

# Special Rules

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## Research References

- 4 Hinds §§ 3152–3265
- 7 Cannon §§ 758–845
- 6 Deschler Ch 21 §§ 16–19
- Manual §§ 686b, 726, 728, 729, 786, 877a

## § 1. In General

### Jurisdiction and Authority

Jurisdiction over the “order of business” of the House is given by standing rule to the Committee on Rules. Rule X clause 1(m). *Manual* § 682a. Under this authority, the Rules Committee commonly reports resolutions—called “special orders” or “special rules”—that specify the manner in which a particular measure is to be taken up and the procedures to be followed during its consideration. Such resolutions, once agreed to by the House, give privilege to the measure to be considered. Deschler Ch 21 § 16. As noted elsewhere, measures are often taken up by unanimous consent (see UNANIMOUS-CONSENT AGREEMENTS) or considered under suspension of the rules (see SUSPENSION OF RULES), and certain measures are privileged in their own right under other rules (see APPROPRIATIONS; ORDER OF BUSINESS; and QUESTIONS OF PRIVILEGE).

The power of the Rules Committee to report resolutions varying the order of business or providing a special order is very broad, being limited only as expressly restricted by the rules of the House. The only absolute restrictions on that power are those provisions [Rule XI clause 4(b)] protecting the motion to recommit (see REFER AND RECOMMIT) and the Calendar Wednesday call of committees (see CALENDAR WEDNESDAY). The restriction relating to Calendar Wednesday business preserves the requirement that a two-thirds vote is required to dispense with business under Rule XXIV clause 7. Rule XVI clause 4 provides that one motion to recommit “shall be in order” after the ordering of the previous question. *Manual* § 782. This

motion is considered a fundamental prerogative of the minority. Special rules which directly prevent the use of this motion are specifically precluded. *Manual* § 729a.

In the 104th Congress, a new restriction on the authority of the Committee on Rules was imposed by § 426 of the Unfunded Mandates Act. *Manual* § 1007; 2 USC § 658e(a). Section 426 precludes the consideration of a special rule waiving points of order under § 425 of the Unfunded Mandates Act. However, this restriction is “enforced” by raising the question of consideration against the rule. The House’s attention is thus focused on the waiver, but after limited debate, the House can decide to consider the waiver and proceed to adopt the rule.

Because of the wide diversity of their use in the legislative process, special rules are discussed in the context of many other procedural articles in this work. See for example AMENDMENTS; COMMITTEES OF THE WHOLE; CONFERENCES BETWEEN THE HOUSES; CONSIDERATION AND DEBATE; GERMANENESS OF AMENDMENTS; ORDER OF BUSINESS; POSTPONEMENT; SENATE BILLS AND AMENDMENTS BETWEEN THE HOUSES.

### **Application to Unreported Measure**

Special orders are customarily requested from the Rules Committee by a committee that has reported, or has jurisdiction over, the measure to be considered. A special rule providing for the consideration of a bill is not invalidated by the fact that the bill is not on the calendar (8 Cannon § 2259; 88–2, Aug. 19, 1964, pp 20212, 20213), nor by the fact that the bill has no committee sponsorship (99–2, Apr. 16, 1986, p 29973). A special rule may make in order the consideration of a measure not yet reported from a standing committee (see Deschler Ch 21 §§ 16.15–16.17) or provide for the immediate consideration of a conference report when it is eventually reported from the committee of conference (Deschler Ch 21 §§ 16, 17). A special rule may even provide for the consideration of a bill that has not yet been introduced. 8 Cannon § 3388. The Rules Committee also may report resolutions prescribing certain procedures to apply during the further consideration of a bill already under consideration in the House or Committee of the Whole. 8 Cannon § 2258. Deschler Ch 21 § 16.2. See also CONSIDERATION AND DEBATE.

The Rules Committee has the authority to report a special order discharging a standing committee even though that committee may have ordered reported another similar bill on the same subject. See 99–2, Oct. 16, 1986, p 32190. In one instance, a special order discharged six committees from an unreported bill similar to one previously reported. 99–2, May 15, 1986, p 10954.

### Waivers

The Committee on Rules may report resolutions temporarily waiving or altering a rule of the House that would otherwise prohibit the consideration of the underlying bill. Statutory provisions enacted in the exercise of the House's rule-making authority also may be waived in this manner. 94-1, Mar. 20, 1975, pp 7676-78; 94-1, Mar. 24, 1975, p 8418. A special-order resolution may waive any rule that might impede the consideration of a bill or amendment thereto. Points of order do not lie against the consideration of the special order as it is for the House to determine, by a majority vote on the adoption of the resolution, whether certain rules should be waived. Deschler Ch 21 § 16.9. However, a statutory rule may contain language restricting the authority of the committee to recommend a waiver. For example, the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4) added a new part B to title IV of the Congressional Budget Act of 1974 that imposes several requirements on committees with respect to "Federal mandates," establishes points of order to enforce those requirements, and precludes the consideration of a rule or order waiving such points of order in the House. Section 426(a) of the Act establishes a point of order against consideration of any rule or order that waives the application of § 425. *Manual* § 1007. See also BUDGET PROCESS.

In 1995, the House adopted a rule directing that, to the "maximum extent possible," special-order resolutions be specific with respect to any waiver of a point of order against the underlying measure or against its consideration. Rule XI clause 5(e). *Manual* § 731a.

## § 2. Reporting Special Rules

### Generally; Typography

Reports from the Rules Committee repealing or amending a House rule must use appropriate typography showing the proposed omissions or insertions. A Ramseyer-type comparative print (see COMMITTEES) is required under clause 4(d) of Rule XI whenever the Committee on Rules reports a resolution repealing or amending a rule of the House or part thereof. *Manual* § 731. This clause does not apply to resolutions which merely provide temporary waivers of rules during the consideration of particular legislative business. 94-1, Mar. 20, 1975, p 7677; 94-1, Mar. 24, 1975, p 8418.

### Privilege and Precedence of Reports

A report from the Committee on Rules enjoys high privilege. 8 Cannon § 2260. It takes precedence over a privileged motion to discharge a committee (see Deschler Ch 21 § 17.7), and has been called up before District of

Columbia business which is privileged on District Day (see Deschler Ch 21 § 17.8). When it has been called up in the House after its one-day layover, the question of consideration cannot be raised. 8 Cannon § 2440. After the resolution has been reported and is under debate, no matter of lesser privilege may interrupt its consideration without the consent of the House. 91–1, Oct. 29, 1969, pp 32076–83. Only one motion to adjourn is permitted and dilatory motions are proscribed. *Manual* § 729a. Once the resolution is under debate, the House can postpone further consideration and proceed to other business only by unanimous consent. Deschler Ch 21 § 18.37. However, the manager of the resolution can withdraw it from consideration before a decision has been made thereon. Rule XVI clause 2. Deschler Ch 21 § 18.

Although highly privileged, a report from the Committee on Rules yields to the presentation of conference reports (5 Hinds § 6449), and to questions of privilege (8 Cannon § 3491), and is not in order after the House has voted to go into Committee of the Whole (5 Hinds § 6781).

### **Reporting to the House; Calling Up**

The Rules Committee must present special-order resolutions to the House within three legislative days of the time when it orders a report with respect to the underlying measure. Rule XI clause 4(c). *Manual* § 730.

Ordinarily, a report from the Committee on Rules reaches the floor by being called up by a member of that committee who has been so authorized. But under Rule XI clause 4(c), if the report has been on the House calendar for seven legislative days without being called up, any member of the committee may call up the resolution provided he gives one day's notice of his intention to do so. *Manual* § 730. This rule may be invoked by a minority member of the committee. 96–1, Nov. 13, 1979, p 32185; 96–2, Sept. 25, 1980, p 27417.

In the event an adverse report is made by the Committee on Rules on an order-of-business resolution, any Member of the House may call up the report and move the adoption of the resolution on days when motions to discharge committees are in order. *Manual* § 730. See DISCHARGING MEASURES FROM COMMITTEES.

### **Same-day Consideration**

While it is always in order to call up for consideration a resolution reported from the Committee on Rules relating to the order of business, it may not be considered on the same legislative day reported unless so determined by a vote of not less than two-thirds of the Members voting (*Manual* § 729a), a quorum being present. 94–1, July 30, 1975, p 25826; 94–1, Nov.

14, 1975, p 36638. If consideration is ordered by a two-thirds vote, a point of order that the resolution has not been printed does not lie. 95–1, Feb. 2, 1977, p 3344. The requirement that two-thirds of Members voting must agree to same-day consideration does not apply to resolutions called up during the last three days of a session. 91–2, Dec. 31, 1970, p 44292. The two-thirds vote requirement may be waived by adoption of a resolution reported from the Rules Committee (93–2, Dec. 19, 1974, p 41571) or by House adoption of a resolution offered under suspension of the rules (93–2, Dec. 16, 1974, p 40170).

Exceptions to the two-thirds vote requirement for same-day consideration of Rules Committee reports are found in Rule XI clause 2(1)(6) (*Manual* § 715) and in Rule XXVIII clause 2 (*Manual* §§ 912a, 912b). If the only effect of a rule is to waive the three-day layover requirement of a particular reported bill or the three-day layover and two-hour availability requirement of a conference report and amendments in disagreement, such a reported rule may be considered on the same day the report is filed without a two-thirds vote. See 98–2, Aug. 10, 1984, p 23978.

### § 3. Forms

#### Filing a Rule

MEMBER: Mr. Speaker, by direction of the Committee on Rules, I present a privileged report for printing under the Rule.

THE SPEAKER: The Clerk will report the title of the resolution. [*After Clerk reports title.*] The report is referred to the House Calendar and is ordered to be printed.

#### Calling Up a Rule

MEMBER: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution \_\_\_\_ and ask for its immediate consideration.

THE SPEAKER: The Clerk will report the resolution. [*After the resolution is read in full.*] The gentleman from \_\_\_\_ is recognized for one hour.

#### Calling Up Rule on Same Day It Is Filed

MEMBER: Mr. Speaker, by direction of the Committee on Rules, I present a privileged report for printing under the Rule.

THE SPEAKER: The Clerk will report the title of the resolution. [*After Clerk reports title.*] The report is referred to the House Calendar and is ordered to be printed.

THE SPEAKER: The question is, will the House consider the resolution. [*If two-thirds of those voting, a quorum being present, vote in the affirmative.*] The House has voted to consider the resolution and the gentleman from \_\_\_\_\_ is recognized for one hour.

**§ 4. Debate on Special Rules; Voting**

Special-order resolutions reported from the Committee on Rules are considered in the House, as distinguished from the Committee of the Whole. They are debatable under the hour rule (*Manual* § 758), and require a majority vote for adoption (4 Hinds § 3169). The resolution is not subject to division (Rule XVI clause 6; *Manual* § 791). The two-thirds vote needed for same-day consideration does not alter the requirement that a simple majority actually adopt the resolution. Deschler Ch 21 § 18. See also VOTING.

A Member recognized to call up an order-of-business resolution by direction of the Committee on Rules controls one hour of debate thereon and may offer one or more amendments thereto (95-1, July 29, 1977, p 25653), and authorization of the committee is not required should the proponent exercise his right to amend. 101-2, Sept. 25, 1990, p \_\_\_\_\_. Other Members may be recognized only if yielded time. 90-2, Oct. 8, 1968, pp 30217, 30222-24. It is customary for the Member calling up the resolution to yield 30 minutes of the hour to a minority member of the Committee on Rules for purposes of debate only. The minority member is permitted to yield his time in segments to other Members. The resolution is not subject to amendment from the floor unless the Member in charge yields for that purpose or unless the House fails to order the previous question. 94-2, Feb. 26, 1976, pp 4625, 4626; 98-2, Feb. 22, 1984, p 2965; 99-2, Sept. 24, 1986, p 25889. Debate is not limited to the specifications of the resolution but may go to the merits of the underlying bill, since the issue is whether the bill should be considered under the terms specified or considered at all. 96-1, July 25, 1979, p 20609.

In the event that the previous question is rejected, the Member who has led the opposition will be recognized by the Chair for one hour. The Member recognized may yield such time as he desires, may offer a germane amendment to the resolution, and may move the previous question on the amendment and the resolution. Deschler Ch 21 § 18. Following the rejection of the previous question on a rule, the strictures against dilatory motions in Rule XI clause 4(b) no longer apply; motions to table or refer may be offered following the rejection of the previous question. *Manual* § 729b.

The Speaker has the authority to postpone for up to two legislative days a record vote on ordering the previous question or on the adoption of a rule. See Rule I clause 5(b), *Manual* § 631. See VOTING.

## § 5. Modification of Special Rules

### By Resolution

The Committee on Rules may report a privileged resolution modifying the operation or effect of a previous special order reported by that committee and adopted by the House. 96–2, Apr. 30, 1980, p 9467. Such a resolution may provide additional procedures to govern the further consideration of a measure already pending in Committee of the Whole, and may include limitations on further debate or amendments. 98–1, May 4, 1983, p 11036.

### By Unanimous Consent

A special rule reported from the Committee on Rules while pending before the House may be modified by unanimous consent. 96–1, Sept. 28, 1979, p 26834; 98–1, July 14, 1983, p 19140. By unanimous consent the House has altered the terms of an adopted special order to make an additional amendment in order in the Committee of the Whole (100–2, Aug. 11, 1988, p 22105), or to change the specified order or sequence of amendments in Committee (101–2, Oct. 3, 1990, p \_\_\_\_).

A unanimous-consent request to modify the terms established by a special order should be made in the House even if the special order provides for the consideration of a measure in the Committee of the Whole. An appropriate time to request unanimous consent to modify the terms of such a special order is after its adoption by the House and prior to consideration of the underlying measure in the Committee. 99–2, Sept. 24, 1986, p 25889.

Once consideration of the underlying measure has begun in the Committee of the Whole, the Committee has no authority to significantly change the applicable special rule. *Manual* § 877a. Unanimous-consent requests may be entertained in the Committee if their effect is to allow a minor or incidental change from the procedure required by the special rule. 93–2, Mar. 26, 1974, p 8239. But where a unanimous-consent request proposes to directly alter the basic structure of the rule, the Chair should refuse to entertain the request. See 93–1, Dec. 12, 1973, p 41153. For example, the Chair has refused to entertain unanimous-consent requests:

- To permit a substitute to be read by sections for amendment where the special rule did not so provide. 93–1, Dec. 12, 1973, p 41153.
- To extend the time limitation for consideration of amendments beyond that set by a special order, which required the question to be put after a specified number of hours. 102–1, Oct. 30, 1991, p \_\_\_\_.
- To modify the terms of a special order permitting consideration of certain amendments only en bloc. 99–2, Sept. 11, 1986, p 22871.

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- To change the control of time for general debate by certain Members as allocated by special rule. 99–2, Oct. 9, 1986, p 29984.
- To permit consideration of an amendment out of the order specified in a special rule. 100–2, May 25, 1988, p 12275; 102–1, Oct. 31, 1991, p \_\_\_\_.

The Committee of the Whole sometimes rises to permit a unanimous-consent request in the House that changes the mandate of a special order. 99–2, Sept. 11, 1986, p 22871.

Unanimous-consent requests have been entertained in Committee of the Whole:

- To permit the modification of a designated amendment made in order by a special rule. 94–2, Sept. 1, 1976, p 28877.
- To permit a supporter of an amendment to claim debate time allocated by special order to an opponent, where no opponent seeks recognition. 101–2, May 23, 1990, p \_\_\_\_.
- To shorten the time set by special order for debate on a particular amendment. 101–2, Aug. 1, 1990, p \_\_\_\_.
- To lengthen the 10 minutes of controlled debate time set by special rule for debate on an amendment by an additional 10 minutes. 102–1, May 21, 1991, p \_\_\_\_.

In addition, the House may, by unanimous consent, delegate to the Committee of the Whole authority to entertain unanimous-consent requests to change procedures contained in an adopted House special order. 99–2, Aug. 11, 1986, p 20633.

Recognition to offer a unanimous-consent request, see UNANIMOUS-CONSENT AGREEMENTS.

### § 6. Types of Special Rules

In recent Congresses, special orders of business have provided for the consideration of amendments in a variety of ways, from “open” rules (which are silent on the amendment structure) to “closed” (which deny all amendments). In between these two extremes, special orders have:

- Specified consideration that is open in part and restricted in part.
- Permitted only specified amendments.
- Required amendments to be printed.
- Specified that certain amendments be “considered as adopted.”
- Authorized the floor manager to offer en bloc amendments consisting of the text of other amendments made in order.
- Left the amendment process open but only within a certain time frame.

One procedure involving the consideration of amendments is called “King of the Hill.” While regular order does not permit further amendments to a

text once it has been amended in its entirety, a “King of the Hill” rule permits several substitute amendments to be voted on, with the last one adopted the one to be finally voted on in the House. More recently the Committee on Rules has reported a special order of business providing for a variation of that procedure. This procedure permits consideration of conflicting amendments in a series with the one winning the most votes being finally voted on in the House.

Reports of special orders of business often make in order as original text something other than the text of the introduced measure. For example, the base text may be specified to be:

- A substitute reported by the committee of jurisdiction (the most common text made in order).
- The text of another introduced bill or a specified preprinted amendment.
- An amendment first adopted in the Committee of the Whole (104–1, Aug. 2, 1995, p \_\_\_\_).
- Original text as modified by amendments “self-executed” (i.e., considered adopted) upon the adoption of the special order or of the amendments in the Committee of the Whole (104–1, Apr. 15, 1995, p \_\_\_\_).

Special orders of business often relate to the consideration of conference reports and amendments between the Houses. For example a rule may:

- Permit a motion to “hook-up” a House-passed measure with a similar Senate-passed measure and permit a motion to go to conference.
- Waive points of order, thus permitting consideration of a conference report which would otherwise be vulnerable to a point of order.
- Provide for a motion to dispose of Senate amendments to a House bill (104–1, Dec. 13, 1995, p \_\_\_\_).
- Permit a third-degree amendment to be offered to a Senate amendment.
- Allow conferees to refile a conference report in a corrected form without a new meeting or new signatures (104–1, Nov. 17, 1995, p \_\_\_\_).

The Committee on Rules may report resolutions which provide special procedures to expedite consideration or accomplish specific results. For example, they may:

- Permit the Chairman of the Committee of the Whole to postpone and cluster requests for recorded votes on amendments offered in the Committee of the Whole.
- Give priority of recognition for the offering of amendments to Members who preprinted their amendments in the *Congressional Record*.
- Adopt a concurrent resolution correcting an enrollment (104–1, June 29, 1995, p \_\_\_\_).
- Link two measures separately considered into one engrossment (102–1, Oct. 16, 1991, p \_\_\_\_).

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Prior to the adoption of the rules, a special order of business has been offered at the direction of the majority party conference to provide for consideration in the House of a resolution to adopt the rules of a new Congress (104-1, Jan. 4, 1995, p \_\_\_\_).