AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

It is the practice in Congress that joint committees shall vote per capita, and not as representatives of the two Houses (IV, 4425), although the membership from the House is usually, but not always (IV 4410), larger than that from the Senate (III, 1946; IV, 4426–4431). But ordinary committees of conference appointed to settle differences between the two Houses are not considered joint committees, and the managers of the two Houses vote separately (V, 6336), each House having one vote. A quorum of a joint committee seems to have been considered to be a majority of the whole number rather than a majority of the membership of each House (IV, 4424). The first named of the Senate members acted as chairman in one notable instance (IV, 4424), and in another the joint committee elected its chairman (IV, 4447).

SEC. XII—COMMITTEE OF THE WHOLE

§ 326. Parliamentary usage as to Committee of the Whole.

The speech, messages, and other matters of great concernment are usually referred to a Committee of the Whole House (*6 Grey, 311*), where general principles are digested in the form of resolutions, which are debated and amended till they get into a shape which meets the approbation of a majority. These being reported and confirmed by the House are then referred to one or more select committees, according as the subject divides itself into one or more bills. *Scob., 36, 44.* Propositions for any charge on the people are especially to be first made in a Committee of the Whole. *3 Hats., 127.* The sense of the whole is better taken in committee, because in all committees everyone speaks as often as he pleases. *Scob., 49.* * * *

This provision is largely obsolete, the House having by its rules and practice provided specifically for procedure in Committee of the Whole, and having also by its rules for the order of business left no privileged status for motions to go into Committee of the Whole on matters not already referred to that committee. The Committee of the Whole no longer originates resolutions or bills, but receives such as have been formulated by standing or select committees and referred to it; and when it reports, the

House usually acts at once on the report without reference to select or other committees (IV, 4705). The practice of referring annual messages of the President to Committee of the Whole, to be there considered and reported with recommendations for the reference of various portions to the proper standing or select committees (V, 6621, 6622), was discontinued in the 64th Congress (VIII, 3350). The current practice is to refer the annual message to the Committee of the Whole House on the state of the Union and order it printed (Jan. 14, 1969, p. 651). Executive communications submitted to implement the proposals contained in the State of the Union Message are referred by the Speaker to the various committees having jurisdiction over the subject matter therein.

§ 327. Selection of Chairman of Committee of the Whole.

* * * They generally acquiesce in the chairman named by the Speaker; but, as well as all other committees, have a right to elect one, some member, by consent, putting the question, *Scob., 36; 3 Grey, 301.* * * *

The House (by clause 1 of rule XVIII) gives the authority to appoint the Chairman of the Committee of the Whole to the Speaker (IV, 4704).

§ 328. Form of going into Committee of the Whole.

* * * The form of going from the House into committee, is for the Speaker, on motion, to put the question that the House do now resolve itself into a Committee of the Whole to take into consideration such a matter, naming it. If determined in the affirmative, he leaves the chair and takes a seat elsewhere, as any other Member; and the person appointed chairman seats himself at the Clerk's table. *Scob., 36.* * * *

This is the form in the House, except that the Chairman of the Committee of the Whole seats himself in the Speaker's chair. Clause 1(b) of former rule XXIII (current rule XVIII) was adopted to authorize the Speaker, and it is the modern practice, when no other business is pending, to declare the House resolved into Committee of the Whole to consider a measure at any time after the House has adopted a special order of business providing for consideration of such measure (and not require a motion), unless the resolution specifies otherwise (H. Res. 5, Jan. 3, 1983, p. 34).

§ 329. Quorum in Committee of the Whole.

* * * Their quorum is the same as that of the House; and if a defect happens, the chairman, on a motion and question, rises, the Speaker resumes the chair and the chairman can make no other report than to inform the House of the cause of their dissolution. * * *

Until 1890 a quorum of the Committee of the Whole was the same as the quorum of the House; but in 1890 the rule (former clause 2 of rule XXIII, current clause 6 of rule XVIII) fixed it at one hundred (IV, 2966). Clause 6 of rule XVIII provides the procedure that is followed in Committee of the Whole in case of failure of a quorum.

§ 330. Rising of committee for reception of messages.

* * * If a message is announced during a committee, the Speaker takes the chair and receives it, because the committee can not. *2 Hats., 125, 126.*

In the House, the committee rises informally to receive a message, or to enable the Speaker to sign and lay before the House an enrolled bill, at the direction of the Chairman without a formal motion from the floor (IV, 4786, footnote; Jan. 28, 1980, p. 888; Feb. 8, 1995, p. 4112); but at this rising the House may not have the message read or transact other business except by unanimous consent (IV, 4787–4791). However, it is the general custom for the Speaker to decline to entertain a unanimous-consent request during an informal rising of the Committee of the Whole (IV, 4789, Apr. 6, 2000, p. ——).

§ 331. Quarrels in Committee of the Whole, and duty of the Speaker in relation thereto.

In a Committee of the Whole, the tellers on a division differing as to numbers, great heats and confusion arose, and danger of a decision by the sword. The Speaker took the chair, the mace was forcibly laid on the table; whereupon the Members retiring to their places, the Speaker told the House "he has taken the chair without an order to bring the House into order." Some excepted against it; but it was generally

approved as the only expedient to suppress the disorder. And every Member was required, standing up in his place, to engage that he would proceed no further in consequence of what had happened in the grand committee, which was done. *3 Grey, 128.*

In the House the Speaker has on several occasions taken the chair "without an order to bring the House into order" (II, 1648–1653), but that being accomplished he may yield to the chairman that the committee may rise in due form (II, 1349). In one instance, the chairman, having been defied and insulted by a Member, left the chair; and, on the chair being taken by the Speaker, he reported the facts to the House (II, 1653). In several cases Members who have quarrelled have made explanation and reconciled their difficulties (II, 1651), or have been compelled by the House to apologize "for violating its privilege and offending its dignity" (II, 1648, 1650).

§ 332. Effect of breaking up of Committee of the Whole by disorder.

A Committee of the Whole being broken up in disorder, and the chair resumed by the Speaker without an order, the House was adjourned. The next day the committee was considered as thereby dissolved, and the subject again before the House; and it was decided in the House, without returning into committee. *3 Grey, 130.*

This provision is obsolete, since in the practice of the House there is but one Committee of the Whole, which is in its nature a standing committee with calendars of business. It is never dissolved, and bills remain on its calendar until reported in the regular manner after consideration (IV, 4705). When the Speaker restores order he usually yields the chair to the chairman, thus permitting the committee later to rise in due form (II, 1349).

§ 333. Motions for previous question and to adjourn not used in Committee of the Whole.

No previous question can be put in a committee; nor can this committee adjourn as others may; but if their business is unfinished, they rise, on a question, the House is resumed, and the chairman reports that the Committee of the Whole have, according to order, had under

their consideration such a matter, and have made progress therein; but not having had time to go through the same, have directed him to ask leave to sit again. Whereupon a question is put on their having leave, and on the time the House will again resolve itself into a committee. *Scob., 38.* But if they have gone through the matter referred to them, a member moves that the committee may rise, and the chairman report their proceedings to the House; which being resolved, the chairman rises, the Speaker resumes the chair, the chairman informs him that the committee have gone through the business referred to them, and that he is ready to make report when the House shall think proper to receive it. If the House have time to receive it, there is usually a cry of "now, now," whereupon he makes the report; but if it be late, the cry is "to-morrow, to-morrow," or "Monday," etc., or a motion is made to that effect, and a question put that it be received to-morrow, &c. *Scob., 38.*

§ 334. Parliamentary law as to reports from Committee of the Whole.

In the practice of the House the previous question and motion to adjourn are not admitted in Committee of the Whole; but the rules (clause 8 of rule XVIII) provide for closing both the general and five-minute debate. When the committee rises without concluding a matter the chairman reports that they "have come to no resolution thereon"; but leave to sit again is not asked in the modern practice. The permission of the House is not asked when the chairman reports a matter concluded in committee. The report is made and received as a matter of course, and is thereupon before the House for action. When the House has vested control of general debate in certain Members, their control may not be abrogated during general debate by another Member moving to rise, unless they yield for that purpose (May 25, 1967, p. 14121; June 10, 1999, p. ——). A Member yielded time in general debate may not yield to another for such motion (Feb. 22, 1950, p. 2178; May 17, 2000, p. ——). The motion that the Committee of the Whole rise is privileged during debate under the five-minute rule,

and may be offered during debate on a pending amendment, except where a Member has the floor (Aug. 13, 1986, p. 21215; Mar. 22, 1995, p. 8770). The motion to rise may not include restrictions on the amendment process or limitations on future debate on amendments (June 6, 1990, p. 13234). The motion that the Committee of the Whole rise is not debatable (May 17, 2000, p. ——). For a further discussion of the motion to rise, see § 983, *infra*.

§ 335. Duties of Speaker and House as to reception of reports of Committee of the Whole.

The Speaker recognizes only reports from the Committee of the Whole made by the chairman thereof (V, 6987), and a matter alleged to have arisen therein but not reported may not be brought to the attention of the House (VIII, 2429, 2430) even on the claim that a question of privilege is involved (IV, 4912; V, 6987; VIII, 2430). In one instance, however, the committee reported with a bill a resolution relating to an alleged breach of privilege (V, 6986). When a bill is reported the Speaker must assume that it has passed through all the stages necessary for the report (IV, 4916). When the committee reported not only what it had done but by whom it had been prevented from doing other things, the Speaker held that the House might not amend the report, which stood (IV, 4909). But a committee may not report a recommendation which, if carried into effect, would change a rule of the House (IV, 4907, 4908) unless a measure proposing amendments to House rules has initially been referred to the Committee of the Whole by the House. When an amendment is reported by the committee it may not be withdrawn, and a question as to its validity is not considered by the Speaker (IV, 4900). When a committee, directed by order of the House to consider certain bills, reported also certain other bills, the Speaker held that so much of the report as related to the latter bills could be received only by unanimous consent (IV, 4911). When a report is ruled out as in excess of the committee's power, the accompanying bill stands recommitted (IV, 4784, 4907). A report from a Committee of the Whole could not formerly be received in the absence of a quorum (VI, 666; clause 7 of rule XX).

§ 336. Amendments in Committee of the Whole.

The Committee of the Whole, like any other committee, may amend a proposition either by an ordinary amendment or by a substitute amendment (IV, 4899), but these amendments must be reported to the House for action. Amendments rejected by the committee are not reported (IV, 4877). Ordinarily all amendments must be disposed of before the committee may report (IV, 4752–4758); but sometimes a special order of business requires a report at a specified time, in which case pending amendments are reported (IV, 3225–3228) or not (IV, 4910) as the terms of the order may direct. In the 98th Congress, clause 2 of rule XXI was amended to give precedence to the motion that the Committee rise and report a general appropriation bill at the conclusion of its reading for amendment and prior to or between consideration of amendments proposing certain limitations or retrenchments (H. Res. 5, Jan. 3, 1983, p. 34). The 104th Congress

further amended clause 2 to permit only the Majority Leader or a designee to offer that motion (sec. 215(a), H. Res. 6, Jan. 4, 1995, p. 468). The 105th Congress elevated the Majority Leader's preferential motion in clause 2 to take precedence of *any* motion to amend at that stage (H. Res. 5, Jan. 7, 1997, p. 121). The practice of the House, based originally on a rule (IV, 4904), requires amendments to be reported from the Committee of the Whole in their perfected forms, and this holds good even in the case of an amendment in the nature of a substitute, which may have been amended freely (IV, 4900–4903). If a Committee of the Whole amends a paragraph and subsequently strikes out the paragraph as amended, the first amendment fails, and is not reported to the House or voted on (IV, 4898; V, 6169; VIII, 2421, 2426), and when the Committee of the Whole adopts two amendments that are subsequently deleted by an amendment striking out and inserting new text, only the latter amendment is reported to the House (June 20, 1967, p. 16497). Where two amendments proposing inconsistent motions to strike and insert a pending section are considered as separate first degree amendments (not one as a substitute for the other) before either is finally disposed of under a special procedure permitting the Chair to postpone requests for a recorded vote, the Chair's order of voting on the matter as unfinished business determines which amendment (if both were adopted) would be reported to the House (Aug. 6, 1998, p. ——). Normally, if the Committee of the Whole perfects a bill by adopting certain amendments and then adopts an amendment striking out all after section one of the bill and inserting a new text, only the bill, as amended by the motion to strike out and insert, is reported to the House; but when the bill is being considered under a special rule permitting a separate vote in the House on any of the amendments adopted in the Committee of the Whole to the bill or the committee substitute, all amendments adopted in the Committee are reported to the House regardless of their consistency (May 26, 1960, pp. 11302–04). Where a separate vote is demanded in this type of situation in the House only on an amendment striking out a section of a committee substitute, but not on perfecting amendments which have been previously adopted in Committee of the Whole to that section, rejection in the House of the motion to strike the section results in a vote on the committee substitute in its original form and not as perfected, since the perfecting amendments have been displaced in the Committee of the Whole and have not been revived on a separate vote in the House (Speaker O'Neill, Oct. 13, 1977, pp. 33622–24). But where the Committee of the Whole reports a bill to the House with an adopted amendment in the nature of a substitute and the special order of business in question does not provide for separate House votes on amendments thereto, a separate vote may not be demanded on an amendment to such amendment, since only one amendment in its perfected form has been reported back to the House (Nov. 17, 1983, p. 33463).

§ 337. Committee of the Whole amendments in the House.

All amendments to a bill reported from the Committee of the Whole stand on an equal footing and must be voted on by the House (IV, 4871) in the order in which they are reported, although they may be inconsistent, one with another (IV, 4881, 4882), and are subject to amendment in the House unless the previous question is ordered (VIII, 2419). Two amendments being reported as distinct were considered independently, although apparently one was a proviso attaching to the other (IV, 4905); and an entire and distinct amendment may not be divided, but must be voted on by the House as a whole (IV, 4883–4892; VIII, 2426). It is a frequent practice for the House by unanimous consent, to act at once on all the amendments to a bill reported from the Committee of the Whole, but it is the right of any Member to demand a separate vote on any amendment (IV, 4893, 4894; VIII, 2419). Where a special rule permits en bloc consideration of certain amendments in Committee of the Whole, those amendments if reported back to the House may also be considered en bloc for a separate vote in the House on demand of any Member (Speaker O'Neill, Sept. 7, 1978, p. 28425). A Member may demand a separate vote in the House on an amendment to a committee amendment in the nature of a substitute adopted in the Committee of the Whole where the bill is being considered under a special rule permitting separate votes in the House on any of the amendments adopted in the Committee of the Whole to the bill or committee amendment (Sept. 30, 1971, p. 34337), but where a special rule "self-executes" an amendment as a modification of an amendment in the nature of a substitute to be considered as an original bill, that modification is not separately voted on upon demand in the House (Speaker Foley, Feb. 3, 1993, p. 2043). A Member may withdraw a demand for a separate vote in the House on an amendment reported from Committee of the Whole prior to the Speaker's putting the question thereon, and unanimous consent is not required (May 28, 1987, p. 14030). When demand is made for separate votes in the House on several amendments adopted in the Committee of the Whole, the amendments are voted on in the House in the order in which they appear in the bill (July 24, 1968, pp. 23093–95; May 28, 1987, p. 14030; June 11, 1997, p. ——), except when amendments have been considered under a special rule prescribing the order for their consideration where the bill is considered as read, in which case they are voted on upon demand in the order in which considered in Committee of the Whole (Mar. 11, 1993, p. 4733; Mar. 25, 1993, pp. 6358, 6359).

Depending on the will of the House as expressed on the question of ordering the previous question (IV, 4895; V, 5794; VIII, 2419), when a bill is reported with amendments, it is in order to submit additional amendments after disposition of the committee amendments (IV, 4872–4876). However, in modern practice the opportunity to submit amendments is normally foreclosed by the ordering of the previous question under a special rule. The fact that a proposition has been rejected by the Committee of the

Whole does not prevent it from being offered as an amendment when the subject comes up in the House (IV, 4878–4880; VIII, 2700). A substitute amendment may be offered to a bill reported from committee, and then the previous question may be ordered on the substitute, on all other amendments, and on the bill to final passage (V, 5472). An amendment in the nature of a substitute reported from committee is treated like any other amendment (V, 5341), and if the House rejects the substitute the original bill without amendment is before the House (VIII, 2426).

§ 338. Bills from Committee of the Whole in the House.

Where a series of bills are reported from Committee of the Whole, the House considers them in the order in which they are reported (IV, 4869, 4870; VIII, 2417). A proposition reported for action has precedence over an independent resolution on the same subject offered by a Member from the floor (V, 6986), and where a bill and a resolution relating to an alleged breach of privilege were reported together the question was put first on the bill (V, 6986). A bill read in full and considered in Committee of the Whole (IV, 3409, 3410), or presumed to have been so read (IV, 4916), is not read in full again in the House when reported and acted on. The Chairman of the Committee of the Whole which reports a bill does not become entitled to prior recognition for debate in the House (II, 1453); but on an adverse report an opponent is recognized to make a motion for disposition of the bill (IV, 4897; VIII, 2430), or for debate (VII, 2629). The recommendation of the committee being before the House, the motion to carry out the recommendation is usually considered as pending without being offered from the floor (IV, 4896), but when a bill was reported with a recommendation that it lie on the table, a question was raised as to whether or not this motion, which prevents debate, should be considered as pending (IV, 4897). The House considers an amendment reported from the Committee of the Whole to the preamble of a Senate joint resolution following disposition of amendments to the text and pending third reading (May 25, 1993, pp. 11036, 11037).

§ 339. Discharge of the Committee of the Whole.

A motion to discharge the Committee of the Whole from the consideration of a matter committed to it is not privileged as against a demand for the regular order (IV, 4917). When the committee is discharged from consideration of a bill the House, in lieu of the report of the chairman, accepts the minutes of the Clerk as evidence of amendments agreed to (IV, 4922).

§ 340. Application of House rules in Committee of the Whole.

In other things the rules or proceedings are to be the same as in the House. *Scob., 39.*

The House provides by rule (clause 12 of rule XVIII) that the rules of proceeding in the House shall apply in Committee of the Whole so far as they may be applicable.

SEC. XIII—EXAMINATION OF WITNESSES

§ 341. Common fame as ground for investigation.

Common fame is a good ground for the House to proceed by inquiry, and even to accusation. *Resolution House of Commons, 1 Car., 1, 1625; Rush, L. Parl., 115; Grey, 16–22, 92; 8 Grey, 21, 23, 27, 45.*

In the House common fame has been held sufficient to justify procedure for inquiry (III, 2701), as in a case wherein it was stated on the authority of common rumor that a Member had been menaced (III, 2678). The House also has voted to investigate with a view to impeachment on the basis of common fame, as in the cases of Judges Chase (III, 2342), Humphreys (III, 2385), and Durell (III, 2506).

§ 342. The production of witnesses at an inquiry.

Witnesses are not to be produced but where the House has previously instituted an inquiry, *2 Hats., 102, nor then are orders for their attendance given blank. 3 Grey, 51.*

In the House witnesses are summoned in pursuance and by virtue of the authority conferred on a committee by the House to send for persons and papers (III, 1750). Even in cases wherein the rules give to certain committees the authority to investigate without securing special permission, authority must be obtained before the production of testimony may be compelled (IV, 4316). The rules require that subpoenas issued by order of the House be signed by the Speaker (clause 4 of rule I) and attested and sealed by the Clerk (clause 2 of rule II). However, in clause 2(m) of rule XI the House has authorized any committee or subcommittee to issue a subpoena when authorized by a majority of the members of the committee or subcommittee voting, a majority being present. A committee may also delegate the authority to issue subpoenas to the chairman of a full committee. Authorized subpoenas are signed by the chairman of the committee or by any other member designated by the committee. Sometimes the House authorizes issue of subpoenas during a recess of Congress and empowers the Speaker to sign them (III, 1806), and in one case the two Houses, by concurrent resolution, empowered the Vice President and Speaker to sign during a recess (III, 1763). (See McGrain *v.* Daugherty, 273 U.S. 135 (1927); Barry *v.* U.S. ex. rel. Cunningham, 279 U.S. 597 (1929); Sinclair *v.* United States, 279 U.S. 263 (1929)).