



BASIC » TRAINING

PARLIAMENTARY PROCESS,
FACTS, AND STRATEGIES

Open Rules and Appropriations Bills

When describing an amendment process for a bill, particularly one provided by a “rule” reported by the Committee on Rules, it is often articulated in terms of being “open” or “closed.” The more open the amendment process, the closer it is to the default rules of the House: any Member may offer any germane amendment, amendments are debated under the “five-minute rule,” and are otherwise subject to the basic rules of the House and the Committee of the Whole. The most common kinds of bills debated under open amendment structure are the annual appropriations bills, although recently efforts have been made to again handle some authorizing bills under open or modified-open rules.

THE BASICS OF OPEN RULES

An “**open**” rule is one that allows any Member to offer any germane amendment, which is then debated under the **five-minute rule**. The primary variation of this rule is a “**modified-open**” rule, which generally functions like an open rule, with the exception that there is usually a requirement that amendments be submitted for printing in the *Congressional Record* prior to being offered. Outside this exception, the two kinds of rules function identically when it comes to considering amendments.

Under an open rule, the House conducts both general debate and debate on individual amendments in the Committee of the Whole House on the State of the Union, generally referred to as the **Committee of the Whole**. The Committee of the Whole offers several advantages to expedite consideration of amendments, including fewer procedural motions, a

lower quorum requirement, and reduced time for electronic votes.

One indicator of whether the House is operating in the House or in the Committee of the Whole is the position of the Mace on the Rostrum. If the Mace is in the “up” position, the body is operating in the House; in the “down” position, it is operating in the Committee of the Whole. (See Figure 1.)

Reading for Amendment and the Five-Minute Rule. Under an open rule, a bill is “read” for amendment section-by-section. Amendments may only be offered to the section currently being read, known as the section currently “open to amendment.” After the disposition of a particular amendment, the Chair inquires whether there are additional amendments to the section, and if not, the Clerk moves on to read the next section and begins the process again.



Figure 1. When the Mace is in the “up” position, that indicates that the body is operating as the House; if the Mace is in the “down” position, it is operating in the Committee of the Whole and the presiding officer is addressed as Mr. or Madam Chair.

The five-minute rule allows the proponent of an amendment to speak for five minutes in favor of the amendment, and also allows the Chair to recognize a Member opposed for five minutes. Other members who wish to speak may be recognized by offering a **pro forma amendment** (to “**strike the last word**”), although no Member may be recognized for more than one five-minute period, less there is unanimous consent to allow for this practice.



Open Rules *continued*

GENERAL TYPES OF AMENDMENTS AVAILABLE UNDER OPEN RULES

Under an open amendment process, Members can generally choose from any of the typical amendatory forms to improve a bill. For instance, the full range of perfecting amendments — motions to strike, strike and insert, or insert — as well as substitute amendments and amendments in the nature of a substitute are available.

Figure 2 illustrates the standard amendment “tree,” showing the kinds of amendments that can be pending at any one time, as well as the order in which votes are taken.

Perfecting Amendments. A perfecting amendment is an amendment intended to improve, or “perfect,” the provision

currently under consideration. They most commonly operate against the base text of the measure (known as an **amendment in the “first degree”**) and can either delete language (**strike**), add language (**insert or add**), or modify language (**strike and insert**).

Under an open rule, any of these forms of amendment can operate against another pending amendment. An amendment to an amendment is known as an **“amendment in the second degree.”** The rules of the House prohibit amendments beyond the second degree.

Substitute Amendments. A **“substitute amendment”** is one that substitutes for the pending amendment. If adopted, the substitute amendment would occupy the same position on the amendment tree as

the first degree amendment. It is for that reason that a substitute amendment is subject to a further perfecting amendment without violating the prohibition against amendments in the third degree.

A substitute amendment is distinguishable from an **“amendment in the nature of a substitute”** in that the later is a substitute for the entire bill, rather than a pending amendment. An amendment in the nature of a substitute usually carries a caption indicating the form of the amendment. Even if this formal classification is absent, should the amendatory instruction (preceding the legislative text) read, *“Strike all after the enacting clause and insert the following:”*, it is an amendment in the nature of a substitute.

OTHER CONSIDERATIONS

Note that under a truly “open” amendment process, amendments neither need to be submitted to the Rules Committee, nor pre-printed in the Congressional Record. A Member can offer an amendment that he or she drafted while listening to the ongoing debate.

An “open” rule may, however, prescribe amendments that are pre-printed in the Congressional Record be afforded priority in recognition.

Whether pre-printed or not, it is important to alert the staff of the Committee on Appropriations of a Member’s intent to offer an amendment, so it is not accidentally excluded from any potential unanimous consent agreement limiting the total “universe” of amendments. 🗋️

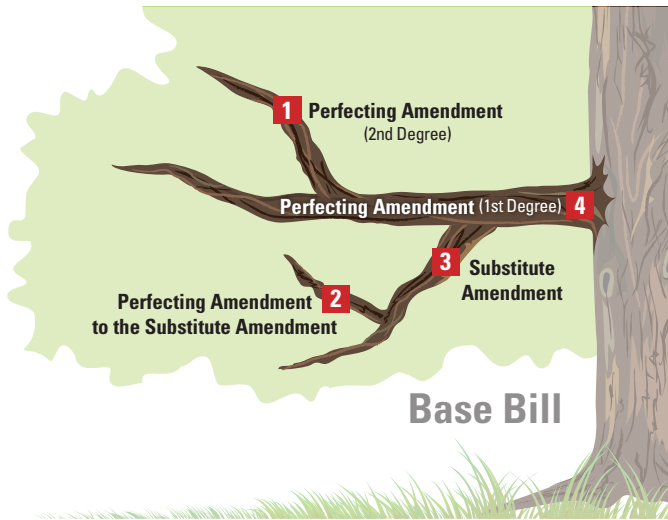


Figure 2. The Amendment Tree. The standard amendment “tree” illustrates the various kinds of perfecting and substitute amendments that can be pending at any one time. The numbers indicate voting order.

MORE KEY CONCEPTS FOR APPROPRIATIONS BILLS

Authorizing Language — Clause 2 of rule XXI prohibits authorizing language in an appropriations measure. However, the Rules Committee usually waives all points of order against the bill and provisions in the bill. This puts authorizing

committees at a disadvantage if the Appropriations Committee includes authorizing language in the bill when reported. Since the mid-1990s, the Rules Committee has enforced the so-called “Armey Protocol” which allows the chair of the relevant

authorizing committee to request that authorizing language be “exposed,” or excluded from the general waiver of all points of order. This is intended to level the playing field between authorizers and appropriators.



Appropriation Specific Considerations

There are some differences between the amendment process for an appropriations measure and other types of bills. For instance, rather than being read section-by-section, appropriations bills are read **paragraph-by-paragraph**.

Further, in addition to the standard forms of amendment available under any open amendment process, there are a several kinds of amendments that are generally only available in an appropriations context.

TRANSFERS AND “REACH BACKS”

Clause 2(f) of rule XXI provides an exception to the general principle of only being able to offer amendments at the specific point in the reading of the bill that their amendment edifies.

This rule allows a Member to offer two “**transfer amendments**” en bloc, or as two amendments in one, one decreasing spending and the other increasing spending by an equal amount. These amendments must be offered when the first amended account is reached in the reading of the bill and are not subject to a call for division.

To be in order, however, the amendments must be neutral in terms of both **budget authority** and **outlays**. Depending on both the program being cut and the program being increased, and their specific individual spending rates, the amounts of the decrease and increase may be different. In this particular case, it is important to ensure that the amendment does not violate a particular subcommittee allocation, even if performing a transfer. Thus, it is important to check with the Appropriations

Committee or the Congressional Budget Office to ensure that any en bloc amendment is drafted correctly.

“**Reach-back**” or “**fetch-back**” amendments are new paragraphs inserted into the underlying bill to change amounts contained in previous paragraphs, thus changing funding amounts in the pending bill by reference. These amendments are typically offered at the end of the bill. For instance, an across the board cut is considered a reach-back amendment.

“**Across-the-board cuts**” should reduce each account in the measure by the same amount. If individual accounts are not specifically amended with a specific dollar reduction, the Appropriations Committee has no direction as to which accounts to reduce in order to reduce the overall spending in the bill and the amendment is not scored as achieving measurable savings.

LIMITATION AMENDMENTS

Limitation amendments come at the end of the bill and limit the use of the funds appropriated in the bill. These amendments may limit spending within the bill, but only when the effect does not directly change existing law. The basic theory of limitations is that, just as the House may decline to appropriate for a purpose authorized by law, it may, by limitation, restrict how the funds for a specific purpose are used. Limitation amendments do not alter how much funding is being allocated, but how the appropriated funding is distributed within the purpose. So while the limitation cannot change existing law, it can negatively restrict the use of funds for an authorized purpose or project.

Separate votes — In the 112th Congress, the Speaker indicated his desire to provide Members with the opportunity to separately consider cabinet level departments in appropriations bills in an effort to cut down on “omnibus” measures.

The Speaker and the Rules Committee are experimenting with a mechanism to achieve this goal. It is included in the rule for consideration of a particular appropriations measure, and directs the Chair to put the question on “retaining” a par-

ticular title of a bill containing a cabinet-level agency.

To date, this mechanism has only been used once, for the FY2012 MilCon-VA Appropriations bill. In that case, after the Committee of the Whole rose

at the end of the bill, the Chair then put the question to the House of retaining the title containing appropriations for the Department of Veterans’ Affairs.

PROHIBITIONS ON CERTAIN KINDS OF AMENDMENTS TO APPROPRIATIONS BILLS

Amendments to general appropriations bills must comply with numerous requirements in the Rules of the House and the Budget Act. Rule XXI of the Rules of the House describes many of the restrictions on amendments to appropriations bills. An amendment that violates any one of these rules is subject to a point of order against its consideration. Specifically, amendments:

- » May not be offered if the amendment is drafted to a point in the bill that has already been read;
- » May not legislate or authorize new or existing programs or otherwise make changes in existing law (clause 2(c) of rule XXI);
- » May not cause the total amount of both budget authority and outlays to exceed the overall limitations established for budget enforcement purposes (§§ 302(f) and 311(f) of the Congressional Budget Act);
- » Must be germane to both the bill and the paragraph being amended (clause 7 of rule XVI);
- » May not provide appropriations to unauthorized programs or appropriate funds in excess of an explicit authorization (clause 2(a)(1) of rule XXI); and
- » May not reappropriate funds that have already been appropriated in a prior fiscal year (clause 2(a)(2) of rule XXI).

Appropriations Considerations *continued*

SPENDING REDUCTION AMENDMENTS

New for the 112th Congress, the end of every general appropriation bill will include a “**spending reduction**” account. Pursuant to the standing order contained in section 3(j) of H.Res. 5, Members may offer amendments much like a 2(f) transfer amendment, but the amounts reduced may be placed in the spending reduction account in order to demonstrate that those funds are no longer available for further appropriation during consideration of the bill. If the bill contains a rescission, the amount of the rescission cannot be increased and that amount dedicated to the spending reduction account.

Additionally, it is not in order to offer an amendment to reduce the amount of the spending reduction account. En bloc amendments offered pursuant to this standing order are not divisible.

OTHER CONSIDERATIONS

Earmarks. While there is no point of order in the House rules prohibiting consideration of an earmark, the moratorium adopted by the House Republican Conference at the beginning of the 112th Congress prohibits Republican Members from “requesting” an earmark, even through the offering of an amendment. If an amendment contains an earmark, it is likely to be opposed by the Majority bill manager.

Budget Compliance. H.Res. 5 contains another standing order intended to ensure that an appropriations bill does not violate

its allocation through the amendment process. A standing order carried in H.Res. 5 through the last several congresses eliminates the “automatic” motion to rise and report from the Committee of the Whole when the last lines of the bill are read, and instead requires the majority manager of the appropriations bill make a motion to rise and report, which is subject to a point of order if the bill exceeds its allocation.

If the point of order were to be upheld, the Chairman of the Committee on Appropriations is given authority to offer an amendment to bring the bill back into compliance. ☹



Figure 3. Defense Appropriations Subcommittee Chair Bill Young makes a motion to “rise and report” the FY2012 Defense Appropriations bill from the Committee of the Whole to the House.