

The Committee of the Whole

A. IN GENERAL

§ 1. Jurisdiction; House as in Committee of the Whole Distinguished

This chapter deals with the practice and procedure followed by the House when it resolves itself into the Committee of the Whole.⁽¹⁾ Discussed elsewhere are the requirements of a quorum in the Committee of the Whole,⁽²⁾ procedures for acting on amendments in Committee of the Whole, including amendments to a concurrent resolution on the budget,⁽³⁾ consideration and debate in

1. For pre-1936 precedents: see 4 Hinds' Precedents §§ 4704–4791 and 8 Cannon's Precedents §§ 2318–2380 for precedents relating to the Committee of the Whole; 4 Hinds' Precedents §§ 4792–4868 and 8 Cannon's Precedents §§ 2381–2416, relating to subjects requiring consideration in the Committee of the Whole; 4 Hinds' Precedents §§ 4869–4922 and 8 Cannon's Precedents §§ 2417–2430 relating to reports from the Committee of the Whole.
2. Ch. 20, *infra*.
3. See Ch. 27, *infra* as to amendments, generally. For procedures relating to resolutions on the budget, see Ch. 13, *supra*.

Committee of the Whole,⁽⁴⁾ and voting in Committee of the Whole.⁽⁵⁾

The term Committee of the Whole technically applies to two Committees, the Committee of the Whole House, which formerly considered business on the Private Calendar, and the Committee of the Whole House on the state of the Union, which considers business on the Union Calendar [that is, public bills].⁽⁶⁾ There was little difference in the work of the two Committees except in the character of bills considered.⁽⁷⁾ Since 1935,⁽⁸⁾ bills on the Private Calendar have been considered in the House *as in* Committee of the Whole, not, strictly speaking, in the Committee of the Whole.

When the House sits *as in* Committee of the Whole, it does not

4. Ch. 29, *infra*. See also §§ 15–18, *infra*.
5. Ch. 30, *infra*.
6. See 4 Hinds' Precedents § 4705 for the distinction between the two Committees of the Whole.
7. 4 Hinds' Precedents § 4705; *Deschler's Procedure* (93d Cong.), Ch. 19 § 1.1.
8. 79 CONG. REC. 4480–89, 74th Cong. 1st Sess., Mar. 27, 1935. See Rule XXIV clause 6, *House Rules and Manual* §§ 893, 894 (1979).

actually resolve into the Committee; it sits “as in” Committee of the Whole to allow consideration of bills under the five-minute rule without general debate.⁽⁹⁾ This practice is permitted for the consideration of public bills by unanimous consent or by special order from the Committee on Rules.⁽¹⁰⁾

Because the Committee of the Whole House for the consideration of private bills is no longer of practical application, the term “Committee of the Whole” is used in this chapter to refer to the Committee of the Whole House on the state of the Union unless otherwise indicated.

Rule XXIII clause 3⁽¹¹⁾ provides that, “All motions or propositions involving a tax or charge upon the people, all proceedings touching appropriations of money, or bills making appropriations of money

or property, or requiring such appropriation to be made, or authorizing payments out of appropriations already made, or releasing any liability to the United States for money or property, or referring any claim to the Court of Claims, shall be first considered in a Committee of the Whole. . . .”

This rule is applied not only to bills, but to amendments⁽¹²⁾ and Senate amendments to House measures as well. As to the latter, Rule XX clause 1⁽¹³⁾ provides that, “Any amendment of the Senate to any House bill shall be subject to the point of order that it shall first be considered in the Committee of the Whole House on the state of the Union, if, originating in the House, it would be subject to that point. . . .”

A view of long standing was that, to require consideration in a Committee of the Whole, a measure must have shown on its face that it fell within the requirements of Rule XXIII clause 3;⁽¹⁴⁾ where the expenditure was a mere matter of speculation,⁽¹⁵⁾ or where

9. See 4 Hinds' Precedents §§4923–4935 and 8 Cannon's Precedents §§2431–2435 for pre-1936 precedents relating to the House as in Committee of the Whole; and Jefferson's Manual, *House Rules and Manual* §§424–427 (1979) for actions which may or may not be taken in the House as in Committee of the Whole.
10. 4 Hinds' Precedents §4923 and Jefferson's Manual, *House Rules and Manual* §424 (1979).
11. *House Rules and Manual* §865 (1979).

12. 4 Hinds' Precedents §§4793, 4794.
13. *House Rules and Manual* §827 (1979). See Ch. 32 §5, *infra*, for discussion and precedents regarding House action on Senate amendments.
14. 4 Hinds' Precedents §§4811–4817.
15. 4 Hinds' Precedents §§4818–4821; 8 Cannon's Precedents §2388.

the bill might have involved a charge, but did not necessarily do so,⁽¹⁶⁾ the rule did not apply. In ruling on a point of order as to whether a proposition involved a charge on the Treasury, the Speaker was confined to the provisions of the text and could not take into consideration personal knowledge not directly deducible therefrom.⁽¹⁷⁾ In modern practice, a measure goes on the Union Calendar for consideration in the Committee of the Whole House on the state of the Union if an expenditure under the measure is probable.

The Committee of the Whole observes the rules of proceeding in the House as far as applicable.⁽¹⁸⁾ However, the procedure in the Committee of the Whole differs from procedures in the House in certain respects. In the Committee, (1) a quorum consists of 100 Members instead of a majority of the House membership;⁽¹⁹⁾ (2) tellers may be requested by 20 Members instead of by 44 (one-fifth of a quorum of the

House);⁽²⁰⁾ (3) a recorded vote may be requested by 25 (formerly 20) Members instead of by 44 (one-fifth of a quorum of the House);⁽²¹⁾ (4) the constitutional ye and nay vote demanded by one fifth of the Members present,⁽²²⁾ or an “automatic” ye and nay vote as provided under Rule XV clause 4,⁽²³⁾ may not be taken; (5) amendments may not be withdrawn except by unanimous consent;⁽¹⁾ (6) debate may both be general and under the five-minute rule for amendments;⁽²⁾ and (7) leave to extend remarks may be given only to the Member making the request, and not for the inclusion of extraneous material, general leaves being granted only by the House.⁽³⁾

16. 4 Hinds' Precedents §§ 4809, 4810.

17. 8 Cannon's Precedents §§ 2386, 2391.

18. Rule XXIII clause 9, *House Rules and Manual* § 877 (1979); 4 Hinds' Precedents § 4737.

19. Rule XXIII clause 2(a), *House Rules and Manual* § 863 (1979). See also Jefferson's Manual, *House Rules and Manual* § 329 Note (1979).

20. Rule I clause 5, *House Rules and Manual* § 630 (1979); 5 Hinds' Precedents §§ 5985, 5986.

21. Rule XXIII clause 2(b) (adopted in the 96th Congress; see H. Res. 5, Jan. 15, 1979), *House Rules and Manual* (1979).

22. U.S. Cong. art. I, § 5, clause 3, *House Rules and Manual* § 76 Note (1979); 4 Hinds' Precedents §§ 4722, 4723.

23. *House Rules and Manual* § 773 (1979).

1. Rule XXIII clause 5, *House Rules and Manual* § 870 (1979); Rule XIX, *House Rules and Manual* § 824 Note (1979); 5 Hinds' Precedents §§ 5221, 5753 (ftn.).

2. Rule XXIII clause 5, *House Rules and Manual* § 870 (1979).

3. 5 Hinds' Precedents §§ 7009, 7010, 8 Cannon's Precedents § 3488.

Certain powers may not be exercised by the Committee of the Whole. For example, the Committee may not modify orders of the House,⁽⁴⁾ raise the question of consideration,⁽⁵⁾ transact proceedings regarding words demanded to be taken down in debate,⁽⁶⁾ appoint, authorize, or discharge committees,⁽⁷⁾ extend, even by unanimous consent, time for debate fixed by the House⁽⁸⁾ suspend the rule relating to admission to the floor,⁽⁹⁾ recess without permission of the House,⁽¹⁰⁾ in-

4. 4 Hinds' Precedents §§4712, 4713; 7 Cannon's Precedents §786; and 8 Cannon's Precedents §§2321, 2323.
5. 7 Cannon's Precedents §952 (on Calendar Wednesday); see also 5 Hinds' Precedents §§4973–4976.
6. 2 Hinds' Precedents §§1257–1259, 1348; 8 Cannon's Precedents §§2533, 2538, 2539. See Rule XIV clause 5, *House Rules and Manual* §761 (1979), which states that objectionable words are taken down and read to the House. See also §17, *infra*, for a discussion of Committee procedure when a Member objects to certain language.
7. 4 Hinds' Precedents §§4697, 4710.
8. Note to Rule XXIII clause 5, *House Rules and Manual* §871 (1979); 5 Hinds' Precedents §§5212–5216; 8 Cannon's Precedents §§2321, 2550.
9. Note to Rule XXXII clause 1, *House Rules and Manual* §919 (1979); 5 Hinds' Precedents §7285.
10. 5 Hinds' Precedents §§6669–6671.

struct conferees,⁽¹¹⁾ or consider questions of privilege.⁽¹²⁾

The Committee of the Whole may rise informally to receive messages.⁽¹³⁾

Significance of Mace

§ 1.1 The position of the mace signifies whether the House is in session or whether it has resolved itself into the Committee of the Whole. When the mace is in the higher position at the Speaker's right the House is in regular session. When the Members begin deliberations in the Committee of the Whole, the mace is placed on the lower pedestal next to the desk of the Sergeant at Arms.

On July 13, 1966, the 125th anniversary year of the use of the present mace,⁽¹⁴⁾ Mr. Frank Horton, of New York, discussed the position of the mace as it relates to whether the House meets in regular session or in the Committee of the Whole.

MR. HORTON: Mr. Speaker, today I should like to remind my distinguished

11. 8 Cannon's Precedents §2320.
12. Note to Rule IX, *House Rules and Manual* §666 (1979); 2 Hinds' Precedents §1657.
13. *House Rules and Manual* §330 (1979); 4 Hinds' Precedents §4786.
14. 112 CONG. REC. 15403, 15404, 89th Cong. 2d Sess.

colleagues of a historic anniversary. The year 1966 marks 125 years of consecutive use of the present mace in the House of Representatives. . . .

The position of the mace signifies whether the House is in session or whether it has resolved itself into the Committee of the Whole House on the State of the Union. Visitors in the galleries today will notice that the mace is now in position at the Speaker's right, meaning that we are now in regular session. When we begin our deliberations in the Committee of the Whole, the mace will be placed on the lower pedestal next to the desk of the Sergeant at Arms. Any Member or visitor entering the House can tell at a glance if the House is in session or in committee.

Anticipation of Parliamentary Situations by Speaker

§ 1.2 The Speaker does not anticipate parliamentary situations which might arise in Committee of the Whole.

On June 29, 1973,⁽¹⁵⁾ Speaker Carl Albert, of Oklahoma, refused to anticipate parliamentary situations which might arise in the Committee of the Whole.

MR. [RICHARD] BOILING [of Missouri]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 479 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

15. 119 CONG. REC. 22336, 22337, 93d Cong. 1st Sess.

H. RES. 479

Resolved, That upon the adoption of this resolution it shall be in order to move, clause 6, rule XXI 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 bill (H.R. 9055) making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes, and all points of order against said bill for failure to comply with the provisions of clauses 2 and 5, rule XXI are hereby waived. It shall be in order to consider without the intervention of any point of order the following amendment in the nature of a substitute for section 307 of the bill H.R. 9055.

"Sec. 307. None of the funds herein appropriated under this Act or heretofore appropriated under any other Act may be expended to support directly or indirectly combat activities in, over, or from off the shores of Cambodia or in or over Laos by United States forces." . . .

MR. [JAMES J.] PICKLE [of Texas]: Mr. Speaker, is it my understanding that this is an open rule? Do I further understand that the gentleman from Georgia (Mr. Flynt) intends to offer the Eagleton amendment as a substitute which we had voted on in the last few days?

I understand from conversations which I have had at the Chair that it would be in order then to offer amendments to the substitute which will be offered by the gentleman from Georgia, and if any of those amendments were passed, it would be an amendment to that substitute.

If that substitute passes, there can be no more amendments and the vote will be up or down on that issue. Thus, if I am correct, then, Mr. Speaker, if

the substitute is passed, then there will be a vote on that up or down, and there can be no amendment beyond that point, is that correct?

THE SPEAKER: The Chair will answer that this is a matter for the Chairman of the Committee of the Whole House on the State of the Union.

The Chair is not able at this time to take over the responsibility of making parliamentary rulings from the Chairman of the Committee of the Whole House.

MR. [DELBERT L.] LATTA [of Ohio]: Mr. Speaker, the Speaker is absolutely correct. This is something that can be taken up in the Committee of the Whole House on the State of the Union.

Consideration of Questions of Personal Privilege

§ 1.3 Members may not rise to a question of personal privilege in the Committee of the Whole.

On Apr. 18, 1944,⁽¹⁶⁾ during consideration of H.R. 4254, extension of "Lend Lease," Chairman Warren G. Magnuson, of Washington, refused to permit a Member to

16. 90 CONG. REC. 3558, 78th Cong. 2d Sess. See also 115 CONG. REC. 24372, 91st Cong. 1st Sess., Sept. 4, 1969 (during consideration of H.R. 12085, extending the Clean Air Act); 106 CONG. REC. 11289, 86th Cong. 1st Sess., June 18, 1959; and *Deschler's Procedure* (93d Cong.), Ch. 11 §13.6, for other instances of this principle.

raise a question of personal privilege because that issue may not be raised in the Committee of the Whole.

MR. [CLARK E.] HOFFMAN [of Michigan]: Mr. Chairman, can I raise a question of personal privilege in the Committee of the Whole, or do I have to wait until we go back into the House?

THE CHAIRMAN: That cannot be done in the Committee of the Whole.⁽¹⁷⁾

Consideration of Measures in House as in Committee of the Whole

§ 1.4 Where a joint resolution requiring consideration in the Committee of the Whole is called up by unanimous consent, it is considered in the House as in the Committee of the Whole and is subject to debate and amendment under the five-minute rule.⁽¹⁸⁾

17. Note: Under the modern practice, points of personal privilege may not be raised in the Committee of the Whole. The opposite was formerly true. See 3 Hinds' Precedents §§2540 et seq., which indicate that a matter of personal privilege could be claimed with reference to unparliamentary words. This former practice has been superseded by the procedure for taking down words in Committee of the Whole.

18. For more detailed discussion of consideration and procedure in the

On Sept. 26, 1968,⁽¹⁹⁾ by unanimous consent House Joint Resolution 1461 was considered in the House as in Committee of the Whole and subject to debate and amendment under the five-minute rule.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I ask unanimous consent for the immediate consideration of the joint resolution (H.J. Res. 1461) making continuing appropriations for the fiscal year 1969, and for other purposes.

The Clerk read the title of the joint resolution.

THE SPEAKER:⁽²⁰⁾ Is there objection to the request of the gentleman from Texas? . . .

MR. [FRANK T.] BOW [of Ohio: . . . I should like to make a parliamentary inquiry, Mr. Speaker.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. BOW: If this joint resolution is now called before the House, will it be in order, when it is before the House, to offer a substitute in the manner in which I have discussed it?

THE SPEAKER: The answer is that it would be in order. . . .

Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the joint resolution as follows:

House as in Committee of the Whole, see Ch. 29 §§ 4, 70.

19. 114 CONG. REC. 28374, 90th Cong. 2d Sess.

20. John W. McCormack (Mass.).

H.J. RES. 1461

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That clause (c) of section 102 of the joint resolution of June 29, 1968 (Public Law 90-366), is hereby further amended by striking out "September 30, 1968" and inserting in lieu thereof "October 12, 1968".

MR. MAHON: Mr. Speaker, I ask unanimous consent that the joint resolution be considered in the House as in the Committee of the Whole.

THE SPEAKER: Is there objection to the request of the gentleman from Texas?

There was no objection.

MR. MAHON: Mr. Speaker, I move to strike out the last word. May I just add a few words. There are a number of agencies of the Government for which regular appropriations for 1969 have not been finally enacted by the Congress.

§ 1.5 A motion that a Union Calendar bill called up be considered in the House as in the Committee of the Whole is not in order, although unanimous consent may be granted for that purpose; if such consent is not obtained, the House automatically resolves itself into the Committee of the Whole on Calendar Wednesday.

On July 12, 1939,⁽¹⁾ during consideration of H.R. 985, to author-

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

ize the Secretary of War to furnish markers for certain graves, Speaker William B. Bankhead, of Alabama, stated that a unanimous-consent request, but not a motion, to consider a Union Calendar bill in the House as in Committee of the Whole would be in order. After an objection was raised to the unanimous-consent request, the House automatically resolved itself into the Committee of the Whole.

MR. [ANDREW J.] MAY [of Kentucky] (when the Committee on Military Affairs was called): Mr. Speaker, by direction of the Committee on Military Affairs, I call up the bill (H.R. 985) to authorize the Secretary of War to furnish certain markers for certain graves, and ask unanimous consent that the bill be considered in the House as in Committee of the Whole.

The Clerk read the title of the bill.

MR. [JOSEPH W.] MARTIN [Jr.] of Massachusetts: Mr. Speaker, reserving the right to object, will the gentleman explain the bill before we grant this request?

MR. MAY: This is a bill to authorize the Secretary of War to furnish certain markers for graves of persons who are entitled to have them. Under the statute they are bronze markers or stone markers.

MR. [SAM] HOBBS [of Alabama] Mr. Speaker, I object.

MR. MAY: To what is the gentleman objecting?

MR. HOBBS: I am objecting to the consideration of the bill.

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

THE SPEAKER: 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.

The gentleman from Kentucky asks unanimous consent to consider the bill in the House as in Committee of the Whole. Is there objection to the request of the gentleman from Kentucky?

MR. HOBBS: I object, Mr. Speaker.

THE SPEAKER: This bill is on the Union Calendar.

Accordingly, the House resolved itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 985) to authorize the Secretary of War to furnish certain markers for certain graves, with Mr. Tarver in the chair.

§ 2. Motions and Requests Generally

Particular motions which may be entertained in the Committee of the Whole include certain motions relating to the enacting clause,⁽²⁾ motions to amend, and motions to rise;⁽³⁾ the Committee of the Whole may not entertain motions involving functions properly performed by the House such as motions to (1) adjourn,⁽⁴⁾ (2) lay on the table,⁽⁵⁾ (3) lay on the table

2. See §§ 10–14, *infra*.

3. See §§ 22–25, *infra*.

4. § 2.4, *infra*.

5. § 2.7, *infra*. However, after general debate on a bill has been closed, a motion that the Committee of the