

Rules and Precedents of the House

- § 1. In General
- § 2. Binding Effect
- § 3. Construction
- § 4. Changing or Waiving Rules

Research References

- 8 Cannon §§ 3376–3396
- 1 Deschler, Preface, Ch 5 §§ 1–7
- Manual §§ 59, 60, 283–286, 387, 388, 686a
- U.S. Const. art. I § 5

§ 1. In General

Adoption of Rules

The Constitution empowers each House to determine its rules of proceedings. U.S. Const. art. I § 5. The House may not by its rules 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 obtained. But within these limitations, the House is free to adopt such rules as it sees fit. *Yellin v United States*, 374 U.S. 109 (1963).

It is customary for the House at the beginning of each Congress to adopt the rules by which it is to be governed during its meetings. In so doing, the House will ordinarily adopt the rules applicable in the previous Congress with such amendments as it considers necessary. 86–1, Jan. 27, 1959, p 1209; 88–1, Jan. 9, 1963, pp 14, 20; 99–1, Jan. 3, 1985, pp 393 *et seq.* Such rules are adopted or amended pursuant to a simple resolution which is called up as privileged. 103–1, Jan. 5, 1993. See also 87–1, Sept. 22, 1961, p 20823; 88–1, Jan. 9, 1963, pp 14, 20; 93–1, Mar. 7, 1973, pp 6713–20; 99–1, Jan. 3, 1985, p 393. Generally, see ASSEMBLY OF CONGRESS. Changes in the rules from the prior Congress normally emanate from the conference or caucus of the party which commands a majority and thus has the responsibility for organizing the House.

Even before adoption of rules, it is in order to consider, as privileged, a resolution in the nature of a special order which makes in order the subsequent consideration of a resolution adopting the rules for the newly organized House. See 104–1, Jan. 4, 1995, p _____. See also 5 Hinds' 5450.

When a member of the majority party offers a resolution providing rules for the new Congress:

- The resolution is debatable for one hour.
- The resolution is not subject to amendment unless the previous question is rejected or the manager of the resolution yields for an amendment (Deschler Ch 1 § 10.9).
- A motion to refer (with instructions) is in order before debate begins, but this motion is subject to being laid on the table. 103–1, Jan. 5, 1993, p ____.
- A motion to commit is in order pending or following the ordering of the previous question. 5 Hinds § 5604; 102–1, Jan. 3, 1991, p ____; 104–1, Jan. 4, 1995, p ____.
- A majority vote is required to pass a resolution adopting rules for a new Congress.

The right of the House to determine the rules of its proceedings may not be impaired by repetition of dilatory motions. 5 Hinds § 5707.

Publication

The standing rules of the House are published each Congress in the *House Rules and Manual* pursuant to resolution. See for example H. Res. 580, Oct. 7, 1994. This comprehensive volume also includes, among other pertinent material, Jefferson’s Manual, which was prepared by Thomas Jefferson for his own guidance as President of the Senate from 1797 to 1801. These provisions still govern the proceedings of the House where applicable and not inconsistent with the standing rules and orders of the House. Rule XLII. *Manual* § 938.

Statutory Rules and Joint Rules

In some cases, Congress has enacted statutes setting forth rules and procedures to be followed in the House in considering certain kinds of legislation. A noteworthy example is the Congressional Budget and Impoundment Control Act of 1974. Such statutes are enacted as an exercise of the rule-making power of Congress, are reincorporated by reference in the preface of the resolution adopting the rules as a part of the rules of each House, and are carried in the *House Rules and Manual*. § 1013. Deschler Ch 5 § 3.

Joint rules, although in common use until 1876, are rarely used today. For a recent example, see 91–1, Jan. 3, 1969, p 36, relating to the count of electoral votes.

Rules Based on Precedent or Custom

As Asher Hinds noted in his work on the precedents of the House, much of what is known as parliamentary law is not part of the formal writ-

ten rules of the House, but springs from precedent or long-standing custom. 1 Hinds p iii. Such precedent may be invoked to resolve a procedural question in the absence of an express written rule on the subject. Deschler Ch 5 § 3. See also 1 Deschler, Preface, pp. iii–xiv. More frequently the precedents of the House are used to show the scope and application of one of its formal rules. A noteworthy example is the House germaneness rule, which is set forth in less than a sentence in Rule XVI clause 7, yet has been interpreted through thousands of precedents since its adoption in 1789. See *Manual* §§ 794–800; Deschler-Brown Ch 28.

The precedents of the House, which are based primarily on the rulings of the Speaker or Chairman of the Committee of the Whole, are compiled in *Hinds' Precedents* (1907), *Cannon's Precedents* (1936), *Deschler's Precedents* (1977) and *Deschler-Brown Precedents*. Such compilations have been authorized by law (70 Stat. 270; 88 Stat. 1777).

§ 2. Binding Effect

Parliamentary law—a term that encompasses both formal rules and usages—has come to be recognized as binding on the assembly and its members except as it may be varied by the adoption by the membership of special rules or through some other authorized procedural device. *Landes v State ex rel Matson*, 160 Ind. 479, 67 NE 189.

On the theory that a government of laws is preferable to a government of men, the House has repeatedly recognized the importance of following its precedents and obeying its well-established procedural rules. See, for example, 2 Hinds § 1317. The House adheres to settled rulings, and will not lightly disturb procedures which have been established by prior decision of the Chair. 1 Deschler p vi. Of course, the Speaker is not required to follow precedents blindly or mindlessly; the Speaker or Chairman may refuse to follow a precedent even though it is relevant to a pending question, where it is the only precedent on the point, and was not carefully reasoned. 6 Cannon § 48.

§ 3. Construction

It is the duty of the Chair, when a timely point of order is raised, to determine whether language in a pending bill or amendment conforms to the rules of the House, although the Chair may properly decline to do so where points of order against the provisions have been waived by special rule. 93–1, May 10, 1973, pp 15290, 15291. In construing a rule, the Speaker may look beyond its terms and consider all the facts and circumstances in order to determine the intention of the House in adopting the rule. Deschler Ch

5 § 6.3. In construing the rules, the Chair may be guided by the general principle that the object of a parliamentary body is action, and not stoppage of action. 92–2, Oct. 3, 1972, p 33503.

The absence of a formal rule governing a particular procedure does not necessarily mean that the procedure is permitted. Indeed, acts or proceedings not expressly authorized by the rules may be deemed inconsistent with, or in violation of, the rules. Deschler Ch 5 § 6.4.

Where two rules of the House are in conflict, the last one adopted controls. Deschler Ch 5 § 6.1. Similarly, where the rules of the House and a subsequent legislative enactment are not consistent, the enactment must prevail. 87–1, Sept. 5, 1961, p 18133. By the same token, a rule adopted after an enactment may supersede those provisions of the statute which would otherwise govern House procedure. Deschler Ch 5 § 6.

§ 4. Changing or Waiving Rules

Generally

Pursuant to its authority under the Constitution (art. I § 5) the House may change or waive the rules governing its proceedings, and this is so even with respect to rules enacted by statute (94–1, Mar. 20, 1975, p 7677; 95–1, Nov. 1, 1977, pp 36310, 36311). Once the rules have been adopted at the convening of the House in a new Congress, further amendments to the rules are generally implemented by resolution. And a rule may in effect be suspended or modified through the use of certain procedural devices, such as a unanimous-consent request. Deschler Ch 5 § 5.

A motion to amend the rules of the House does not present a question of “constitutional” privilege. 8 Cannon § 3377. And a question of the privileges of the House may not be invoked to effect a change in the rules of the House or their interpretation. 100–2, Sept. 9, 1988, p 23298; 102–2, July 30, 1992, p _____. Generally, see QUESTIONS OF PRIVILEGE.

The effect of a proposed change in the rules is a matter for debate and not within the jurisdiction of the Chair to decide on a parliamentary inquiry during its pendency. 90–1, Apr. 25, 1967, pp 10708–12.

For the motion to suspend the rules, see SUSPENSION OF RULES.

By Resolution

Amendments to the rules are generally offered in the form of a privileged resolution reported and called up by the Committee on Rules. Such a resolution may not be amended unless the Member in charge yields for that purpose or the previous question is voted down. Deschler Ch 5 § 5.8. The resolution may be considered in the Committee of the Whole, pursuant

to the terms of a special order reported from the Committee on Rules. Deschler Ch 5 § 5.6.

Although a resolution from the Committee on Rules to amend a House rule is privileged (Deschler Ch 5 § 5.1), a resolution offered from the floor to amend a House rule is not privileged for consideration as against a demand that business proceed in the regular order (8 Cannon § 3377).

The discharge rule (Rule XXVII clause 3) has also been used to bring a proposed rules change before the House. 103–1, Sept. 28, 1993, p ____.

By Unanimous Consent

Minor changes in the standing rules are frequently considered by unanimous consent. Deschler Ch 5 § 5.2. And the House may by unanimous consent waive the requirements of a particular rule unless the rule itself provides that it is not subject to waiver even by unanimous consent. 91–2, July 29, 1970, p 24619.

By Special Order

The House has the power to adopt a special rule from the Committee on Rules which has the effect of setting aside the standing rules of the House insofar as they impede the consideration of a particular bill. 90–1, Nov. 28, 1967, p 34038. The special rule may waive one or more—or indeed all—points of order against a particular bill. For example, the special order may waive points of order that could otherwise be raised against legislative provisions in an appropriation bill, points of order based on the germaneness requirement, or points of order based on the Ramseyer rule. Deschler Ch 5 § 7. For a full discussion of special orders, see SPECIAL RULES.