

Referral of Discharged Bills

§ 4.7 Where a committee is discharged from the further consideration of a bill and no motion is made providing for the immediate consideration of such bill, the Speaker refers the bill to its appropriate calendar.

On Jan. 13, 1936,⁽²⁵⁾ following the agreement by the House to a motion to discharge the Committee on Ways and Means from the further consideration of a bill,⁽²⁶⁾ Mr. Hamilton Fish, Jr., of New York, propounded a parliamentary inquiry:

MR. FISH: Under the rule, when a committee is discharged from the consideration of a bill, does not the bill automatically come up for consideration in the House?

THE SPEAKER:⁽¹⁾ It does not, except on motion of a Member who signed the discharge petition.

The bill will be referred to the Committee of the Whole House on the state of the Union and ordered to be printed.

25. 80 CONG. REC. 336, 337, 74th Cong. 2d Sess.

26. H.R. 1, providing for the immediate cash payment of certain service certificates.

1. Joseph W. Byrns (Tenn.).

§ 5. Discharge of Vetoed Bills, Other Questions Privileged Under the Constitution, Resolutions of Inquiry, and Reorganization Plans

The Constitution⁽²⁾ provides that when the President returns a bill to the House in which it originated, with his objections, that House shall proceed to reconsider it and determine whether the bill shall be again passed, the objections of the President to the contrary notwithstanding. Under this provision, it has been held that a motion to discharge a committee from the further consideration of a vetoed bill so returned to the House presents a question of constitutional privilege and is, therefore, in order at any time.⁽³⁾ While the ordinary motion to discharge a committee from consideration of an unprivileged legislative proposition is not privileged,⁽⁴⁾ it is in order to move to discharge a committee from consideration of a proposition referred through the hopper, involving a question of constitutional privilege such as the right of a Member to his seat,

2. U.S. Const. art. I § 7, clause 2.

3. See § 5.1, *infra*. See also Ch. 13, *supra*.

4. 8 Cannon's Precedents § 2316.

the punishment of a Member, or an impeachment resolution,⁽⁵⁾ notwithstanding the availability of the discharge petition under Rule XXVII clause 4;⁽⁶⁾ the rationale being that matters properly involving questions of the privileges of the House retain their privilege and may be reached by use of a motion to discharge even though referred through the hopper.

Rule XXII clause 5⁽⁷⁾ provides that all resolutions of inquiry shall be reported to the House within one week after presentation. Pursuant to the rule, committees are required to report resolutions of inquiry back to the House within one week of the reference, and this weeks time has been construed to be seven legislative days. If a committee refuses or neglects to report the resolution back, the House may reach the resolution only by a motion to discharge the committee from the resolutions further consideration. A privileged status is accorded the motion to discharge in cases of

resolutions of inquiry.⁽⁸⁾ The privileged status of the motion does not obtain, however, where the resolution of inquiry has sought opinions, not facts, as required under the rule.⁽⁹⁾

Prior to the amendments adopted in 1977 to the Reorganization Act, reorganization plans submitted by the President were subject to discharge from committee pursuant to the statute in existence at that time.⁽¹⁰⁾ A resolution with respect to a reorganization plan could be discharged from the committee to which it had been referred under the provisions of 5 USC §911(a) if the committee had not reported it at the end of 20 calendar days after its introduction. However, a motion to discharge could be made only by an individual favoring the resolution.⁽¹¹⁾ Debate on the motion was limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution.⁽¹²⁾

Parliamentarin's Note: See also *House Rules and Manual*, 96th

5. See 3 Hinds' Precedents §2709; 8 Cannon's Precedents §2316.

6. See Ch. 14, §8.3, supra, where a discharge petition was utilized unsuccessfully against an impeachment resolution referred through the hopper to the Committee on the Judiciary.

7. *House Rules and Manual* §855 (1979).

8. See §5.2, infra.

9. See §5.3, infra.

10. 5 USC §911 (1970 ed.), revised by Pub. L. No. 95-17, Apr. 6, 1977. Current procedure (1981) provides an automatic discharge of a disapproval resolution after 45 days.

11. See §5.5, infra.

12. See §§5.6, 5.7, infra.

Congress, § 1013, chapter on "Congressional Disapproval" Provisions Contained in Public Laws, Part A, for other statutory provisions containing discharge procedures.

Discharging Vetoed Bills

§ 5.1 A motion to discharge a committee from the consideration of a vetoed bill, while presenting a question of constitutional privilege, is subject to the motion to lay on the table.

On Sept. 7, 1965,⁽¹³⁾ during proceedings incident to the consideration of a motion raised as a question of constitutional privilege by Mr. Durward G. Hall, of Missouri, which sought to discharge the Committee on Armed Services from further consideration of a vetoed bill,⁽¹⁴⁾ the following parliamentary inquiry was raised:

MR. HALL: Mr. Speaker, I rise to a question of the highest privilege of the House, based directly on the Constitution and precedents, and offer a motion.

13. 111 CONG. REC. 22958, 22959, 89th Cong. 1st Sess. For a further illustration see 4 Hinds' Precedents § 3532.

14. H.R. 8439, relating to military construction had been vetoed on Aug. 21, 1965 and referred back to the Committee on Armed Services on Aug. 23, 1965.

THE SPEAKER PRO TEMPORE⁽¹⁵⁾ The Clerk will report the motion.

The Clerk read as follows:

Motion by Mr. Hall:

Resolved, That the Committee on Armed Services be discharged from further consideration of the bill H.R. 8439, for military construction, with the President's veto thereon, and that the same be now considered.

MR. L. MENDEL RIVERS of South Carolina: Mr. Speaker, I move to lay that motion on the table. . . .

MR. HALL: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HALL: The question is on the motion of the gentleman from South Carolina [Mr. Rivers] to table my motion, which is highly privileged?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. HALL: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HALL: Is a highly privileged motion according to the Constitution subject to a motion to table?

THE SPEAKER PRO TEMPORE: It is.

Subsequently, the motion to table was agreed to.

Discharging Resolutions of Inquiry

§ 5.2 A motion to discharge a committee from consideration of a resolution of inquiry is privileged (under

15. Carl Albert (Okla.).

Rule XXII clause 5) after the resolution has been pending before the committee for seven legislative days.

On Aug. 2, 1971,⁽¹⁶⁾ Mr. James M. Collins, of Texas, moved to discharge the Committee on Education and Labor from the further consideration of a resolution of inquiry⁽¹⁷⁾ directing the Secretary of Health, Education, and Welfare to furnish the House with certain documents. The resolution of inquiry had been pending before that committee at least seven legislative days without action thereon. The resolution was read to the House; whereupon, without debate, the question on the motion to discharge was taken; the motion was agreed to—yeas 252, nays 129, not voting 52.

§ 5.3 A motion to discharge a committee from consideration of a resolution of inquiry is not in order where

16. 117 CONG. REC. 28863, 22869, 92d Cong. 1st Sess. See also 96 CONG. REC. 1755, 81st Cong. 2d Sess., Feb. 9, 1950, where Speaker Sam Rayburn (Tex.), informed the House that if a committee to which a resolution of inquiry had been referred did not report the resolution within seven legislative days, the Member who had introduced the resolution could call it up for consideration as a matter of privilege.

17. H. Res. 539.

the resolution is not privileged because it calls upon the head of an executive department to furnish the House with a statement of opinion and not merely factual information.

On July 7, 1971,⁽¹⁸⁾ Ms. Bella S. Abzug, of New York, moved to discharge the Committee on Armed Services from further consideration of a resolution of inquiry:

H. RES. 491

Resolved, That the President, the Secretary of State, Secretary of Defense, and the Director of the Central Intelligence Agency be, and they are hereby, directed to furnish the House of Representatives within fifteen days after the adoption of this resolution with full and complete information on the following—

the history and rationale for United States involvement in South Vietnam since the completion of the study entitled "United States—Vietnam Relationships, 1945–1967", prepared by the Vietnam Task Force, Office of the Secretary of Defense;

the known existing plans for residual force of the United States Armed Forces in South Vietnam;

the nature and capacity of the government of the Republic of Vietnam, including but not limited to analyses of their past and present military capabilities, their capacity for military and economic self-sufficiency including but

18. 117 CONG. REC. 23810, 23811, 92d Cong. 1st Sess.

not limited to analyses of the political base of the Republic, the scope, if any, of governmental malfunction and corruption, the depth of popular support and procedures for dealing with non-support; including but not limited to known existing studies of the economy of the Republic of South Vietnam and the internal workings of the government of the Republic of South Vietnam;

the plans and procedures, both on the part of the Republic of South Vietnam and the United States Government for the November 1971 elections in the Republic of South Vietnam, including but not limited to analyses of the United States involvement, covert or not, in said elections.

A point of order was made by Mr. F. Edward Hébert, of Louisiana, asserting that the resolution was not privileged because it sought opinions, not facts as required under the rule.⁽¹⁹⁾ In his ruling sustaining the point of order, the Speaker⁽²⁰⁾ stated:

THE SPEAKER: . . . The gentlewoman from New York has moved to discharge the Committee on Armed Services from further consideration of the resolution, House Resolution 491. The gentlewoman has furnished the Chair a copy of the resolution, and the Chair appreciates that fact, since it gives an opportunity to the Chair to examine the resolution prior to ruling on the point of order.

19. Rule XXII clause 5, *House Rules and Manual* §§ 855, 857 (1979).

20. Carl Albert (Okla.).

The resolution under consideration has not been reported by the committee to which it has been referred.

Clause 5 of rule XXII provides that:

All resolutions of inquiry addressed to the heads of executive departments shall be reported to the House within one week after presentation.

The gentleman from Louisiana makes a point of order against the motion to discharge on the ground that the resolution is not privileged under the rule because it calls for opinions in addition to factual information.

It has been consistently held that to retain the privilege under the rule, resolutions of inquiry must call for facts rather than opinions—Cannon's precedents, volume VI page 413 and pages 418 to 432. Speaker Longworth, on February 11, 1926, held that a resolution inquiring for such facts as would inevitably require the statement of an opinion to answer such inquiry was not privileged—Record, page 3800.

Among other requests, House Resolution 491 calls for the furnishing of one, the "rationale" for U.S. involvement in South Vietnam since the completion of the study; two, the nature and "capacity" of the Government of the Republic of Vietnam, including "analyses" of their military "capabilities"; their capacity for self-sufficiency which would include analyses of the Government's political base, the scope of malfunction and corruption, the depth of popular support; and three, analyses of U.S. involvement in 1971 elections in South Vietnam.

In at least these particulars, executive officials are called upon—not for facts—but to furnish conclusions,

which must be, essentially, statements of opinion.

The Chair therefore holds that House Resolution 491 is not a privileged resolution within the meaning of clause 5, rule XXII, and that the motion to discharge the Committee on Armed Services from its further consideration is not in order.

An appeal from the ruling of the Chair made by Ms. Abzug was laid on the table.

Debate on Resolutions of Inquiry

§ 5.4 A resolution of inquiry is normally debatable in the House under the hour rule; but when a motion to discharge a committee from further consideration of a resolution of inquiry has been agreed to and the previous question has been ordered on the resolution without intervening debate, the Speaker may invoke the 40-minute rule (Rule XXVII clause 3) allotting 20 minutes each to those supporting and opposing the resolution.

On Aug. 2, 1971,⁽¹⁾ the previous question was ordered without debate on a resolution of inquiry⁽²⁾

1. 117 CONG. REC. 28863, 28869, 92d Cong. 1st Sess.
2. H. Res. 539, directing the Secretary of Health, Education, and Welfare to

which was before the House pursuant to a motion to discharge. Mr. Thomas P. O'Neill, Jr., of Massachusetts, then raised a parliamentary inquiry:

MR. O'NEILL: Mr. Speaker, a parliamentary inquiry: In view of the fact that there was no debate on this, is a Member entitled to 20 minutes if he asks for time?

THE SPEAKER: ⁽³⁾ He is.

MR. O'NEILL: Mr. Speaker, I am asking for the 20 minutes. I have some questions I would like to ask on this and have the chairman of the Committee on Education and Labor explain it.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, has not the previous question been moved and accepted?

THE SPEAKER: Yes, it has.

MR. O'NEILL: Mr. Speaker, I was on my feet seeking recognition.

MR. HALL: Regular order, Mr. Speaker.

THE SPEAKER: Inasmuch as there has been no debate on the resolution, the 40-minute rule applies, 20 minutes to each side. The gentleman from Texas is entitled to 20 minutes and the gentleman from Massachusetts is entitled to 20 minutes.

Debate incident to the consideration of the resolution ensued, at the conclusion of which the resolution was agreed to. A motion to reconsider was laid on the table.

furnish the House with certain documents.

3. Carl Albert (Okla.).

Discharging Resolutions Relating to Reorganization Plans (Prior to 95th Congress)

§ 5.5 Pursuant to the provisions of 5 USC §911 (1970 ed.), a motion to discharge a committee from further consideration of a resolution with respect to a reorganization plan could be made only by a Member favoring the resolution.

On Aug. 3, 1961,⁽⁴⁾ the following proceedings occurred:

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, I offer a privileged motion dealing with Reorganization Plan No. 6.

THE SPEAKER:⁽⁵⁾ The Clerk will report the motion.

The Clerk read as follows:

Mr. Gross moves to discharge the Committee on Government Operations from further consideration of House Resolution 335, introduced by Mr. John S. Monagan, of Connecticut, disapproving Reorganization Plan No. 6, transmitted to Con-

4. 107 CONG. REC. 14548-54, 87th Cong. 1st Sess. For a further example see 107 CONG. REC. 13084, 87th Cong. 1st Sess., July 20, 1961. The amendments to the Reorganization Act in the 95th Congress (Pub. L. No. 95-17) removed the concept of the motion to discharge from the act. Under the current procedure, a resolution is deemed to be discharged 45 days after introduction.

5. Sam Rayburn (Tex.).

gress by the President on June 12, 1961.

THE SPEAKER: Is the gentleman in favor of the resolution?

MR. GROSS: Mr. Speaker, I am in favor of the disapproving resolution, yes.

THE SPEAKER: The gentleman is entitled to 30 minutes.

Debate on Discharging Reorganization Plans

§ 5.6 Debate on a motion to discharge a committee from further consideration of a resolution disapproving a reorganization plan was limited to one hour (5 USC §911) and was equally divided between the Member making the motion and a Member opposed thereto.

On Aug. 3, 1961,⁽⁶⁾ during proceedings incident to a motion offered by Mr. H. R. Gross, of Iowa, to discharge the Committee on Government Operations from further consideration of a resolution⁽⁷⁾ disapproving a reorganization plan, the Speaker⁽⁸⁾ divided the one hour permitted by statute⁽⁹⁾ for debate on such motions equally between Mr. Gross, the

6. 107 CONG. REC. 14548-54, 87th Cong. 1st Sess.

7. H. Res. 335.

8. Sam Rayburn (Tex.).

9. 5 USC §911.

maker of the motion, and Mr. Dante B. Fascell, of Florida, a Member opposed thereto. Following the announcement of the Chair relative to the allocation of available time, Mr. Gross was recognized to open debate.

§ 5.7 Debate on a motion to discharge a committee from further consideration of a resolution disapproving a reorganization plan was, by unanimous consent, extended from one to two hours, to be controlled and divided by the proponent of the motion and a Member designated by the Speaker.

On July 18, 1961,⁽¹⁰⁾ a unanimous-consent request was made to the House:

MR. [JOHN W.] McCORMACK [of Massachusetts]: Mr. Speaker, I ask unanimous consent that in the event a motion is made to discharge the Committee on Government Operations on the resolution disapproving Reorganization Plan No. 7, that the time for debate be extended from 1 hour to 2 hours, one-half to be controlled by the proponent of the motion and one-half by a Member designated by the Speaker.

THE SPEAKER:⁽¹¹⁾ Is there objection to the request of the gentleman from Massachusetts?

10. 107 CONG. REC. 12774, 87th Cong. 1st Sess.

11. Sam Rayburn (Tex.).

There was no objection.

On July 20, 1961,⁽¹²⁾ the proponent and opponent of a resolution disapproving of a reorganization plan were, pursuant to this unanimous-consent agreement, each recognized for one hour on the motion to discharge.

Discharging Reorganization Plans by Unanimous Consent

§ 5.8 By unanimous consent, the House agreed to a motion that a select committee be discharged from further consideration of a concurrent resolution disapproving a reorganization plan.

On May 7, 1940,⁽¹³⁾ the following proceedings transpired:

MR. [CLARENCE F.] LEA [of California]: Mr. Speaker, I move to discharge the Select Committee on Government Organization from further consideration of House Concurrent Resolution 60.

THE SPEAKER:⁽¹⁴⁾ The Clerk will report the resolution.

The Clerk read as follows:

HOUSE CONCURRENT RESOLUTION 60

Resolved by the House of Representatives (the Senate concurring), That the Congress does not favor the

12. 107 CONG. REC. 13084, 87th Cong. 1st Sess.

13. 86 CONG. REC. 5676, 76th Cong. 3d Sess.

14. William B. Bankhead (Ala.).

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Reorganization Plan No. IV transmitted to Congress by the President on April 11, 1940.

MR. [JOHN J.] COCHRAN [of Missouri]: Mr. Speaker, the majority members of the Select Committee on Organization are in accord with the gentleman from California, and I ask

unanimous consent that the motion of the gentleman from California to discharge the select committee be considered as having been agreed to.

THE SPEAKER: Without objection, it is so ordered.

There was no objection.