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104TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 104–5

AMENDING HOUSE RULES TO PERMIT COMMITTEE CHAIRMEN TO SCHEDULE HEARINGS

JANUARY 27, 1995.—Referred to the House Calendar and ordered to be printed

Mr. SOLOMON, from the Committee on Rules, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H. Res. 43]

[Including cost estimate of the Congressional Budget Office]

The Committee on Rules, to whom was referred the resolution (H. Res. 43) to amend clause 2(G)(3) of House Rule XI to permit committee chairmen to schedule hearings, having considered the same, report the resolution favorably thereon and recommend that the resolution be adopted.

PURPOSE OF RESOLUTION

The purpose of House Resolution 43 is to amend House Rule XI, clause 2(g)(3) to permit committee chairmen, without a vote of the committee, to announce hearings at least a week in advance, and to schedule hearings sooner if for good cause.

COMMITTEE CONSIDERATION

House Resolution 43 was introduced on January 23, 1995, by Chairman Solomon and referred to the Committee. On January 26, 1995, the Committee met to consider the resolution as a matter of original jurisdiction, and, after discussion, the Committee ordered the resolution reported to the House by voice vote.

99–008

BACKGROUND

Clause 2(g)93) of House Rule XI was initially adopted as part of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and became a part of the House Rules in the 92nd Congress on January 22, 1971, (H. Res. 5, Congressional Record, p. 144).

The subparagraph requires that each Committee of the House (except the Committee on Rules) shall make a public announcement of the date, place and subject matter of any hearing at least one week in advance unless the committee determines there is good cause to begin a hearing sooner, in which case the announcement is to be made at the earliest possible date.

There is no indication in the Rules Committee's report on the 1970 Legislative Reorganization Act (H.R. 17654, H. Rept. 91–1215) as to why the word "committee" was used in the new requirement as opposed to the committee chairman. It should be noted that clause 2(c)(1) of rule XI, which dates back to 1931, authorizes each committee chairman to call and convene such meetings in addition to the regular meeting days, "as he or she considers necessary * * * for the consideration of any bill or resolution pending before the committee or for the conduct of other committee business."

The 1970 Act also included several other hearing procedures for committees such as the prohibition on committees sitting while the House is considering legislation for amendment under the five-minute rule (clause 2(i)), and the right of the minority to ask for an additional day of hearings to call its own witnesses (clause 2(j)(1)).

Another House rules change added by the 1970 Act is clause 2(g)(5) of rule XI that provides that no point of order will lie in the House against a measure on grounds that hearings were not conducted in accordance with the provisions of clause 2 or rule XI unless a point of order is timely made in committee and improperly overruled or not properly considered.

It has generally been assumed and accepted that it is the chairman's prerogative to determine the subject and timing of hearings on behalf of that committee or subcommittee. That has been the standard practice and operating procedure for years in the House.

And yet, clause 2(g)(3) was literally invoked in the Judiciary Committee on January 5, 1995 in the form of a point of order against the chairman's announcement of a hearing on the balanced budget amendment on January 9. The point of order was made on the grounds that a determination had not been made by the committee to schedule the hearing. The chairman overruled the point of order on grounds that it was sufficient for the chair to announce the hearing acting on behalf of the committee.

On January 6, 1995, Representative Frank of Massachusetts and Representative Becerra of California wrote to the Parliamentarian requesting an interpretation of what is required under House Rule XI, clause 2(g)(3), and the comparable Judiciary Committee rule with respect to scheduling hearings.

On January 10, 1995, the Parliamentarian responded that in his experience, "committees and subcommittees often deferred to their chairmen for the purpose of establishing hearing dates." However,

the letter went on, "Where the question is raised in a proper manner * * * I would conclude that the committee or subcommittee as a collegial body must ratify the call and scheduling of hearings." (Letter from Parliamentarian Charles W. Johnson to Reps. Becerra and Frank, January 10, 1995). In other words, literal compliance with the rule requires that a committee formally convene and vote on announcing a hearing.

Because the chairman of the Judiciary Committee was not aware of any interpretation of the rule as requiring a committee determination on such an announcement, the point of order was improperly overruled. Under clause 2(g)(5) of rule XI, as mentioned above, if a point of order is timely made and improperly overruled on a hearing procedure, it may be raised on the House floor against the consideration of the measure that was the subject of that hearing.

Consequently, it was necessary for the Rules Committee to recommend a waiver of clause 2(g)(3) in its rule (H. Res. 44) providing for the consideration of the balanced budget amendment (H.J. Res. 1) by the House.

ARGUMENTS FOR A RULE CHANGE

The current interpretation of clause 2(g)(3) presents a catch-22 situation for committee and subcommittee chairmen since it would literally require a full committee or subcommittee meeting at least a week in advance to vote on whether to schedule a hearing.

If such a meeting and vote is not held, then a point of order can be raised at the outset of the hearing when only two members are required for a quorum (as permitted by House Rules if adopted as a committee rule).

The chairman is then left with the option of either cancelling the hearing or waiting until a quorum for business, usually one-third of the membership, appears to vote on scheduling an immediate hearing.

In short, it presents a very unwieldy way of trying to schedule hearings in an orderly way. While the current rule is on the books, the fate of future hearings is dependent either on a return to the practice which previously existed, or the scheduling of meetings to schedule hearings.

Many chairmen may find it more convenient not to hold hearings than to risk points of order that will stop the hearing in their tracks or will imperil the future consideration of legislation by the House.

Since the House is better served by the information derived from hearings in drafting legislation, hearings should be encouraged and conducted to the maximum extent possible rather than discouraged. It is in that spirit that the Committee recommends a rule change to facilitate rather than curtail committee and subcommittee hearings.

ANALYSIS OF RESOLUTION

House Resolution 43 would amend clause 2(g)(3) or rule XI by substituting the committee chairman for the committee as the authority responsible for announcing the subject, date and place of hearings at least a week in advance, or to determine if there is

good cause to schedule a hearing sooner. This is designed to restore what has been the standard practice in the House for decades.

As with the existing rule, the new rule exempts the Rules Committee given this Committee's special scheduling responsibilities as an arms of the Leadership. And as with the existing rule, the new rule retains the requirement that hearing announcements be promptly published in the Daily Digest of the Congressional Record and entered into the Committee scheduling service of the House Information Systems.

The authority conferred by the rule applies to subcommittee chairman by implication, since the rules of the committees are the rules of its subcommittees.

It is the clear expectation of this Committee that committees will adopt appropriate committee rules, to require adequate prior notice of a hearing except in the most extreme, emergency situation. It is not the intent of the Committee that the rule be used by committee chairman to schedule spur-of-the-moment hearings that catch committee members unawares and unprepared to participate in an informed manner.

The current House committee meeting rule (clause 2(c)(1) of rule XI) already authorizes a chairman to schedule meetings "as he or she considers necessary," and contains no prior notice requirement. But most committees, have included prior notice requirements in their committee rules, except under emergency circumstances, in which case there is usually a consultation requirement with the minority before calling the meeting. The same latitude should be allowed for scheduling hearings of a urgent nature with less than a week's advance notice. But, the Committee advises committees to adopt a committee rules requiring the chairman to confer with the ranking minority member before scheduling any hearing with less than a week's notice.

COMMITTEE VOTES

On January 26, 1995, the Committee ordered House Resolution 43 reported, as amended, by a nonrecord vote, a quorum being present.

Clause 2(l)(2)(B) of House rule XI requires that the results of each rollcall vote on an amendment or motion to report, together with the names of those voting for and against, be included in the committee report on the measure. No rollcall votes are called on any amendment.

COMMITTEE COST ESTIMATE

Clause 2(l)(3)(B) of rule XI requires each committee report that accompanies a measure providing new budget authority, new spending authority, or new credit authority or changing revenues or tax expenditures to contain a cost estimate, as required by section 308(a)(1) of the Congressional Budget Act of 1974, as amended, when practicable, a comparison of the total estimated funding level for the relevant program (or programs) with the appropriate levels under current law.

Clause 7(a) of rule XIII requires committees to include their own cost estimates in certain committee reports, which include, when

practicable, a comparison of the total estimated funding level for the relevant program (or programs) with the appropriate levels under current law.

The Committee adopts as it own the cost estimate in the succeeding section of this report which was prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Clause 2(l)(3)(C) of rule XI requires each committee to include a cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974, if the cost estimate is timely submitted. Below is the CBO cost estimate as required:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 27, 1995.

Hon. GERALD B.H. SOLOMON,
Chairman, Committee on the Rules,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed House Resolution 43, to amend clause 2(g)(3) of House Rule XI to permit committee chairmen to schedule hearings, as ordered reported by the House Committee on Rules on January 26, 1995. We estimate that enactment of this legislation would result in no significant cost to the federal government and in no cost to state or local governments. Enactment of House Resolution 43 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to this resolution.

Current rules of the House of Representatives require that a committee schedule hearings at least a week in advance, unless the committee votes to approve an earlier date. House Resolution 43 would allow the chairman of a committee to begin hearings sooner if the chairman determines that a good cause exists. The chairman would be required to announce the hearing schedule promptly. The schedule would be published in the Daily Digest and also would be made available through House Information Systems. We do not expect the cost of such activities to be significant.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mary Maginniss.

Sincerely,

ROBERT D. REISCHAUER.

INFLATION IMPACT STATEMENT

Clause 2(l)(4) of rule XI requires each committee report on a bill or joint resolution of a public character to include an analytical statement describing what impact enactment of the measure would have on prices and costs in the operation of the national economy. The Committee determines that H. Res. 43 will have no inflationary impact on the Nation's economy.

OVERSIGHT FINDINGS

Clause 2(l)(3)(A) of rule XI requires each committee report to contain oversight findings and recommendations required pursuant to clause 2(b)(1) of rule X. Clause 2(b)(1) of rule X calls on each standing committee, other than the Committee on Appropriations and Budget to review and study the effectiveness of laws and other matters within its jurisdiction. The Committee has no oversight findings relating to this proposed rules change.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Clause 2(l)(3)(D) of rule XI requires each committee report to contain a summary of the oversight findings and recommendations made by the Government Reform and Oversight Committee pursuant to clause 4(c)(2) of rule X, whenever such findings have been timely submitted. The Committee has received no oversight findings or recommendations from the Committee on Government Reform and Oversight.

CHANGES IN THE RULES OF THE HOUSE OF REPRESENTATIVES MADE BY THE RESOLUTION AS REPORTED

Clause 4(d) of rule XI requires that, whenever the Committee on Rules reports a resolution amending or repealing the Rules of the House of Representatives, the accompanying report must contain a comparative print showing the changes in existing rules proposed to be made by the resolution. Matter to be stricken appears in brackets below, and new matter is printed in italic:

RULE XI

COMMITTEE RULES

* * * * * * *

2. (a) * * *

* * * * * * *

(g)(1) * * *

[(3) Each committee of the House (except the Committee on Rules) shall make public announcement of the date, place and subject matter of any committee hearing at least one week before the commencement of the hearing. If the committee determines that there is good cause to begin the hearing sooner, it shall make the announcement at the earliest possible date. Any announcement made under this subparagraph shall be promptly published in the Daily Digest and promptly entered into the committee scheduling service of the House Information Systems.]

* * * * * * *

(3) The chairman of each committee of the House (except the Committee on Rules) shall make public announcement of the date, place, and subject matter of any committee hearing at least one week before the commencement of the hearing. If the chairman of the committee determines that there is good cause to begin the hearing sooner, the chairman shall make the announcement at the earlier possible date. Any announcement made under this subparagraph shall

be promptly published in the Daily Digest and promptly entered into the committee scheduling service of the House Information Systems.

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VIEWS OF COMMITTEE MEMBERS

Clause 2(1)(5) of rule XI requires each committee, except the Committee on Rules, to afford a three-day opportunity for members of the committee to file additional, minority, or dissenting views and to include the views in its report. Although the requirement does not apply to the Rules Committee, the Committee always makes the maximum effort to provide its members with an opportunity to submit their views. The following views were submitted:

MINORITY VIEWS

We understand the majority's desire to alter clause 2(g)(3) of rule XI in order to more accurately reflect current practices in the House. However, we do not view House Resolution 43 in its current form as the best reflection of that desire.

Currently, the subparagraph requires each committee to announce hearings a week in advance unless the committee determines there is "good cause" to schedule a hearing sooner. The practice, it is true, has been that the Chair of each committee, not the entire committee, makes public announcements of hearings with sufficient notice. The seven-day notice requirement can be circumvented, however, only with the concurrence of the committee.

While committees generally do not formally meet and ratify the scheduling of hearings with less than seven days notice, the threat of a point of order guarantees that the Chair consults with, and gets the agreement of, the committee, including the minority. A point of order is available in committee. A point of order that prohibits the House from considering a bill for failure by the reporting committee to comply with clause 2(g)(3) of rule XI is available but only if the point of order was timely made in committee and either improperly overruled or not properly considered.

House Resolution 43 would allow the chair alone to determine whether there is good cause to hold a hearing sooner than seven days. This does not require consultation or concurrence of the committee. It does not give other members of the committee any leverage or say. This is quite a change from current practice. Our proposal is to amend House Resolution 43 to read as follows:

> (3) The chairman of each committee of the House (except the Committee on Rules) shall make public announcement of the date, place, and subject matter of any committee hearing at least one week before the commencement of the hearing. If the Committee determines that there is good cause to begin the hearing sooner, it shall make the announcement at the earliest possible date. Any announcement made under this subparagraph shall be promptly published in the Daily Digest and promptly entered into the committee scheduling service of the House Information Systems.

We hope that when the resolution is considered by the House, in the spirit of bipartisan cooperation, House Resolution 43 can be amended to reflect current practice, not to enhance the power of the Chair.

JOE MOAKLEY.
ANTHONY C. BEILENSON.
MARTIN FROST.
TONY P. HALL.