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House on the State of the Union for the consideration of the bill H.R. 2245.

§ 4. Consideration in the House as in the Committee of the Whole

Consideration in the House as in the Committee of the Whole involves a procedure under which propositions are considered for debate and amendment under the five-minute rule, normally without general debate but with all the motions utilized in the House available as provided in clause 4 of Rule XVI. Under this procedure, the House does not resolve into the Committee nor does a Chairman preside, the Speaker instead continuing to preside.

The normal method for initiating consideration in the House as in the Committee of the Whole is by unanimous consent. A motion that a Union Calendar bill be considered under that procedure is not in order.(10) An order or request for this procedure means that the bill or resolution will be considered as having been read for amendment and will be open for amendment and debate under the five-minute rule.(11)

Where a bill is or would be on the Union Calendar, and it is called up by unanimous consent for "immediate consideration" (as opposed to "immediate consideration in the House"), the unanimous-consent request carries by implication the requirement that if the request is agreed to the bill will be considered in the House as in the Committee of the Whole.(12)

On occasion, a resolution from the Committee on Rules has provided for the consideration of a proposition in the House as in Committee of the Whole.(13)

Special Rules Providing for Consideration

§ 4.1 Special rules may provide for the consideration of designated bills in the House as in Committee of the Whole; thus, a resolution was re-

10. See § 4.11, infra. Generally, see Ch. 19, supra.

11. See Jefferson's Manual, *House Rules and Manual* § 424 (1995). For the procedure under the five-minute rule in the House as in the Committee of the Whole, see § 70, infra.

12. See §§ 4.5–4.8, 4.12, infra. Alternatively, a unanimous-consent request for the consideration of a Union Calendar bill may specify that the bill be considered "under the general rules of the House," that is, in the Committee of the Whole House on the State of the Union (see §§ 3.4, 3.5, supra), or that it be considered in the House.

13. See §§ 4.1, 4.2, infra.

ported from the Committee on Rules, providing for consideration in the House as in Committee of the Whole of a nonprivileged resolution also reported from that committee establishing a Select Committee on Assassinations.

On Feb. 2, 1977,[14] the following proceedings occurred in the House:

MR. [RICHARD] BOLLING [of Missouri]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 230 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 230

Resolved, That upon the adoption of this resolution it shall be in order to consider the resolution (H. Res. 222), creating a Select Committee on Assassinations, in the House as in the Committee of the Whole.

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

MR. BOLLING: Mr. Speaker, this is a slightly unusual rule, but it has been used a number of times before. It in effect provides, when it is adopted . . . that the House will go into the House as in the Committee of the Whole to consider the matter contained in House Resolution 222, which would reconstitute the Select Committee on Assassinations for a limited period. . . .

The reason we chose this procedure, rather than providing for an open rule or dealing with a closed rule, is to try to be fair to Members who want to offer amendments in the House as in the Committee of the Whole. We proceed without general debate under the 5-minute rule. The Speaker continues to preside. He does the recognizing. The Members are recognized on either side for 5 minutes, pro forma, on all questions of amendments. Pro forma amendments are in order.

But this is the important difference: the manager of House Resolution 222—and I will be that manager—has control of the previous question. . . .

So the resolution was agreed to.

Parliamentarian's Note: House Resolution 222 was not privileged since it included provisions funding the select committee, matters not within the jurisdiction of the Committee on Rules.

§ 4.2 Special rules adopted by the House providing for the consideration of designated bills in the House as in Committee of the Whole have also provided for general debate.

On June 5, 1936,[16] the House agreed to the following resolution (H. Res. 528), authorizing a list of enumerated bills to be considered in the House as in the Committee of the Whole:

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

14. 123 CONG. REC. 3359, 3360, 3369, 95th Cong. 1st Sess.

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

16. 80 CONG. REC. 8746, 74th Cong. 2d Sess.

the Committee on the Judiciary to call up for consideration, without the intervention of any point of order, the following bills:

S. 3389. An act to provide for the appointment of two additional judges for the southern district of New York.

S. 2075. An act to provide for the appointment of additional district judges for the eastern and western districts of Missouri.

S. 2137. An act to provide for the appointment of one additional district judge for the eastern, northern, and western districts of Oklahoma.

S. 2456. An act to provide for the appointment of an additional district judge for the northern and southern districts of West Virginia.

H.R. 11072. A bill authorizing the appointment of an additional district judge for the eastern district of Pennsylvania.

H.R. 3043. A bill to provide for the appointment of an additional district judge for the northern district of Georgia.

Each such bill when called up shall be considered in the House as in the Committee of the Whole. After general debate on each such bill, which shall continue not to exceed 20 minutes, 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 5-minute rule.

On Jan. 6, 1937,[17] the House adopted House Resolution 44, providing for the consideration in the House as in the Committee of the Whole of a joint resolution:

Resolved, That upon the adoption of this resolution the House as in the Committee of the Whole House on the State of the Union shall consider the joint resolution, Senate Joint Resolution 3; that there shall be not to exceed 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs, whereupon the joint resolution shall be read for amendment under the 5-minute rule.

Unanimous-consent Procedure—Measures on Union Calendar

§ 4.3 The House considered a resolution—continuing certain appropriations—in the House as in the Committee of the Whole pursuant to a unanimous-consent request to that effect agreed to on a prior day.

On Sept. 28, 1966,[18] the House considered House Joint Resolution 1308, continuing appropriations through October 1966, in the House as in the Committee of the Whole. Consideration of the joint resolution had been made in order by a unanimous-consent agreement on Sept. 22, 1966.[19]

§ 4.4 Where consideration of a bill "under the general rules of the House" has been

17. 81 CONG. REC. 90, 75th Cong. 1st Sess.

18. 112 CONG. REC. 24080, 89th Cong. 2d Sess.

19. *Id.* at pp. 23691, 23692.

agreed to, the bill may be called up pursuant to the agreement and then by unanimous consent be considered in the House as in the Committee of the Whole.

On Apr. 1, 1969,[20] Mr. L. Mendel Rivers, of South Carolina, made a unanimous-consent request for the consideration of a bill:

> Mr. Speaker, pursuant to the unanimous-consent agreement of March 27, 1969, I call up for immediate consideration the bill (H.R. 9328) [special pay for naval officers qualified for nuclear submarine duty] and ask unanimous consent that the bill be considered in the House as in the Committee of the Whole.

On Mar. 27, Mr. Rivers had asked unanimous consent that it be in order to consider "under the general rules of the House" (in this case, in Committee of the Whole since it was a Union Calendar bill) on Tuesday or Wednesday of the following week the bill H.R. 9328.[1]

§ 4.5 Where unanimous consent is granted for the consideration of a bill on the Union Calendar, the bill is frequently considered in the House as in the Committee of the Whole.

See, for example, the proceedings of Apr. 6, 1966, discussed in § 4.7, infra; and the proceedings of June 28, 1966, discussed in § 4.10, infra.[2]

§ 4.6 Where a joint resolution requiring consideration in the Committee of the Whole is called up by unanimous consent, it may be considered in the House as in the Committee of the Whole.

On Sept. 26, 1968,[3] Mr. George H. Mahon, of Texas, asked unanimous consent for the consideration of House Joint Resolution 1461, making continuing appropriations for the fiscal year 1969. In response to a parliamentary inquiry, Speaker John W. McCormack, of Massachusetts, stated that if the request was agreed to, the joint resolution could be amended.

There was no objection to Mr. Mahon's request, and he then asked unanimous consent that the joint resolution be considered in the House as in the Committee of the Whole. The request was agreed to.

Parliamentarian's Note: As indicated in § 4.7, infra, the second re-

20. 115 CONG. REC. 8136, 91st Cong. 1st Sess.

1. *Id.* at p. 7895.

2. See also 79 CONG. REC. 14331, 74th Cong. 1st Sess., Aug. 23, 1935.

3. 114 CONG. REC. 28374, 90th Cong. 2d Sess.

quest was not necessary, since by implication a unanimous-consent request for immediate consideration of a Union Calendar bill means consideration in the House as in Committee, rather than "in the House" (under the hour rule) or "under general rules of the House" (in Committee of the Whole).

§ 4.7 Where a Member asks "unanimous consent for the immediate consideration" of a bill pending on the Union Calendar, the request is construed to carry with it the additional stipulation that if consent is granted, the bill will be considered in the House as in the Committee of the Whole.

On Apr. 6, 1966,[4] Mr. Wilbur D. Mills, of Arkansas, asked unanimous consent for the immediate consideration of the bill H.R. 14224, the Social Security Act Amendments of 1966, then pending on the Union Calendar. Speaker John W. McCormack, of Massachusetts, responded as follows to a parliamentary inquiry:

MR. [JOHN W.] BYRNES of Wisconsin: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. BYRNES of Wisconsin: Mr. Speaker, I make this parliamentary inquiry only that the Members might understand what the opportunities might be for discussion. I make the parliamentary inquiry to the effect that if the request of the gentleman from Arkansas is agreed to that the bill can be considered under unanimous-consent request—do I state it correctly that there will be the opportunity for striking out the last word and having an opportunity to speak?

THE SPEAKER: The bill is to be considered in the House as in the Committee of the Whole, and motions to strike out the last word will be in order.

MR. BYRNES of Wisconsin: Will the gentleman make the request that the bill be considered in the House as in the Committee of the Whole?

THE SPEAKER: The Chair will state that the unanimous-consent request will automatically carry that privilege.

§ 4.8 Where the House, during the call of the Consent Calendar, grants unanimous consent for the immediate consideration of a bill on the Union Calendar or of an identical Senate bill, the bill is considered in the House as in the Committee of the Whole.

On Aug. 3, 1970,[5] during the call of the Consent Calendar, Speaker John W. McCormack, of

4. 112 CONG. REC. 7749, 89th Cong. 2d Sess.

5. 116 CONG. REC. 26981, 26982, 91st Cong. 2d Sess.

Massachusetts, indicated in response to parliamentary inquiries that a bill on the Union Calendar, or an identical Senate bill, would be considered in the House as in the Committee of the Whole should unanimous consent be granted for consideration.

§ 4.9 The House agreed by unanimous consent to consider in the House as in the Committee of the Whole a privileged rescission bill when called up by the Committee on Appropriations.

On Feb. 17, 1977,[6] Mr. George H. Mahon, of Texas, made the following unanimous-consent request in the House:

> MR. MAHON: Mr. Speaker, I ask unanimous consent that when the bill H.R. 3347 is called up, that it be considered in the House as in the Committee of the Whole.
>
> THE SPEAKER:[7] Is there objection to the request of the gentleman from Texas?
>
> There was no objection.

§ 4.10 Where a resolution has been adopted making the consideration of a bill in order, and the bill is then called up and considered by unanimous consent, rather than pursuant to the rule, in the House as in the Committee of the Whole, the Journal indicates the discharge of the Committee of the Whole House on the State of the Union.

On June 28, 1966,[8] the House adopted a special rule (H. Res. 895) for the consideration in the Committee of the Whole House on the State of the Union of a calendared bill (H.R. 5256) changing the method of computing the retirement pay of members of the armed forces. Then Mr. F. Edward Hébert, of Louisiana, asked unanimous consent that the bill be considered in the House as in the Committee of the Whole, and there was no objection. The Journal entry on that day stated:[9]

> On motion by Mr. Hébert, by unanimous consent, the Committee of the Whole House on the State of the Union was discharged from further consideration of the bill (H.R. 5256) to amend title 10, United States Code, to change

6. 123 CONG. REC. 4576, 95th Cong. 1st Sess.

Under Public Law 93–344, section 1017(c)(2), debate on a rescission bill in Committee of the Whole cannot exceed two hours, and the purpose of the above request was to permit immediate consideration under the five-minute rule without general debate.

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

8. 112 CONG. REC. 14544–45, 89th Cong. 2d Sess.

9. H. Jour. p. 650, 89th Cong. 2d Sess., June 28, 1966.

the method of computing retired pay of certain enlisted members of the Army, Navy, Air Force, or Marine Corps.

When said bill was considered and read twice.

After debate,

The following amendment, recommended by the Committee on Armed Services, was agreed to: . . .

The bill, as amended, was ordered to be engrossed and read a third time, was read a third time by title, and passed.

—*Motion Not in Order*

§ 4.11 A motion that a Union Calendar bill be considered in the House as in the Committee of the Whole is not in order (unanimous consent being required).

On July 12, 1939,[10] Mr. Andrew J. May, of Kentucky, called up H.R. 985, on the Union Calendar, and asked unanimous consent that it be considered in the House as in the Committee of the Whole. Mr. Sam Hobbs, of Alabama, objected to the consideration of the bill and Mr. May then attempted to make a motion for consideration in the House as in the Committee of the Whole:

> Then I move, Mr. Speaker, that the bill be considered in the House as in the Committee of the Whole.

Speaker William B. Bankhead, of Alabama, ruled:

> The Chair is of the opinion that could not be permitted under the rules of the House. The gentleman may submit a unanimous-consent request, but not a motion.

Mr. Hobbs objected to Mr. May's request, and the Speaker directed the House to resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill.[11]

District of Columbia Bills on Union Calendar

§ 4.12 District of Columbia bills called up on District Monday, if on the Union Calendar, may be considered by unanimous consent in the House as in the Committee of the Whole.

On Aug. 11, 1964,[12] Mr. John V. Dowdy, of Texas, called up

10. 84 CONG. REC. 8945, 76th Cong. 1st Sess.

11. Procedure in the House as in the Committee of the Whole is by unanimous consent only, as the order of business gives no place for a motion that business be considered in that manner. 4 Hinds' Precedents § 4923 [cited at Jefferson's Manual, *House Rules and Manual* § 424 (1995)]. Provision is made in the rules for the consideration of Private Calendar bills under the five-minute rule in the House as in the Committee of the Whole. See Rule XXIV clause 6, *House Rules and Manual* § 893 (1995).

12. 110 CONG. REC. 18949, 18950, 88th Cong. 2d Sess.

H.R. 9774, terminating the District of Columbia Plaza Renewal Project, on District Monday. The bill had been on the Union Calendar, and Mr. Dowdy requested unanimous consent that the bill be considered in the House as in the Committee of the Whole. The House agreed to the request.[13]

Private Calendar Bills

§ 4.13 Omnibus private bills are considered under the five-minute rule in the House as in the Committee of the Whole, and the Chair does not recognize for extensions of time.

On Mar. 17, 1936,[14] the House as in the Committee of the Whole was considering for amendment omnibus private bills under the five-minute rule. Speaker Joseph W. Byrns, of Tennessee, refused to recognize a Member for an extension of time:

> The time of the gentleman from Minnesota has expired.
>
> MR. [THEODORE] CHRISTIANSON [of Minnesota]: Mr. Speaker, I ask unanimous consent to proceed for 5 additional minutes.
>
> THE SPEAKER: On the previous section of this bill the Chair put a unanimous-consent request for an extension of time. The attention of the Chair has since been called to a ruling by the author of the present Private Calendar rule, who was presiding at the last session on this calendar. This rule was proposed for the purpose of expediting business. Upon reflection, the Chair does not think he should recognize Members for the purpose of requesting an extension of time.[15]

§ 5. Question of Consideration

Rule XVI clause 3 provides a method by which the House may protect itself against business that it does not wish to consider:

> When any motion or proposition is made, the question, Will the House now consider it? shall not be put unless demanded by a Member.[16]

The question of consideration is raised before debate on the motion or proposition, and since it is not itself debatable, has the effect if not agreed to of preventing all debate on the measure proposed to be considered in the House.[17]

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13. See also 115 CONG. REC. 20850, 91st Cong. 1st Sess., July 28, 1969.

14. 80 CONG. REC. 3890, 74th Cong. 2d Sess.

15. See § 70, infra, for additional ruling on the five-minute rule as applied to private bills.

16. *House Rules and Manual* § 778 (1995). See also §§ 779–781 for raising the question, for the questions subject to the question of consideration, and for the relation of the question to points of order.

17. See § 5.4, infra, for the nondebatability of the question and §§ 5.1–5.3, infra, for raising the question.