to reconsider was laid on the table.

Parliamentarian's Note: Section 152(d)(3) of the Trade Act, like a number of other statutes providing privileged procedures for consideration of legislative disapproval measures, states: "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." Since resolutions of disapproval under the Trade Act, as well as most other disapproval resolutions, require consideration in Committee of the Whole, it is clear that the subsection requires the motion to postpone to be applicable to the motion to resolve into the Committee of the Whole.

§ 2.43 Although the motion to postpone is not ordinarily

7. Thomas P. O'Neill, Jr. (Mass.).

applicable to a motion that the House resolve itself into the Committee of the Whole, the motion to resolve into the Committee may be postponed indefinitely where a statute[8] enacted under the rulemaking power of the House of Representatives accords privilege to the motion to resolve into the Committee of the Whole for consideration of matters specified in the statute and allows a motion to postpone in the House with respect to such consideration.

On Aug. 3, 1977,[9] the following proceedings occurred in the House:

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Speaker, pursuant to section 152(d)(1) of the Trade Act of 1974, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of House Resolution 653, to disapprove the recommendation of the President to extend the authority in section 402(c) of the Trade Act of 1974 with respect to the Socialist Republic of Romania for an additional 12 months.

The Clerk read the title of the resolution.

The Clerk read the resolution, as follows:

H. RES. 653

Resolved, That the House of Representatives 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 June 3, 1977, with respect to the Socialist Republic of Romania.

MR. [WILLIAM A.] STEIGER [of Wisconsin]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Steiger moves, pursuant to section 152(d)(3) of the Trade Act of 1974, to postpone indefinitely the motion that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of House Resolution 653.

THE SPEAKER PRO TEMPORE:[10] The question is on the preferential motion offered by the gentleman from Wisconsin (Mr. Steiger).

The question was taken; and on a division (demanded by Mr. Ashbrook) there were—ayes 149, noes 33. . . .

So the preferential motion was agreed to.

—Three-day Layover Requirement Not Applicable to Consideration of Disapproval Resolution

§ 2.44 A motion to resolve into Committee of the Whole for consideration of a concurrent resolution disapproving an agency action is highly privileged and may be of-

8. Trade Act of 1974, section 152(d)(1) and (d)(3), Pub. L. 93–618.

9. 123 CONG. REC. 26528, 95th Cong. 1st Sess.

10. Dan Rostenkowski (Ill.).

fered before the third day on which a report thereon is available, since, under an exception now contained in Rule XI, the requirement of clause 2(l)(6) of that rule that committee reports be available to Members for three days is not applicable to a measure disapproving a decision by a government agency.

On May 26, 1982,[11] a motion was made, pursuant to section 21(b) of the Federal Trade Commission Improvements Act,[12] for consideration of a concurrent resolution disapproving a rule promulgated by the Federal Trade Commission.

> MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, pursuant to the provisions of section 21(b) of Public Law 96–252, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the Senate concurrent resolution (S. Con. Res. 60) disapproving the Federal Trade Commission trade regulation rule relating to the sale of used motor vehicles; and pending that motion, Mr. Speaker, I move that general debate on the Senate concurrent resolution be limited to not to exceed 2 hours, 1 hour to be controlled by the gentleman from New Jersey (Mr. Florio) and 1 hour to be controlled by the gentleman from New York (Mr. Lee). . . .
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> MR. [BENJAMIN S.] ROSENTHAL [of New York]: Mr. Speaker, I make a point of order against consideration of this concurrent resolution on the ground that it violates subsection 6 of section 715, which in essence requires a 3-day layover of the matter under consideration. The rule says:
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> > Nor shall it be in order to consider any measure or matter reported by any committee unless copies of such report and reported measure have been available to the Members for at least three calendar days.
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> There is no report available, Mr. Speaker, to the members of the committee or the Members of the House in this matter under consideration, and therefore it would be in violation of the rules to consider it. I am very much aware, Mr. Speaker, that there is an additional paragraph under the rule which says: "The subparagraph shall not apply to two exceptions."
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> In other words, there are two exceptions under which the 3-day layover and requirement that a report is necessary can be waived. . . .
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> The second section, subsection (b) says:
>
> > Any decision, determination or action by a government agency which would become or continue to be effective unless disapproved or otherwise invalidated by one or both Houses of Congress.
>
> Now, I am assuming, Mr. Speaker, that the proponents of the resolution under consideration would suggest that the waiver provision of section (b) would apply to the matter under consideration, and they would suggest that the Federal Trade Commission is

11. 128 CONG. REC. 12027, 12028, 97th Cong. 2d Sess.

12. 15 U.S.C. 57a–1(b)

a Government agency in the common parlance of what is a Government agency. . . . The point that I make in support of my point of order is that in the House rules the definition of a Government agency has traditionally been that of an executive branch agency, not a quasi-judicial commission, such as the Federal Trade Commission. . . .

THE SPEAKER:[13] The Chair is ready to rule.

The gentleman from New York (Mr. Rosenthal), makes the point of order against the consideration of Senate Concurrent Resolution 60 on the ground that the report accompanying that resolution has not been available for 3 days as required by clause 2(l)(6), rule XI. The report from the Committee on Energy and Commerce was filed yesterday and will be available to members during the debate, but was not available for 3 days.

Section 21(b)(3)A of the Federal Trade Commission Improvements Act of 1980 provided that:

> When a committee has reported a concurrent resolution, it shall be in order at any time thereafter (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the concurrent resolution. The motion shall be highly privileged in the House of Representatives and shall not be debatable.

Now the Chair has consistently endeavored to interpret such provisions of law in conjunction with clause 2(l)(6) of rule XI, both of which are readopted as rules of the 97th Congress at the beginning of this Congress, so as to require that Members have 3 days to read accompanying reports unless the exception contained in clause 2(l)(6), rule XI, becomes applicable. In this case, the Chair believes that the exception contained in that rule is applicable, and the Chair will read the exception in relevant part:

> This subparagraph shall not apply to . . . (B) any decision, determination or action by a Government agency which would become or continue to be, effective unless disapproved or otherwise invalidated by one or both Houses of Congress. For the purposes of the preceding sentence, a 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.

15 U.S.C. 41 establishes the Federal Trade Commission as a "commission." In the opinion of the Chair, the Federal Trade Commission is an instrumentality of the U.S. Government. The President's budget on page 1-v45 lists the Federal Trade Commission as an independent agency. It is agreed that the proposed FTC regulation in question becomes effective at midnight tonight, the expiration of the 90 calendar day period pursuant to sec. 21(a)(2) of the act, unless disapproved by adoption of a concurrent resolution of disapproval.

The report accompanying the Legislative Reorganization Act of 1970 which first incorporated the 3-day rule describes the intention of the exception to the rule to apply to "legislative veto procedures".

Thus the Chair rules that the exception from the 3-day rule is applicable in the instant case and the availability

13. Thomas P. O'Neill, Jr. (Mass.).

of the report on Senate Concurrent Resolution 60 is not a prerequisite for the consideration of the concurrent resolution. The Chair overrules the point of order.

§ 3. Consideration in the Committee of the Whole

All bills on the Union Calendar must be considered in the Committee of the Whole unless otherwise provided for by the House.[14]

Consideration of business in the Committee of the Whole is initiated when the House agrees to resolve into the Committee for the purpose of such consideration pursuant to a resolution,[15] by unanimous-consent agreement,[16] by motion,[17] or by declaration of the Speaker pursuant to Rule XXIII.

Rule XXIII, clause (1)(b) provides:[18]

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

The motion to resolve into the Committee of the Whole is not subject to the question of consideration, the motion itself being a test of the will of the House on the matter.[19]

The rejection by the House of the motion to resolve into the Committee for the consideration of a particular matter does not preclude the making of the same motion at a later time.[20]

Where a special rule adopted by the House prescribes the order of consideration of amendments to a bill in Committee of the Whole, the House[1] (but not the Committee of the Whole) may by unanimous consent alter the order of consideration.

Cross References

Control and distribution of time for debate in the Committee of the Whole, see §§ 24–34, infra.

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14. For examples of Union Calendar bills considered in the House as in the Committee of the Whole by unanimous consent, see § 4, infra. For the requirement of considering certain bills in the Committee of the Whole, see Ch. 19, supra. For the duration of debate in the Committee, see §§ 74 et seq., infra.

15. See § 3.2, infra.

16. See §§ 3.3, 3.4, infra.

17. See §§ 3.10, 3.12–3.15, infra.

18. *House Rules and Manual* § 862 (1995). This authority was first provided in rules adopted for the 98th Congress. H. Res. 5, Jan. 3, 1983.

19. See § 3.10, infra.

20. See §§ 3.12, 3.13, infra.

1. See 133 CONG. REC. 11829, 100th Cong. 1st Sess., May 8, 1987 (request of Mr. Aspin).