

## H. RES. 1339

*Resolved*, That a revised edition of the Rules and Manual of the House of Representatives for the Ninety-second Congress be printed as a House document, and that 1,600 additional copies shall be printed and bound for the use of the House of Representatives, of which 700 copies shall be bound in leather with thumb index and delivered as may be directed by the Parliamentarian of the House for distribution to officers and Members of Congress.

## § 2. Jefferson's Manual

Jefferson's Manual was prepared by Thomas Jefferson for his own guidance as President of the Senate in the years of his Vice Presidency, from 1797 to 1801. In 1837, the House, by rule which still exists, provided that the provisions of the Manual should govern the proceedings of the House to the extent specified in the rule. The present rule<sup>(6)</sup> states:

The rules of parliamentary practice comprised in Jefferson's Manual and the provisions of the Legislative Reor-

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adopted in other Congresses. See, as examples, 114 CONG. REC. 31313, 90th Cong. 2d Sess., Oct. 14, 1968; 104 CONG. REC. 19699, 85th Cong. 2d Sess., Aug. 23, 1958; and 94 CONG. REC. 5746, 80th Cong. 2d Sess., May 12, 1948.

6. Rule XLII, *House Rules and Manual* §938 (1973).

ganization Act of 1946, as amended, shall govern the House in all cases to which they are applicable, and in which they are not inconsistent with the standing rules and orders of the House and joint rules of the Senate and House of Representatives.

The extent to which particular provisions of Jefferson's Manual are applicable to present-day procedures in the House is indicated in the notes thereto, including the citations of precedents, accompanying the text as printed in the *House Rules and Manual*.

In addition to being traditionally incorporated in some degree in the House rules, Jefferson's Manual serves as part of the basis of the general parliamentary law that governs the House prior to adoption of the rules.<sup>(7)</sup>

## § 3. Background Information—Power of New House to Adopt Rules

With respect to the importance of adopting rules of procedure in legislative bodies, Jefferson stated in his Manual:<sup>(8)</sup>

And whether these forms be in all cases the most rational or not is really not of so great importance. It is much more material that there should be a

7. See § 3, *infra*.

8. *House Rules and Manual* §285 (1973).

rule to go by than what that rule is; that there may be a uniformity of proceeding in business not subject to the caprice of the Speaker or captiousness of the members. . . .

The Constitution<sup>(9)</sup> provides that, “Each House may determine the Rules of its Proceedings. . . .” Thus, the power of each House of Representatives to make its own rules may not be impaired or controlled by the rules of the preceding House or by a law passed by a prior Congress.<sup>(10)</sup> As an example, the provisions of a legislative reorganization act enacted into law in a previous Congress cannot restrict the authority of a present House to adopt its own rules.<sup>(11)</sup> But a law passed by an existing Congress with the concurrence of the House has been recognized by that House as of binding force in matters of procedure.<sup>(12)</sup>

In some cases, Congress has enacted statutes containing provisions relating to procedures to be followed in certain instances. Such statutes have been enacted as an

exercise of the rule-making power of Congress and deemed a part of the rules of each House. Thus, Congress has provided by statute for procedures to be followed with respect to the consideration of certain resolutions relating to executive reorganization plans.<sup>(13)</sup> Such statutes were enacted with express recognition of the power of each House to change its rules, and with specific limitations on the applicability of the statute.<sup>(14)</sup>

Joint rules are rarely employed. It may be noted that, in the 91st Congress, a law specifying that the counting of electoral votes for President and Vice President should be conducted in a joint session was made a joint rule of the two Houses by its incorporation by reference in a concurrent resolution.<sup>(15)</sup>

The House at any time may, by rules, provide new methods of procedure so long as such rules do not conflict with constitutional provisions.<sup>(16)</sup> With regard to the scope of the power of the House to determine the rules of its proceedings, Jefferson stated in his Manual:<sup>(17)</sup>

9. U.S. Const. art. I, §5.

10. See Ch. 1, supra.

11. See 117 CONG. REC. 132, 92d Cong. 1st Sess., Jan. 22, 1971 (remarks of Speaker Carl Albert [Okla.]).

12. See, generally, Ch. 1, supra. See also 59 Am. Jur. 2d, *Parliamentary Law* §2 (adoption and suspension of rules of procedure).

13. 5 USC §§908–913.

14. See 5 USC §908.

15. See 115 CONG. REC. 36, 91st Cong. 1st Sess., Jan. 3, 1969.

16. See §4, infra.

17. *House Rules and Manual* §387 (1973).

Where the Constitution authorizes each House to determine the rules of its proceedings, it must mean in those cases (legislative, executive, or judiciary) submitted to them by the Constitution, or in something relating to these, and necessary toward their execution. But orders and resolutions are sometimes entered in the journals having no relation to these, such as acceptances of invitations to attend orations, to take part in procession, etc. These must be understood to be merely conventional among those who are willing to participate in the ceremony, and are therefore, perhaps, improperly placed among the records of the House.

Propositions to adopt or change a rule are within the jurisdiction of the Committee on Rules.<sup>(18)</sup>

The action of the House taken with respect to a rule that has been reported by the Committee on Rules is controlling. A rule having been adopted, the Chair will thereafter look to the rule and direct the House to proceed in accordance with its terms, unless the rule has been superseded.<sup>(19)</sup>

Proceedings in the House are not, of course, governed by the rules exclusively. Thus, the procedure of the House is governed in some instances by the custom or practice of the House rather than by express rules. On the other hand, even where a matter or pro-

**18.** See Ch. 17, *infra*; see also Ch. 21, *infra*.

**19.** See §6, *infra*.

cedure is not expressly prohibited by the rules, it may be considered unauthorized thereby and therefore deemed improper.<sup>(20)</sup>

Before the adoption of rules by a new House, that House is governed by general parliamentary law. The Speakers have been inclined to give weight to the precedents of the House in modifying the usual constructions of general parliamentary law.<sup>(1)</sup>

On occasion, the House has passed a bill of major importance prior to the adoption of the rules.<sup>(2)</sup>

**20.** See, for example, the discussion in 7 Cannon's Precedents §1029. See also 98 CONG. REC. 1334, 82d Cong. 2d Sess., Feb. 25, 1952, in which Speaker Sam Rayburn (Tex.) stated, with reference to the televising of committee meetings, that since there was at that time no authority in the rules of the House granting the privilege of televising the proceedings of the House of Representatives, there was no authorization for televising committee meetings. (Speaker Rayburn's rulings on the subject were later relied upon by Speaker John W. McCormack [Mass.], in 108 CONG. REC. 267-269, 87th Cong. 2d Sess., Jan. 16, 1962.) See §6.4, *infra*.

**1.** See Ch. 1, *supra*.

**2.** There was an instance in the 73d Congress (77 CONG. REC. 75 et seq., 73d Cong. 1st Sess., Mar. 9, 1933) in which the House by unanimous consent agreed to consider, under a