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The Motion to Recommit in the House of Representatives

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Summary

The motion to recommit provides a final opportunity for the House to affect a measure before passage, either by amending the measure or sending it back to committee.

The motion to recommit is often referred to as "the minority's motion," because preference in recognition for offering a motion to recommit is given to a member of the minority party who is opposed to the bill. The stated purpose of giving the minority party this right was to allow them to "have a vote upon its position upon great public questions." House rules protect this minority right, as it is not in order for the House Committee on Rules to report a special rule that would preclude offering a motion to recommit a bill or joint resolution prior to its initial passage.

Motions to recommit are of two types: "straight" motions and motions that include instructions. A Member offering a "straight" motion to recommit seeks to send the measure to committee with no requirement for further consideration by the House. A Member offering a motion to recommit with instructions seeks to immediately amend the underlying bill on the House floor.

A motion to recommit may have various procedural effects, including amending an underlying measure, sending it to one or more committees, providing additional time for its consideration, or potentially disposing of the legislation. Due to its inclusion of policy language, the motion to recommit might also have political effects, such as allowing Members to go on record as supporting or opposing a specific policy and creating a comprehensive public record to emphasize the minority party's differences from the platform of the majority.

This report provides an overview of House rules and precedents governing the motion to recommit and describes procedural and political effects of the motion. This report will be updated to reflect any changes in House rules governing the usage of the motion to recommit.

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House Rules Governing the Motion to Recommit

When the House considers legislation, one of the last steps it takes is to consider a motion to recommit. The motion to recommit represents the last chance of the House to affect a measure. In practice, that means either to offer amendatory language or to send the bill back to committee.

In practice, the motion to recommit, as authorized by Rule XIX, is offered after the previous question has been ordered on passage.[1] For these motions, the Speaker affords priority in recognition to those opposed to the measure[2] and gives preference among those opposed to a minority party Member,[3] which has resulted in the motion being dubbed, "the minority's motion." Among minority opponents, priority to offer the motion is given first to the minority leader or his or her designee and then to Members from the reporting committee in order of their committee seniority.[4]

Only one proper motion to recommit is in order. If a motion to recommit is ruled out of order, a second, proper motion to recommit may be offered.[5] A motion to recommit may be amended (although it is uncommon in practice) but only if the previous question has not yet been ordered on the motion. A motion to recommit offered after the previous question has been ordered on the bill may not be tabled.[6]

House rules specifically prohibit the House Committee on Rules from reporting a special rule that would prevent the motion to recommit from being offered on initial passage of a bill or joint resolution.[7] House rules also guarantee that the motion to recommit may include instructions that include an amendment otherwise in order if offered by the minority leader or his or her designee.[8] This guarantee does not apply to consideration of a Senate bill for which the text of a House-passed measure has been substituted, because the motion would have been protected during initial consideration of the House-passed measure.

Types of Motions to Recommit

Motions to recommit are characterized as being of two types. The first type, referred to as a "simple" or "straight" motion to recommit, includes no instructions. If adopted by the House, it

[1] The motion to recommit may also be in order pending the motion for the previous question. For measures considered under the terms of a special rule, however, the previous question is typically agreed to as part of that rule, so in practice, the motion is usually offered only after the previous question has been ordered. The information in this report involves those motions to recommit in order after the previous question has been ordered on the measure. The rules and practices described do not necessarily apply to motions to recommit conference reports. For more information regarding the recomittal of conference reports, see CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki; and William Holmes Brown, Charles W. Johnson, and John V. Sullivan, *House Practice: A Guide to the Rules, Precedents and Procedures of the House* (Washington: GPO, 2011), ch. 13, §35.

[2] Rule XIX, clause 2(a).

[3] A Member or Delegate or the Resident Commissioner.

[4] *House Practice*, ch. 48, §14.

[5] Ibid., ch. 48, §13.

[6] U.S. Congress, *Constitution, Jefferson's Manual, and Rules of the House of Representatives*, H.Doc.113-181, 113th Cong., 2nd sess. (Washington: GPO, 2015), §1002a (hereafter cited as *House Manual*).

[7] In instances when the previous question is operating.

[8] Rule XIII, clause 6(c).

returns the underlying measure to committee.[9] When a "straight" motion to recommit is offered, the clerk will report it in the following form:

> Mr. Obey of Wisconsin moves to recommit the bill, H.R. 3010 to the Committee on Appropriations.[10]

The other type of motion to recommit, offered much more frequently, includes instructions and must contain language directing that the legislation be reported "forthwith," meaning that if the House adopts such a motion, the measure remains on the House floor, and the committee chair (or designee) immediately rises and reports the bill back to the House with any amendment(s) contained in the instructions of the recommittal motion.[11] The House votes on agreeing to the amendment(s) before moving to final passage of the bill as it may have been amended. Typically, if the motion to recommit has been agreed to, the amendment in the instructions is agreed to by voice vote. However, amendment(s) in the instructions are subject to division of the question if it consists of two or more separable substantive propositions.[12]

When a motion to recommit with instructions is offered, the clerk will report it in the following form:

> Mr. Scott of Virginia moves to recommit the bill H.R. 10 to the Committee on Oversight and Government Reform with instructions to report the same back to the House forthwith with the following amendment: Add at the end of section 6 the following new subsection:(f) Requiring Protection of Students and Applicants Under Civil Rights Laws.—Section 3008 (sec. 38-1853.08, D.C. Official Code) is amended by adding at the end the following new subsection: "(i) Requiring Protection of Students and Applicants Under Civil Rights Laws.—In addition to meeting the requirements of subsection (a), an eligible entity or a school may not participate in the opportunity scholarship program under this Act unless the eligible entity or school certifies to the Secretary that the eligible entity or school will provide each student who applies for or receives an opportunity scholarship under this Act with all of the applicable protections available under each of the following laws:" (1) Title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000c et seq.).[13]

Both types of motions to recommit are debatable for 10 minutes.[14] The majority floor manager of a bill or joint resolution may ask that debate time be extended to one hour. In either case, debate time is equally divided between the Member making the motion and a Member opposing it.

[9] If the motion is not adopted, the House moves to a vote on final passage.

[10] *Congressional Record* (daily edition), vol. 151, June 24, 2005, p. H5163.

[11] If the motion is not adopted, the House moves to a vote on final passage.

[12] House Rule XVI clause 5. With some exceptions, a question is divided on the demand of any Member, Delegate, or Resident Commissioner anytime before the question is put to the House for a vote if it "includes propositions so distinct in substance that, one being taken away, a substantive proposition remains." For example, on May 28, 2010, the chair divided the instructions in a motion to recommit H.R. 5116 "among nine separable portions." Only four of nine portions were agreed to. *Congressional Record* (daily edition), vol. 156, May 28, 2010, p. H4188.

[13] *Congressional Record* (daily edition), vol. 161, October 21, 2015, p. H7076.

[14] Because House Rule XIX, clause 2(b) specifically provides for debate only when the motion is offered to a bill or joint resolution, there is no guarantee of debate when offered to a simple or concurrent resolution.

Restrictions on Instructions in Motions to Recommit

Instructions in a motion to recommit generally may not propose to do that which may not be done by amendment under the rules of the House.[15] For example, instructions that do any of the following would be out of order:

- Propose an amendment that is not germane to the measure.
- Amend or eliminate an amendment already adopted by the House, unless permitted by a special rule.
- Propose an amendment in violation of Rule XXI clause 2, 4, or 5.[16]
- Propose an amendment in violation of Rule XXI, clause 10, "the CUTGO rule."[17]
- Authorize a committee to report at any time or direct a committee to report by a date certain.[18]

Potential Procedural Effects of the Motion to Recommit

A motion to recommit may have several procedural effects. First, it allows the minority to offer and obtain a vote on policy language of their design, an opportunity that might otherwise be unavailable if the measure is being considered under the terms of a special rule that restricts or prevents the offering of amendments.

Further, a motion to recommit grants the minority the *last* opportunity to amend legislation before final passage. The motion to recommit even allows the offering of an amendment previously rejected by the House during consideration in Committee of the Whole.[19]

House approval of a "straight" motion to recommit could have the effect of sending the bill back to the committee from which it was reported for further work on the measure. If the underlying legislation was not first reported by the committee of jurisdiction before coming to the floor—either because it was never referred to committee or because the committee was discharged from further consideration of the bill—the minority might try to use the motion as a way to put the legislation before the committee for its consideration.[20]

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[15] *House Manual*, §1002b.

[16] Generally these rules prohibit consideration of unauthorized appropriations, legislation on an appropriations bill, appropriations on bills not reported by the Committee on Appropriations, and taxes or tariffs in bills not reported from the Committee on Ways and Means.

[17] The House CUTGO rule generally prohibits consideration of legislation that would have the net effect of increasing mandatory spending over certain periods.

[18] *House Manual*, §1002b.

[19] *Deschler's Precedents of the United States House of Representatives*, H. Doc. 94-661, 94th Cong., 2nd sess. (Washington: GPO, 1977), vol. 9, §35.27, p. 827.

[20] This would technically be a motion to commit if the measure has not previously been referred to a committee, but it would be treated as a motion to recommit under House rules and precedents.

A motion to recommit can also send a measure to a committee to which the bill had not been originally referred.[21] This kind of action could be tied to the creation of an ad hoc committee, such as in the following example:

> Mr. Ryan of Wisconsin moves to commit the resolution (H.Res. 6) to a select committee composed of the Majority Leader and the Minority Leader with instructions to report back the same to the House forthwith with only the following amendment.[22]

An ad hoc committee like this has no permanence and is not required to meet. Such motions to commit are frequently used in conjunction with the House rules package on the opening day of Congress, before standing committees have been established.

Additionally, the motion to recommit might seek to send the bill to a committee to which it was not referred due to jurisdictional issues. For example, in 1975, a "straight" motion to recommit attempted to send a bill which had been reported by the Committee on Ways and Means, not only to that committee, but also to the Committee on Interstate and Foreign Commerce. This motion to recommit appeared to suggest that the goal of the underlying legislation might be achieved in additional ways under the jurisdiction of this second panel.[23]

"Straight" motions to recommit could also create a situation that would effectively dispose of the underlying measure, since once the measure is recommitted, a committee is not obligated to take further action. It could be argued that it would be unlikely for a committee to report back a measure that the House has voted to remove from the floor. Debate in the House on a "straight" motion to recommit may, however, provide a committee with a non-binding understanding of what should be done to improve the measure.

A committee's decision whether to act on a recommitted measure might also be influenced by House and committee rules. For instance, a Speaker pro tempore observed in response to a parliamentary inquiry, "The Chair cannot say what in the rules of a committee might constrain the timing of any action it might take. Neither can the Chair render an advisory opinion whether points of order available under the rules of the House might preclude further proceedings on the floor."[24]

Potential Political Effects of the Motion to Recommit

As described below, the motion to recommit underwent fundamental changes in 1909 with the stated purpose of giving the minority the right "to have a vote upon its position upon great public questions."[25] This seems to imply that the motion was intended to have not only procedural effects but also political ones, allowing Members to go on record as supporting or opposing a specific policy, an opportunity that may be important for demonstrating their policy preference to constituents that might not otherwise occur in the absence of the motion.

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[21] *House Practice*, ch. 45, §3.

[22] *Congressional Record* (daily edition), vol. 153, January 5, 2007, p. H83.

[23] Motion to recommit offered in reference to H.R. 6860. *Congressional Record*, vol. 121, June 19, 1975, pp. 19786-19788.

[24] Motion to recommit offered in reference to H.R. 3773. *Congressional Record* (daily edition), vol. 153, November 15, 2007, p. H14061.

[25] Remarks of Representative John Fitzgerald, *Congressional Record*, vol. 44, March 15, 1909, p. 23.

Besides providing a policy vote, the motion to recommit can have additional political effects. A motion to recommit may combine several proposed amendments, providing the opportunity to package together a set of views as a way to create a comprehensive public record to emphasize the minority party's differences from the platform of the majority.

As described above, using a "straight" motion to recommit without instructions can have the effect of delaying or even "killing" a measure, since a committee to which the measure is recommitted would never be required to act.

Motions to recommit may also have the effect of providing an outlet for the minority to express its discontent with restrictions related to the openness or fairness of the legislative process. For example, a minority dissatisfied with the number of amendments its Members have been allowed to offer in the Committee of the Whole may make use of their right to offer a motion to recommit with instructions as a means for expressing their opposition to the policies of the majority party.

A Brief History of the Motion to Recommit

The motion to recommit has its antecedents in the British Parliament and has existed since the First Congress. Prior to 1909, however, it operated differently than it does today, and priority in recognition for the offering of the motion to recommit was not reserved for a Member opposed to the measure. Instead, as former Speaker of the House Joseph Cannon remarked:

> The object of this provision [for a motion to recommit] was, as the Chair has always understood, that the motion should be made by one friendly to the bill.[26]

Often, the majority floor manager of a bill would make a "straight" motion to recommit with the expectation that it would be defeated. Since only one proper motion to recommit is in order, this would preclude anyone else from trying to use the motion in order to defeat or amend the measure.

For most of the history of the House, the purpose of the motion to recommit more closely resembled the current usage of the motion to reconsider. Recommittal provided Members with a final opportunity to correct errors within the measure, and in 1891, the Speaker ruled that a bill could be recommitted "forthwith," meaning the committee chair would report the amendments in the motion at once without the bill having to be sent back to committee.[27]

The use of the motion to recommit changed substantially in 1909 as a result of changes made in House procedures championed largely by a coalition of Democrats and Progressive Republicans who opposed the autocratic rule of Speaker Cannon. During debate on the adoption of the rules package for the 61st Congress (1909-1910), the previous question was defeated, allowing Representative John Fitzgerald to propose a set of rules changes, one of which guaranteed priority in recognition to offer the motion to recommit to a Member opposed to the bill. This rules change was offered with the stated purpose of giving the minority the right "to have a vote upon its position upon great public questions."[28] Further, the Fitzgerald amendment prohibited the Rules Committee from reporting any special rule that would prevent the offering of a motion to recommit. This amended rules package passed 211-173.

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[26] Clarence Cannon, *Cannon's Precedents of the House of Representatives of the United States* (Washington: GPO, 1936), vol. VIII, §2762.

[27] Asher C. Hinds, *Hinds' Precedents of the House of Representatives of the United States* (Washington: GPO, 1907), vol. V, §5545-47.

[28] Fitzgerald, *Congressional Record*.

It was not until 1932, however, that precedent definitively established giving priority in recognition to offer the motion to a *minority party* Member opposed to the bill.[29] This solidified the motion as a "minority right."

At the beginning of the 92nd Congress (1971-1972), the language now contained in House Rule XIX, clause 2(b), was added to the standing rules, allowing 10 minutes of debate on a motion to recommit with instructions, equally divided between a proponent and an opponent.[30]

Also in the 92nd Congress, a new rule made recorded votes in the Committee of the Whole in order for the first time,[31] causing some to question whether the motion to recommit had become redundant or unnecessary. An earlier ruling by the Speaker pro tempore noted that in the Committee of the Whole, "there is no roll-call vote, so that the only opportunity that a minority may have to go on record is by means of a motion to recommit in the House."[32] Because the rules now allowed for recorded votes in the Committee of the Whole, some argued that the motion's main purpose could be achieved in other ways, making the motion to recommit "much less necessary."[33] The right of the minority to offer a motion to recommit, however, remained intact, even in light of the expanded rules on voting.

Following the successful adoption of a motion to recommit in 1984 that included the Crime Bill as amendatory instructions, the House decided that 10 minutes of debate might not always be sufficient, since these motions had the potential of adding substantial portions of legislation to an underlying measure.[34] At the start of the 99th Congress (1985-1986), the current language in clause 2(c) of the rule was added, allowing the majority floor manager to demand that debate time on the motion be extended to one hour equally divided and controlled by the proponent and an opponent. To date, the one-hour extension has been demanded only once.[35]

During the 1980s and 1990s, the Rules Committee issued what the minority perceived to be an increased number of special rules restricting both the amending process as well as the motion to recommit.[36] In 1995, the House added language now in Rule XII, clause 6(c), prohibiting the Rules Committee from reporting a special rule that would prevent the offering of a motion to recommit with instructions, thereby preventing the Rules Committee from restricting the scope or content of the motion to recommit.

During the 110th Congress (2007-2008), there was a significant increase in motions to recommit offered, specifically motions to recommit with instructions that did not include the term *forthwith*, referred to as motions to recommit with "non-forthwith" instructions (or sometimes referred to as "promptly" motions). If adopted, a motion to recommit with "non-forthwith" instructions would

[29] *Cannon's Precedents*, vol. VIII, §2697.

[30] *House Manual*, §1002a.

[31] H.Res.1123 (92nd Congress), agreed to in the House on October 13, 1972.

[32] The ruling was made on May 19, 1932. *Cannon's Precedents*, vol. VIII, §2698.

[33] Statement of Stanley Bach, U.S. Congress, Committee on Rules of the House, *Roundtable Discussion on the Motion to Recommit*, committee print, 102nd Cong., 2nd sess. (Washington: GPO, 1992), p. 12.

[34] On September 25, 1984, the text of H.R.5963: Comprehensive Crime Control Act of 1984 was successfully added as a an amendment in a motion to recommit forthwith to H.J.Res. 648, a joint resolution making continuing appropriations for FY1985, and for other purposes. *Congressional Record* (daily edition), vol. 140, September 25, 1984, pp. H10078-H10130.

[35] In reference to H.R. 4848. *Congressional Record* (daily edition), vol. 134, July 13, 1988, p. H18054.

[36] See Donald Wolfensberger, "The Motion to Recommit in the House: The Rape of a Minority Right," in *Roundtable Discussion on the Motion to Recommit*, pp. 93-159.

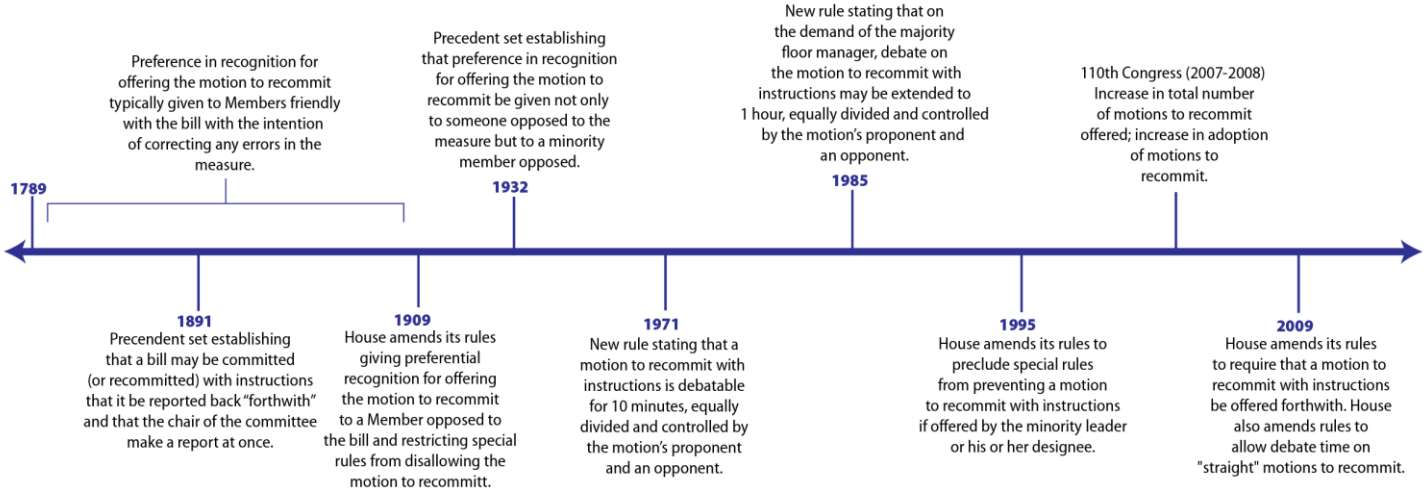
have returned the bill to the specified committee whose eventual report, if any, would not have been immediately or automatically before the House.

Motions to recommit with "non-forthwith" instructions sometimes had the effect of creating a difficult political choice for Members who supported both the underlying measure and the amendment contained in the motion to recommit. Some Members argued that motions to recommit with "non-forthwith" instructions were designed to trap majority party Members reluctant to vote against the motion's amendment, forcing them into a "lose-lose" situation.[37] Also, it was argued that the use of motions to recommit with "non-forthwith" instructions including specific policy amendments were not necessary because the motion could usually be offered "forthwith," which if successful would have immediately incorporated the motion's amendments.

These arguments led the House to amend its rules. The rules adopted by the House at the beginning of the 111th Congress (2009-2010) added a requirement that any instructions must be in the form of a direction to report an amendment or amendments back to the House "forthwith." The rules package of the 111th Congress further altered the rules surrounding the motion to recommit by making "straight" motions to recommit debatable. Prior to this, only motions to recommit with instructions had been debatable. These changes are still in effect.

[37] "The Republicans continue to use the motion to recommit for political purposes, not substantive purposes. Substantive purposes would be trying to change policy. For the most part, what they do with their motions to recommit are not change policy, but try to construct difficult political votes for Members. We understand that. To some degree, we did that as well." Remarks made by Majority Leader Steny Hoyer in Jennifer Yachnin, "Democrats Again Look to Change GOP Motions; After Defeats, Leaders Studying Ways to Neuter Republicans' Motions to Recommit," Roll Call, October 31, 2007, p. 3.

Figure 1. Evolution of the Motion to Recommit



Source: Congressional Research Service using the *Congressional Record*, *House Practice*, and *House Manual*.

Author Information

Megan S. Lynch
Specialist on Congress and the Legislative Process

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