PRECEDENTS

OF THE

OKLAHOMA HOUSE OF REPRESENTATIVES

HOUSE PRECEDENTS OF THE FIFTIETH, FIFTY-FIRST AND FIFTY-SECOND OKLAHOMA LEGISLATURES

(2005-2010)

STARE DECISIS ET NON QUIETA MOVERE

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Preface

Throughout the history of the Oklahoma House of Representatives, the presiding officers simply relied upon "institutional memory" when making rulings on questions of parliamentary procedure arising from a point of order or parliamentary inquiry. Specifically, it was the unwritten customs and precedents of the House that the presiding officer looked to for guidance. As time passed**,** the number of "rulings" to be recalled increased significantly, making it difficult for the presiding officer to effectively remember and accurately apply the "precedents" of the Oklahoma House of Representatives.

As a result, Representative Fred Morgan of Oklahoma City offered a motion in the course of the Forty-Eighth Oklahoma Legislature which, as adopted, required the Chief Clerk to record all rulings of the Chair based on "House precedent." For the first time, the Oklahoma House of Representatives began to formally note the parliamentary rulings made on such a basis. During the Forty-Ninth Oklahoma Legislature, the Chief Clerk's office compiled a collection of "points of order" and "rulings by the Chair." The procedural rules adopted by the House at the beginning of the Fiftieth Oklahoma Legislature explicitly called for a "book of precedents" providing that "the Speaker may publish…substantive rulings in a volume of precedents."

In the Oklahoma House, a precedent may arise in at least one of three ways: (1) the rulings or decisions of the Speaker arising from a point of order or a point of inquiry; (2) the decisions or conclusions made by the House itself on a question; and (3) precedents *sub silentio.* Precedents of the third type could arise in the case of some practice or procedure being followed by the House as a matter of course and without objection. From the point of view of the members and the public, the most visible precedents are those which result from an interpretation of the House rules by the presiding officer arising from a point of order.

The format for the heading of each precedent is as follows: first, a section number from House rules indicating which House Rule the precedent is interpreting; second, a number will follow the House rule section showing how many precedents have been made interpreting that specific House Rule; if needed, the precedent number will be followed by a letter indicating whether that precedent itself is interpreting an earlier precedent previously published by the House; next, each precedent will include the year in which the precedent was published and finally, the heading will include a descriptive phrase indicating the subject matter of the precedent.

The body of the precedent will consist of the following: the first paragraph will contain either the full House rule or a sufficient portion of the House rule to allow the reader to easily discover what language in the rule is being interpreted; following the "rule" paragraph, the next paragraph will contain the history of the ruling; following the "history" paragraph, the next paragraph will provide the actual ruling or precedent; and finally, if appropriate, the reasoning behind the ruling will be provided with sufficient detail to guide a future presiding officer faced with the same or similar circumstances. If available, a House precedent will include a citation to the House Journal as well as a citation to the record of audio or video recordings created by the House on a daily basis.

By having a written "book of precedents," the Oklahoma House of Representatives observes the time-honored common law principle of *stare decisis*, thus establishing a more open and predictable legislative process for the people of Oklahoma.

RULE ONE

DUTIES AND RIGHTS OF THE SPEAKER

§ 1.2 PRESERVATION OF ORDER AND DECORUM

1.2 - 1. (2010) Distribution of Literature On House Floor

Rule – House Rule 1.2, paragraph (a) states:

> *The Speaker shall preserve order and decorum. In case of any disturbance or disorderly conduct in the House Chamber, halls or rooms belonging to the House, the Speaker shall have the power to order the same to be cleared or direct any other action necessary to preserve order and decorum.*

History – Representative Sullivan raised a point of order as to whether it was in order for literature to be distributed on the House Floor when such literature did not display the distributing Member's name. The presiding officer stated that while no House Rule requires that a Member's name be placed on literature intended for distribution on the House Floor, it had been the practice of the House to require that this be done in

order to provide notice to the members as to who had requested distribution of the material. As such the presiding officer ruled that all materials distributed on the House Floor must have the distributing member's name displayed on the material before such material would be approved for distribution.[1]

Ruling – It is the decision of the Chair that all materials distributed on the House Floor must display the distributing member's name.

[1] *Okla. H. Jour.*, 404, 52nd Leg., 2nd Reg. Sess. (Feb. 10, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 01:03:24-01:06:40 (Feb. 10, 2010).

RULE SIX

BILLS AND RESOLUTIONS

§ 6.1 DEFINITION OF THE TERM "BILL"

6.1 - 1. (2009) Form Of Title During Stages Of Legislation

Rule – House Rule 6.1 states in part:

> *The term "bill", as used in these Rules, shall mean proposed legislation which in order to become law must pass through the Legislature according to the procedures established by the Oklahoma Constitution…*

History – While House Bill 1958 was under consideration, Speaker Benge moved to amend House Bill 1958 by adopting a floor substitute in lieu of the bill. Representative Morrissette raised a point of order as to whether it was in order to consider the floor substitute because if adopted, the bill as amended would not meet the definition of a bill as established in House Rule 6.1. Specifically, if adopted, the floor substitute would not have a complete title rendering it constitutionally defective and out of order for the House to consider.

The presiding officer ruled the point not well taken and stated that the floor substitute did conform to the definition of a bill as provided in House Rule 6.1 and that it would be appropriate for the House to consider whether to adopt the amendment.[1]

Ruling – It is the ruling of the Chair that a substitute amendment lacking a complete title does not violate House Rule 6.1 and may be considered by the House.

Reasoning – In defining the term "bill" in House Rule 6.1, the rule alludes to the fact that there are constitutional procedures that must be followed in order for proposed legislation to become law. Implied in the phrase "procedures established by the Oklahoma Constitution" is the idea that to be constitutionally sound a bill must have a full title.[2]

Article V, Section 57 says in relevant part:

> *Every act of the Legislature shall embrace but one subject, which shall clearly be expressed in its title…*

When Section 57 uses the term "act", it is speaking of proposed legislation that has proceeded through the required stages of legislation and upon the Governor's approval, would become law.

As long as proposed legislation passed by the Legislature meets the requirement that "every act shall embrace…one subject…clearly…expressed in its title",

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[1] *Okla. H. Jour.*, 721, 722, 52nd Leg., 1st Reg. Sess. (March 3, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:29, 1:12-7:41 (March 3, 2009).
[2] OK CONST Art. V § 57.

there is no Constitutional mandate that a proposed measure have a specific form of title or any title at all as it passes through the legislative process. The measure must only possess a full title when the measure has completely passed through the required stages of legislation and arrives at the Governor's desk for consideration.[3]

On the question of what form the title must have as a measure passes through the stages of legislation, the applicable constitutional provision is Article V, Section 30. Section 30 says in relevant part, "Each House may determine the rules of its proceedings…" Although other adopted House rules do address the question of what form a title must have as a measure undergoes consideration in the House of Representatives,[4] House Rule 6.1 expresses no requirements as to the form a measure's title must possess as it passes through the stages of legislation, meaning that no violation of the rule occurred when the House took up consideration of a substitute amendment thought to be lacking a full title.

Finally, it is not appropriate for the presiding officer neither to make a determination regarding the constitutionality of a proposed amendment nor to determine the constitutional sufficiency of the amendment's title.[5]

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[3] Id.; OK CONST Art. VI § 11.

[4] For requirements at time of "introduction" see *Okla. H. Rules*, § 6.4 (52nd Leg.); when reported from House committees see *Okla. H. Rules*, § 7.5 (52nd Leg.); for amendments of title during *General Order* see *Okla. H. Rules*, § 8.6 (52nd Leg.).

[5] *Mason's Manual of Legislative Procedure* 518, 519 § 729(3), (4) (National Conference of State Legislatures 2000).

§ 6.4 INTRODUCTION

6.4 - 1. (2010) Appropriation Shell Bills Exempted From Eight-Bill Limit

Rule – House Rule 6.4, paragraphs (b) and (c) state:

(b) Except as provided in subsection (c) of this section, no Member of the House of Representatives shall be the principal author of more than eight (8) bills or joint resolutions during a session of the Legislature.

(c) The provisions of subsection (b) of this section shall not apply to:

1. bills containing appropriation matters of which the principal author is the Chair of the Appropriations and Budget Committee of the House…

History – During consideration of House Bill 2350, Representative Morrissette raised a point of order that House Bill 2350 was not in order to consider pursuant to House Rule 6.4, paragraph (c) because it lacked published appropriations numbers thereby removing it from the exception to the eight (8) bill limit contained in paragraph (c). Representative Morrissette requested that the measure be withdrawn from consideration until specific appropriations were published in the measure.

The presiding officer stated that a shell bill styled as an appropriation bill falls within the exceptions enumerated in House Rule 6.4, paragraph (c). While House Bill 2350 did not yet contain actual appropriations, it was clearly intended for use as an appropriation measure and therefore would be in order for the House to consider. The presiding officer ruled the point not well taken.

Representative Morrissette appealed the ruling of the presiding officer and the decision of the presiding officer was upheld upon a roll call vote.[6]

Ruling – It is the decision of the Chair that a shell bill styled as an appropriation bill falls within the exception enumerated in House Rule 6.4, paragraph (c) excepting appropriation bills authored by the Appropriations and Budget chairperson from the eight (8) bill limitation.

§ 6.6 PRINCIPAL SENATE AUTHOR OF A HOUSE BILL OR RESOLUTION

6.6 - 1. (2010) Consideration of Measures With Pending Principal Senate Author

Rule – House Rule 6.6 says in part:

> *…no bill or resolution lacking a principal Senate author shall be scheduled for floor consideration…*

History – During the course of considering House Bill 2654, Representative Lamons raised a point of order inquiring whether House Bill 2654 was out of order for consideration by the House pursuant to House Rule 6.6 because the measure on its face did not reflect a Senate author.

The presiding officer stated that the Senate author was being held in the electronic author/coauthor system and the principal Senate author would be reflected once the

[6] *Okla. H. Jour.*, 402, 403, 52nd Leg., 2nd Reg. Sess. (Feb. 10, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 0:47:51-1:03:15 (Feb. 10, 2010).

measure had been considered and passed on Third Reading and final passage. The presiding officer ruled the point not well taken.[7]

Ruling – It is the ruling of the Chair that a measure may be taken up for consideration on the House Floor when the measure's principal Senate author has been designated and is pending in the House's electronic coauthor software.

§ 6.7 PROCEDURES GOVERNING SIMPLE AND CONCURRENT RESOLUTIONS

6.7 - 1. (2005) Form Of Amendments

Rule – House Rule 6.7, paragraph (c) states in part:

A motion to adopt a simple or concurrent resolution shall be subject to amendment and debate. A motion to amend shall be in order immediately…

History - Representative Kiesel moved to amend House Resolution 1025 by inserting the language of House Resolution 1015, which motion was ruled out of order because the amendment was not presented in written form.

The presiding officer ruled that it is necessary to have an amendment before the Clerk prepared [in order] to amend a resolution.[8]

[7] *Okla. H. Jour.*, 439, 52nd Leg., 2nd Reg. Sess. (Feb. 15, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 1:33:58-1:35:32 (Feb. 15, 2010).

Ruling – It shall be the decision of the Chair that House Rule 6.7(c) shall be interpreted to mean that all proposed amendments to simple resolutions, noting the page and the line, shall be submitted to the Clerk on a separate piece of paper before being taken up for consideration by the House.

Reasoning – House Rule 8.6(b) states that, "The body of a bill or joint resolution shall not be defaced or interlined, but all proposed amendments, noting the page and line, shall be submitted on a separate piece of paper to the House staff for preparation and shall be filed with the Office of the Chief Clerk." While this rule is not binding authority because it pertains only to bills and joint resolutions on General Order, it should be viewed as strong persuasive authority. If it is desirable to require that amendments to bills and joint resolutions be presented in written form, it is logical and reasonable to impose the same requirement on proposed amendments to simple resolutions.

Also, House Rule 10.3 lends support in that it allows the presiding officer to require proposed motions be submitted in writing. If it is reasonable for the presiding officer to require that motions be presented in written form, it is not unreasonable for the presiding officer to interpret House Rule 6.7(c) to impose the same requirement on amendments proposed to simple resolutions. However, more important than the persuasive authority provided in House Rules 8.6(b) and

[8] *Okla. H. Jour.*, 1244, 50th Leg., 1st Reg. Sess. (2005); *Daily H. Sess. Dig. Rec.*, 50th Leg., 1st Reg. Sess. Track 10:25, 7:35-9:50 (April 14, 2005).

10.3, the custom of the House is to require that amendments be submitted to the clerk in written form.

Under other parliamentary authorities, there clearly exists support for the requirement that amendments be submitted in writing. Specifically, in Rule XVI, *Motions and Amendments*, Paragraph 1, the United States House of Representatives requires that all motions be submitted in writing upon the demand of a Member, Delegate or Resident Commissioner.[9] The precedents of the U.S. House explicitly hold that amendments should be submitted in writing.[10] Furthermore, *Mason's Manual of Legislative Procedure* states that amendments to bills and resolutions must be submitted in writing.[11]

In addition to such other persuasive authorities as may be marshaled both from within House Rules and without from other sources, a healthy dose of common sense must also be applied. Specifically, in order for Members to have some idea of what an amendment may contain, it is clearly necessary for the clerk to have a copy of the proposed amendment so that the presiding officer may direct that it be read prior to its consideration.

§ 6.8 FINAL ACTION

6.8 - 1. (2005) Bill Unavailable For Further Consideration after Final Action Occurs

Rule – House Rule 6.8, paragraph (a) states in part:

[9] U.S. House Rule XVI, Par. 1 (109th Cong.).
[10] 8 Cannon Sec. 2826; Deschler Ch 27 § 1.2.
[11] *Mason's Manual of Legislative Procedure* 273 § 400(3) (National Conference of State Legislatures 2000).

(a) The following action shall constitute final action on any bill or resolution:

1. committee recommendation of "Do Not Pass"…

History – Representative Hamilton moved to suspend House Rules 7.11 and 7.13 to withdraw House Bill 1699 from the Business and Economic Development Committee and send it directly to the calendar.

The presiding officer ruled the motion out of order pursuant to House Rule 6.8 since House Bill 1699 was reported "Do Not Pass" from the Business and Economic Development Committee which constitutes final action.[12]

Ruling – It shall be the decision of the Chair that House Rule 6.8 shall be interpreted to mean that "final action" on any bill or resolution arising from a committee recommendation of "Do Not Pass" shall result in that bill being unavailable for retrieval out of committee by any method including a suspension of House rules.

Reasoning – In the above ruling, the underlying question is what does "final action" under House Rule 6.8 truly mean. Based on the record, it seems the appealing party interpreted the language of Rule 6.8(a)(1) to mean that by suspending the rule, the bill in question could merely be withdrawn from committee and then proceed through the legislative process. Immediately, two difficult and serious questions present

[12] *Okla. H. Jour.*, 1020, 50th Leg., 1st Reg. Sess. (March 17, 2005); *Daily H. Sess. Dig. Rec.*, 50th Leg., 1st Reg. Sess. Track 10:13, 0:00-9:55 (March 17, 2005); affirmed at *Okla. H. Jour.*, 1542, 1543, 52nd Leg., 1st Reg. Sess. (April 27, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:14, 3:13-9:42 (April 27, 2009).

themselves; first the question of finality within the House rules and second the question of orderliness within the legislative process.

When considering the issue of finality one must remember that while it is true that most requirements or directives within House rules may be suspended by the requisite two-thirds majority under House Rule 14.1(c), there are certain actions that cannot be undone and are not therefore susceptible to suspension. Rule 6.8 is an example of one such provision.

Once final action occurs, the bill in question no longer exists. It is dead, final means final.

Besides the question of finality within House rules, the present ruling also implicates a more general, yet longstanding principle of orderliness within the legislative process. When compiling his *Manual of Parliamentary Practice* Thomas Jefferson stated:

> *…it is more material that there should be a rule to go by, than what that rule is; that there may be an uniformity of proceeding in business, not subject to the caprice of the Speaker, or captiousness of the members…it is very material that order, decency and regularity be preserved in a dignified public body.*[13]

Clearly, order is the seminal principle to be observed in all things pertaining to the legislative process.
The idea of suspending the rules in order to resurrect a bill that met its end for reasons provided in Rule 6.8, not

[13] Thomas Jefferson, *A Manual Of Parliamentary Practice* 2 § 1 (Washington City: S.H. Smith, 1801).

only violates the supreme principle of order, but in fact, would create disorder in the immediate case in a very practical way. Specifically, where would the newly revived bill appear within the legislative process?

While the appearance of House Bill 1699 on the House calendar by suspension of Rule 6.8 seems innocuous enough, the unavoidable implication of such an action would be that any bill, even after receiving final action, could be resurrected anywhere within the legislative cycle. Such a result would create unnecessary chaos in an already complex legislative process.

While many requirements in the House rules may be suspended, it is paramount that certain constraints remain firmly in place so that order and predictability might prevail over chaos and confusion. The ruling of the Chair regarding the "final action" provision of Rule 6.8 achieves just that.

6.8 - 2. (2008) Veto By Governor Not Final Action

Rule – House Rule 6.8, paragraph (a) states:

The following action shall constitute final action on any bill or resolution:

1. committee recommendation of "Do Not Pass",

2. if a motion to reconsider the vote on Third Reading or Fourth Reading fails to prevail,

3. if a motion to table the motion to reconsider prevails, or

4. if a vote is taken on Third Reading or Fourth Reading and no notice is served to reconsider the vote.

History – Representative Gilbert requested a ruling of the Chair as to whether or not, under the terms of House Rule 6.8, consideration of House Bill 2547 by the House was in order. According to Representative Gilbert, the measure contained the same subject matter as a measure vetoed by the Governor in the course of the previous legislative session.

The presiding officer ruled the point not well taken pursuant to House Rule 6.8 because the Rule only applies when the action taken was to defeat a measure within the legislative process of the House of Representatives and was not applicable in the case of a gubernatorial veto. As such, the presiding officer ruled consideration of House Bill 2547 in order. Representative Gilbert appealed the ruling of the Chair and the decision of the presiding officer was upheld by the House upon roll call.[14]

Ruling – It shall be the decision of the Chair that veto of a measure by the Chief Executive does not constitute final action under the terms of House Rule 6.8.

[14] *Okla. H. Jour.*, 678, 51st Leg., 2nd Reg. Sess. (2008*); Daily H. Sess. Dig. Rec.*, 51st Leg., 2nd Reg. Sess. Track 10:16, 6:33-13:10 (March 6, 2008); affirmed at *Okla. H. Jour.*, 1593, 52nd Leg., 1st Reg. Sess. (May 4, 2009*)*; *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:27, 1:29-3:09 (May 4, 2009).

6.8 - 3. (2009) Bill Receiving Final Action May Not Be Offered As Instructions To Conference Committee

Rule – House Rule 6.8, paragraph (a), subparagraph (1.) and paragraph (b) state:

The following action shall constitute final action on any bill or resolution:

1. committee recommendation of "Do Not Pass",

(b) If final action is such as to defeat a bill or resolution, no other bill or resolution having the same effect and covering the same specific subject matter shall be considered by the House during either session of the current Legislature.

History – During consideration of the Conference Committee Report on Senate Bill 135, Representative Brown moved to reject the conference committee report with the following instructions:

1. Replace the existing content of the entire measure with the content of the introduced version of HB 1312 of the First Session of the Fifty-second Oklahoma Legislature;

2. Amend the dollar figure in subsection G of Section 1 of HB 1312 from Fifty Thousand Dollars ($50,000.00) to Thirty-six Thousand Dollars ($36,000.00).

Representative Sullivan raised a point of order stating that House Bill 1312 had been reported out of the Economic Development and Financial Services Committee with a “Do Not Pass” report and as such,

Representative Brown's motion to reject the conference committee report on Senate Bill 135 with attached instructions was out of order. The presiding officer ruled the point of order well taken and the motion to reject with attached instructions out of order pursuant to House Rule 6.8, paragraph (b).[15]

Ruling – It is the ruling of the Chair that a bill that previously received final action may not be offered as attached instructions to a conference committee.

6.8 - 4. (2010) Motion To Rescind May Not Be Used To Avoid Final Action

Rule – House Rule 6.8, paragraph (a) states in part:

> *The following action shall constitute final action on any bill or resolution:*
>
> *…a motion to reconsider the vote on Third Reading or Fourth Reading [that] fails to prevail…*

History – Representative Nelson moved to reconsider the vote whereby Senate Bill 2207 failed, which motion failed of adoption.

Representative Nelson moved to rescind the vote whereby the reconsideration motion failed.

Representative Reynolds raised a point of order stating that the motion to rescind was dilatory.

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[15] *Okla. H. Jour.*, 1542, 1543, 52nd Leg., 1st Reg. Sess. (April 27, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:14, 3:13-9:42 (April 27, 2009).

The presiding officer stated that the motion to rescind the vote to reconsider was not in order because when a motion to reconsider fails on a measure which itself previously failed, the failed motion to reconsider constitutes final action on the measure and therefore is not in order to consider further.[16]

Ruling – It is the ruling of the Chair that a motion to rescind cannot be used to negate an action which would otherwise constitute final action.

6.8 - 5. (2010) Failure Of Motion To Adopt Conference Committee Report Not Final Action

Rule – House Rule 6.8, paragraph (a) states:

(a) The following action shall constitute final action on any bill or resolution:

1. committee recommendation of "Do Not Pass",

2. if a motion to reconsider the vote on Third Reading or Fourth Reading fails to prevail,

3. if a motion to table the motion to reconsider prevails, or

4. if a vote is taken on Third Reading or Fourth Reading and no notice is served to reconsider the vote.

[16] *Okla. H. Jour.*, 1442, 52nd Leg., 2nd Reg. Sess. (April 22, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 1:54:57-2:01:10 (April 22, 2010).

History – The Conference Committee Report on Senate Bill 2033 was called up for consideration.

Representative Sears moved that the House adopt the conference committee report, which motion failed of adoption upon a roll call vote.

Later in the day, The Conference Committee Report on Senate Bill 2033 was again called up for consideration.

Representative Reynolds raised a point of inquiry as to whether it was in order for the House to proceed with considering the conference committee report again since the motion to adopt the conference committee report had previously failed.

The presiding officer stated that failure of a motion to adopt a conference committee report did not constitute "final action" under House Rule 6.8 and therefore consideration of the report was in order.
Upon motion of Representative Sears, the conference committee report was adopted upon a division of the question.[17]

Ruling – It is the ruling of the Chair that failure of a motion to adopt a conference committee report does not constitute "final action".

[17] *Okla. H. Jour.*, 1753, 52nd Leg., 2nd Reg. Sess. (May 25, 2010); *Okla. H. Jour.*, 1772, 1773, 52nd Leg., 2nd Reg. Sess. (May 26, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 06:07:48-06:08:21; 06:18:07-06:19:04 (May 26, 2010).

RULE SEVEN

COMMITTEES

§ 7.4 AUTHORITY OF THE CHAIR

7.4 - 1. (2008) Cognizance Of Committee Procedures By Presiding Officer

Rule – House Rule 7.4, paragraph (b) states in part:

> *Except as otherwise provided in these Rules, the Chair has all authority necessary to ensure the efficient operation of the committee or subcommittees, including, but not limited to, presiding over the committee or subcommittees, establishing the agenda for the committee or subcommittees, recognition of members or presenters, deciding all questions of order in committee or subcommittees and determining the order in which matters are considered in committee or subcommittees…*

History – Representative Covey raised a point of order pursuant to House Rules 7.2(a) and (b) concerning lack of notice for a committee meeting conducted on the previous day. Specifically, his point of order included a question of the Chair as to whether or not a meeting notice should include attached language for legislation to

be considered at the committee meeting announced in the published notice.

The presiding officer, Representative Armes, held that it was not within the jurisdiction of the presiding officer on the House Floor to address a member's concerns regarding a possible violation of committee procedures and that such complaints or concerns should be taken up with the relevant committee chairperson. Representative Covey appealed the ruling of the Chair and the House upheld the ruling upon roll call.[1]

Precedent – It shall be the decision of the Chair that the Presiding Officer will not take cognizance of or attempt to exercise jurisdiction over alleged violations of committee procedure while presiding on the House Floor.

Reasoning – In practical terms, the presiding officer is not in a position to effectively handle complaints pertaining to committee procedure. There are, however, other appropriate ways for a member to raise concerns regarding committee procedure within the House.

Under the rules and traditions of the Oklahoma House of Representatives, the concerned member has several options available to them if they believe a committee chairperson is violating House rules pertaining to committee operations. First, the member may approach the offending chairperson directly. If this does not end

[1] *Okla. H. Jour.*, 587, 588, 51st Leg., 2nd Reg. Sess. (March 4, 2008); *Daily H. Sess. Dig. Rec.*, 51st Leg., 2nd Reg. Sess. Track 10:20, 10:45-15:25 (March 4, 2008); affirmed at *Okla. H. Jour.*, 1077, 51st Leg. 2nd Reg. Sess. (April 2, 2008); *Daily H. Sess. Dig. Rec.*, 51st Leg., 2nd Reg. Sess. Track 10:19, 0:00-0:54 (April 2, 2008).

in a positive result, the member may approach the Speaker directly and raise his or her concerns.

If this does not satisfy the member, House rules provide an outlet that is public and specifically designed for airing of complaints about procedures and processes within the House.[2] This is known colloquially as a "question of privilege of the House." To be recognized for this purpose, the member should notify the Majority Floor Leader of his or her intention to seek recognition for a question of privilege of the House.[3] At the appropriate time within the course of the day's legislative business, unless a more privileged motion is lodged, the Majority Floor Leader must seek recognition on behalf of the requesting member. Upon receiving recognition, the member would approach the well of the House and notify the full House of his or her concerns regarding appropriate notice of committee meetings.

§ 7.11 BILL SUMMARY

7.11 - 1. (2005) Fiscal Impact Statements*

Rule – House Rule *7.12, paragraph (a) states in part:

> *All bills and resolutions whose adoption will have a fiscal impact, including the affecting of revenues, expenditures or fiscal liability shall not be scheduled for floor consideration unless accompanied by a fiscal analysis.*

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[2] *Okla. H. Rules*, § 9.5 (51st. Leg.).
[3] *Prec. Okla. H. of Rep.*, § 9.2(1.), 50th Leg., 1st Reg. Sess. (April 7, 2005).
* Interpreted Rule 7.12, 50th Leg., this rule was renumbered as Rule 7.11 in House Rules adopted for 51st Leg. and 52nd Leg.

History – Representative Wright raised a point of order pursuant to House Rule 7.12(a) that a fiscal impact statement is required for consideration of House Bill 1230.

The Speaker Pro Tempore Winchester ruled the point well taken and pursuant to House Rule *7.12(a), House Bill 1230 would be laid over until a fiscal impact statement was distributed.[4]

Ruling – It shall be the decision of the Chair that the phrase "accompanied by a fiscal analysis" contained in House Rule 7.12(a) shall be interpreted to mean that the fiscal analysis prepared for a particular bill or resolution must be distributed on the House Floor before that bill or resolution may be heard.

7.11 - 2. (2007) Measures With No Fiscal Impact

Rule – House Rule 7.11, paragraph (a) states in part:

> *All bills and resolutions whose adoption will have a fiscal impact, including the affecting of revenues, expenditures or fiscal liability shall not be scheduled for floor consideration unless accompanied by a fiscal analysis.*

History – During floor consideration of Senate Bill 633, Representative Morrissette raised a point of inquiry regarding whether or not the bill under consideration was required to be accompanied by a "fiscal impact statement." The presiding officer ruled that if no fiscal

[4] *Okla. H. Jour.*, 425, 50th Leg., 1st Reg. Sess. (Feb. 24, 2005); *Daily H. Sess. Dig. Rec.*, 50th Leg., 1st Reg. Sess. Track 12:30, 8:27-11:48 (Feb. 24, 2005).

impact was identified by the House fiscal staff and the measure's author represented to the House that there was not a fiscal impact associated with the measure, the Chair would rely upon the author's representation.[5]

Ruling – It shall be the decision of the Chair that House Rule 7.11(a) shall be interpreted to mean that if no fiscal impact is identified by the House fiscal staff and the measure's author represents to the House that there is not a fiscal impact associated with the measure, the Chair will rely upon the author's representation.

7.11 - 3. (2008) Availability Of Fiscal Analysis In Second Session Of Legislature

Rule – House Rule 7.11, paragraph (c) states in part:

> *If any bill…is scheduled for floor consideration without a fiscal…analysis having been prepared, it shall be the right of any Member to raise a point of order on the Floor…*

History – Representative Covey raised a question of the Chair pursuant to House Rule 7.11 as to whether or not it was proper for House Bill 1897 to be considered without the availability of a fiscal impact statement. House Bill 1897 was introduced in the First Session of the 51st Oklahoma Legislature. It received a favorable committee recommendation but was not scheduled for consideration by the full House. In the Second Session of the 51st Oklahoma Legislature, House Bill 1897 was

[5] *Okla. H. Jour.*, 1146, 51st Leg., 1st Reg. Sess. (April 9, 2007); *Daily H. Sess. Dig. Rec.*, 51st Leg., 1st Reg. Sess. Track 10:11, 2:16-4:32 (April 9, 2007).

scheduled for consideration and was taken up by the full House.

Although a proper fiscal analysis of the measure was drafted in anticipation of consideration by the full House in the First Session of the Legislature, the fiscal analysis had not been published on the House Floor Calendar at the time the measure was actually taken up in the Second Session of the Legislature.[6]

Precedent – In response to the question of the Chair, Speaker Pro Tempore Blackwell directed that House Bill 1897 be laid over until a fiscal impact statement was provided or the measure's author provided additional information describing the parameters of the measure's fiscal impact.

7.11 - 4. (2009) No Requirement For Bill Summary For Appropriation Measures

Rule – House Rule 7.11, paragraph (a) states in part:

> *All bills and resolutions whose adoption will have a fiscal impact, including the affecting of revenues, expenditures or fiscal liability shall not be scheduled for floor consideration unless accompanied by a bill summary which shall include a fiscal analysis…*

History – During consideration of the Conference Committee Report on Senate Bill 81, Representative Reynolds raised a point of inquiry as to whether consideration of the conference committee report should

[6] *Okla. H. Jour*., 414, 51st Leg., 2nd Reg. Sess. (Feb. 19, 2008); *Daily H. Sess. Dig. Rec.*, 51st Leg., 2nd Reg. Sess. Track 10:02, 2:18-4:55 (Feb. 19, 2008).

be postponed since no accompanying fiscal analysis had been published on the House Floor Calendar.
The presiding officer stated that it has been the practice of the House not to require a published fiscal analysis for appropriation measures since the fiscal impact of the measure is plain on its face.[7]

Ruling – It is the ruling of the Chair that appropriation measures are not required to be accompanied by a published fiscal analysis because the fiscal impact of the measure is plain on its face.

7.11 - 5. (2009) Summary For Adopted Floor Substitute Becomes Bill Summary For Bill

Rule – House Rule 7.11, paragraph (a) says in relevant part:

> *All bills and resolutions whose adoption will have a fiscal impact, including the affecting of revenues, expenditures or fiscal liability shall not be scheduled for floor consideration unless accompanied by a bill summary which shall include a fiscal analysis…*

History – During consideration of House Bill 1330, Representative Ritze moved to amend the measure by adopting a floor substitute in lieu of the bill itself. Representative Peters moved to advance the question which motion was adopted upon a roll call vote. Representative Ritze moved adoption of the floor substitute which was adopted upon a division of the question. Representative Peters then moved to advance

[7] *Okla. H. Jour.*, 1793, 52nd Leg., 1st Reg. Sess. (May 20, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:10, 1:23-3:19 (May 20, 2009).

the bill. Representative Brown raised a point of order as to whether a fiscal summary was available for the bill as amended by the floor substitute.

The presiding officer ruled the point not well taken and stated that a fiscal summary for the floor substitute was available on the Floor Calendar and that upon adoption of the floor substitute, the fiscal summary prepared for the floor substitute became the fiscal summary for the bill itself.[8]

Ruling – It is the ruling of the Chair that upon adoption of a floor substitute, the fiscal summary prepared for the floor substitute becomes the fiscal summary for the bill itself.

§ 7.15 CONFERENCE COMMITTEE REPORTS

7.15 - 1. (2005) Layover Requirement For Senate Conference Committee Reports*

Rule – House Rule *7.16, paragraph (c) states:

> *Prior to consideration, a conference committee report shall lie over thirty-six (36) hours after it is filed. No conference committee report shall be considered for adoption or rejection if Members of the House have not been provided a printed or electronically transmitted*

[8] *Okla. H. Jour.*, 951, 952, 52nd Leg., 1st Reg. Sess. (March 11, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:56, 24:03-25:47 (March 11, 2009).

* Interpreted Rule 7.16, paragraph (c) from 2005; a variation of this rule was adopted and renumbered as Rule 7.15 in House Rules adopted in 2009; the required layover period for House conference committee reports is contained in paragraph (d) of Rule 7.15 of 2009.

copy of the report twenty-four (24) hours before the consideration of the report. The report must be accompanied by a separate summary of the changes made to the bill or resolution sent to conference. This subsection shall not apply on the last two (2) days of any legislative session once the date of the sine die adjournment has been set.

History – Representative Gilbert raised a point of order citing House Rule 7.16(c) that the conference committee report on Senate Bill 556 had not lain over for thirty-six (36) hours prior to consideration.

The Presiding Officer ruled the point not well taken and House Rule 7.16(c) applies to the filing of conference committee reports.[9]

Ruling – It shall be the decision of the Chair that the timing requirements delineated in House Rule 7.16(c) shall be interpreted as to not apply to conference committee reports associated with Senate bills.

Reasoning – When any House rule is considered only in the sterile and isolated context of the House rules themselves, there exists the danger that the rule may be interpreted too narrowly. It is therefore incumbent upon the Speaker when exercising his expansive authority to interpret House rules that he not do so on a whim but employ a broadly encompassing view not only of the

[9] *Okla. H. Jour.*, 1687, 50th Leg., 1st Reg. Sess. (May 18, 2005); *Daily H. Sess. Dig. Rec.*, 50th Leg., 1st Reg. Sess. Track 10:07, 0:23-2:39 (May 18, 2005); affirmed at *Okla. H. Jour.*, 1759, 52nd Leg., 1st Reg. Sess. (May 19, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:10, 0:39-4:30 (May 19, 2009); *Okla. H. Jour.*, 1713, 52nd Leg., 2nd Reg. Sess. (May 25, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 00:25:52-00:26:53 (May 25, 2010).

letter of the rules, but upon the publicly announced policies of the Speaker, the customs and precedents of the House and parliamentary law.

While House Rule 7.16(c) does not explicitly state that the rule only applies to House conference committee reports, it does strongly imply such a holding. In the first sentence of Rule 7.16(c) it states, "Prior to consideration, a conference committee report shall lie over thirty-six (36) hours after it is filed." The operative term for the question at hand is the word "filed" as it is used in Rule 7.16(c). On the basis of the broad authority given under House Rule 3.1 to the Chief Clerk to oversee the legislative process in the House along with due consideration of the customs of the House, this means filed in the Chief Clerk's office within the House of Representatives.

The logical progression is as follows, if the generally understood meaning of the term "filed" as expressed in House Rule 7.16(c) means filed in the Chief Clerk's office, then it is impossible for Senate conference committee reports to fall under the time requirements of Rule 7.16(c) because they are never "filed" in the Chief Clerk's office. They are only filed in the Senate by whatever method the Senate prescribes.

From a practical perspective a conference committee report pertaining to a Senate bill may be filed, considered and accepted on the Senate side and not be transmitted to the House for several days. Furthermore, upon arrival in the House, there is no readily ascertainable event on which to base the timing requirements imposed by House Rule 7.16(c). At what point would a Senate conference committee report be considered "filed"? Would it be when the message

arrives from the Senate notifying the House of the conference committee report's transmission to the House? Might it be when the message of submission is distributed to other House clerks for processing and inclusion in the bill tracking system, or perhaps would it be when the Senate measure was distributed on the House Floor? Which event could reasonably be considered "filing" for the purposes of timing under Rule 7.16(c)? Put succinctly, there is no practical method of pinpointing when a Senate conference committee report is "filed" for the purposes of observing and calculating the timing requirements imposed by Rule 7.16(c).

Therefore, on the basis of practical considerations and the custom of the House, the time constraints imposed by House Rule 7.16(c) cannot and do not apply to Senate conference committee reports.

7.15 - 2. (2009) Germaneness Of Conference Committee Report Not Open To Question Once Debate In Progress

Rule – House Rule 7.15, paragraph (b) states in relevant part:

> *…A motion to adopt or reject a conference committee report shall be subject to debate. Such debate shall be limited to one (1) hour, equally divided between the proponents and the opponents of the motion…*

History – During consideration of the 2nd Conference Committee Report on Senate Bill 1170 while in debate on the question of adoption of the conference committee report, Representative Sullivan raised a point of order as to whether Sections two (2) and three (3) of the

conference committee report were limited to matters germane to Senate Bill 1170.

The presiding officer stated that because debate had already commenced, it was the opinion of the Chair that it would be disorderly to entertain a question of germaneness and as such, the point was not well taken.[10]

Ruling – It is the ruling of the Chair that once debate on adoption or rejection of a conference committee report is in progress, no point of order shall be recognized questioning the germaneness of the report.

7.15 - 3. (2010) No Restriction On New Language In Conference Committee Reports

Rule – House Rule 7.15, paragraph (a) states:

> *A conference committee report shall be considered by the House only when a majority of both the House and Senate members of the committee have signed the report. The House shall consider the report only if it is limited to matters germane to the bill or resolution.*

History – During consideration of the 2nd Conference Committee Report on House Bill 2659, Representative Reynolds requested a ruling of the presiding officer as to whether the conference committee report was in order for consideration.

Representative Reynolds raised a point of order stating that pursuant to *Mason's Manual of Legislative*

[10] *Okla. H. Jour.*, 1928, 52nd Leg., 1st Reg. Sess. (May 22, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:41, 17:57-19:33 (May 22, 2009).

Procedure a conference committee report shall be confined to the agreement reached between both Houses.[11]

The presiding officer ruled that the issues raised are addressed in House Rules 7.15 and 9.3 and the point not well taken.[12]

Ruling – It is the decision of the Chair that any limitations governing what language may be included in a conference committee report are contained within House Rules 7.15 and 9.3.

7.15 - 4. (2010) Conference Committee Report Considered Electronically Available At Time It Becomes Available In *BTOnline*

Rule – House Rule 7.15, paragraph (d) states in relevant part:

> *No House conference committee report shall be considered for adoption if Members of the House have not been provided a printed or electronically transmitted copy of the report twenty-four (24) hours before consideration of the report.*

History – When the 2nd Conference Committee Report on House Bill 2659 was called up for consideration, Representative Reynolds raised a point of order referencing the requirement in House Rule 7.15(d) that

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[11] *Mason's Manual of Legislative Procedure* 560 § 771(2) (National Conference of State Legislatures 2000).
[12] *Okla. H. Jour.*, 1779, 52nd Leg., 2nd Reg. Sess. (May 26, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 7:44:53-7:55:38 (May 26, 2010).

an electronic copy of a conference committee report must be made available to the members twenty-four (24) hours prior to consideration.

The presiding officer stated that a conference committee report becomes available electronically through *BTOnline*[13] at the time the report is filed with the Clerk's office and as such, the conference committee report in question had been available for twenty-four (24) hours.[14]

Ruling – It is the decision of the Chair that once a conference committee report becomes available through *BTOnline*, it is considered electronically available to the members.

7.15 - 5. (2010) Germaneness Requirement Applicable Only To House Conference Committee Reports

Rule – House Rule 7.15, paragraph (a) states:

> *A conference committee report shall be considered by the House only when a majority of both the House and Senate members of the committee have signed the*

[13] *BTOnline* is the electronic bill tracking software used by the Oklahoma Legislature. *BTOnline* is dynamically updated as a measure moves through the legislative process. In the case of a conference committee report for a House measure, the status of that House measure is updated when the conference committee report is physically filed with the Clerk's office meaning that an electronic copy of the report becomes available through *BTOnline* once the physical copy of the report is filed with the Clerk's office.

[14] *Okla. H. Jour.*, 1779, 52nd Leg., 2nd Reg. Sess. (May 26, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 7:56:00-7:58:51 (May 26, 2010).

report. The House shall consider the report only if it is limited to matters germane to the bill or resolution.

History – Upon consideration of the 2nd Conference Committee Report on Senate Bill 481, Representative Morrissette requested a ruling of the presiding officer as to whether the conference committee report was in order for consideration pursuant to House Rule 8.11, paragraph (a).

The presiding officer stated that House Rule 8.11 pertains to measures on General Order and that Senate Bill 481 was at a later point in the legislative process. As such, the point was not well taken.

Representative Morrissette then requested a ruling as to whether the conference committee report was in order pursuant to House Rule 7.15.

The presiding officer ruled that House Rule 7.15 historically had been interpreted by the Chair to be applicable only to conference committee reports filed for House bills but not to conference committee reports associated with Senate bills and therefore ruled the point not well taken.

Representative Morrissette appealed the ruling of the presiding officer and the decision of the Chair was upheld upon a roll call vote.[15]

Ruling – It is the ruling of the Chair that the germaneness requirement for conference committee

[15] *Okla. H. Jour.*, 1845, 1846, 52nd Leg., 2nd Reg. Sess. (May 26, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 09:22:43-09:32:42 (May 26, 2010).

reports contained in House Rule 7.15 applies only to conference committee reports filed for House measures.

RULE EIGHT

ORDER OF BUSINESS AND LEGISLATIVE PROCESS

§ 8.5 READING AND EXPLANATION

8.5 - 1. (2009) Referencing Discussion In Committee During Floor Consideration

Rule – House Rule 8.5, paragraph (b) states:

> *The Member presenting a bill or joint resolution shall be allowed a reasonable length of time in which to explain same, but said explanations shall not include a discussion of the merits of the proposition.*

History – During consideration on General Order of House Joint Resolution 1047, the presiding officer entertained the customarily allowed questions pertaining to House Joint Resolution 1047. Representative Reynolds raised a point of order as to whether it was in order to discuss what had previously occurred during consideration of the measure in committee.
The presiding officer ruled the point not well taken and

the questions in order.[1]

Ruling – It is the ruling of the Chair that discussions which occurred in committee may properly be referenced during discussion of the measure on General Order.

§ 8.6 AMENDMENTS

8.6 - 1. (2007) Recommendation Of Rules Committee And Motion To Strike Title

Rule – House Rule 8.6, paragraph (f) states in part:

> *…amendments to strike the Title or the Enacting or Resolving Clause of a bill or joint resolution shall be in order only when offered by the principal author of such bill or resolution and upon receiving prior approval from the House Rules Committee…*

History – During consideration of House Bill 1507, Representative Nations, in his capacity as Vice Chair of the Rules Committee, reported to the full House that the Rules Committee recommended that the title be stricken from House Bill 1507. After announcing the recommendation of the Rules Committee, Representative Nations moved to amend the bill by striking the title.

While the author of the bill, Representative Adkins, did not personally offer the motion to "strike title," he did not object to Representative Nations offering the motion

[1] *Okla. H. Jour.*, 1529, 52nd Leg., 1st Reg. Sess. (April 23, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:30, 1:32-2:26 (April 23, 2009).

on his behalf in conjunction with Representative Nations' announcement of the recommendation of the Rules Committee.

Again, during consideration of House Bill 2108, Representative Nations, in his capacity as Vice Chair of the Rules Committee, reported to the full House that the Rules Committee recommended that the title be stricken from House Bill 2108. After announcing the recommendation of the Rules Committee, Representative Nations moved to amend the bill by striking the title.

While the author of the bill, Speaker Cargill, did not personally offer the motion to "strike title," he did not object to Representative Nations offering the motion on his behalf in conjunction with Representative Nations' announcement of the recommendation of the Rules Committee.[2]

Precedent – It is the precedent of the Oklahoma House of Representatives under the terms of House Rule 8.6, paragraph (f), that it is permissible for the Vice Chair of the Rules Committee to announce the recommendation of the Rules Committee with regard to allowing an amendment to strike the title from a measure and for the Vice Chair to then offer the actual motion, on behalf of the measure's author, to strike the title.

[2] Okla. H. Jour., 877, 897, 51st Leg., 1st Reg. Sess. (March 14, 2007); Daily H. Sess. Dig. Rec., 51st Leg., 1st Reg. Sess. Track 10:04, 6:04-7:19; Track 10:41, 1:11-1:27 (March 14, 2007).

8.6 - 2. (2008) Title Of Floor Substitute Stricken

Rule – House Rule 8.6, paragraph (f) states in part:

> *Beginning on the Monday falling two (2) weeks prior to a Third Reading deadline, amendments to strike the Title or the Enacting or Resolving Clause of a bill or joint resolution shall be in order only when offered by the principal author of such bill or resolution and upon receiving prior approval from the House Rules Committee…*

History – Representative Banz, author of House Bill 1441, offered a floor substitute to House Bill 1441 which included language purporting to strike the title of the bill reported from the Appropriations and Budget Committee.

Representative Wright raised a point of order pursuant to House Rule 8.6, paragraph (f) that the floor substitute for House Bill 1441 was out of order because the floor substitute's title was stricken. The presiding officer ruled the point not well taken because the measure itself had been reported out of the Appropriations and Budget Committee.[3]

Precedent – It shall be the ruling of the Chair that House Rule 8.6, paragraph (f) shall be interpreted to mean that a bill reported to the full House without a title may be amended by a floor amendment which includes language purporting to strike the title of the bill.

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[3] Okla. H. Jour., 794, 51st Leg., 2nd Reg. Sess. (2008); Daily H. Sess. Dig. Rec., 51st Leg., 2nd Reg. Sess. Track 10:12, 15:53-18:13 (March 12, 2008).

Reasoning – Although the amendment's author, in offering an amendment to strike the title of the bill, did not meet the technical requirements of House Rule 8.6, paragraph (f), the version of the bill reported from committee did not itself contain a title. As such, no title existed within the bill to be stricken by a floor amendment, thus rendering the language to strike the bill's title meaningless.

From a practical perspective, no bill reported from the Appropriations and Budget Committee without a title would have been reported as such without the full knowledge and consent of the committee's chairman. Furthermore, under House Rule 8.6, paragraph (g), this same chairman has the authority to offer floor amendments to strike the title of measures affecting revenue or appropriations.

Finally, if the chairman saw fit to report the bill out of committee without title, it cannot be said that a floor amendment offered by another member which includes language striking the title of the bill violates the underlying principles represented by the rule. While the Banz floor substitute may appear to have violated the letter of the rule, it did not violate the spirit of House Rule 8.6, paragraph (f).

8.6 - 3. (2008) Title Stricken Prior To Floor Consideration

Rule – House Rule 8.6, paragraphs (e), (f) and (g) state:

(e) No amendment purporting to strike the Title or the Enacting or Resolving Clause of any bill or joint resolution shall be in order except as provided in subsections (f) and (g) of this section.

(f) Beginning on the Monday falling two (2) weeks prior to a Third Reading deadline, amendments to strike the Title or the Enacting or Resolving Clause of a bill or joint resolution shall be in order only when offered by the principal author of such bill or resolution and upon receiving prior approval from the House Rules Committee. Amendments offered under this subsection shall not be subject to the time constraints mandated by subsections (b) and (c) of this section.

(g) The Chairperson of the Revenue and Taxation Committee and the Chairperson of the Appropriations and Budget Committee shall be permitted to offer amendments to strike the Title or the Enacting or Resolving Clause of measures affecting revenue or appropriations. Amendments offered under this subsection shall not be subject to the time constraints mandated by subsections (b) and (c) of this section.

History – During the author's presentation of House Bill 3121, Representative Covey requested a ruling of the Chair as to whether or not it was in order for the House to consider House Bill 3121 with a stricken title under the terms of House Rule 8.6, paragraphs (e), (f) and (g). The presiding officer ruled the point not well taken noting that House Rule 8.6 applies solely to floor amendments and not to the measure itself and as such, consideration of House Bill 3121 was in order.[4]

[4] Okla. H. Jour., 821, 51st Leg., 2nd Reg. Sess. (2008); Daily H. Sess. Dig. Rec., 51st Leg., 2nd Reg. Sess. Track 10:40, 06:10-06:30 (March 12, 2008).

Ruling – It shall be the ruling of the Chair that House Rule 8.6, paragraphs (e), (f) and (g) are not applicable to a measure itself but apply only to amendments offered to the measure on the House Floor.

8.6 - 4. (2008) Amendment Lacking Substantive Change Out Of Order

Rule – House Rule 8.6, paragraph (a) states:

> *All House and Senate bills and joint resolutions when initially published on the Floor Calendar shall be subject to amendment beginning at the time of such publishing.*

History – During consideration of Senate Bill 163, Representative Terrill presented a comprehensive amendment, or "floor substitute," to Senate Bill 163 followed by another floor substitute, an amendment to the first main floor amendment offered by Representative Terrill. The amendment to the main amendment contained the same substantive language as the main amendment but included a "preamble" explaining the legislative intent of the constitutional amendment proposed in Senate Bill 163.

Although the preambular language, once adopted, would be included in the Oklahoma Session Laws, it would not be included in the substantive language of the Oklahoma Constitution upon adoption of the proposed constitutional amendment by a vote of the people.

Representative Brown raised a point of order as to whether the Terrill amendment to the first floor substitute was in order on the basis of there being no substantive change in the language between the

amendment to the floor substitute and the floor substitute itself.

The presiding officer did not rule on Representative Brown's point of order. He referred to and quoted section 401, paragraph (5) of *Mason's Manual* [5] which says:

> *The presiding officer should never rule an amendment out of order unless certain that it is. In case of doubt the presiding officer should entertain the amendment, subject to the right of a member to raise a point of order, or the presiding officer should submit to the house the question of whether the amendment is in order.*

The presiding officer exercised the prerogative of the Chair and put the following question to the House for a decision: "Shall the amendment to the amendment be considered a proper amendment?" The House ruled the Terrill amendment to the floor substitute improper upon roll call.[6]

Ruling – It shall be the ruling of the House that an amendment to the main floor amendment containing the same substantive language as the main floor amendment shall be out of order.

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[5] *Mason's Manual of Legislative Procedure* 274 § 401(5) (National Conference of State Legislatures 2000).
[6] *Okla. H. Jour.*, 1368, 1369, 51st Leg., 2nd Reg. Sess. (2008); *Daily H. Sess. Dig. Rec.*, 51st Leg., 2nd Reg. Sess. Track 10:21, 5:27-51:33 (April 23, 2008).

8.6 - 5. (2009) Amendments Offered to Untimely Filed Main Floor Amendments

Rule – House Rule 8.6, paragraphs (a) through (c) state the following:

(a) All House and Senate bills and joint resolutions when initially published on the Floor Calendar shall be subject to amendment beginning at the time of such publishing.

(b) A main floor amendment must be filed no later than twenty-four (24) hours after a bill or joint resolution is initially published on the Floor Calendar.

(c) An amendment to a main floor amendment must be filed no later than forty-eight (48) hours after a bill or joint resolution is initially published on the Floor Calendar.

History – While considering House Bill 1084, Representative Thomsen moved to suspend House Rule 8.6 for purposes of allowing consideration of an untimely filed amendment. The motion to suspend was adopted upon a roll call vote.

Upon suspension of House Rule 8.6, Representative Brown presented a proposed untimely main amendment to House Bill 1084. Prior to adoption of Representative Brown's main floor amendment, Representative John Wright moved to amend Representative Brown's main floor amendment with another amendment.

Representative Reynolds requested the presiding officer rule on the question of whether Representative Wright's proposed amendment to the untimely main floor

amendment was in order without a second motion to suspend House Rules.

The presiding officer ruled that due to the first suspension of House Rules for consideration of the untimely main floor amendment offered by Representative Brown, it was not necessary to suspend the Rules a second time to consider an amendment proposed to an untimely main floor amendment under consideration by the House of Representatives.[7]

Ruling – It shall be the decision of the Chair that upon suspension of House Rules for purposes of considering an untimely filed main floor amendment, an amendment to the main floor amendment then under consideration may be offered without a second vote to suspend House Rules.

Reasoning – Notice, transparency and full consideration are essential to the amendment process; however, the immediate needs of the House as expressed in a successful motion to suspend House Rules to consider an untimely filed amendment may temporarily supersede such considerations. It is up to the House to decide what amendments deserve immediate consideration outside the parameters of House Rule 8.6.

As such, if the House is willing to suspend the Rules to consider an untimely main floor amendment, it is reasonable that the House would consider other amendments offered to that same untimely main floor

[7] *Okla. H. Jour.*, 558, 52nd Leg., 1st Reg. Sess. (Feb. 18, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:22, 4:19-5:03 (Feb. 18, 2009).

amendment without having to suspend the Rules a second time.

8.6 - 5.A. (2009) Additional Untimely Main Floor Amendments Offered After First Rule Suspension

Rule – House Rule 8.6, paragraphs (a) through (c) state the following:

(a) All House and Senate bills and joint resolutions when initially published on the Floor Calendar shall be subject to amendment beginning at the time of such publishing.

(b) A main floor amendment must be filed no later than twenty-four (24) hours after a bill or joint resolution is initially published on the Floor Calendar.

(c) An amendment to a main floor amendment must be filed no later than forty-eight (48) hours after a bill or joint resolution is initially published on the Floor Calendar.

History – During consideration of House Bill 1604, Representative Sullivan moved to suspend House Rule 8.6 for purposes of considering an untimely amendment to Representative Ownbey's timely filed main floor amendment. The House adopted the motion to suspend upon a roll call vote. Representative Ownbey then offered his untimely amendment to the main amendment. The House adopted the untimely amendment and then adopted the main floor amendment as amended.

Subsequently, Representative Reynolds raised a point of inquiry as to whether, under the motion to suspend House Rules, it would be in order to offer untimely main floor amendments not contemplated by the original motion to suspend House Rules for the purpose of considering the first untimely main floor amendment.

The presiding officer ruled that although a previous ruling permitted consideration of an untimely amendment offered to an untimely main floor amendment then under consideration by the House, it would not be in order to consider additional untimely main floor amendments without voting a second time to suspend House Rules for that purpose.

Representative Reynolds moved to suspend House Rule 8.6 for the purpose of allowing consideration of an untimely main floor amendment, which failed of adoption upon a roll call vote.[8]

Ruling – It shall be the decision of the Chair that upon suspension of House Rules for purposes of considering an untimely filed main floor amendment, additional main floor amendments may not be offered without a second vote to suspend House Rules.

Reasoning – Under a ruling earlier this session, it is permissible to spontaneously offer untimely amendments to an untimely main floor amendment then under consideration without an additional motion to suspend House Rules. This means that once the Rules are suspended to allow the untimely main floor

[8] *Okla. H. Jour*., 783-785, 52nd Leg., 1st Reg. Sess. (March 4, 2009); *Daily H. Sess. Dig. Rec*., 52nd Leg., 1st Reg. Sess. Track 10:30, 3:29-4:20 (March 4, 2009).

amendment, a member may merely lay an amendment to the main amendment on the table without abiding by the amendment process laid out in House Rule 8.6.[9]

In order to preserve the main components of the amendment cycle, namely notice, transparency and full consideration,[10] one successful motion to suspend House Rules for purposes of offering one untimely filed main floor amendment should not be viewed as carte blanche to offer additional untimely main floor amendments on the same bill.

Consideration of other untimely main floor amendments should only arise as a result of individual motions to suspend the Rules for consideration of each individual untimely main floor amendment or if a member desires to offer multiple untimely main floor amendments, a motion to suspend the Rules for consideration of more than one untimely main floor amendment.

Notice, transparency and full consideration[11] are so fundamental to the amendment process in the House of Representatives that untimely main amendments should face the threshold requirement of a successful two-thirds (2/3) majority vote prior to consideration.

While the body has complete discretion to choose what ideas are so meritorious as to deserve immediate consideration outside the requirements of House Rule 8.6, the method for allowing such consideration should not automatically throw open the door to other untimely and potentially less meritorious proposals merely

[9] *Prec. Okla. H. of Rep.*, § 8.6(5.), 52nd Leg., 1st Reg. Sess. (Feb. 18, 2009).
[10] Id.
[11] Id.

because the House voted to suspend the Rules in one instance.

8.6 - 6. (2009) Verbalization of Motion to Strike Title By Appropriations Chair

Rule – House Rule 8.6, paragraph (g) states in part:

> *The Chairperson of the Appropriations and Budget Committee …shall be permitted to offer amendments to strike the Title… of measures affecting revenue or appropriations. Amendments offered under this subsection shall not be subject to the time constraints...*

History – While House Bill 2027 was under consideration, the author, Representative Steele, moved to amend House Bill 2027 by adopting a floor substitute in lieu of the bill itself. The floor substitute was adopted by the House.

Representative Dorman raised a point of inquiry as to whether the chairperson of the Appropriations and Budget Committee is required to verbalize the motion to strike the title. The presiding officer ruled that it has been the practice of the House that when offered by the chairperson, an amendment to strike the title is generally made by unanimous consent and put by the presiding officer without recognizing the chairperson offering the amendment.[12]

Ruling – It shall be the ruling of the Chair that in keeping with the practice of the House, the presiding

[12] *Okla. H. Jour.*, 502, 503, 52nd Leg., 1st Reg. Sess. (Feb. 12, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:07, 3:31-4:56 (Feb. 12, 2009).

officer may seek unanimous consent to strike the title on behalf of the Appropriations and Budget chairperson for measures affecting revenue or appropriations.

8.6 - 7. (2010) Authority To Strike Title On Retirement Measures Affecting Revenue

Rule – House Rule 8.6, paragraph (g) states:

> *The Chairperson of the Appropriations and Budget Committee and the Chairperson of the Appropriations Subcommittee on Revenue and Taxation shall be permitted to offer amendments to strike the Title or the Enacting or Resolving Clause of measures affecting revenue or appropriations. Amendments offered under this subsection shall not be subject to the time constraints established by subsections (b) and (c) of this section.*

History – While considering House Bill 2357, Representative Miller moved to amend House Bill 2357 by striking the title. Representative Reynolds raised a point of order that the motion to strike the title was out of order because the measure was a retirement measure and not an appropriation measure.

The presiding officer stated that House Rule 8.6, paragraph (g) permits the chairperson of the Appropriations and Budget Committee to offer amendments to strike the title on measures affecting revenue or appropriations and that it was the opinion of the Chair that this measure would affect how the State of Oklahoma utilizes certain types of revenue. As such, the presiding officer ruled the point not well taken and

allowed presentation of the amendment to strike the title.[13]

Ruling – It shall be the decision of the Chair that retirement measures affecting revenue or appropriations fall within the authority of the Appropriations and Budget chairperson to offer amendments to strike the title as provided in House Rule 8.6, paragraph (g).

§ 8.7 CONSIDERATION AND PRESENTATION

8.7 - 1. (2006) Adoption Of Floor Substitute Precludes Further Amendment Of A Bill*

Rule – House Rule *8.8 states the following:

(a) No amendment to any bill or joint resolution on General Order may be scheduled for floor consideration until at least the fourth legislative day after the bill is placed on General Order.

(b) Amendments shall be taken up only as sponsors gain recognition from the Speaker to move their adoption.

(c) A timely filed amendment to a pending main floor amendment may be received, but until it is disposed of no other motion to amend will be in order except an amendment to that amendment. Amendments to main floor amendments are voted on before the main floor

[13] *Okla. H. Jour.*, 409, 52nd Leg., 2nd Reg. Sess. (Feb. 10, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 1:25:46-1:36:00 (Feb. 10, 2010).

* Interpreted Rule 8.8, 50th Leg., this rule was renumbered as Rule 8.7 in House Rules adopted for the 51st and 52nd Legislatures.

amendments are taken up. Only one amendment to the amendment is in order at a time.

(d) The adoption of an amendment to a section shall not preclude further amendment of that section. If a bill is being considered section by section or item by item, only amendments to the section or item under consideration shall be in order.

(e) For the purpose of this Rule, an amendment shall be deemed pending only after its author has been recognized by the Speaker and has moved its adoption.

History – Representative Toure raised a point of order stating that suspension of House Rule *8.7 allowed amendment from the floor when the measure had not been advanced from General Order to Third Reading and that a motion to reconsider is not required.

The presiding officer ruled the point not well taken and the motion to suspend House Rule *8.7 and the motion to reconsider adoption of the floor substitute, out of order.[14]

Ruling – It shall be the decision of the Chair that adoption of a floor substitute, a comprehensive amendment, shall upon adoption, preclude further amending of the bill under consideration.

Reasoning – The House adopted a floor substitute amending House Bill 2842. Subsequent to the adoption of the floor substitute, a House member attempted to

[14] *Okla. H. Jour.*, 721, 50th Leg., 2nd Reg. Sess. (2006); *Daily H. Sess. Dig. Rec.*, 50th Leg., 2nd Reg. Sess. Track 10:50, 44:20-50:29 (March 13, 2006).

lodge a motion to suspend House rules to further amend House Bill 2842. This attempt resulted in guidance from the Chair that such an amendment was out of order but that a motion to reconsider passage of the floor substitute was in order and upon passage of such a motion, a suspension of House rules for further amendment would be in order at that time. The motion to reconsider passage of the floor substitute was made and failed rendering further attempts to amend House Bill 2842 out of order.

After the failed motion to reconsider, a second attempt to suspend House rules for the purpose of offering further amendments to House Bill 2842 followed and was again ruled out of order by the Chair. Subsequent to this second attempt, a point of order was raised appealing the ruling of the Chair on the questions of repetitive amendment of the same language in a bill or amendment as well as the renewal of a motion to reconsider.

Generally, once language in a bill or main floor amendment has been amended, that same language may not undergo further amendment unless the body assents to a motion to reconsider effectively rescinding the vote by which the amendment was adopted. In other words, the vote by which the amendment was passed is effectively erased thus allowing a Member to propose further amendments aimed at changing language previously amended in a bill or main floor amendment. In this situation, due to the fact that the amendment was a comprehensive floor substitute, the House effectively amended every aspect of House Bill 2842 rendering it not susceptible to further amendment except upon reconsideration of the adoption of the floor substitute. Once the motion to reconsider failed of adoption, further

amendment of the floor substitute or effectively the bill, was not in order.

While House Rule [*]8.8, paragraph (d), allows multiple amendments to a section of a bill, House rules do not specifically address the issue of amending the same language over and over. As a result, such a question fell to the presiding officer who, as required in House Rule 14.2, determined that such a practice should not be permitted. Besides being proper under House rules, the Chair's ruling clearly is supported by general American parliamentary law. For example, *Mason's Manual* states, "an amendment, once adopted, may not be further amended…"[15] Earlier parliamentary authorities such as *Cushing's Legislative Assemblies*[16] and *Reed's Parliamentary Rules*[17] also articulate this same principle.

In addition to being well grounded in general parliamentary procedure, such a ruling rests squarely on principles that provide the tangible underpinnings of an orderly legislative process. First, when presiding, the presiding officer is charged with "enforcing, applying and interpreting"[18] the rules of the House. Secondly, the presiding officer must "maintain order and decorum"[19] during the daily sessions. Finally, the Speaker must rule on parliamentary questions not provided for in the

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[*] Rule 8.8, 50th Leg., was renumbered as Rule 8.7 in House Rules adopted for the 51st and 52nd Legislatures.

[15] *Mason's Manual of Legislative Procedure* 272 § 398(1) (National Conference of State Legislatures 2000).

[16] Cushing, Luther Stearns, *Elements of the Law and Practice of Legislative Assemblies of the United States of America* 518 § 1307 (Little, Brown and Co. 1856).

[17] Reed, Thomas B., *A Manual of General Parliamentary Law* 106, 107 § 147 (Rand, McNally & Co., 1898).

[18] *Okla. H. Rules*, § 9.1 (50th Leg.).

[19] *Okla. H. Rules*, § 9.2 (50th Leg.).

House rules.[20] If parliamentary law is to be given any credence and if order is the "seminal principle,"[21] then the Speaker was correct in ruling that once an amendment is adopted, it cannot undergo further amending unless revisited via a successful motion to reconsider.

8.7 - 2. (2007) Order Of Presentation Of Floor Amendments

Rule – House Rule 8.7, paragraph (a) states:

> *The House shall not consider more than one amendment at a time and amendments shall be taken up only as sponsors gain recognition from the Speaker to move their adoption.*

History – During consideration of Senate Bill 507, Representative Morrissette raised a point of order questioning the order by which proposed floor amendments came before the House for consideration. The presiding officer ruled that pursuant to House Rule 8.7, paragraph (a), the Chair has the prerogative and authority to determine the order of consideration of floor amendments.

Additionally, the presiding officer ruled that there is no requirement within House Rule 8.7 that the Chair announce a reason for the order of presentation that he chooses to follow when recognizing authors for

[20] *Okla. H. Rules*, § 14.2 (50th Leg.).
[21] *Prec. H. of Rep.*, §6.8(1.), 50th Leg., 1st Reg. Sess., (March 17, 2005).

presentation of their proposed floor amendments during floor sessions.[22]

Ruling – It shall be the decision of the Chair that House Rule 8.7, paragraph (a) shall be interpreted to mean that the Chair has the prerogative and authority to determine the order of consideration of floor amendments and that the Chair is not required to announce a reason for the order of presentation that he chooses to follow when recognizing the authors for presentation.

§ 8.8 BILLS SUBJECT TO SPECIAL RULE

8.8 - 1. (2010) No Requirement Beyond Simple Majority To Adopt Special Rule

Rule – House Rule 8.8, paragraph (a) states:

> *The Committee on Rules, with the approval of the Speaker, may by majority vote recommend that any bill be subject to a Special Rule created by the Committee. The Committee shall submit the recommendation to the House for its approval.*[23]

History – As recommended by the House Rules Committee, Representative Blackwell, chairperson of the House Rules Committee, moved pursuant to House Rule 8.8 that the House adopt House Special Rule one (1).

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[22] *Okla. H. Jour.*, 1223, 51st Leg., 1st Reg. Sess. (April 17, 2007); *Daily H. Sess. Dig. Rec.*, 51st Leg., 1st Reg. Sess. Track 10:22, 21:26-27:20 (April 17, 2007).
[23] See also, *Okla. H. Rules*, § 10.4 (52nd Leg.).

Representative Reynolds raised a point of inquiry as to whether the adoption of the Special Rule would require sixty-eight (68) votes for passage since it purported to amend the House Rules.

The presiding officer stated that adoption of the Special Rule would require only a simple majority pursuant to House Rule 10.4.[24]

Ruling – It is the decision of the Chair that a majority of those voting, a quorum being present, may adopt a Special Rule.

8.8 - 2. (2010) Special Rule May Be Applied To More Than One Measure

Rule – House Rule 8.8 states:

(a) The Committee on Rules, with the approval of the Speaker, may by majority vote recommend that any bill be subject to a Special Rule created by the Committee. The Committee shall submit the recommendation to the House for its approval.

(b) A Special Rule may limit or prohibit the offering of amendments, may prescribe the time and conditions of debate, may govern floor consideration on third or fourth reading of the bill, or may contain any other provisions deemed appropriate.

History – As recommended by the House Rules Committee, Representative Blackwell, chairperson of

[24] *Okla. H. Jour.*, 1741, 52nd Leg., 2nd Reg. Sess. (May 25, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 6:46:11-6:48:10 (May 25, 2010).

the House Rules Committee, moved pursuant to House Rule 8.8 that the House adopt House Special Rule one (1).

Representative Wright (John) raised a point of inquiry as to whether it was in order pursuant to House Rule 8.8(a) to consider a Special Rule affecting more than one measure as opposed to adopting individual, special rules specific to each measure.

The presiding officer ruled that the term "bill" in House Rule 8.8 means any method utilized by the Oklahoma Legislature to enact law or to express the will of the Legislature or of the House itself.

Specifically, Rule 8.8, paragraph (b), says that a special rule "may contain any...provisions deemed appropriate" and as such, it was appropriate for the House to proceed with consideration of House Special Rule one (1).

Representative Blackwell pressed adoption of House Special Rule one (1) which was declared adopted upon a roll call vote.[25]

Ruling – It is the decision of the Chair that under House Rule 8.8 a Special Rule may be applied to more than one measure.

[25] *Okla. H. Jour.*, 1741, 1742, 52nd Leg., 2nd Reg. Sess. (May 25, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 6:50:19-7:00:00 (May 25, 2010).

§ 8.9 AMENDMENT OF GENERAL APPROPRIATIONS BILL

8.9 - 1. (2010) Amendments Offered To A Proposed Main Amendment To A General Appropriation Bill

Rule – House Rule 8.9 states:

> *Whenever an amendment is offered to a General Appropriations Bill that would increase any line item of such bill, such amendment shall show the amount by line item of the increase and shall decrease a line item or items within the same bill in an amount or amounts equivalent to or greater than the increase required by the amendment.*

History – During consideration of House Bill 2366, Representative Reynolds moved to amend the bill with a floor substitute to be adopted in lieu of the bill itself. Representative Collins then moved to amend the floor substitute by inserting a new Section 61 which if adopted, would change the amount of funds appropriated to a specific state agency.

Representative Reynolds requested a ruling of the Chair as to whether the proposed amendment to the floor substitute offered by Representative Collins was in order pursuant to House Rule 8.9. The presiding officer stated that House Rule 8.9 is applicable only to amendments in the first degree and not to amendments in the second degree such as the Collins amendment presently under consideration.

To apply the requirements of House Rule 8.9 to an amendment intended to amend a main amendment would potentially prevent the possibility of corrective action being taken which could bring a main amendment otherwise out of compliance with House Rule 8.9 into compliance with the requirements of the rule.

The presiding officer ruled the point not well taken and the proposed amendment to the floor substitute in order for consideration. Representative Collins then pressed adoption of his amendment to the floor substitute and his amendment was adopted.

Upon adoption of the Collins amendment to the main floor amendment, the floor substitute, Representative Terrill raised a point of order stating that the floor substitute as amended by the Collins amendment was out of order pursuant to House Rule 8.9.

The presiding officer stated that House Rule 8.9 requires that amendments offered to a general appropriation bill must reflect, line item by line item, the amounts to be increased versus the amounts to be decreased and that prior to adoption of the amendment to the amendment offered by Representative Collins to the floor substitute complied with the stated requirements of House Rule 8.9.

The presiding officer further stated that upon adoption of the Collins amendment to the floor substitute, the floor substitute, as amended, no longer complied with the requirements of House Rule 8.9 because the amount appropriated by the Collins amendment to the amendment was not reflected with a corresponding decrease anywhere within the floor substitute as amended. As such, the presiding officer ruled the floor

substitute, as amended, out of order for further consideration.[26]

§ 8.10 AMENDMENT SUMMARY

8.10 - 1. (2008) Availability Of Fiscal Analysis For Floor Amendment[27]

8.10 - 2. (2009) Determination Of Need For Fiscal Summary To Accompany Floor Amendment

Rule – House Rule 8.10, paragraph (a) states in part:

> *All proposed amendments to bills or joint resolutions whose adoption will have a fiscal impact, including the affecting of revenues, expenditures or fiscal liability, shall be accompanied by a written summary which shall contain a fiscal analysis upon being filed with the Chief Clerk's Office…*

History – During consideration of House Bill 1928, Representative Terrill raised a point of order as to whether a fiscal summary had been published for a floor amendment offered by Representative Reynolds. The point of order was raised on the basis of House Rule 8.10.

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[26] *Okla. H. Jour.*, 413, 52nd Leg., 2nd Reg. Sess. (Feb. 10, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 3:09:09-3:15:10 (Feb. 10, 2010).

[27] Tacitly overruled by the presiding officer in *Prec. Okla. H. of Rep.*, § 8.10(2), 52nd Leg., 1st Reg. Sess. (Feb. 19, 2009).

The presiding officer determined that a fiscal summary had not been published and questioned Representative Reynolds as to whether adoption of the amendment would have a fiscal impact. Representative Reynolds stated that no fiscal summary was prepared by the fiscal division; therefore, he did not feel that the amendment would have a fiscal impact.

The presiding officer noted that an individual member must request preparation of a fiscal summary and that a summary is not automatically prepared by the fiscal division.

Representative Blackwell then offered a motion to table the Reynolds amendment. Prior to consideration of the motion to table, Representative Terrill pressed his point of order and informed the presiding officer that he believed the amendment, if adopted, would have a fiscal impact.

The presiding officer undertook consideration of the point of order prior to presentation of the motion to table and ruled the point well taken. The presiding officer referred the question of whether the Reynolds amendment would have a fiscal impact to the chairperson of the House Appropriations and Budget Committee.

Upon recognition, the chairperson concurred that the Reynolds amendment would have a fiscal impact. The presiding officer then ruled the Reynolds amendment out of order on the basis of the opinion offered by the chairperson of the House Appropriations and Budget Committee.

Upon presentation of a second amendment offered by Representative Reynolds, Representative Terrill raised a second point of order questioning whether, under House Rule 8.10, the second Reynolds amendment should be accompanied by a fiscal summary.

As done previously, the presiding officer referred the question to the chairperson of the House Appropriations and Budget Committee. The Appropriations and Budget Chairperson stated that he concurred with the opinion of the chairperson of the House Appropriations and Budget Subcommittee on Public Safety and Judiciary who, as the relevant subcommittee chairperson, believed the Reynolds amendment would have a fiscal impact.

As such, the presiding officer ruled the second Reynolds amendment out of order on the basis of the opinion of the chairperson of the House Appropriations and Budget Committee.[28]

Precedent – It shall be the decision of the Chair that questions arising under House Rule 8.10, paragraph (a) pertaining to necessity of an accompanying fiscal summary for floor amendments shall be determined on the basis of the informed opinion of the chairperson of the House Appropriations and Budget Committee.

[28] *Okla. H. Jour.*, 575, 577, 52nd Leg., 1st Reg. Sess. (Feb. 19, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:13, 1:25-16:54 (Feb. 19, 2009); affirmed at *Okla. H. Jour.*, 902, 903, 52nd Leg., 1st Reg. Sess. (March 10, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:66, 3:39-5:37 (March 10, 2009).

§ 8.11 GERMANENESS OF HOUSE OR SENATE AMENDMENTS

8.11 - 1. (2007) Germaneness Of Committee Amendments

Rule – House Rule 8.11, paragraph (a) states in part:

> *The House shall not consider any proposed amendment not germane to the subject of the original bill or resolution…*

History – Upon beginning consideration of Senate Bill 507, a point of order was raised by Representative Morrissette requesting a ruling of the Chair as to whether a committee substitute adopted in committee for Senate Bill 507 met the requirements of the germaneness rule named in House Rule 8.11.

The presiding officer ruled that while a bill is in committee, it is the committee chair that rules on the germaneness of a committee substitute or other amendments offered in committee. Once the bill comes to the House floor for consideration, the bill is considered germane and any subsequent questions regarding the germaneness of floor amendments are decided by the presiding officer.

Subsequent to the presiding officer's ruling, Representative Morrissette appealed the ruling of the presiding officer. Upon consideration by the House, the decision of the presiding officer was upheld by the House.[29]

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[29] *Okla. H. Jour.*, 1219, 51st Leg., 1st Reg. Sess. (March 17, 2007); *Daily H. Sess. Dig. Rec.*, 51st Leg., 1st Reg. Sess. Track 10:22, 00:10-

Ruling – It shall be the ruling of the Chair that House Rule 8.11 shall be interpreted to mean that while a bill is under consideration in committee, it is the committee chairperson that rules upon the germaneness of amendments offered in that committee and that upon presentation of the bill to the full House, the bill, as reported from committee, is considered germane.

8.11 - 2. (2007) Germaneness Of Motion To Reject Senate Amendments

Rule – House Rule 8.11, paragraph (a) states:

> *The House shall not consider any proposed amendment not germane to the subject of the original bill or resolution. It shall be the duty of the presiding officer to enforce this Rule, regardless of whether or not a point of order is raised by a Member.*

History – Representative Martin, upon obtaining recognition by the presiding officer, offered a motion to reject Senate amendments to House Bill 1819. Prior to the presiding officer putting the Martin motion to a vote, Representative Wright requested that the Chair rule on the germaneness of the Senate amendments named in the motion to reject.

01:22 (March 17, 2007); affirmed at *Okla. H. Jour.*, 1156, 51st Leg., 2nd Reg. Sess. (April 10, 2008); *Daily H. Sess. Dig. Rec.*, 51st Leg., 2nd Reg. Sess. Track 10:07, 00:00-20:34 (April 10, 2008); *Okla. H. Jour.*, 1212, 51st Leg., 2nd Reg. Sess. (April 15, 2008); *Daily H. Sess. Dig. Rec.*, 51st Leg., 2nd Reg. Sess. Track 10:31, 00:48-3:00 (April 15, 2008).

The presiding officer ruled that the question of germaneness was not relevant to consideration of a motion to reject Senate amendments to a House bill. Additionally, the presiding officer informed Representative Wright that only upon the presentation of a motion to adopt Senate amendments to a House bill, would the question of germaneness become relevant.[30]

Ruling – It shall be the decision of the Chair that House Rule 8.11, paragraph (a) shall be interpreted to mean that the question of germaneness is not relevant to consideration of a motion to reject Senate amendments to a House bill and that only upon the presentation of a motion to adopt Senate amendments to a House bill, would the question of germaneness become relevant.

8.11 - 3. (2008) Germaneness Of Floor Amendment Offered To Proposed Constitutional Amendment

Rule – House Rule 8.11, paragraph (a) states in part:

> *The House shall not consider any proposed amendment not germane to the subject of the original bill or resolution…*

History – Senate Bill 1987 contained a proposal directing the Secretary of State to refer for a vote of the people a proposal to amend the Oklahoma Constitution to impose term limits on certain executive branch officials elected statewide.

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[30] *Okla. H. Jour.*, 1450, 51st Leg., 1st Reg. Sess. (May 2, 2007); *Daily H. Sess. Dig. Rec.*, 51st Leg., 1st Reg. Sess. Track 10:29, 2:32-4:13 (May 2, 2007).

During consideration of Senate Bill 1987 on the House Floor, Representative Kiesel offered an amendment which proposed changes to certain election laws contained in Title 26 of the Oklahoma Statutes. The amendment contained language which, after passage by the legislature, would have been required to be presented to the Governor for his approval or disapproval under the requirements of Article VI, Section 11 of the Oklahoma Constitution.

Representative Terrill requested a ruling of the Chair as to whether the Kiesel floor amendment was in order pursuant to House Rule 8.12. The presiding officer ruled that Rule 8.12 was not applicable to the question but held that the germaneness rule of House Rule 8.11 did apply. The presiding officer ruled that the amendment was not germane because the subject of Senate Bill 1987 was a proposed constitutional amendment and the subject of the floor amendment was multiple statutory changes.

Representative Kiesel appealed the ruling of the Chair. Upon consideration by the full House, the decision of the presiding officer was upheld by the House.[31]

Ruling – It shall be the ruling of the Chair that House Rule 8.11 shall be interpreted to mean that a floor amendment containing statutory changes is not germane to the subject of a bill that contains proposed amendments to the Oklahoma Constitution.

[31] *Okla. H. Jour.*, 1264, 1265, 51st Leg., 2nd Reg. Sess. (April 16, 2008); *Daily H. Sess. Dig. Rec.*, 51st Leg., 2nd Reg. Sess. Track 10:52, 3:39-17:00 (April 16, 2008).

8.11 - 4. (2008) Germaneness Of Legislation Itself

Rule – House Rule 8.11, paragraph (a) states in relevant part:

> *The House shall not consider any proposed amendment not germane to the subject of the original bill or resolution…*

History – During consideration of Senate Bill 1943 on the House Floor, Representative Morrissette requested a ruling of the presiding officer as to whether Senate Bill 1943 itself was germane pursuant to House Rules 8.11 and 8.12. The presiding officer ruled that Rule 8.12 did not apply and that since there was no floor amendment under consideration, the point was not well taken under the terms of Rule 8.11.

Representative Morrissette appealed the ruling of the Chair. Upon consideration by the full House, the decision of the presiding officer was upheld by the House.[32]

Ruling – It shall be the ruling of the Chair that House Rule 8.11 is applicable only to floor amendments under consideration on the House Floor.

[32] *Okla. H. Jour.*, 1348, 1349, 51st Leg., 2nd Reg. Sess. (April 22, 2008); *Daily H. Sess. Dig. Rec.*, 51st Leg., 2nd Reg. Sess. Track 10:49, 13:51-24:54 (April 22, 2008).

8.11 - 5. (2009) Controlling Factor Of Germaneness Is Subject Matter

Rule – Section 8.11, paragraph (a) of the House Rules states in relevant part:

> *The House shall not consider any proposed amendment not germane to the subject of the original bill or resolution…*

History – While House Bill 1508 was under consideration, Representative Blackwell moved to amend House Bill 1508 by adopting a floor substitute in lieu of the bill. Representative Thomsen then requested a ruling of the Chair as to whether the subject of the floor substitute was germane to the subject of House Bill 1508.

The presiding officer ruled the floor substitute not germane to the subject of House Bill 1508. Representative Reynolds raised a point of inquiry as to what constitutes germaneness stating that the amendment ruled out of order included language contained in the same title of law as the bill itself.

The presiding officer ruled that subject matter is the determining factor of germaneness and not location in the same title of law. Representative Inman appealed the ruling of the Chair which was upheld upon roll call vote.[33]

[33] *Okla. H. Jour.*, 911, 912, 52nd Leg., 1st Reg. Sess. (March 11, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:11, 4:09-12:17 (March 11, 2009).

Ruling – It is the ruling of the Chair that subject matter and not location in the same title of law is the determining factor when deciding whether an amendment is germane to a bill.

8.11 - 6. (2009) Method Of Determining Germaneness Of Floor Amendments

Rule – House Rule 8.11, paragraph (a) states:

> *The House shall not consider any proposed amendment not germane to the subject of the original bill or resolution. It shall be the duty of the Presiding Officer to enforce this Rule, regardless of whether or not a point of order is raised by a Member.*

History – During consideration of Senate Bill 269, Representative McCullough moved to amend the bill by inserting a new section. Representative Shelton requested a ruling by the Chair as to whether the subject matter of the amendment was germane to the subject of Senate Bill 269.

In ruling on the question of germaneness, the presiding officer stated that the term "germane", contained in House Rule 8.11, was to be defined in accordance with the definition of germaneness articulated by the Oklahoma Supreme Court in *Campbell v. White* in 1993 and recently upheld in *Fent v. State ex rel. Office of State Finance*.[34]

The presiding officer stated that similar to the definition of germaneness given in *Campbell*, which defined

[34] *Campbell v. White* 856 P.2d 255, 260 (1993); *Fent v. State ex rel. Office of State Finance* 184 P.3d 467, 476, 477 (2008).

germaneness as the existence of a common, closely akin subject or purpose that is plainly visible between the provisions of a bill, the term “germane”, as contained in House Rule 8.11, would be interpreted to mean the existence of a common, closely akin subject or purpose that is plainly visible between the provisions of a proposed floor amendment and the provisions of a bill or resolution.

The presiding officer held that when at issue, the question of germaneness would be considered a question of fact which would be determined by the Chair as the trier of fact and that when raised by a member the burden of proof would rest upon the member raising the point of order.

The presiding officer stated that the inquiring member would be expected to immediately and succinctly explain why he or she believed the amendment not to be germane after which, the presiding officer would determine by the preponderance of the evidence whether the amendment was germane to the measure to be amended.

The presiding officer also stated that on the basis of the custom of the body, the only evidence that would be considered in a germaneness inquiry would be the amendment under consideration and the published bill or resolution to be amended and that, while still preserving the Chair’s prerogative under Rule 8.11, to rule *sua sponte* on questions of germaneness, the Chair would presume that proposed floor amendments are, in fact, germane until proven otherwise.

The presiding officer ruled the point well taken and the McCullough amendment not germane to the subject of

Senate Bill 269 because the subject of the McCullough amendment, which dealt with the subject of allowing district attorneys or assistant district attorneys to carry concealed weapons, more likely than not did not have a common, closely akin subject or purpose that was plainly visible to the subject matter contained in Senate Bill 269 which dealt with the subject of the composition of a metropolitan area planning commission.[35]

§ 8.12 AMENDMENTS OUT OF ORDER

8.12 - 1. (2007) Improper Floor Amendments

Rule – House Rule 8.12 states in part:

> *An amendment is out of order if it is the principal substance of a bill…that…has not been reported favorably by the committee of reference in either session of the current Legislature and may not be offered to a bill…on the Floor Calendar and under consideration by the House.*

History – During consideration of House Bill 1765, Representative Reynolds offered a timely filed main floor amendment. A point of order was raised by Representative Worthen regarding whether or not the

[35] *Okla. H. Jour.*, 1286, 52nd Leg., 1st Reg. Sess. (April 13, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:22, 2:34-6:04 (April 13, 2009). See also *Okla. H. Jour.*, 1876, 52nd Leg., 1st Reg. Sess. (May 21, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:54, 0:30-5:32 (May 21, 2009). In this instance, a question was raised regarding the germaneness of the conference committee report on House Bill 1121. In ruling on the germaneness of the conference committee report, the presiding officer relied on the same method established in this precedent, *Prec. Okla. H. of Rep.*, § 8.11(6.), 52nd Leg., 1st Reg. Sess. (April 13, 2009).

Reynolds amendment was out of order under the terms of House Rule 8.12.

The presiding officer ruled that the Worthen point of order was "well taken" and that under the provisions of House Rule 8.12, a floor amendment is out of order if the principal substance of the bill that has received an unfavorable committee report, has been withdrawn by the author or has not been reported favorably from the committee of reference.

After reviewing the bills authored by Representative Reynolds still residing in the standing committees of the House, the presiding officer ruled that in the case of the Reynolds amendment, the amendment contained identical language to House Bill 1013 which had not been favorably reported from the Rules Committee. As such, the Reynolds amendment could not be entertained by the House and was out of order.
Subsequent to the presiding officer's ruling, Representative Reynolds indicated a desire to appeal the ruling of the presiding officer. Upon consideration by the full House, the decision of the presiding officer was upheld by the House.[36]

Ruling – It shall be the decision of the Chair that House Rule 8.12 shall be interpreted to mean that bills not reported out of a House committee cannot be introduced as floor amendments to another bill during either session of the current Legislature.

[36] *Okla. H. Jour.*, 812, 51st Leg., 1st Reg. Sess. (March 12, 2007); *Daily H. Sess. Dig. Rec.*, 51st Leg., 1st Reg. Sess. Track 11:30, 22:57-33:11 (March 12, 2007).

8.12 - 2. (2009) Floor Amendments Mirroring House Bills In Possession Of Senate

Rule – Section 8.12 of the House Rules states in relevant part:

> *An amendment is out of order if it is the principal substance of a bill or resolution that has received an unfavorable committee report, has been withdrawn from further consideration by the principal author or has not been reported favorably by the committee of reference in either session of the current Legislature and may not be offered to a bill or resolution on the Floor Calendar and under consideration by the House...*

History – During consideration of Senate Bill 1066, Representative Duncan offered a main floor amendment, a floor substitute, in lieu of the bill itself. Representative Morrissette requested a ruling of the presiding officer as to whether, under the constraints of House Rule 8.12, it was in order to consider the amendment because the language contained in the amendment appeared to be identical to language contained in a House measure in possession of the Senate which had not yet been considered by the Senate.

The presiding officer ruled that House Rule 8.12 does not apply to a House measure in possession of the Senate.[37]

[37] *Okla. H. Jour*., 1443, 52nd Leg., 1st Reg. Sess. (April 22, 2009); *Daily H. Sess. Dig. Rec*., 52nd Leg., 1st Reg. Sess. Track 10:26, 12:29-15:09 (April 22, 2009).

Ruling – It is the ruling of the Chair that an amendment consisting of language also contained in a House measure in possession of the Senate is not prohibited by House Rule 8.12.

8.12 - 3. (2009) House Rule 8.12 Not Applicable To Conference Committee Substitutes

Rule – House Rule 8.12 says:

> *An amendment is out of order if it is the principal substance of a bill or resolution that has received an unfavorable committee report, has been withdrawn from further consideration by the principal author or has not been reported favorably by the committee of reference in either session of the current Legislature and may not be offered to a bill or resolution on the Floor Calendar and under consideration by the House…*

History – During consideration of the Conference Committee Report on House Bill 1121, Representative Reynolds requested a ruling of the Chair as to whether the subject of the conference committee report was limited to matters germane to the subject of House Bill 1121. The presiding officer ruled the point well taken and the conference committee report not germane.

Representative Auffet moved to suspend House Rule 7.15, paragraph (a) for the purpose of allowing consideration of the Conference Committee Report on House Bill 1121. The motion to suspend the rule prevailed upon a roll call vote. Representative Reynolds then raised a point of inquiry as to whether consideration of the conference committee report was in order since the language contained in the conference committee

report appeared to be the same language contained in a measure which did not receive a committee hearing during General Order.

The presiding officer stated that pursuant to House Rule 8.12, a bill not reported from a House committee cannot be presented on the House Floor in the form of a floor amendment during General Order. The presiding officer ruled that a conference committee report is not a floor amendment and is not under consideration on General Order, meaning that language contained in a measure remaining in a House committee may be considered in the form of a conference committee substitute after the General Order deadlines. The presiding officer ruled the point not well taken.[38]

Ruling – It is the decision of the Chair that the prohibitions applicable to floor amendments contained in House Rule 8.12 do not apply to conference committee substitutes.

§ 8.14 MOTION TO COMMIT

8.14 - 1. (2009) Motion To Commit After Third Reading Deadline

Rule – House Rule 8.14 states:

A motion may be made during the reading or consideration of any bill or joint resolution on General Order to commit the bill to a standing or special committee, with or without instructions.

[38] *Okla. H. Jour.*, 1876, 1877, 52nd Leg., 1st Reg. Sess. (May 21, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:54, 0:30-11:27 (May 21, 2009).

History – On Thursday, April 30, 2009, Representative Terrill offered a motion to withdraw Senate Bill 483 from the House General Order Calendar and recommit it to the Committee on Public Safety. Representative Brown raised a point of order as to whether the motion to recommit was out of order because it was offered subsequent to the deadline established for "third reading" of bills and joint resolutions in Senate Concurrent Resolution 97 from 2008.

The presiding officer ruled the point not well taken and the motion in order because the measure itself was not before the House for consideration on "third reading" and final passage and therefore not subject to the expired deadline. Representative Dorman appealed the ruling of the presiding officer and the decision of the Chair was upheld upon a roll call vote.[39]

Ruling – It is the ruling of the Chair that a motion to recommit is in order after the expiration of third reading deadlines established in consultation between the House of Representatives and the Senate.

[39] *Okla. H. Jour.*, 1571, 1572, 52nd Leg., 1st Reg. Sess. (April 30, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:07, 0:00-11:21 (April 30, 2009); *Okla. H. Jour.*, 1573, 52nd Leg., 1st Reg. Sess. (April 30, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:08, 0:00-1:22 (April 30, 2009).

§ 8.16 CONSIDERATION AND DEBATE

8.16 - 1. (2007) Recognition For Debate After Third Reading[40]

Rule – House Rule 8.17 states in part:

> *…before the vote is ordered, such question shall be subject to debate. Debate shall be limited to one (1) hour, equally divided between the proponents and opponents of the question…*

History – After Third Reading and preceding final passage of House Bill 1432, Representative Reynolds requested recognition to debate in favor of final passage of the bill. No member requested recognition to present debate in opposition to final passage of House Bill 1432.

The presiding officer ruled that in the absence of a request to debate in opposition to final passage of House Bill 1432, debate offered only in favor of final passage was waived. Representative Reynolds raised a point of order regarding the presiding officer's ruling.

Upon the presiding officer's ruling Representative Reynolds' "point not well taken," Representative Reynolds indicated a desire to appeal the ruling of the presiding officer but did not obtain the required seconding of fifteen (15) other House members. The presiding officer declared that an appeal was not in order due to the lack of fifteen (15) additional members to

[40] In 2007, this precedent interpreted House Rule 8.17. The identical rule was adopted for the 52nd Oklahoma Legislature, 2009-2010, as House Rule 8.16.

second the appeal of the ruling lodged by Representative Reynolds.[41]

Ruling – It shall be the decision of the Chair that House Rule 8.17[42] shall be interpreted to mean that in the absence of House members requesting recognition to debate in opposition to final passage of a bill, any debate offered only in favor of final passage is waived.

8.16 - 1.A. (2009) Debate In Opposition Permitted Even If Debate In Favor Not Requested[*]

Rule – House Rule 8.16 states in part:

> *On Third Reading or Fourth Reading… Before the vote is ordered, such question shall be subject to debate. Debate shall be limited to one (1) hour, equally divided*

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[41] *Okla. H. Jour.*, 585, 51st Leg., 1st Reg. Sess. (Feb. 27, 2007); *Daily H. Sess. Dig. Rec.*, 51st Leg., 1st Reg. Sess. Track 10:09, 3:22-4:30 (Feb. 27, 2007). See also *Okla. H. Jour.*, 1651, 52nd Leg., 2nd Reg. Sess. (May 21, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 06:26:50-06:26:57 (May 21, 2010). In this instance, the 2007 precedent is relied upon to disallow debate offered only in favor of adoption of the emergency section of Senate Bill 1267 after adoption of the bill itself on Fourth Reading; *Okla. H. Jour.*, 1676, 52nd Leg., 2nd Reg. Sess. (May 24, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 03:24:05-03:24:31 (May 24, 2010).

[42] See FN 40.

[*] The ruling reflected in this precedent is based on House Precedent 8.17(1) from 2007. House Precedent 8.17(1) from 2007 interpreted House Rule 8.17 from 2007. The substance and language of House Rule 8.17 from 2007 continues to exist in House Rules for the 52nd Oklahoma Legislature (2009-2010) but is renumbered as House Rule 8.16. To avoid confusion, the above precedent is numbered as *8.16 - 1.A. (2009)* to reflect the current House Rule it interprets, Rule 8.16, rather than the rule from 2007 which was identical but numbered as Rule 8.17 and was interpreted by House Precedent 8.17(1) from 2007.

between the proponents and opponents of the question…

History – During consideration of Senate Bill 481, Representative Reynolds moved adoption of his main floor amendment to Senate Bill 481. Prior to commencement of debate on the floor amendment, Representative Morgan raised a point of inquiry as to whether it was in order to entertain debate offered solely in opposition to adoption of the amendment since debate in favor of the amendment had not been requested.

The presiding officer clarified that only in the case where no debate in opposition is requested and only debate in favor is requested will the Chair refuse to entertain debate because to do so would be a waste of the House's time.[43]

Ruling – It is the ruling of the Chair that debate in opposition to a measure will be entertained regardless of whether or not debate in favor of a measure has also been requested.

Reasoning – When presenting a bill or resolution, the author is customarily recognized to offer explanation of the proposed legislation and if other members so desire, to spend significant time taking part in questions and answers to the reasonable satisfaction of the author.

If so little opposition to a proposed measure exists that no member requests debate in opposition, it would be a waste of the body's limited time to allow the author to

[43] *Okla. H. Jour.*, 1421, 52nd Leg., 1st Reg. Sess. (April 21, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:41, 6:04-7:06 (April 21, 2009).

consume an additional ten (10) minutes debating in favor of the bill or resolution after already having had the opportunity to offer explanation and to respond to follow-on questions.

If, on the other hand, debate in opposition is requested, it would be contrary to the deliberative characteristics of a legislative body to prevent such debate merely because no request was made for debate in favor of the measure. Unless the House takes some affirmative action to curtail debate on a question, within the strictures of House Rules, care should be taken to afford opportunity to express a dissenting point of view.

§ 8.18 CONSIDERATION OF EMERGENCY SECTION

8.18 - 1. (2009) Request For Debate In Opposition To Emergency Clause Must Give Rise To Actual Debate

Rule – House Rule 8.18 states:

> *When any bill or joint resolution is being considered on Third Reading or Fourth Reading, and such a bill or joint resolution contains an emergency section, the emergency section shall constitute a separate question, and shall be subject to debate.*

History – After being read a fourth time, House Bill 1934 was passed by the House. Prior to the vote on the emergency clause, debate was requested on the question of adoption of the emergency clause. Although debate was requested in opposition to adoption of the emergency clause, the requesting member did not in fact

offer any debate in opposition but yielded all of his allotted time back to the Chair.

Representative Morgan raised a point of order stating that since there was effectively no debate in opposition to adoption of the emergency clause, the presiding officer should not permit debate in favor of the emergency clause. The presiding officer ruled the point well taken and debate out of order pursuant to House precedent 8.17(1) of 2007.[44]

Ruling – It is the ruling of the Chair that a request for debate in opposition to adoption of an emergency clause must in fact give rise to actual debate.

8.18 - 2. (2010) Questions Must Pertain To Adoption Of Emergency

Rule – House Rule 8.18 states:

> *When any bill or joint resolution is being considered on Third Reading or Fourth Reading, and such a bill or joint resolution contains an emergency section, the emergency section shall constitute a separate question, and shall be subject to debate.*

History – Subsequent to passage of House Bill 2658 on Fourth Reading, the question of adoption of the measure's emergency clause was under consideration by the House.

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[44] *Okla. H. Jour.*, 1387, 52nd Leg., 1st Reg. Sess. (April 20, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:23, 40:06-43:24 (April 20, 2009); see also *Okla. H. Rules*, § 8.17 (51st Leg.); *Prec. Okla. H. of Rep.*, § 8.17(1.), 51st Leg., 1st Reg. Sess. (Feb. 27, 2007).

During consideration of the passage of the emergency clause, Representative Morrissette raised a point of order as to whether questions posed to the measure's author should be limited to adoption of the emergency clause rather than the merits of the measure itself.

The presiding officer ruled the point well taken and cautioned the members to limit their questions to matters pertaining to the question of adoption of the emergency clause.[45]

Ruling – It is the decision of the Chair that questions posed during consideration of an emergency clause must pertain to the question of adoption of the emergency clause rather than to the previously passed measure itself.

[45] *Okla. H. Jour.*, 1611-1612, 52nd Leg., 2nd Reg. Sess. (May 18, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 40:29-41:20 (May 18, 2010).

RULE NINE

CHAMBER PROTOCOL

§ 9.2 QUESTIONS OF ORDER AND DECORUM

9.2 - 1. (2005) Manner By Which Business Is Conducted On House Floor

Rule – House Rule 9.2, paragraph (a) states in part:

> *While in the [House] Chamber, the Presiding Officer shall preserve order and decorum…*

History – Representative Toure objected to the decision of the presiding officer that motions had to be scheduled through the Floor Leader.

The presiding officer ruled that the Floor Leader is charged by the Speaker with setting the agenda for the business of the House for every legislative day. Any motion that puts new business before the House must go through the Floor Leader or it is out of order. The agenda for the floor and introducing new business is within the exclusive authority of the Floor Leader.[1]

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[1] *Okla. H. Jour.*, 1175, 1176, 50th Leg., 1st Reg. Sess. (April 7, 2005); *Daily H. Sess. Dig. Rec.*, 50th Leg., 1st Reg. Sess. Track 10:06, 6:10-

Ruling – It shall be the decision of the Chair that the phrase "the presiding officer shall preserve order and decorum" contained in House Rule 9.2(a) shall be interpreted to mean that all motions affecting order and business of the day must first be presented to the Majority Floor Leader before the member desiring to make the motion will be recognized by the presiding officer.

Reasoning – In general terms, every legislative body must have some expression of procedural rules in order that business pending before the body may receive proper contemplation and consideration. Without clearly defined rules, the will of the majority cannot be determined and presented in a coherent manner,[2] the rights of the minority are not protected and the majority is not protected from obstructive tactics on the part of the minority.[3]

In Oklahoma, the power to regulate and order the deliberative process is left to the discretion of the respective houses of the legislature under Article V,

11:04 (April 7, 2005); affirmed at *Okla. H. Jour*., 562, 52nd Leg., 1st Reg. Sess. (Feb. 18, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:25, 15:30-18:16 (Feb. 18, 2009); *Okla. H. Jour*., 629, 52nd Leg., 1st Reg. Sess. (Feb. 24, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:25, 6:37-8:01 (Feb. 24, 2009); *Okla. H. Jour*., 1246, 1247, 52nd Leg., 1st Reg. Sess. (April 8, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:11, 0:12-0:45 Track 10:12, 0:06-4:30 (April 8, 2009); *Okla. H. Jour*., 664, 52nd Leg., 2nd Reg. Sess. (March 3, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 5:03:38-5:08:20 (March 3, 2010); *Okla. H. Jour*., 1658, 52nd Leg., 2nd Reg. Sess. (May 21, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 8:39:45-8:40:16 (May 21, 2010).

[2] *Mason's Manual of Legislative Procedure* 9 § 1(1) (National Conference of State Legislatures 2000).

[3] *Mason's Manual of Legislative Procedure* 10 § 1(3) (National Conference of State Legislatures 2000).

Section 30 of the Oklahoma Constitution. Specifically, Article V, Section 30 permits each house to determine its own rules. On this basis the Oklahoma House of Representatives passed its own set of procedural rules on February 7, 2005.[4]

Before examining the relevant rules, it must be noted that while the Speaker may honor the House custom of delegating the scheduling of floor action to the Majority Floor Leader, the authority of the Speaker is not absolute. In this situation, the Speaker's specific decision to require that all motions affecting order and introduction of new business be scheduled through the Floor Leader is subject to House Rule 9.2, paragraph (e) which provides a means of appeal of the Chair's ruling.

For the purposes of this case, the question of order is addressed several ways under House Rules. Rules 1.2, paragraph (a), and 9.2, paragraph (a) charge the Speaker or the Speaker's designee in the Chair with the task of actively maintaining order and decorum. Additionally, Rule 8.1, paragraph (a), impliedly provides the general framework for the daily order of business. Rules 10.1 and 10.2 govern the order of presentation of motions.

Under House Rules 1.2, paragraph (a) and 9.2, paragraph (a), the presiding officer is tasked with preserving "order and decorum" in the House. When Rules 1.2, paragraph (a) and 9.2, paragraph (a) are read in conjunction with Rule 9.1 which empowers the Speaker to interpret the House Rules in all deliberations, it becomes clear that it is entirely appropriate for the Speaker to interpret the mandate of Rule 9.2, paragraph

[4] *Okla. H. Jour.*, 57, 50th Leg., 1st Reg. Sess. (Feb. 7, 2005).

(a) to mean that all motions affecting order and business of the day must go through the Majority Floor Leader.

The responsibility of the presiding officer to maintain order and decorum has existed throughout Oklahoma's existence, first as a territory and later as a state. Such authority can be found in House Rules of the First Session of 1890 Territorial Legislature.[5] Specifically, Rule 2 of the House of Representatives, First Oklahoma Territorial Legislature, contains the following language, "He [the Speaker] shall preserve order and decorum, and speak to 'points of order' in preference to other members…he shall decide questions of order subject to an appeal to the House…"[6] This authority continued in House Rules throughout the remainder of Oklahoma's territorial years, continued after statehood and has remained until the present time.

The authority of the Speaker to maintain order is not unique to Oklahoma, but is well established in the principles of general parliamentary procedure. The parliamentary authority, Luther S. Cushing, in his venerable work *Elements of the Law and Practice of Legislative Assemblies of the United States of America* includes among the duties of the presiding officer such provisions as, "To enforce the observance of order and decorum among members, to inform the assembly…in a point of order or practice, to decide in first instance, and subject to the revision of the house, all questions of order, that may arise, or be submitted for his decision."[7] More recently, *Mason's Manual of Legislative*

[5] *Okla. Terr. H. House Rules*, 1st Sess. 2 (1890).
[6] Id.
[7] Cushing, Luther Stearns, *Elements of the Law and Practice of Legislative Assemblies of the United States of America* 113 § 291 (Little, Brown and Co. 1856).

Procedure states that the presiding officer shall, "…preserve order and decorum," and shall "…guide and direct the proceedings of the body…"[8] All told, general parliamentary authorities, the historical rules of the Oklahoma House of Representatives and current House Rules indicate that the Speaker can and should take the initiative to preserve order in the House by any reasonable means.

House Rule 10.1 establishes which motions receive precedence and can be offered even if unrelated to the business under consideration. House Rule 10.2 provides that motions incidental to the business under consideration may be permitted at the time of consideration of that business. Again, even though it is a fundamental right both under House Rules and general parliamentary law for a member to present any proper proposal for consideration by the body, appropriate timing must be observed.[9]

Finally, in this case where the ruling of the Chair was sustained by the body of the House, the Speaker's decision that all motions affecting order and business of the day must go through the Majority Floor Leader became ratified as the will of the House.

9.2 - 2. (2009) Impugning Other Members During Debate

Rule – House Rule 9.2, paragraph (a) states:

[8] *Mason's Manual of Legislative Procedure* 416 § 575 (e), (k) (National Conference of State Legislatures 2000).
[9] *Mason's Manual of Legislative Procedure* 118 § 155 (1) (National Conference of State Legislatures 2000).

While in the Chamber, the Presiding Officer shall preserve order and decorum, shall prevent personal reflections or the impugning of the motive of any Member, and shall confine Members in debate to the question under discussion.

History – While House Bill 2013 was under consideration, Representative Reynolds raised a point of order stating that he had been impugned by another member in the course of that member's debate. The presiding officer ruled that while a member may not impugn the character of another member during debate, it is out of order to state an objection simply on the basis of the objecting member's perception of particular statements made during debate.[10]

Ruling – It is the decision of the Chair that it is out of order to raise an objection simply on the basis of perceptions of particular statements made during debate and that differing perceptions of the question under consideration do not rise to the level of impugning.

Reasoning – By analogy, debate is regulated much like the closing arguments made at the conclusion of trial. The respective counsels offer differing and often contradictory perspectives or versions of the facts and unless one party violates some procedural rule, the judge would not sustain an objection raised simply on the basis of mere disagreement over how the facts of the case were characterized by opposing counsel. Ultimately, it is up to the finder of fact to decide which version of the story reflects the evidence and is closest to the truth.

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[10] *Okla. H. Jour.*, 570, 52nd Leg., 1st Reg. Sess. (Feb. 19, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:08, 31:37-32:37 (Feb. 19, 2009).

Similarly, the House of Representatives itself is the trier of fact when the question before the House is passage of a bill. The author's representations, the questions and answers, the debate all provide the basis upon which the body as a whole decides which version of the narrative will ultimately prevail.

It is therefore out of order and improper to interrupt a member's debate merely because the debating member states a different point of view than the one favored by the objecting member. Moreover, differing perceptions of the question under consideration does not give rise to impugning the motives of other members.

9.2 - 3. (2009) Interruption Of Debate Not Permitted For Motion To 'Lay The Bill Over'

Rule – House Rule 9.2, paragraph (a) states in part:

> *While in the Chamber, the Presiding Officer shall preserve order and decorum, shall prevent personal reflections or the impugning of the motive of any Member, and shall confine Members in debate to the question under discussion.*

History – In the course of debate on passage of House Bill 1823, Representative Morrissette moved to "lay the bill over". The presiding officer ruled the motion presently out of order because debate was underway but stated that the motion would be recognized at the conclusion of debate.[11]

[11] *Okla. H. Jour.*, 874, 52nd Leg., 1st Reg. Sess. (March 10, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:23, 7:10-7:54 (March 10, 2009).

Ruling – It is the ruling of the Chair that a motion to "lay the bill over" or to otherwise temporarily postpone consideration of a measure is not in order during debate on final passage.

Reasoning – In order to promote an orderly debate process, a motion to temporarily postpone consideration of a measure, more commonly expressed as a motion to 'lay the bill over', should not be recognized during debate on final passage of a measure. Such a motion would properly be in order when debate is concluded and before the vote on final passage is opened.

9.2 - 4. (2009) Point Of Order Pertaining To An Amendment Must Be Raised Before Amendment Is Adopted

Rule – House Rule 9.2, paragraph (d) states:

> *Any Member may rise to a point of order against any other Member when, in the Member's opinion, such Member is proceeding out of order. Such point of order shall be decided by the Presiding Officer without debate.*

History – During consideration of House Bill 2090, Representative Kirby moved to amend House Bill 2090 by striking the title. During a division on the question of adopting the amendment to strike title, Representative John Wright raised a point of inquiry as to the lack of a written analysis of the fiscal impact associated with a previously adopted amendment to House Bill 2090 and whether the chairperson of the Appropriations and Budget Committee should weigh in on the existence of a fiscal impact.

The presiding officer ruled the point not well taken because the House had already adopted the amendment in question and the point of order should have been raised during consideration and before adoption of the amendment.[12]

Ruling – It is the decision of the Chair that a point of order pertaining to an amendment must be raised in a timely manner, meaning that it must be raised before the amendment is adopted by the House.

9.2 - 5. (2009) Customary Duties Of Majority Floor Leader

Rule – House Rule 8.1, paragraph (a) states in relevant part:

The following Order of Business shall be followed each day…

13. Consideration of Simple and Concurrent Resolutions.

14. Messages from the Senate and Senate Amendments to House Bills.

15. House and Senate Bills and Joint Resolutions on General Order.

16. House and Senate Bills and Joint Resolutions on Third Reading.

[12] *Okla. H. Jour.*, 949, 52nd Leg., 1st Reg. Sess. (March 11, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:53, 7:31-8:13 (March 11, 2009).

17. Consideration of Conference Committee Reports.

18. House and Senate Bills and Joint Resolutions on Fourth Reading.

19. Motions and Notices.

20. Unfinished business.

History – Representative Brown raised a point of inquiry as to what order of business the House would follow throughout the day's session. The presiding officer stated that it is the custom of the House for the Majority Floor Leader to establish the daily schedule.[13]

Ruling – It is the ruling of the Chair that the custom of the House is for the Majority Floor Leader to establish the daily schedule of business for the House of Representatives.

Reasoning – It is the custom of the House to delegate scheduling of floor action and each legislative day's agenda to the Majority Floor Leader.[14] This custom has its origins in the Speaker's authority to preserve order in the House by any reasonable means.[15] The Speaker's authority to maintain order flows from both the House Rules[16] and from long established practice.[17] As the

[13] *Okla. H. Jour.*, 959, 960, 52nd Leg., 1st Reg. Sess. (March 12, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:02, 0:08-0:59, 3:26-3:51 (March 12, 2009).
[14] *Prec. Okla. H. of Rep.*, § 9.2(1.), 50th Leg., 1st Reg. Sess. (April 7, 2005).
[15] Id.
[16] *Okla. H. Rules*, § 1.2 (52nd Leg.); *Okla. H. Rules*, §§ 9.1, 9.2 (52nd Leg.).

Speaker's appointee, the Majority Floor Leader's authority to manage the legislative schedule is derived from the Speaker's authority to maintain order in the House of Representatives.

9.2 - 6. (2009) Regulation Of Questions and Answers

Rule – House Rule 9.2, paragraph (a) states in part:

> *While in the Chamber, the Presiding Officer shall preserve order and decorum…*

History – During consideration of House Concurrent Resolution 1016, Representative Morrissette raised a point of inquiry as to whether the presiding officer would extend the question and answer period prior to the House proceeding to debate on adoption of the resolution.

The presiding officer stated that it is within the prerogative of the Chair to decide how much time will be permitted for questions and answers on a measure under consideration by the House. Upon announcement of the presiding officer's ruling, Representative Kiesel appealed the ruling of the Chair. Upon consideration by the full House, the decision of the presiding officer was upheld upon a roll call vote.[18]

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[17] *Okla. Terr. H. House Rules*, 1st Sess. 2 (1890); see also *Okla. Terr. H. Jour.*, 47, 1st Sess. (Sept. 3, 1890).

[18] *Okla. H. Jour.*, 1180, 1181, 52nd Leg., 1st Reg. Sess. (March 31, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:09, 11:58-17:33 (March 31, 2009); *Okla. H. Jour.*, 465, 52nd Leg., 2nd Reg. Sess. (Feb. 17, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 1:19:25-1:21:51 (Feb. 17, 2010); *Okla. H. Jour.*, 1651, 52nd

Ruling – It is the decision of the Chair that it is the prerogative of the presiding officer, under Rule 9.2, to determine how many individual questions to entertain while a pending question is under consideration.

Reasoning – Under general parliamentary law, it is the duty of the presiding officer to preserve order and decorum and to guide and direct the proceedings of the body, subject to the control and will of the body. Likewise, House Rule 9.2 charges the presiding officer with the duty of preserving order and decorum in the daily sessions of the House.[19] All the same, adopted House Rules frequently do not address every procedural question that may arise in the context of preserving "order and decorum". For example, specific questions such as: may the presiding officer limit the number of questions posed to a measure's author on the House floor frequently are not directly addressed in House Rules.

In the case that the House Rules do not address a particular procedural question, what must be done? In reality, much procedure has been and continues to be derived from established customs and usages rather than from adopted rules. When a question arises over something not addressed by a House Rule, the presiding officer may appropriately rely on customs and usages in much the same way he or she would look to adopted House Rules for guidance on questions directly addressed by specific House Rules.

Leg., 2nd Reg. Sess. (May 21, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 06:29:57-06:31:17 (May 21, 2010).

[19] *Okla. H. Rules*, § 9.2 (52nd Leg.).

Indeed, when no rule or precedent is on point, the customary practice, usage or precedent of the House governs until the House sets a precedent establishing a different procedure either through a decision of the presiding officer or by the body itself when deciding an appeal.

In the Oklahoma House of Representatives, it has been the practice of the body to permit individual questions directed to a measure's author, subject to recognition and control by the presiding officer. While House Rules do not directly speak to such a practice during Floor consideration, House Rules do address the practice in House committees.

The "committee rule" explicitly provides a measure's author or an amendment's presenter the opportunity to receive and answer questions in House committees.[20] This privilege or entitlement customarily has been tempered by two controlling yet unequal factors: the chairperson's nearly unqualified authority to grant or not grant recognition and the willingness of the presenting member to yield to individual questions. Under the committee rule and under the customs and practices of the House, exercise of the former always trumps the willingness of the latter.

While the chairperson should allow members of the committee reasonable opportunity to pose questions, the committee rule does not create an absolute right to ask individual questions in committee. Similarly, on the House Floor it is well-established custom and practice for the presiding officer to recognize members for

[20] *Okla. H. Rules*, § 7.5(a) (52nd Leg.).

individual questions on a pending question. That being said, this practice owes its existence to authority given to the presiding officer in House Rule 9.2, paragraph (a) to "preserve order and decorum" and the general nature of its mandate allows considerable latitude in interpreting the terms "order and decorum".

In practice, personal style often comes into play resulting in somewhat different approaches to preserving order during daily floor sessions. Nonetheless, the plenary nature of the presiding officer's authority allows exercise of direct control over how many members are recognized for questions, how many questions are permitted as well as what limits are ultimately imposed because of repetitive questioning or other types of dilatory activity.

9.2 - 7. (2009) Presiding Officer May Defer Ruling On Point Of Order

Rule – House Rule 9.2, paragraph (d) states:

> *Any Member may rise to a point of order against any other Member when, in the Member's opinion, such Member is proceeding out of order. Such point of order shall be decided by the Presiding Officer without debate.*

History – During consideration of the Conference Committee Report on Senate Bill 244, Representative Reynolds requested a ruling of the Chair as to whether the subject of the conference committee report was limited to matters germane to Senate Bill 244 as required by House Rule 7.15(a).

Representative Blackwell then made what amounted to a unanimous consent request to temporarily postpone consideration of the conference committee report. Representative Reynolds raised a point of order as to whether it was in order for the presiding officer to defer ruling on a point of order. The presiding officer stated that it is the prerogative of the Chair to defer ruling on a point of order. The conference committee report on Senate Bill 244 was temporarily postponed.[21]

Ruling – It is the decision of the Chair that it is the prerogative of the presiding officer to defer ruling on a point of order.

9.2 - 8. (2010) Temporary Postponement For Review Of Amendment Not Previously Distributed

Rule – House Rule 9.2, paragraph (a) states in part:

> *While in the Chamber, the Presiding Officer shall preserve order and decorum…*

History – During consideration of House Resolution 1065, Representative Reynolds moved to amend the resolution by striking all language contained in the resolution and inserting in lieu thereof a floor substitute.

Representative Sullivan raised a point of order stating that because the Reynolds amendment was quite lengthy

[21] *Okla. H. Jour.*, 1893, 52nd Leg., 1st Reg. Sess. (May 21, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:78, 0:47-4:10 (May 21, 2009); see also *Mason's Manual of Legislative Procedure* 188, 189 § 244 (National Conference of State Legislatures 2000).

and had not been distributed to the members and as such, the amendment should not be considered until it was made available to the members.

The presiding officer stated that although the rules don't require that the amendment be distributed, the Chair would temporarily postpone consideration of the resolution as a courtesy to the members.[22]

Precedent – It is the precedent of the House that the presiding officer may temporarily postpone consideration of a measure to allow review of an amendment that was not previously distributed to the members of the House.

9.2 - 9. (2010) Impugning Nonmembers In Debate

Rule – House Rule 9.2, paragraph (a) states:

> *While in the Chamber, the Presiding Officer shall preserve order and decorum, shall prevent personal reflections or the impugning of the motive of any Member, and shall confine Members in debate to the question under discussion.*

History – During consideration of Senate Amendments to House Bill 3202, Representative Denney raised a point of order stating that veterinarians had been impugned.

[22] *Okla. H. Jour.*, 1154, 52nd Leg., 2nd Reg. Sess. (April 5, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 58:22-1:00:40 (April 5, 2010).

The presiding officer stated that House Rules only prohibit the impugning of members of the House of Representatives.[23]

Reasoning – In Article V, Section 22, the Oklahoma Constitution says "Senators and Representatives…for any speech or debate in either House, shall not be questioned in any other place."[24] Article V, Section 30, says "Each House may determine the rules of its proceedings…"[25]

On the basis of Article V, Section 30, the House of Representatives has adopted House Rule 9.2 which requires the presiding officer to prevent personal attacks against other members of the House during debate on the House Floor.[26]

In its rules, the House of Representatives has not extended the prohibition against impugning other members of the House during debate to persons not included in the membership of the House of Representatives.

Arguably, under the provisions of Article V, Section 22, a member of the House, as long as he or she is offering their comments within the recognized limits of the "speech and debate" privilege, can disparage or impugn veterinarians or for that matter, any other person without

[23] *Okla. H. Jour.*, 1199, 52nd Leg., 2nd Reg. Sess. (April 8, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 30:52-31:22 (April 8, 2010).
[24] OK CONST V, 22.
[25] OK CONST V, 30.
[26] *Okla. H. Rules*, § 9.2 (52nd Leg.).

fear of having a civil suit successfully prosecuted against them.[27]

Likely, the House has not acted to restrict disparaging remarks directed toward nonmembers because it has a duty to hold the executive branch agencies to account, to investigate certain persons or situations in the course of considering legislation as well as potentially pointing out any perceived shortcomings of judges or of the chief executive. To do so would have a "chilling effect" on essential characteristics of the legislative branch.

9.2 - 10. (2010) Point Of Order Must Be Raised In Timely Manner

Rule – House Rule 9.2, paragraph (d) states:

> *Any Member may rise to a point of order against any other Member when, in the Member's opinion, such Member is proceeding out of order. Such point of order shall be decided by the Presiding Officer without debate.*

History – After consideration on Third Reading and final passage, the emergency clause of Senate Bill 509 was considered and failed of adoption. Representative Coody served notice that at some future time she might choose to offer a motion to reconsider the vote whereby the emergency failed.

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[27] *Cf. U. S. v. Gillock*, 445 U.S. 360, 100 S.Ct. 1185 (1980); *Lindley v. Life Investors Ins. Co. of America*, Slip Copy, 2009 WL 2245565 (N.D.Okla. 2009); *Brock v. Thompson*, 948 P.2d 279 (Okl. 1997); *Oklahoma State Senate ex rel. Roberts v. Hetherington*, 868 P.2d 708 (Okl. 1994); *State ex rel. Oklahoma Bar Ass'n v. Nix*, 295 P.2d 286 (Okl. 1956).

After Representative Coody served notice, Representative Lamons raised a point of order stating that Senate Bill 509 should be ruled out of order pursuant to House Rule 9.3(b).

The presiding officer ruled that the point should have been raised earlier and therefore the point was not well taken.

Representative Inman raised a point of order also stating that pursuant to House Rule 9.3(b) the presiding officer should have ruled the measure out of order. The presiding officer ruled the point not well taken.

Representative Inman then appealed the ruling of the Chair. The decision of the presiding officer was upheld upon a roll call vote.

Representative Lamons then moved to rescind the vote whereby Senate Bill 509 passed, which motion failed of adoption.[28]

Ruling – It is the decision of the Chair that a point of order pertaining to a possible procedural violation must be raised prior to disposition of the underlying question.

Reasoning – When to entertain a point of order is a question of order to be decided by the presiding officer subject to appeal.

In this instance, a point of order was raised pertaining to a procedural question related to consideration of Senate

[28] *Okla. H. Jour.*, 1364-1367, 52nd Leg., 2nd Reg. Sess. (April 20, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 5:57:43-6:24:26 (April 20, 2010).

Bill 509. However, the point of order was raised after passage of Senate Bill 509 had already occurred.

When the House passes the point where a procedural issue could be properly raised but is not, any perceived violation of the rules pertaining to that procedural question is moot and should not be entertained by the presiding officer.[29] To do otherwise would be disorderly and would tend to waste the body's time.

In this case, after an appeal was lodged and decided in favor of the presiding officer's decision, a motion to rescind the passage of Senate Bill 509 was properly offered and considered by the House.

Although ultimately unsuccessful, this was the correct approach for bringing the underlying question back before the House for continued consideration and to raise a point of order pursuant to House Rule 9.3, paragraph (b).

9.2 - 11. (2010) Request For Full Reading Up To Discretion Of Presiding Officer

Rule – House Rule 9.2, paragraph (a) states in relevant part:

> *While in the Chamber, the Presiding Officer shall preserve order and decorum…*

[29] *Mason's Manual of Legislative Procedure* 186 § 241(1) (National Conference of State Legislatures 2000); see also *Prec. Okla. H. of Rep.*, § 9.2(4.), 52nd Leg., 1st Reg. Sess. (March 11, 2009).

History – When House Resolution 1087 was called up for consideration, Representative Kern requested that it be read in full.

Representative Lamons raised a point of inquiry stating that on a previous legislative day he had requested that an amendment be read in full which request was denied by the presiding officer due to lack of time.[30]

Representative Lamons inquired as to why a similar request that House Resolution 1087 be read in full be granted on this present day.

The presiding officer stated that it is up to the discretion of the presiding officer as to whether such a request is to be granted.[31]

Ruling – It is the decision of the Chair that it is up to the discretion of the presiding officer as to whether to grant a request to have the clerk read an amendment or measure in full.

9.2 - 12. (2010) Delay Or Obstruction Of Business

Rule – House Rule 9.2, paragraph (a) states in part:

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[30] *Okla. H. Jour.*, 1304, 52nd Leg., 2nd Reg. Sess. (April 19, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 44:03-49:25 (April 19, 2010).

[31] *Okla. H. Jour.*, 1535, 52nd Leg., 2nd Reg. Sess. (May 6, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 44:25-45:24 (May 6, 2010); *Okla. H. Jour.*, 1633, 52nd Leg., 2nd Reg. Sess. (May 20, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 02:25:30-02:26:17 (May 20, 2010).

While in the Chamber, the Presiding Officer shall preserve order and decorum…

History – Representative Reynolds sought recognition to serve notice to reconsider the vote whereby Senate Bill 2124 passed, which notice was not recognized by the presiding officer.

Representative Reynolds raised a point of order stating that he had not been recognized as desired.

The presiding officer stated that pursuant to *Mason's Manual*, Section 180, paragraph 2,[32] the attempt to serve notice by Representative Reynolds was dilatory and would not be recognized.

Representative Reynolds appealed the ruling of the presiding officer receiving the required fifteen (15) standing seconds.

Representative Wright (Harold) moved to table the Reynolds appeal, which tabling motion prevailed upon a division of the question.

Later in the day, the Conference Committee Report on Senate Bill 1840 was called up for consideration. Upon motion of Representative Johnson, the conference committee report was adopted.

Senate Bill 1840, as amended in conference, was read at length for the fourth time and adopted upon a roll vote.

[32] *Mason's Manual of Legislative Procedure* 141 § 180(2) (National Conference of State Legislatures 2000).

After adoption of the emergency clause, Representative Reynolds sought recognition to serve notice to reconsider the vote whereby Senate Bill 1840 passed.

The presiding officer stated that it was ruled earlier in the day that the repeated attempts to lodge notice to reconsider votes constituted dilatory activity. As such, at this time Representative Reynolds was not recognized to lodge notice of possible intent to reconsider.

Representative Reynolds raised a point of order pursuant to House Rule 9.10, paragraph (a) stating that a Member may serve notice immediately after a final vote is taken.

The presiding officer restated pursuant to *Mason's Manual*, Section 180 that every legislative body has a right to protect itself from dilatory behavior. The earlier ruling was put before the House in the form of an appeal. The appeal was tabled causing the ruling of the Chair to stand.[33]

Representative Reynolds raised a point of inquiry as to what actions would be considered dilatory.

The presiding officer referenced *Mason's Manual*, quoting Section 180, which states that when it is evident to the Chair that a member is trying to obstruct the actions of the body, the presiding officer should not recognize that member, but should rule that person out of order.[34]

Later, the Conference Committee Report on House Bill 2434 was called up for consideration. Representative

[33] Id. at 142
[34] Id.

Liebmann moved adoption of the conference committee report.

Representative Reynolds moved to table the Liebmann motion, which tabling motion failed of adoption upon a roll call vote.

Representative Peters then moved to put the previous question.

Representative Reynolds moved to table the previous question motion and requested a recorded vote on the motion to table.

Pursuant to Section 180 of *Mason's Manual*, the presiding officer ruled as dilatory the request by Representative Reynolds for a recorded vote.[35]

As it pertained to this member, the presiding officer ruled that repeated objections to unanimous consent requests on emergency sections as well as demands for recorded votes on every motion would be considered dilatory activity from this point forward and would not be entertained by the Chair.[36]

Ruling – It is the ruling of the Chair that once satisfied that a member is using parliamentary tactics to obstruct business, subject to appeal in the first instance, the presiding officer will not continue to recognize that member.

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[35] Id.
[36] *Okla. H. Jour.*, 1722, 1736, 1737, 1739, 52nd Leg., 2nd Reg. Sess. (May 25, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 03:22:36-03:26:25; 05:35:22-05:52:26; 06:09:18-06:21:39 (May 25, 2010).

§ 9.4 DEBATE

9.4 - 1. (2009) Debate May Be Extended But Not Limited

Rule – House Rule 9.4, paragraph (b) states:

> *When a debatable question is before the House, any Member may move that the time for debate on such question be extended. For adoption, such motion need only receive a majority of those voting, a quorum being present.*

History – The Conference Committee Report on Senate Bill 153 was considered and adopted. Upon fourth reading and final passage of Senate Bill 153, Representative John Wright moved that debate time be effectively limited to five (5) minutes to the opponents of the question and five (5) minutes to the proponents of the question.

The presiding officer ruled that pursuant to House Rule 9.4, paragraph (b), debate time may be extended but cannot be limited, and as such, ruled the motion out of order. Representative John Wright then moved to suspend House Rule 9.4 for purposes of limiting debate to five (5) minutes a side, which motion was declared adopted upon a roll call vote.[37]

Ruling – It is the decision of the Chair that under the terms of House Rule 9.4, paragraph (b), debate may be

[37] *Okla. H. Jour.*, 1944, 1945, 52nd Leg., 1st Reg. Sess. (May 22, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:59, 10:45-16:40 (May 22, 2009).

extended by motion but may not undergo additional time restrictions without suspension of the rule.

9.4 -2. (2010) Debate Not In Progress Until First Member Recognized

Rule – House Rule 9.4, paragraph (a) states:

> *Except as otherwise specifically provided in these Rules, when a debatable question is before the House, such debate shall be limited to fifteen (15) minutes, equally divided between the proponents and opponents of the question. Under no circumstances shall a Member debate twice on the same question, nor shall any Member speak longer than ten (10) minutes on the same question.*

History – After Senate Bill 1901 was read at length for the third time, debate on the measure was requested.

Upon the request for debate, Representative Nelson moved to advance the question.

Representative Reynolds then raised a point of order stating that the motion to advance the question was out of order because debate was already in progress.

The presiding officer stated that debate is not in progress until the first member is recognized to begin their debate.

In this case, no member had yet been recognized for debate and therefore the point was not well taken.[38]

[38] *Okla. H. Jour.*, 1436-1437, 52nd Leg., 2nd Reg. Sess. (April 22, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 54:58-

Ruling – It is the ruling of the Chair that debate has not commenced until the first member is recognized to begin their debate.

§ 9.6 VOTING AND DIVISION

9.6 - 1. (2006) Members Present In Chamber But Not Voting May Be Named Upon Closing Of Vote

Rule – House Rule 9.6, paragraph (a) states in part:

Every Member shall vote providing the Member is in the Chamber at the time the vote is in progress.

History – Representative Askins raised a point of order that House Rule 9.6(a) does not contain enforcement authority against members who were in the Chamber but not voting.

The presiding officer ruled that a Member may raise a point of order pursuant to House Rule 9.6(a) against a Member, by name, who was in the Chamber but not voting which motion may be subject to a vote of the body.[39]

Ruling – It shall be the decision of the Chair that a Member may raise a point of order naming specific

58:37 (April 22, 2010); *Okla. H. Jour.*, 1677, 52nd Leg., 2nd Reg. Sess. (May 24, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 03:26:30-03:27:27 (May 24, 2010).

[39] *Okla. H. Jour.*, 1599, 1600, 50th Leg., 2nd Reg. Sess. (May 19, 2006); *Daily H. Sess. Dig. Rec.*, 50th Leg., 2nd Reg. Sess. Track 10:05, 5:25-13:09 (May 19, 2006).

Member(s) who were present in the House Chamber upon the closing of a vote, but did not cast their vote. In addition, it is in order for the House to consider a motion offered by a Member requesting that such information be included in the House Journal. Finally, in contrast, the Chair will not hear a motion that does not name offending Members by name due to the fact that such a "blanket" motion might implicate Members who could have been excused for the day or might be outside the House Chamber conducting other business.

Reasoning – The historical roots of House Rule 9.6(a) invite some examination before the parliamentary reasons for the present ruling are discussed. Throughout most of Oklahoma's history, the rules of the House contained a provision requiring Members present to vote and included a punitive provision for Members who were present in the Chamber but did not vote. Beginning in the 1931 House rules, a Member who refused to vote was recorded as voting "no."[40] Specifically, Section 59 of the 1931 House Rules states in part the following:

> *Every member shall vote when his name is called…when a member refuses to vote, he shall be recorded as voting "No".*

From the Thirteenth Oklahoma Legislature in 1931 through the beginning of the Forty-Seventh Oklahoma Legislature in 1999, each successive set of House rules contained language requiring that Members present in the Chamber should vote and upon failing to do would be recorded as voting "no." Near the end of the first

[40] *Okla. H. Jour.*, 453, 13th Leg., 1st Reg. Sess. (Jan. 29, 1931); *Okla. H. Rules*, § 59 (13th Leg.).

regular session of the Forty-Seventh Legislature, the House passed House Resolution 1007 which upon adoption, included an amendment removing the punitive requirement that a Member present in the House Chamber but not voting would be recorded as voting "no."[41] What remained was a provision identical to the present House Rule 9.6(a) holding that:

> *Every Member shall vote providing the Member is in the Chamber at the time the vote is in progress.*[42]

While it is correct that House rules since April 29, 1999, have not included the punitive requirement that Members present but not voting should automatically be recorded as voting "no," there is nothing under the current House rules or general parliamentary law to prevent a Member from raising a point of order for the purpose of pointing out those Members who, being present, did not vote in violation of House Rule 9.6(a). Furthermore, a duly recognized Member after the fact could properly offer a motion requesting that the House Journal name the offending House Members.

Although the current House rules are silent on the question of a motion requesting inclusion of names in the Journal, such a motion is similar to other motions permitted by the Oklahoma House of Representatives. Additionally, under general parliamentary principles, a motion not specifically named by House rules could still pass muster as a proper motion. By definition, a motion is merely a formal statement of a proposal submitted to a legislative body that certain actions be taken or a

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[41] *Okla. H. Jour.*, 1380, 47th Leg., 1st Reg. Sess. (April 29, 1999); 1999 *Okla. Sess. Laws* 2242.
[42] *Okla. H. Jour.*, 1406, 47th Leg., 1st Reg. Sess. (April 29, 1999); *Okla. H. Rules*, § 14(1)(a) (47th Leg.).

determination made.[43] There are literally hundreds of motions not listed in the House rules that short of violating other provisions of the House rules, Oklahoma Statutes, the Oklahoma Constitution, federal law or the federal Constitution, would be appropriate for the House to consider.

On a more practical note, a motion to include in the House Journal the names of Members present in the Chamber but not voting upon the close of the vote is a motion subject to motions of higher rank and, as such, would be subject to debate. Importantly, it should be noted that it would not be appropriate for a Member to attempt to specifically name other Members not yet having voted before the close of the vote. The question of how to vote on a matter frequently results in a Member sitting at his or her desk contemplating how to proceed until the moment right before the vote is closed. While there is no apparent harm in requesting that the presiding officer generally remind Members of their duty to cast a vote, it could be a serious disruption to point out a specific Member who might be quietly deliberating on how he or she should vote immediately before the close of the vote.

In conclusion, a motion to list Members by name in the House Journal on the basis of their failure to vote when present should be entertained only immediately after the close of the vote and before the House takes up another order of business.

[43] *Mason's Manual of Legislative Procedure* 111 § 144(1) (National Conference of State Legislatures 2000); *Sturgis Standard Code of Parliamentary Procedure*, 2nd Ed., 11 Chap. 3 (McGraw-Hill 1966).

9.6 - 2. (2007) Correction Of Vote Mistakenly Cast On Behalf Of Member

Rule – House Rule 9.6, paragraph (e) states:

> *The Presiding Officer shall then lock the machine and instruct the Clerk to record the vote. The Clerk shall immediately activate the recording equipment and when the vote is completely recorded, shall advise the Presiding Officer of the result, and the Presiding Officer shall announce the result to the House. No vote may be changed after it has been recorded.*

History – On March 8, 2007, House Bill 2019 upon final passage failed adoption. At that time, Representative Shelton lodged a motion to reconsider the vote whereby House Bill 2019 failed. On March 13, 2007, Representative Shelton moved to reconsider the final vote on House Bill 2019. The motion to reconsider prevailed. As such, House Bill 2019 underwent a second vote on final passage.

During the second vote on final passage, a member who was excused was mistakenly recorded as casting an "aye" vote. After realizing that an excused member had been mistakenly recorded as casting a vote, the House did not change the vote after the vote was closed and recorded.

Instead, the House voted to suspend House Rule 9.10(a). House Rule 9.10(a) permits only one motion to reconsider the final vote on a bill. Once House Rules were suspended for the purpose of allowing a second motion to reconsider, Representative Shelton offered a second motion to reconsider the final vote on House Bill

2019 which was adopted. On final passage, House Bill 2019 was passed without the excused member's vote.[44]

9.6 - 3. (2008) Division Of The Question

Rule – House Rule 9.6, paragraph (g) states:

> *When a division is requested and ordered, those in the affirmative or the negative, as the case may be, shall cast their votes accordingly…*

History – Representative Morrissette moved to amend House Bill 2242 by striking the title. Prior to consideration of the amendment, Representative Ingmire offered a motion to table the amendment.

Prior to the vote, the presiding officer restated the motion to the full House and then proceeded with a viva voce or voice vote. Upon hearing the "yeas" and the "nays," the presiding officer declared the tabling motion to be adopted. After the voice vote was taken and the result declared by the presiding officer, Representative Morrissette requested a division of the House. The presiding officer declined to order a division.

Representative Morrissette raised a point of order stating that he had requested a division on the tabling motion and as provided in House Rule 9.6(g), the presiding officer should have ordered a division of the question.

[44] *Okla. H. Jour.*, 766, 861-864, 867-869, 51st Leg., 1st Reg. Sess. (March 13, 2007); *Daily H. Sess. Dig. Rec.*, 51st Leg., 1st Reg. Sess. Track 10:49; Track 10:50 (March 13, 2007).

The presiding officer ruled the point not well taken on the basis of House Rule 9.6(g). Rule 9.6(g) states that a division must be both requested and ordered. In this instance, even though requested, the presiding officer had not ordered a division. Representative Morrissette appealed the ruling of the Chair which was upheld by the House upon roll call.[45]

Ruling – It shall be the decision of the Chair that under House Rule 9.6(g), it is within the sole discretion of the presiding officer whether or not to order a division on a question pending before the House.

Reasoning – The usual way to vote is by viva voce. This method is employed by the presiding officer because it is the fastest way to settle questions pending before the House. Many questions considered by the House are routine and easily attract large majorities.[46]

The general rule as stated by *Mason's Manual of Legislative Procedure* and other parliamentary authorities is that a timely request for a division should be granted by the presiding officer.[47] However, as

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[45] *Okla. H. Jour.*, 565, 51st Leg., 2nd Reg. Sess. (March 3, 2008); *Daily H. Sess. Dig. Rec.*, 51st Leg., 2nd Reg. Sess. Track 10:07, 11:15-20:17 (March 3, 2008).

[46] *Mason's Manual of Legislative Procedure* 374 § 532(1) (National Conference of State Legislatures 2000).

[47] *Mason's Manual of Legislative Procedure* 376 § 532 (7) (National Conference of State Legislatures 2000); *Sturgis Standard Code of Parliamentary Procedure*, 2nd Ed., 141 Chap. 17 (McGraw-Hill 1966); Cushing, Luther Stearns, *Elements of the Law and Practice of Legislative Assemblies of the United States of America* 698 § 1798 (Little, Brown and Co. 1856). Thomas Jefferson, *A Manual of Parliamentary Practice* 99 § 41 (Washington City: S.H. Smith, 1801); Petyt, George, *Lex Parliamentaria* 162 Chap. 15 (London: Tim Goodwin, 1690).

permitted by the Oklahoma Constitution,[48] the Oklahoma House of Representatives has adopted a rule which grants greater discretion to the presiding officer.[49] The discretionary authority of the presiding officer to decide whether or not to order a division is a long-standing rule which the Oklahoma House first adopted in 1975 for the Thirty-Fifth Oklahoma Legislature.[50]

While no legislative history or record of debate exists relevant to the original adoption of this provision, the rule on its face is designed to prevent one or two members from wasting the body's time with a request for a division when it is apparent to the presiding officer that the motion under consideration clearly passed in the affirmative or in the negative. As always, the presiding officer should exercise great care when judging the "ayes" and the "nays" and if in doubt, should order a division whether requested or not.[51]

§ 9.7 CONDUCT DURING VOTING

9.7 - 1. (2009) Point Of Order Must Pertain To Vote Itself Once Vote Is Open

Rule – House Rule 9.7, paragraph (a) states:

> *While a vote is in progress and until the completion of a vote, and the announcement of the result, no Member shall be recognized and no other business shall be transacted.*

[48] OK CONST V, 30.
[49] *Okla. H. Rules* § 9.6 (g) (51st Leg.).
[50] *Okla. H. Rules* § 13(1)(g) (35th Leg.).
[51] *Mason's Manual of Legislative Procedure* 375 § 532(4) (National Conference of State Legislatures 2000).

History – During consideration of House Bill 2090, Representative Proctor moved to amend House Bill 2090. During a division on the question of adopting the amendment, Representative Hickman raised a point of order and requested a ruling of the Chair as to whether the subject of the amendment was germane to the subject of House Bill 2090.

Representative McMullen then raised a point of order as to whether the question of germaneness should have been posed prior to opening of the vote on adoption of the amendment. The presiding officer ruled Representative McMullen's point of order to be well taken. Representative Proctor pressed adoption of the amendment which was adopted upon a roll call vote.[52]

Ruling – It is the ruling of the Chair that once a vote is open, no point of order shall be recognized during the vote unless it pertains directly to the conduct of the vote itself.

9.7 - 2. (2009) Motion To Table Not In Order Once Vote Is Ordered

Rule – House Rule 9.7, paragraph (a) states:

> *While a vote is in progress and until the completion of a vote, and the announcement of the result, no Member shall be recognized and no other business shall be transacted.*

[52] *Okla. H. Jour.*, 949, 52nd Leg., 1st Reg. Sess. (March 11, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:53, 4:59-6:41 (March 11, 2009); see also *Okla. H. Jour.*, 1542, 52nd Leg., 1st Reg. Sess. (April 27, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:14, 2:05-3:12 (April 27, 2009).

History – During consideration of Senate Bill 834, Representative Jones moved to amend Senate Bill 834 with a floor substitute in lieu of the bill itself. In the course of presenting the floor substitute to the House, Representative Jones moved to advance the question. After a division was ordered by the presiding officer on whether to advance the question, Representative Inman moved to table Representative Jones' motion to advance the question.

The presiding officer ruled the motion to table out of order because the division on Representative Jones' motion had already been ordered and was underway. Representative Jones pressed his motion to advance the question which was adopted upon a roll call vote.[53]

Ruling – It is the ruling of the Chair that once a vote is ordered on a question by the presiding officer, a motion to table is not in order.

§ 9.8 PREVIOUS QUESTION

9.8 - 1. (2009) Previous Question Applicable Only To Immediately Pending Question

Rule – House Rule 9.8 states in relevant part:

> *When a debatable question is before the House, any Member may move the Previous Question…If the motion for the Previous Question passes, the pending question shall be put immediately and no Member shall be heard to debate it further or seek to amend it.*

[53] *Okla. H. Jour.*, 1346, 1347, 52nd Leg., 1st Reg. Sess. (April 15, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:33, 28:25-29:56 (April 15, 2009).

History – During consideration of the Conference Committee Report on Senate Bill 810, Representative Terrill moved adoption of the conference committee report. Representative Sullivan then moved to put the previous question on the question of passing Senate Bill 810 itself.

The presiding officer ruled that pursuant to House Rule 9.8, the motion to put the previous question is only applicable to the pending question and that the question pending before the House was adoption of the conference committee report not final passage of Senate Bill 810. As such, the presiding officer did not entertain the motion to put the previous question on the question of passing the bill itself.[54]

Ruling – It is the decision of the Chair that the motion to put the previous question is only applicable to the question immediately pending before the House.

§ 9.9 MOTION TO ADVANCE QUESTION

9.9 - 1. (2010) Adoption Of Motion To Advance Question Must Have A Procedural Effect

Rule – House Rule 9.9 states:

When a debatable question is before the House, any Member may move to Advance the Question. If the motion to Advance the Question passes, no further amendments to the matter considered shall be allowed and debate shall be limited to fifteen (15) minutes,

[54] *Okla. H. Jour.*, 1824, 52nd Leg., 1st Reg. Sess. (May 20, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:52, 39:45-41:38 (May 20, 2009).

equally divided between the proponents and opponents of the question, provided that no Member may speak for more than five (5) minutes. After debate is concluded, the question shall be put immediately.

History – Upon consideration of the Conference Committee Report on House Bill 2941, Representative Denney moved that the House adopt the report, which motion failed of adoption upon a roll call vote.

Representative Denney then moved to reject the Conference Committee Report on House Bill 2941and request further conference, which motion failed of adoption upon a roll call vote.

Representative Kiesel then moved to reject the Conference Committee Report on House Bill 2941with attached instructions.

After the motion to reject the report with attached instructions offered by Representative Kiesel, Representative Reynolds moved to advance the question, which motion was ruled out of order. Representative Reynolds raised a point of inquiry as to why the motion to advance the question was out of order.

The presiding officer stated that the motion to advance the question, if adopted, would limit debate to fifteen (15) minutes. The debate time allotted for a motion to reject a conference committee report with instructions was fifteen (15) minutes as well.[55] As such, the motion

[55] *Okla. H. Rules*, § 9.4(a) (52nd Leg.).

to advance the question was ruled out of order because it would have no procedural effect.[56]

Ruling – It is the decision of the Chair that a motion to advance the question is out of order when adoption of the motion would not have any meaningful procedural effect.

§ 9.10 RECONSIDERATION

9.10 - 1. (2007) Electronic Availability Upon Motion to Reconsider

Rule – House Rule 9.10, paragraphs (a) through (f) provide the guidelines governing the motion to reconsider the final vote on bills, emergencies and resolutions.

History – Subsequent to a motion to reconsider the vote whereby House Bill 2019 failed adoption, Representative Sullivan raised a point of order regarding whether or not reconsideration of House Bill 2019 was in order under House Rules due to the fact that the bill

[56] *Okla. H. Jour.*, 1632, 52nd Leg., 2nd Reg. Sess. (May 20, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 2:14:17-2:25:04 (May 20, 2010). See also *Okla. H. Jour.*, 1651, 52nd Leg., 2nd Reg. Sess. (May 21, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 06:28:50-06:29:19 (May 21, 2010). In this instance, the presiding officer did not allow debate on the question of adoption of the emergency section of Senate Bill 1267. Because debate had already been disallowed, the presiding officer refused to recognize a subsequent motion to put the previous question because adoption of the motion would not have resulted in any procedural change. See also *Okla. H. Jour.*, 1892, 52nd Leg., 2nd Reg. Sess. (May 28, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 07:33:19-07:37:21 (May 28, 2010).

under reconsideration was not electronically available on the House Floor Calendar.

The presiding officer ruled the Sullivan point of order "not well taken" on the basis that the bill under reconsideration was available to the members of the House on the Legislature's electronic bill tracking system, *BTOnline*. As such, the members had access to the bill even if the bill no longer was available on the House Floor Calendar.[57]

Ruling – It shall be the decision of the Chair that House Rule 9.10 shall be interpreted to mean that a bill may be taken up on the House floor for reconsideration whether or not it is available on the House Floor Calendar if it is available from some other source such as *BTOnline*.

9.10 - 2. (2008) Consideration Of Other Business Prior To Reconsideration Notice

Rule – House Rule 9.10, paragraph (a) states in part:

> *The final vote on Third Reading…on any bill or joint resolution, or on the Emergency Section thereof…may be reconsidered only if a Member serves notice immediately after such final vote is taken, prior to the consideration of any other business…*

History – Representative Covey attempted to serve notice, or "lodge a motion," that on some future legislative date he might desire to offer a motion to

[57] *Daily H. Sess. Dig. Rec.*, 51st Leg., 1st Reg. Sess. Track 10:44, 9:12-11:43 (March 13, 2007).

reconsider the vote by which House Bill 2561 passed the full House.

Referring to House Rule 9.10(a), the presiding officer ruled the attempted notice not timely and out of order because Representative Covey had not served notice immediately after the vote on "Third Reading" and final passage. Subsequent business had transpired.

Specifically, three other House bills, House Bill 2729, House Bill 2640 and House Bill 2764, had been considered and passed by the full House prior to the attempt to serve notice to reconsider House Bill 2561.[58]

Ruling – It shall be the decision of the Chair that House Rule 9.10(a) shall be interpreted to mean that "other business" includes consideration of other bills and as such, the Chair will not recognize an attempt to serve notice of reconsideration once other bills have been taken up by the House.

9.10 - 3. (2009) Notice To Reconsider Measure Itself May Not Be Lodged Once Emergency Is Under Consideration

Rule – House Rule 9.10, paragraph (a) states in part:

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[58] *Okla. H. Jour.*, 716-719, 51st Leg., 2nd Reg. Sess. (March 10, 2008); *Daily H. Sess. Dig. Rec.*, 51st Leg., 2nd Reg. Sess. Track 10:26, 00:00-06:00 (March 10, 2008); See also *Okla. H. Jour.*, 1772, 52nd Leg., 2nd Reg. Sess. (May 26, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 05:13:12-05:13:44 (May 26, 2010); in this ruling, the presiding officer held that an introduction of guests constituted a different order of business resulting in a reconsideration motion offered subsequent to the introduction to constitute a new order of business to be scheduled through the Majority Floor Leader.

The final vote on Third Reading or Fourth Reading on any bill or joint resolution, or on the Emergency Section thereof…may be reconsidered only if a Member serves notice immediately after such final vote is taken, prior to the consideration of any other business, of said Member's intention to present a motion to reconsider such action…

History – Senate Bill 239 was read for the third time and passed by the House. On the question of adoption of the emergency clause, the emergency failed. Representative Sullivan immediately served notice of his intention to reconsider the vote whereby the emergency failed.

After Representative Sullivan served notice of his intention to reconsider the vote on the emergency clause, Representative Reynolds served notice of his intention to reconsider the vote whereby Senate Bill 239 passed the House. The presiding officer ruled that Representative Reynolds' attempt to serve notice on the bill itself was out of order at that time because the House had already moved on to the next order of business when it took up consideration of the emergency clause.[59]

[59] *Okla. H. Jour.*, 1264, 52nd Leg., 1st Reg. Sess. (April 9, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:14, 47:45-49:40 (April 9, 2009); affirmed at *Okla. H. Jour.*, 1305, 1306, 52nd Leg., 1st Reg. Sess. (April 14, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:21, 00:00-6:31 (April 14, 2009); *Okla. H. Jour.*, 1910, 52nd Leg., 1st Reg. Sess. (May 22, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:19, 4:42-6:15 (May 22, 2009); *Okla. H. Jour.*, 1385, 52nd Leg., 2nd Reg. Sess. (April 20, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 9:42:24-9:53:32 (April 20, 2010); see also *Prec. Okla. H. of Rep.*, § 9.10(6.), 52nd Leg., 2nd Reg. Sess. (April 20, 2010).

Ruling – It is the ruling of the Chair that once the House has moved from consideration of a measure to consideration of the emergency clause, notice to reconsider the measure itself may not be lodged.

Reasoning – In order to promote orderliness within the legislative process, consideration of a measure and consideration of a measure's emergency clause should constitute two distinct orders of business. This means that notice to reconsider the measure itself must be lodged prior to the House taking up the emergency clause for consideration. This approach reflects the guidance provided in House Rule 8.18 which says: "the emergency section shall constitute a separate question."

9.10 - 4. (2009) Use And Distinction Of Motion To Rescind

Rule – House Rule 9.10, paragraph (f) states:

> *Except as otherwise specifically provided in these Rules, no question shall be subject to reconsideration in the House.*

History – During consideration of the Conference Committee Report on Senate Bill 810, Representative Schwartz moved adoption of the conference committee report which failed upon a division of the question. Representative Terrill attempted to serve notice to reconsider the vote whereby the conference committee report failed of adoption.

The presiding officer ruled the motion out of order pursuant to House Rule 9.10(f). Representative Terrill then moved to reject the conference committee report and to request further conference with the Senate.

Representative Sullivan moved to table Representative Terrill's motion to reject the conference committee report. The motion to table failed upon a division of the question. Representative Terrill withdrew his motion to reject the Conference Committee Report on Senate Bill 810.

Representative Terrill then moved to rescind the vote whereby adoption of the conference committee report had failed. The motion to rescind the vote was adopted upon a division of the question. Representative Terrill then, for a second time, moved to adopt the Conference Committee Report on Senate Bill 810.

Representative Reynolds raised a point of inquiry as to whether the second motion to adopt the Conference Committee Report on Senate Bill 810 was dilatory because the question of adopting the conference committee report had been previously considered and defeated by the House.

The presiding officer ruled that because the first vote to adopt the conference committee report, which had failed, had been rescinded, further consideration of the conference committee report was in order.[60]

Ruling – It is the decision of the Chair that once a vote is rescinded, it is as if the vote never occurred and the question may be once again considered by the House.

[60] *Okla. H. Jour.*, 1823-1826, 52nd Leg., 1st Reg. Sess. (May 20, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:52, 35:06-48:46 (May 20, 2009); *Okla. H. Jour.*, 1405, 52nd Leg., 2nd Reg. Sess. (April 21, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 3:20:09-3:21:54 (April 21, 2010).

Reasoning – While the motion to reconsider is similar in result to the motion to rescind, there are several characteristics distinguishing the one from the other. The motion to reconsider is governed by House Rules 8.13 and 9.10. Rule 8.13 is applicable to floor amendments and Rule 9.10 to bills and resolutions on final passage.

A successful motion to reconsider means that the vote is literally retaken on the amendment or measure in question.[61] In contrast, a successful motion to rescind means the vote is considered stricken or made ineffective as if it had never before been taken, as if the question were being considered for the first time.

When a motion to reconsider is lodged it has the effect of suspending the action previously taken until the reconsideration is decided by the House or until the time to reconsider expires by operation of House Rules.[62] On the other hand, the motion to rescind does not suspend actions previously taken. It is used to undo actions that are not susceptible to reconsideration either because a motion to reconsider is prohibited by House Rules or because the time to do so has expired. When a question may be reached by a motion to reconsider under House Rules, a motion to rescind is not in order.[63]

9.10 - 5. (2010) Motion To Reconsider Must Be Exhausted Prior To Use Of Motion To Rescind

Rule – House Rule 9.10, paragraph (a) states:

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[61] *Mason's Manual of Legislative Procedure* 317 § 468(2) (National Conference of State Legislatures 2000).
[62] Id. at 315-316 § 467; *Okla. H. Rules*, §§ 8.13, 9.10 (52nd Leg.).
[63] *Mason's Manual of Legislative Procedure* 321 § 480 (National Conference of State Legislatures 2000).

The final vote on Third Reading or Fourth Reading on any bill or joint resolution, or on the Emergency Section thereof, or the final vote on adoption of a simple or concurrent resolution, may be reconsidered only if a Member serves notice immediately after such final vote is taken, prior to the consideration of any other business…the motion to reconsider a final vote shall not be presented or considered on the same day that such final vote was taken… Only one (1) reconsideration of the final vote on a bill, resolution or Emergency Section shall be allowed.

History – After passage of House Bill 2747 on Third Reading but before the vote was taken on the question of adoption of the measure's emergency clause, Representative Cox requested unanimous consent that the Journal reflect that he had meant to vote 'aye' on House Bill 2747 but had accidentally voted 'nay'.

Representative Morgan raised a point of inquiry as to whether it was permissible in a situation such as this to rescind the vote on the measure when a member had voted differently than they intended.

After quoting Section 480, paragraph four (4) of *Mason's Manual*,[64] the presiding officer stated that a member may lodge notice to reconsider the passage or failure of a measure, and once that approach had been exhausted they could offer a motion to rescind the vote by which the measure had passed or failed.

Representative Brown raised a point of order that since no one had served notice to reconsider the vote and the

[64] *Mason's Manual of Legislative Procedure* 321 § 480(4) (National Conference of State Legislatures 2000).

House had taken up consideration of the emergency clause, the motion to rescind would now be in order. The presiding officer declared the point not well taken.

Representative Wright (John) then requested unanimous consent to rescind the vote whereby House Bill 2747 passed.

The presiding officer readdressed the point of order previously raised by Representative Brown. The presiding officer stated that upon further consideration Representative Brown was correct in stating that since the House had moved onto consideration of the emergency clause, the option of serving notice to reconsider the vote on the measure itself had been exhausted resulting in the motion to rescind the vote on passage of the measure itself to be in order.[65]

Ruling – It is the decision of the Chair that if a motion to reconsider can properly be offered, the motion to reconsider must be exhausted before a motion to rescind will be entertained.

9.10 - 6. (2010) Principal Author Favored To Lodge Notice Of Reconsideration

Rule – House Rule 9.10, paragraph (a) states in part:

> *The final vote on Third Reading or Fourth Reading on any bill or joint resolution, or on the Emergency Section thereof…may be reconsidered only if a Member serves notice immediately after such final vote is taken,*

[65] *Okla. H. Jour.*, 645, 646 52nd Leg., 2nd Reg. Sess. (March 3, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 2:10:11-2:20:07 (March 3, 2010).

prior to the consideration of any other business, of said Member's intention to present a motion to reconsider such action…

History – House Bill 2363 was read for a fourth time and passed by the House. When the emergency clause for House Bill 2363 was considered, it failed of adoption.

The measure's principal author, Representative Miller, then served notice that he might choose at some future time to reconsider the vote whereby the emergency failed.

Immediately after Representative Miller lodged notice, Representative Blackwell raised a point of inquiry as to how much time a member would be granted for the purpose of serving notice of a possible future motion to reconsider as provided in House Rule 9.10.

The presiding officer stated that the member must seek recognition immediately upon the close of the vote. Representative Blackwell raised an additional point of inquiry as to when the vote would be considered in progress.

The presiding officer stated that the vote is in progress once the presiding officer has ordered the vote and that it is within the discretion of the presiding officer whether to recognize or not recognize a member seeking recognition.

Representative Kiesel requested clarification as to when the vote would be actually considered in progress. Would it be at the beginning of the ordering of the vote or at the end of the ordering of the vote?

The presiding officer clarified that it would be at the end of the ordering of the vote and that it is within the discretion of the presiding officer whether to recognize or not recognize a member seeking recognition in the context of maintaining proper order.

Representative Morgan then raised a point of clarification as to what would be the best method for a member to seek recognition to serve notice to reconsider as provided in House Rule 9.10.

The presiding officer stated that a member may activate their "request to speak button" or stand and address the presiding officer.

The presiding officer stated that it is the custom of the House to favor the measure's author when several members are attempting to obtain recognition for the purpose of serving notice of reconsideration, but in the event the author did not seek recognition, other members would be recognized for the purpose of serving notice.[66]

Ruling – It is the decision of the Chair that as is customary, the principal author of a measure will be recognized in preference to other members when seeking recognition to serve notice of possible intent to reconsider.

[66] *Okla. H. Jour.*, 1386-1387, 52nd Leg., 2nd Reg. Sess. (April 20, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 10:08:11-10:32:09 (April 20, 2010).

§ 9.12 QUORUM

9.12 - 1. (2010) Member Must Personally Answer Quorum Call

Rule – House Rule 9.12, paragraph (a) states:

> *If, at any time during the daily sessions of the House, a Member recognized by the Presiding Officer raises a question as to the presence of a quorum, the Presiding Officer shall, without debate, forthwith direct that the electronic voting machine be activated to determine the presence or absence of a quorum, and shall announce the result.*

History – Shortly after convening the House of Representatives on Thursday, April 8, 2010, the presiding officer directed the clerk to activate the electronic machine to determine the presence of a quorum.

Following determination of the presence of a quorum, Representative Blackwell raised a point of inquiry as to whether a member must answer a quorum call personally by activating the electronic button at their desk or whether it would be permissible for one member to direct another member to activate the button on their behalf.

The presiding officer stated that a member must activate the button from their own desk during the determination of the presence of a quorum.[67]

[67] *Okla. H. Jour.*, 1198 52nd Leg., 2nd Reg. Sess. (April 8, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 03:12-06:21 (April 8, 2010).

Ruling – It is the decision of the Chair that when the House is under a quorum call, a member must personally activate the button from their own desk and not request another member to answer the quorum call on their behalf.

RULE TEN

MOTIONS

10 - 1. (2007) Rejection of Multiple Senate Amendments

Rule – House Rule 10 is the main House rule governing the use of motions by the House of Representatives during the legislative session.

History – Upon obtaining recognition by the presiding officer, Representative Benge offered a motion to reject Senate amendments to multiple House bills titled as appropriation measures. In the course of offering the motion, Representative Benge informed the House that the appropriation bills relevant to his motion had been published on a physical list and had been previously distributed to each member of the House.

Upon the offering of the Benge motion, Representative John Wright raised a question of the Chair as to whether or not this was a proper motion for the House to consider. The presiding officer informed Representative Wright that the Benge motion was an appropriate motion due to the fact that it has been the historic practice of the

House to reject Senate amendments to House appropriation bills as a group.[1]

Ruling – It shall be the decision of the Chair that House Rule 10 of shall be interpreted to mean that a motion that purports to reject Senate amendments to multiple House appropriation measures shall be considered a proper motion.

10 - 2. (2010) No Requirement For Fiscal Impact Statement For Other Motions

Rule – Motions utilized by the House of Representatives are principally governed by House Rule Ten, "Motions".[2]

History – Representative Cox moved to reconsider the vote whereby the emergency failed on House Bill 2437, which motion prevailed upon a roll call vote.

Representative Lamons moved that the debate on the motion to reconsider the vote whereby the emergency failed be printed verbatim in the House Journal.

Representative Reynolds moved to extend the debate time on the motion to reconsider the vote whereby the emergency failed, which motion was ruled out of order.

Representative Hickman raised a point of order stating that the Lamons motion was not accompanied by a fiscal

[1] *Okla. H. Jour.*, 1349-1350, 51st Leg., 1st Reg. Sess. (April 23, 2007); *Daily H. Sess. Dig. Rec.*, 51st Leg., 1st Reg. Sess. Track 10:63, 1:19-4:06 (April 23, 2007).
[2] See *Okla. H. Rules*, § 7.11(a) (52nd Leg.); *Okla. H. Rules*, § 7.15(d) (52nd Leg.), for motions that, according to House Rules, must be accompanied by a fiscal impact statement.

impact statement and therefore was not in order for consideration.

The presiding officer ruled that there is no requirement within House Rules that a motion be accompanied by a fiscal summary and as such the point was not well taken.

Representative Lamons pressed his motion that the debate on the motion be printed verbatim in the House Journal, which motion was declared adopted upon a roll call vote.[3]

Ruling – It is the decision of the Chair that no motion shall be required to be accompanied by a fiscal impact statement except such motions as are specifically required by House rule to include a fiscal impact statement.

§ 10.1 PRECEDENCE OF MOTIONS

10.1 - 1. (2009) Precedence Of Main Motions Pertaining To Disposition Of Conference Committee Reports

Rule – House Rule 10.1 states in relevant part:

> *When a question shall be under consideration, no motion shall be received except as hereinafter specified, which motion shall have precedence in the order stated…*

[3] *Okla. H. Jour.*, 1676-1678, 52nd Leg., 2nd Reg. Sess. (May 24, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 3:44:20-3:45:33 (May 24, 2010).

To adopt a conference committee report (not amendable - debatable)

History – During consideration of the Conference Committee Report on Senate Bill 216, Representative Miller moved adoption of the conference committee report. Representative Smithson moved to reject the Conference Committee Report on Senate Bill 216 with attached instructions.

The presiding officer ruled that the motion to adopt the conference committee report would have to fail of adoption before the motion to reject the conference committee report with attached instructions would be in order for consideration. Representative Smithson then moved to table Representative Miller's motion to adopt the conference committee report. The motion to table failed of adoption upon a roll call vote.

Representative Inman raised a point of order stating that a motion to adopt the conference committee report should not be taken up prior to consideration of a motion to reject with instructions and that the House routinely entertained motions to reject with instructions ahead of motions to adopt the conference committee report.

The presiding officer ruled the point not well taken holding that a motion to reject the conference committee report with instructions would not be in order unless the pending motion to adopt the conference committee report failed of adoption. The presiding officer clarified that the Chair had not entertained other main motions such as a motion to reject with instructions when the motion to adopt was pending and that this has been the longstanding practice of the House of Representatives.

Representative Inman appealed the ruling of the presiding officer and the decision of the Chair was upheld upon a roll call vote.[4]

Ruling – It is the decision of the Chair that the main motion to accept a conference committee report and the main motions to reject a conference committee report with or without attached instructions are all three of equal precedence and shall be taken up in the order they are offered upon recognition by the presiding officer.

Reasoning – When taking up consideration of a conference committee report, by custom the House observes a specific practice. The author of the measure, or his or her designee, is recognized to offer explanation of the report. Upon conclusion of the explanation, the author offers either a motion to adopt the report or a motion to reject the report and request further conference with the Senate. The author may offer either motion without seeking additional recognition from the presiding officer.

In the event the author forgets to offer a motion, the author has failed to put anything before the House for consideration,[5] thus becoming vulnerable to another main motion[6] such as a hostile motion to reject the conference committee report with attached instructions.

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[4] *Okla. H. Jour.*, 1865-1867, 52nd Leg., 1st Reg. Sess. (May 21, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:43, 0:00-3:23, 11:22-23:41 (May 21, 2009); *Okla. H. Jour.*, 1587 52nd Leg., 2nd Reg. Sess. (May 17, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 01:34:21-01:41:57 (May 17, 2010).
[5] *Mason's Manual of Legislative Procedure* 109 § 140 (National Conference of State Legislatures 2000).
[6] *Mason's* at 293 § 440; see also *Mason's* at 295, 296 § 442.

By custom there are only three main motions used by the Oklahoma Legislature when dealing with conference committee reports: the motion to adopt the report; the motion to reject the report and request further conference with the Senate with attached instructions; and the motion to reject the report and request further conference with the Senate without attached instructions.[7]

In accordance with the customs of the House and general parliamentary law, each of the three main motions associated with disposition of a conference committee report are of equal standing or precedence and are taken up on the basis of which one was first offered upon recognition by the presiding officer.[8]

§ 10.2 INCIDENTAL MOTIONS

10.2 - 1. (2010) Appeal Of The Chair May Be Tabled

Rule – House Rule 10.2 states in relevant part:

The following motions are incidental in nature and may be made at any time as an incident to the consideration of the subject before the House. Such motions shall be amendable or not amendable, debatable or not debatable, as set forth below:

Appeals (not amendable - not debatable, except as governed by Section 9.2)

[7] *Cf. Mason's* at 293, 294 § 441.
[8] *Mason's* at 123 § 158.

History – During consideration of the Conference Committee Report on House Joint Resolution 1054, Representative Morrissette raised a point of order stating that consideration of the conference committee report was out of order pursuant to House Rule 7.15(a) because it was not germane to the engrossed version of the measure.

The presiding officer ruled the point not well taken and the conference committee report germane.

Representative Morrissette appealed the ruling of the presiding officer followed by Representative Wright (Harold) offering a motion to table the appeal lodged by Representative Morrissette.

Representative Morrissette raised a point of order as to whether a motion to table an appeal of the ruling of the Chair was in order under House Rules.
The presiding officer stated that pursuant to House Rules 10.1 and 10.2, a motion to table is of higher precedence than a motion to appeal the ruling of the presiding officer.

The presiding officer further stated that *Mason's Manual*, Section 233, states that an appeal may be laid upon the table which has the effect of closing debate and sustaining the decision of the presiding officer.[9]

Representative Wright (Harold) withdrew his motion to table the appeal previously lodged by Representative Morrissette. At which time the presiding officer

[9] *Mason's Manual Of Legislative Procedure* 183 § 233 (National Conference of State Legislatures 2000).

entertained the appeal. The decision of the presiding officer was upheld upon roll call vote.[10]

Ruling – It is the decision of the Chair that a motion to table an appeal of the ruling of the Chair is a proper motion and if adopted, has the effect of halting the appeal and sustaining the decision of the presiding officer.

§ 10.5 WITHDRAWAL OF MOTIONS

10.5 - 1. (2009) Withdrawal Of Measure By Author

Rule – House Rule 10.5 states:

Prior to commencement of debate thereon, or prior to action being taken thereon if there be no debate, any motion may be withdrawn by the Member making same. Otherwise, such motion may be withdrawn only upon adoption of a motion to withdraw same.

History – During consideration of House Bill 2013, Representative Miller requested unanimous consent to "lay the bill over" after the bill had undergone Third Reading and debate but prior to the vote on final passage. An objection was lodged and the unanimous consent request was effectively refused. Representative Miller pressed his motion and the presiding officer restated the motion and the vote was taken viva voce. The presiding officer declared the motion adopted.

[10] *Okla. H. Jour.*, 1472-1473, 52nd Leg., 2nd Reg. Sess. (April 28, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 1:32:57-1:52:53 (April 28, 2010); *Okla. H. Jour.*, 1722, 52nd Leg., 2nd Reg. Sess. (May 25, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 03:24:46-03:26:25 (May 25, 2010).

After adoption of the motion, Representative Blackwell raised a point of order as to whether it had been the tradition of the House of Representatives that the House would defer to the principal author of a bill on the question of withdrawing the bill from further consideration by the House.

The presiding officer agreed to take the question under advisement. Representative Brown then raised a point of inquiry as to whether the bill should be considered property of the House at this point in the legislative process rather than remaining within the sole custody of the author and asked whether the House should proceed with the vote on final passage of the bill.
The presiding officer ruled the point well taken except that the House had already adopted the motion by voice vote. At this time, several members requested that a recorded vote be taken on the motion to lay the bill over.

The presiding officer stated that although in the opinion of the Chair the “ayes” prevailed on the question of adoption of the Miller motion, the presiding officer, as a courtesy, would proceed to order a recorded vote. The motion was again declared adopted subsequent to a roll call vote of the House.

The following legislative day, the presiding officer addressed the questions raised in the points of order by Representative Blackwell and Representative Brown by saying that when an author wants to ‘lay a bill over’, and if the bill has not been amended or received debate, the author may withdraw the bill without the consent of the House.

If the bill has been amended or undergone any debate, the bill cannot be withdrawn from further consideration

by the House except upon a successful unanimous consent request or upon a successful motion to request leave to withdraw the question.[11]

Ruling – It shall be the decision of the Chair that House Rule 10.5 shall be interpreted to mean that a bill may not be unilaterally withdrawn from consideration by its principal author if amendment or other substantive action has taken place on the bill or if debate on the bill has already commenced.

Reasoning – In the Oklahoma House it is common to hear a member request that a measure be "laid over" when that member decides additional work needs to be completed on the measure. Under principles of parliamentary procedure, this effectively is a request to withdraw the bill from further consideration at that time.[12] Depending on the point in the legislative process this request is made, the member may or may not have an absolute right to withdraw the bill from further consideration by the House.

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[11] *Okla. H. Jour.*, 570-571, 52nd Leg., 1st Reg. Sess. (Feb. 19, 2009); *Okla. H. Jour.*, 614, 52nd Leg., 1st Reg. Sess. (Feb. 23, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:08, 42:51-47:03 (Feb. 19, 2009); *H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:29, 1:31-3:01 (Feb. 23, 2009); *Okla. H. Jour.*, 834, 835, 52nd Leg., 2nd Reg. Sess. (March 10, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 4:07:24-4:16:10 (March 10, 2010); *Okla. H. Jour.*, 1356, 52nd Leg., 2nd Reg. Sess. (April 20, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 2:52:24-2:56:14 (April 20, 2010); *Okla. H. Jour.*, 1587 52nd Leg., 2nd Reg. Sess. (May 17, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 01:50:59-01:53:13 (May 17, 2010); *Okla. H. Jour.*, 1691, 52nd Leg., 2nd Reg. Sess. (May 24, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 06:10:28-06:11:43 (May 24, 2010).

[12] *Mason's Manual Of Legislative Procedure* 208 § 274 (National Conference of State Legislatures 2000).

House Rule 10.5 states that a member making a motion may withdraw the motion at any time unless the House has started debate on the motion or taken some other action on the motion.[13]

When House Rule 10.5 speaks of "motions", this term encompasses both bills and resolutions in addition to other proposals traditionally referred to as motions. A bill or resolution is included among the main questions or main motions considered by the House, and a bill or resolution is always presented with an implied motion that it be passed whether or not the measure's author actually verbalizes the phrase "move adoption" after he or she is recognized to offer explanation of the bill's purpose.[14]

Typically, a member can tell the presiding officer that they desire to "lay over" or withdraw the measure without another member questioning their request. In fact, such a request is so commonly agreed to that members typically don't frame their request as a unanimous consent request even though such a request may be required depending on where the measure is in the legislative process.

Under the terms of House Rule 10.5, when the author says he or she wants to "lay the bill over", if the bill has not been amended or received debate, the author may withdraw the bill without consent of the House.

If the bill has been amended or undergone any debate, the bill cannot be withdrawn from further consideration

[13] *Okla. H. Rules*, § 10.5 (52nd Leg.).
[14] *Mason's Manual Of Legislative Procedure* 109 § 141; 117 § 150 (National Conference of State Legislatures 2000).

by the House except by unanimous consent or if objection is heard, by a successful motion to request leave to withdraw the question.

The underlying purpose for Rule 10.5 is to protect the House. If the House has taken time to pursue action on or to debate a motion or in this case a bill, the author should not be permitted to take up the House's time and then unilaterally withdraw the bill from further consideration without the House first agreeing to allow the author to do so.

In this case, Representative Miller requested to "lay over" House Bill 2013 after it was debated prior to the vote on final passage. This effectively was a unanimous consent request to withdraw the bill to which objection was heard. Because debate had already occurred and the unanimous consent request had been rejected, the presiding officer correctly put the motion to the House.

In conclusion, under House Rules, two threshold events, amendment or debate, result in a measure becoming property of the House.

RULE FOURTEEN

RULES

§ 14.1 SUSPENSION OR AMENDMENT OF RULES

14.1 - 1. (2010) Previous Rule Suspension Still Effective After Temporary Postponement Of Question

Rule – House Rule 14.1, paragraph (c) states:

> *Two-thirds (2/3) of the Members elected to and constituting the House may suspend the Rules, or a portion thereof, but a motion for that purpose shall be decided without debate.*

History – The 2nd Conference Committee Report on Senate Bill 481 which had been temporarily postponed was called up for further consideration.[1]

Representative Kiesel raised a point of inquiry as to whether it was necessary to suspend House Rule 9.3(b) again in order to continue consideration of the 2nd Conference Committee Report on Senate Bill 481.

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[1] *Okla. H. Jour.*, 1864, 1865, 52nd Leg., 2nd Reg. Sess. (May 28, 2010).

The presiding officer ruled that an additional suspension of House Rule 9.3(b) was not necessary in order to proceed with consideration of the conference committee report.[2]

Ruling – It is the decision of the Chair that once a House rule is suspended, the same rule does not need to be suspended a second time when the question to the which the suspension is incidental is taken up again after being temporarily postponed.

§ 14.2 PARLIAMENTARY AUTHORITIES

14.2 - 1. (2007) Constitutional Rulings

Rule – House Rule 14.2 states in part:

> *Any parliamentary questions not provided for by the Oklahoma Constitution or these Rules shall be governed by the ruling of the Speaker…*

History – In the course of considering House Bill 1360 on General Order, Representative Lamons requested that the presiding officer rule on the constitutionality of House Bill 1360. The presiding officer stated that the Chair would not rule on the constitutionality of a bill under consideration by the House.[3]

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[2] *Okla. H. Jour.*, 1900, 52nd Leg., 2nd Reg. Sess. (May 28, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 8:14:10-8:14:42 (May 28, 2010).

[3] *Okla. H. Jour.*, 682, 51st Leg., 1st Reg. Sess. (March 6, 2007); *Daily H. Sess. Dig. Rec.*, 51st Leg., 1st Reg. Sess. Track 10:08, 0:38-2:07 (March 6, 2007); *Okla. H. Jour.*, 449, 52nd Leg., 2nd Reg. Sess. (Feb. 16, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 46:52-48:08 (Feb. 16, 2010); *Okla. H. Jour.*, 576, 52nd Leg., 2nd Reg. Sess. (March 1, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess.,

Ruling – It shall be the decision of the Chair as allowed under the provisions of House Rule 14.2 that the presiding officer will not rule on the constitutionality of a bill under consideration by the House of Representatives.

14.2 - 1.A. (2009) Constitutionality Of Measure's Title

Rule – House Rule 14.2 states in part:

> *Any parliamentary questions not provided for by the Oklahoma Constitution or these Rules shall be governed by the ruling of the Speaker…*

History – While House Bill 1755 was under consideration, Representative Morrissette raised a point of order as to whether the title of House Bill 1755 met constitutional requirements. The presiding officer ruled the point not well taken pursuant to House Precedent 14.2-1.[4] Representative Morrissette appealed the ruling of the presiding officer. The decision of the presiding officer was upheld upon a roll call vote.[5]

9:16-12:52 (March 1, 2010); *Okla. H. Jour.*, 1398, 52nd Leg., 2nd Reg. Sess. (April 21, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 1:32:18-1:34:36 (April 21, 2010); *Okla. H. Jour.*, 1650, 52nd Leg., 2nd Reg. Sess. (May 21, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 04:54:27-04:56:47; 06:28:11-06:28:50 (May 21, 2010); *Okla. H. Jour.*, 1676, 52nd Leg., 2nd Reg. Sess. (May 24, 2010); *Daily H. Sess. Video Rec.*, 52nd Leg., 2nd Reg. Sess., 03:15:15-03:17:10 (May 24, 2010).

[4] *Prec. Okla. H. of Rep.*, § 14.2(1.), 51st Leg., 1st Reg. Sess. (March 6, 2007).

[5] *Okla. H. Jour.*, 693, 52nd Leg., 1st Reg. Sess. (March 2, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:29, 8:52-14:56 (March 2, 2009).

Ruling – It is the decision of the Chair that in reliance upon Precedent 14.2-1 the presiding officer will not rule on the constitutionality of a bill's title.

Reasoning – It is not proper for the presiding officer to determine whether a measure's title conforms to constitutional requirements. This question must be decided by the House itself.[6]

14.2 - 2. (2009) Authority To Publish Rulings Of The Chair

Rule – House Rule 14.2 states in part:

> *Any parliamentary questions not provided for by the Oklahoma Constitution or these Rules shall be governed by the ruling of the Speaker. The Speaker may publish these substantive rulings in a volume of precedents.*

History – During consideration of the Conference Committee Report on House Bill 1934, Representative Brown requested a ruling of the Chair as to whether the conference committee report was germane to the subject of House Bill 1934 as required by House Rule 7.15(a).

The presiding officer determined that the conference committee report was germane to the subject of House Bill 1934. Representative Brown appealed the ruling of the Chair and the decision of the presiding officer was upheld upon a roll call vote.

[6] *Mason's Manual of Legislative Procedure* 187 § 242(3) (National Conference of State Legislatures 2000).

Subsequent to the ruling on the question of germaneness, Representative Brown moved that the ruling be included in the "book of precedents." The presiding officer ruled the motion out of order pursuant to House Rule 14.2 which grants the Speaker discretion to determine which rulings are published as written precedents of the House.[7]

Ruling – It is the ruling of the Chair that House Rules give exclusive authority to the Speaker to determine which rulings of the Chair are to be published in the "book of precedents".

Reasoning – House Rule 14.2 grants authority to the Speaker to decide whether a ruling of the Chair is "substantive" and therefore should be published as a written precedent of the House. Because Rule 14.2 explicitly gives discretionary authority to the Speaker to make this determination, it would not be appropriate for the presiding officer to entertain a motion which would cause a ruling of the Chair to be placed in the "book of precedents" in a manner outside the procedure created by Rule 14.2.

A motion, such as the one offered in this instance, if adopted, would have had the effect of amending the House Rules without in fact following the requirements outlined in House Rule 14.1, paragraphs (a) and (b), for amending House Rules.

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[7] *Okla. H. Jour.*, 1386, 52nd Leg., 1st Reg. Sess. (April 20, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:23, 00:38-08:04 (April 20, 2009); affirmed at *Okla. H. Jour.*, 1442, 1443, 52nd Leg., 1st Reg. Sess. (April 22, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:26, 7:31-12:15 (April 22, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:07, 11:23-12:21 (April 30, 2009).

GENERAL PRECEDENTS

GP - 1. (2009) Adoption of House Rules

History – In the course of considering House Resolution 1005 which contained proposed House Rules for the 52nd Oklahoma Legislature, Representative Morrissette raised a point of order as to what authority, statutorily or constitutionally, under which the House was proceeding when considering adoption of House Rules.

Representative Morrissette inquired as to whether the House of Representatives should adopt temporary rules, as occurred previously in 2005, the 50th Oklahoma Legislature,[1] prior to adoption of permanent rules for the 52nd Oklahoma Legislature.

The presiding officer stated that the House of Representatives was operating under the customs of the

[1] An exhaustive search of all House Journals reveals adoption of only one set of temporary rules as a distinct set of rules in their own right. In all other cases, the House adopted "temporary" rules in the sense that it adopted the previous session's rules for a short period prior to adoption of permanent rules for that two-year Legislature. Such an approach seems to indicate permanent rules were not prepared prior to the convening of the first session as is the current practice. See *Okla. H. Jour*., 33, 50th Leg., 1st Reg. Sess. (Jan. 4, 2005); Daily H. Sess. Dig. Rec., 50th Leg., 1st Reg. Sess. Track 10:01, 0:00-44:48 (Jan. 4, 2005).

House and that the custom and practice of the House has been to adopt its [permanent] rules on the first day of [regular] session. The presiding officer also ruled that based on the customs of the House, the House would proceed with the adoption of House Rules for the 52nd Oklahoma Legislature.[2]

Ruling – It is the ruling of the Chair that the customs and practices of the House will govern initial adoption of House Rules.

Reasoning – In Oklahoma, under what authority may the House of Representatives adopt procedural rules and in doing so, what is the most appropriate procedure to follow? Analysis of this ruling requires consideration of interrelated matters such as historical influences, constitutional authority, judicial interpretation and generally agreed upon standards of parliamentary procedure.

To begin with, the idea that internal rulemaking should be left to the legislature is a notion deeply rooted in American constitutional theory and history.

Whether created as a royal colony, proprietary colony or by parliamentary charter, each British colony in North America maintained some form of representative assembly.[3] To one degree or another, each colonial

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[2] *Okla. H. Jour*., 268, 52nd Leg., 1st Reg. Sess. (Feb. 2, 2009); Daily H. Sess. Dig. Rec., 52nd Leg., 1st Reg. Sess. Track 10:16, 2:40-8:04 (Feb. 2, 2009).

[3] Francis Newton Thorpe, *The Federal and State Constitutions, Charters and other Organic Laws of the States, Territories and Colonies Now or heretofore Forming the United States of America* [Connecticut] vol. I, 528, 531, [Delaware] vol. I, 559, [Georgia] vol. II, 768, [Maryland] vol. III, 1679, [Massachusetts] vol. III, 1853, 1854,

assembly perceived itself to possess equivalent "privileges" as those claimed by the British Parliament.[4] Among privileges claimed was the long-standing assertion that Parliament alone would decide matters of internal procedure.[5]

After declaring independence, most American colonies codified this "privilege", the notion that internal rulemaking should be conducted solely by the legislature, explicitly reserving it to the legislative branch in most of the early state constitutions.[6] Likewise, in 1789 the states

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1864, 1878,1886-1888, [New Hampshire] vol. IV, 2449, [New Jersey] vol. V, 2536-2538, 2565, 2566, 2574, 2575, [North Carolina] vol. V, 2758, 2781, [Pennsylvania] vol. V, 3037, 3047, 3048, [Rhode Island] vol. VI, 3214, [Virginia] vol. VII, 3810 (Government Printing Office 1909); for New York see Charles Lincoln, *The Constitutional History of New York* 429, 440 (The Lawyers Co-operative Publishing Company 1906); for South Carolina see Richard Middleton, *Colonial America, A History, 1565-1776*, at 184-187 (Blackwell Publishers Ltd. 2002).

[4] Mary Patterson Clarke, *Parliamentary Privilege in the American Colonies* 12, 13 (Yale University Press 1943); Donald S. Lutz, "The Colonial and Early State Legislative Process" in *Inventing Congress: Origins and Establishment of the First Federal Congress* 54 (Kenneth R. Bowling & Donald R. Kennon eds., Ohio University Press 1999).

[5] *The Parliament Rolls of Medieval England, 1275-1504* vol. VII, 64, 99, 100, vol. VIII, 232 [The Earl of Northumberland's Case], vol. XII, 56 [Earl of Arundel's Case, 27 Henry VI], vol. XII, 106 [Impeachment of Duke of Suffolk], vol. XII, 254-255 [Baron Thorpe's Case, 31 Henry VI] (The Boydell Press 2005); Sir Edward Coke, *The Fourth Part of the Institutes of the Laws of England* 14, 15 (E. and R. Brooke 1797); Sir William Blackstone, *Commentaries on the Laws of England* vol. I, 163 (A. Strahan 1800); John Hatsell, *Precedents of the Proceedings of the House of Commons* vol. IV, pref., vi-vii (Luke Hansard & Sons 1818)(modern reprint Irish University Press 1971); A. V. Dicey, *Introduction to the Study of the Law of the Constitution* 52-54 (MacMillan and Co., Ltd 1915).

[6] Thorpe, *The Federal and State Constitutions, Charters and other Organic Laws of the States* [Connecticut] vol. I, 540, [Delaware] vol. I, 571, [Georgia] vol. II, 779, 781 [Maryland] vol. III, 1695, [Massachusetts] vol. III, 1897, 1899, [New Hampshire] vol. IV, 2460,

ratified the current United States Constitution which itself contains a similar provision reserving creation and adoption of procedural rules to Congress.[7]

Similar to other jurisdictions,[8] Article V, Section 30 of the Oklahoma Constitution contains a "textually demonstrable constitutional commitment of the issue"[9] to the respective chambers of the legislature.

Paragraph two (2) says in relevant part:

Each House may determine the rules of its proceedings… That the constitution is referring to the houses of the legislature is beyond dispute. By definition the words "may", "determine" and "rule" connote discretional

2462, [New Jersey] vol. V, 2602, [New York] vol. V, 2640, [Pennsylvania] vol. V, 3094, [Rhode Island] vol. VI, 3227, [South Carolina] vol. VI., 3260, [Virginia] vol. VII, 3816 (Government Printing Office 1909).

[7] US CONST I, 5.

[8] Ala. IV, 53; Alaska II, 12: Ariz. IV, II, 8; Ark. V, 12; Cal. IV, 7(a); Colo. V, 12; Conn. III, 13; Del. II, 9; Fla. III, 4(a); Ga. III, Sec. IV, 4; Haw III, 12; Idaho III, 9; Ill. IV, 6(d); Ind. IV, 10; Iowa III, 9; Kan. II, 8; Ky. 39; La. III, 7(a); Me IV, Part III, 4; Md. III, 19; Mass. Part II, Ch. 1, Sec. II, 7, Sec. III, 10; Mich. IV, 16; Minn. IV, 7; Miss. IV, 55; Mo. III, 18; Mont. V, 10(1); Neb. III, 10; Nev. IV, 6; N.H. II, 22, 37; N.J. IV, Sec IV, Par. 3; N. M. IV, 11; N.Y. III, 9; N.D. IV, 12; Ohio II, 7; Okla. V, 30; Or. IV, 11; Pa. II, 11; R.I. VI, 7; S.C. III, 12; S.D. III, 9; Tenn. II, 12; Tex. III, 11; Utah VI, 12; Vt. II, 19; Va. IV, 7; Wash. II, 9; W.Va. VI, 24; Wis. IV, 8; Wyo. III, 12; Unincorporated, organized United States territories: Guam, 48 USCA § 1423a; Northern Mariana Islands, NMI CONST II, 14; Commonwealth of Puerto Rico, PR CONST III, 9; U.S. Virgin Islands, 48 USCA § 1572g; unincorporated, unorganized United States territory: American Samoa, RCAS II, 11.

[9] *In re INITIATIVE PETITION NO. 348*, 1991 OK 110, 820 P.2d 772, 780 (1991) footnote 21 contains discussion of the Guaranty Clause, US CONST IV, 4, and adopts the factor of "textual commitment" when determining whether a question is political as set forth by the Unites States Supreme Court in *Baker v. Carr*, 369 U.S. 186, 217 (1962).

authority[10] to conclusively and authoritatively fix standards for orderly conduct of business.[11] From the plain, natural and ordinary meaning of the words, in the order of grammatical arrangement,[12] it is clear that the people of Oklahoma intended for the Legislature to decide its own rules of procedure.[13]

Even without "textual commitment" to the legislative branch, adoption of procedural rules is an inherently legislative function intrinsic to the powers of a legislative body[14] and thus falls under the protections of the separation of powers requirement.[15] This is so because the legislative branch could not function as a co-equal branch of state government if it lacked the authority to organize itself and manage its own internal processes.

While the Oklahoma Constitution clearly grants authority to the House to adopt rules, besides requiring a quorum be present to conduct business,[16] there is little guidance on how exactly to adopt such rules. While there appears to be no Oklahoma case law directly on point, the Oklahoma Supreme Court has historically exercised restraint when asked to intervene in disputes arising over intracameral

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[10] *Shea v. Shea*, 537 P.2d 417, 418 (1975).
[11] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 616, 1396 (ed. 1993); BLACK'S LAW DICTIONARY, 1357 (8th ed. 2004).
[12] See *Shaw v. Grumbine*, 278 P. 311, 315 (1929); *Wimberly v. Deacon*, 144 P.2d 447, 450 (1943).
[13] The will of the people is expressed in the various provisions of the state's organic law. See *City of Sapulpa v. Land*, 101 Okla. 22, 223 P. 640, 644 (1924); *Dank v. Benson*, 5 P.3d 1088, 1090 (Okla. 2000).
[14] H. W. Dodds, *Procedure In State Legislatures* 12, 13 (The American Academy of Political and Social Science 1918).
[15] OK CONST IV, 1.
[16] OK CONST V, 30.

procedure or other activities of a recognizable legislative character.[17]

Likewise, case law from other jurisdictions does not appear to speak to the specific question of how procedural rules should be initially or otherwise adopted. With great uniformity other jurisdictions hold that apart from violation of fundamental rights or other requirements within a jurisdiction's organic law, the legislature is empowered to determine for itself its own rules of procedure.[18]

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[17] The Court is without authority to interject itself into the legislative process [assigned by the Constitution to the House] by directing how that body shall conduct its business, *Dank v. Benson*, 5 P.3d 1088, 1092 (Okla. 2000).
Legislature has power and right to determine for itself when moment of time has arrived for adjournment of a legislative day, subject to the rule of reason, *Davis v. Thompson*, 721 P.2d 789, 792, 793 (Okla. 1986), *Bellmon v. Barker*, 760 P.2d 813, 814 (Okla. 1988).
The Legislature decides fiscal policy and the Court may not direct legislative decision making, *Calvey v. Daxon*, 997 P.2d 164, 171, 172 (Okla. 2000), *Oklahoma Education Association v. State ex rel. State Legislature*, 158 P.3d 1058, 1065 (Okla. 2007). The Legislature's policy-making power specifically includes determination of policies related to public education. Id. at 1065, 1066.
[18] With its rules Congress cannot ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. Within these limitations all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate, or even more just. Within the limitations suggested, the power to make rules is absolute and beyond the challenge of any other body or tribunal, *U.S. v. Ballin*, 144 U.S. 1, 5 (1892).
The courts accept as passed all bills authenticated in the manner provided by Congress, *Field v. Clark*, 143 U.S. 649, 672 (1892).
If the question of construction of Senate rules affects persons other than members of the Senate, the question presented may be decided by the courts, *U.S. v. Smith*, 286 U.S. 6, 33 (1932).

If Article V, Section 30 says the House may "determine the rules of its proceedings" and no case law provides additional, specific guidance, what is left to proceed under but the "customs and practices of the House"?[19] This being the case, what is meant by the terms "customs and practices of the House"? In this context it is the historical practices of the House as they pertain to adoption of rules.

The historical practice for adopting rules is as follows: in the opening days of the first session, a member, usually the Majority Floor Leader has sought recognition to present a motion to adopt House Rules, typically in the form of a simple resolution. Upon obtaining recognition, the Floor Leader provides a detailed explanation of the proposed rules and then yields to questions from other members. As consideration of the main question continues, members are recognized to offer amendments, both friendly and unfriendly. Proposed amendments are considered on their merits or disposed of procedurally. Finally, debate takes

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Conviction for perjury held to be violation of fundamental rights because committee rules required presence of quorum; committee lacked quorum at time perjured testimony was offered falling short of a "duly constituted tribunal," *Christoffel v. U.S.*, 338 U.S. 84, 90 (1949). Conviction for contempt of Congress based on refusal to answer questions at a subcommittee hearing reversed because committee failed to comply with its own rules, *Yellin v. U.S.*, 374 U.S. 109, 123, 124 (1963).
Cf. Brown v. Hansen, 973 F.2d 1118 (C.A.3, V.I. 1992); *Birmingham-Jefferson Civic Center Authority v. City of Birmingham*, 912 So.2d 204 (Ala. 2005); *Mission Hospital Regional Medical Center v. Shewry*, 168 Cal.App.4th 460 (C.A. 3, Cal. 2008); Att'y Gen op. 05-1, 2005 WL 1378063 (HI).

[19] *Mason's Manual of Legislative Procedure* 36 § 39(6) (National Conference of State Legislatures 2000); *Cf. Hind's Prec., H. of Rep.*, Ch. 141 §§ 6758-6759, 887 (G.P.O. 1907); *Cannon's Prec., H. of Rep.*, Ch. 271 § 3386, 831 (G.P.O. 1936); *Deschler's Prec., H. of Rep.*, Ch. 1 § 1, 6 (G.P.O. 1976); Josef Redlich, *The Procedure of the House of Commons* vol. II, 4-6 (Archibald Constable & Co. Ltd. 1908).

place unless curtailed by an appropriate procedural motion, followed by a vote on the question of adoption.[20]

[20] *Cf. Okla. Terr. H. Jour.*, 49, 1st Sess. (1890); *Okla. Terr. H. Jour.*, 55, 1st Sess. (1893); *Okla. Terr. H. Jour.*, 294, 1st Sess. (1895); *Okla. Terr. H. Jour.*, 503, 1st Sess. (1897); *Okla. Terr. H. Jour.*, 18-19, 1st Sess. (1899); *Okla. Terr. H. Jour.*, 50, 1st Sess. (1901); *Okla. Terr. H. Jour.*, 85, 1st Sess. (1903); *Okla. Terr. H. Jour.*, 71, 1st Sess. (1905); *Okla. H. Jour.*, 47, 1st Leg., 1st Reg. Sess. (1907); *Okla. H. Jour.*, 58, 2nd Leg., 1st Reg. Sess. (1909); *Okla. H. Jour.*, 56, 3rd Leg., 1st Reg. Sess. (1911); *Okla. H. Jour.*, 339, 4th Leg., 1st Reg. Sess. (1913); *Okla. H. Jour.*, 203, 5th Leg., 1st Reg. Sess. (1915); *Okla. H. Jour.*, 18, 6th Leg., 1st Reg. Sess. (1917); *Okla. H. Jour.*, 91, 8th Leg., 1st Reg. Sess. (1921); *Okla. H. Jour.*, 135, 9th Leg., 1st Reg. Sess. (1923); *Okla. H. Jour.*, 300, 10th Leg., 1st Reg. Sess. (1925); *Okla. H. Jour.*, 454, 11th Leg., 1st Reg. Sess. (1927); *Okla. H. Jour.*, 158, 12th Leg., 1st Reg. Sess. (1929); *Okla. H. Jour.*, 480, 13th Leg., 1st Reg. Sess. (1931); *Okla. H. Jour.*, 338, 14th Leg., 1st Reg. Sess. (1933); *Okla. H. Jour.*, 204, 15th Leg., 1st Reg. Sess. (1935); *Okla. H. Jour.*, 602, 16th Leg., 1st Reg. Sess. (1937); *Okla. H. Jour.*, 233, 17th Leg., 1st Reg. Sess. (1939); *Okla. H. Jour.*, 263, 18th Leg., 1st Reg. Sess. (1941); *Okla. H. Jour.*, 492, 19th Leg., 1st Reg. Sess. (1943); *Okla. H. Jour.*, 118, 20th Leg., 1st Reg. Sess. (1945); *Okla. H. Jour.*, 20, 22nd Leg., 1st Reg. Sess. (1949); *Okla. H. Jour.*, 118, 23rd Leg., 1st Reg. Sess. (1951); *Okla. H. Jour.*, 7, 24th Leg., 1st Reg. Sess. (1953); *Okla. H. Jour.*, 7, 25th Leg., 1st Reg. Sess. (1955); *Okla. H. Jour.*, 12, 26th Leg., 1st Reg. Sess. (1957); *Okla. H. Jour.*, 11, 27th Leg., 1st Reg. Sess. (1959); *Okla. H. Jour.*, 9, 28th Leg., 1st Reg. Sess. (1961); *Okla. H. Jour.*, 9, 29th Leg., 1st Reg. Sess. (1963); *Okla. H. Jour.*, 6, 30th Leg., 1st Reg. Sess. (1965); *Okla. H. Jour.*, 6, 31st Leg., 1st Reg. Sess. (1967); *Okla. H. Jour.*, 10, 32nd Leg., 1st Reg. Sess. (1969); *Okla. H. Jour.*, 7, 33rd Leg., 1st Reg. Sess. (1971); *Okla. H. Jour.*, 8, 34th Leg., 1st Reg. Sess. (1973); *Okla. H. Jour.*, 8, 35th Leg., 1st Reg. Sess. (1975); *Okla. H. Jour.*, 89, 36th Leg., 1st Reg. Sess. (1977); *Okla. H. Jour.*, 225, 37th Leg., 1st Reg. Sess. (1979); *Okla. H. Jour.*, 80, 38th Leg., 1st Reg. Sess. (1981); *Okla. H. Jour.*, 103, 39th Leg., 1st Reg. Sess. (1983); *Okla. H. Jour.*, 295, 40th Leg., 1st Reg. Sess. (1985); *Okla. H. Jour.*, 141, 41st Leg., 1st Reg. Sess. (1987); *Okla. H. Jour.*, 112, 42nd Leg., 1st Reg. Sess. (1989); *Okla. H. Jour.*, 316, 43rd Leg., 1st Reg. Sess. (1991); *Okla. H. Jour.*, 8, 44th Leg., 1st Reg. Sess. (1993); *Okla. H. Jour.*, 40, 45th Leg., 1st Reg. Sess. (1995); *Okla. H. Jour.*, 1383, 47th Leg., 1st Reg. Sess. (1999); *Okla. H. Jour.*, 24, 48th Leg., 1st Reg. Sess. (2001); *Okla. H. Jour.*, 23, 49th Leg., 1st Reg. Sess. (2003); *Okla. H. Jour.*, 54,

The actions taken in adopting House Rules for the 52nd Oklahoma Legislature complied not only with the requirements of the prior session's rules but with the requirements of any given set of procedural rules adopted by the House of Representatives since statehood.[21]

Moreover, the ruling of the Chair parallels guidance provided in *Mason's Manual of Legislative Procedure*[22] both for initial adoption of rules[23] and for group decision making.[24]

For proper decision making, *Mason's Manual* says that the group attempting to make the decision must be legally constituted and must have the legal authority to exercise

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50th Leg., 1st Reg. Sess. (2005); *Okla. H. Jour.*, 256, 51st Leg., 1st Reg. Sess. (2007).

[21] Id.

[22] *Mason's Manual of Legislative Procedure* in creation, approach and function is a guidebook to parliamentary practice in the state legislatures of the United States and is updated on a decennial basis by a commission comprised of members representing a broad cross-section of state legislatures and professional experience; see also *Okla. H. Rules*, § 9.2 (32nd Leg.); *Okla. H. Rules*, § 9.2 (33rd Leg.); *Okla. H. Rules*, § 9.2 (34th Leg.); *Okla. H. Rules*, § 11.2 (35th Leg.); *Okla. H. Rules*, § 11.2 (36th Leg.); *Okla. H. Rules*, § 25.3 (37th Leg.); *Okla. H. Rules*, § 25.3 (38th Leg.); *Okla. H. Rules*, § 25.3 (39th Leg.); *Okla. H. Rules*, § 25.3 (40th Leg.); *Okla. H. Rules*, § 25.3 (41st Leg.); *Okla. H. Rules*, § 25.3 (42nd Leg.); *Okla. H. Rules*, § 25.3 (43rd Leg.); *Okla. H. Rules*, § 25.3 (44th Leg.); *Okla. H. Rules*, § 25.3 (45th Leg.); *Okla. H. Rules*, § 25.3 (46th Leg.); *Okla. H. Rules*, § 25.3 (47th Leg.); *Okla. H. Rules*, § 25.3 (48th Leg.); *Okla. H. Rules*, § 25.3 (49th Leg.); *Okla. H. Rules*, § 14.2 (50th Leg.); *Okla. H. Rules*, § 14.2 (51st Leg.).

[23] *Mason's Manual of Legislative Procedure* 36 § 39(6) (National Conference of State Legislatures 2000); see also Cushing, Luther Stearns, *Elements of the Law and Practice of Legislative Assemblies of the United States of America* 312 § 792, 793 (Little, Brown and Co. 1856); *U.S. H. Jour.*, 36, 27th Cong., 1st Sess. (June 3, 1841); *Cong. Globe*, 18, 27th Cong., 1st Sess. (June 3, 1841).

[24] *Mason's*, 37-40 §§ 42, 43.

the powers it is attempting to exercise. Second, there must be a meeting of the group at which the decision is made.

Third, the group must be given proper notice of the meeting thus allowing opportunity to attend and participate. Fourth, a quorum must be present at the meeting. Fifth, there must be an explicit question for the group to decide. Sixth, when a question is under consideration, members of the group must be given the opportunity to debate the question under consideration. Seventh, in order to make a decision or take an action, the group must take a vote.

Eighth, to carry the proposed question, at least a majority of the group must vote in the affirmative. Ninth, there must not be fraud or deception with the decision-making process. Tenth, any decision made by the group must not be in violation of any laws, rules or decisions of higher authority. Eleventh and finally, there must be a record of the decision made by the group.

In comparison, the Oklahoma House of Representatives was duly constituted[25] and was constitutionally authorized to adopt procedural rules.[26] Second, the House assembled and convened on the date and at the time constitutionally mandated.[27] Third, the constitutional provision establishing the day and time for convening the first day of regular session as well as the motion to adjourn until 12:00 noon, Monday, February 2, 2009 adopted by the House on "organizational day", the previous legislative day,[28]

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[25] *Okla. H. Jour*., 1-6, 52nd Leg., 1st Reg. Sess. (Jan. 6, 2009).
[26] OK CONST V, 30.
[27] *Okla. H. Jour*., 35, 52nd Leg., 1st Reg. Sess. (Jan. 6, 2009); *Okla. H. Jour*., 37, 52nd Leg., 1st Reg. Sess. (Feb. 2, 2009); OK CONST Art. V § 26.
[28] Id.; *Okla. H. Jour*., 35, 52nd Leg., 1st Reg. Sess. (Jan. 6, 2009).

provided each member with explicit and proper notice of the date, time and location of the next daily session of the House.

Fourth, a quorum was established.[29] Fifth, a clear question came before the House to be decided when Representative Jones, the Majority Floor Leader, moved adoption of House Resolution 1005 which contained proposed House Rules for the 52nd Oklahoma Legislature.[30] Sixth, upon consideration of House Resolution 1005, members of the House were afforded opportunity to offer debate on the merits of the proposed rules.[31] Seventh, the question before the House, adoption of House Resolution 1005, House Rules, was brought to a vote.[32]

Eighth, the question before the House passed with a majority of the House voting in the affirmative.[33] Ninth, nothing fraudulent or deceptive occurred in the decision-making process. Tenth, neither the action of adopting House Rules nor the process by which the rules were adopted violates the federal constitution or federal law nor did it violate the Oklahoma Constitution or any known case law interpreting the Oklahoma Constitution.

Finally, the actions taken by the House in adopting House Rules were recorded in the House Journal,[34] including a clear record of the motion to adopt House Resolution 1005, the proposed amendments offered to the main question and their disposition, the final roll call vote

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[29] *Okla. H. Jour*., 37, 52nd Leg., 1st Reg. Sess. (Feb. 2, 2009).
[30] Id. at 270
[31] *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:16, 32:18-55:29 (Feb. 2, 2009).
[32] *Okla. H. Jour*., 270, 52nd Leg., 1st Reg. Sess. (Feb. 2, 2009).
[33] Id.
[34] OK CONST V, 30.

showing a majority of votes cast in the affirmative and a verbatim record of House Rules as adopted.[35]

In conclusion, by ruling that the customs and practices of the House govern consideration and adoption of House Rules, the Chair abided by relevant constitutional requirements, the time-honored practices of the House and generally agreed upon standards of parliamentary procedure.

[35] *Okla. H. Jour*., 268-295, 52nd Leg., 1st Reg. Sess. (Feb. 2, 2009).

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