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National Emergencies Act: Expedited Procedures in the House and Senate

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SUMMARY

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National Emergencies Act: Expedited Procedures in the House and Senate

The National Emergencies Act of 1976 (NEA) provides Congress with expedited parliamentary procedures for the consideration of a joint resolution terminating a national emergency (referred to here as a "termination resolution"), and it establishes a six-month congressional review period for ongoing national emergencies. These "fast track" procedures are intended to limit consideration and allow a simple majority to reach a final vote in each chamber by setting deadlines for action on the measure at each stage of its consideration. However, the NEA is silent on most other aspects of consideration, unlike many more recent statutory procedures that typically include more specific instructions. To date, only six joint resolutions eligible for expedited consideration under the NEA have been submitted to Congress, all of which have been considered under alternative parliamentary mechanisms. Some insight regarding the possible operation of the procedures provided in the statute may be found in precedents established in relation to the War Powers Resolution of 1973 (WPR), after which the NEA's procedures were patterned.

This statutory rule presents a number of procedural ambiguities. The text of the NEA does not provide guidance on how the deadlines established by the Act are to be calculated. Furthermore, there is no precise text stipulated by the NEA, although every termination resolution submitted to date has been drafted in the same form. Furthermore, the text of the statutory rule suggests that any such measure is fully amendable in the House and Senate, including by non-germane amendment. If the Senate were to apply a 2018 WPR precedent to the NEA, then any amendments to a terminating joint resolution would have to be germane. The House's standing rules require amendments to be germane.

The NEA establishes a six-month review period for ongoing national emergencies. The text of the Act suggests that Congress would vote within every six month period that a national emergency remains active. However, in practice, the House and Senate appear to have interpreted this language to mean that a termination resolution can be considered every six months under expedited procedures, if such legislation is introduced, but that Congress is not required to vote every six months on national emergencies.

Upon introduction and referral of a termination resolution, the NEA directs committees to report the measure within 15 calendar days. A privileged motion to discharge becomes available in the House if a committee has not reported within this period of time. The mechanism of discharge in the Senate is less clear. Under the WPR, certain resolutions are discharged automatically. If the Senate applied the same precedent to a termination resolution considered under the NEA, automatic discharge would preclude the need for a motion on the floor to achieve the same result.

Once a committee has reported or been discharged, the termination resolution is to become the pending business of the chamber, which must vote on passage within three calendar days thereafter, unless the chamber votes otherwise. In the House, consideration is likely to be structured by a special rule reported by the Committee on Rules and adopted by the House. Absent that, a privileged motion to take up the measure likely becomes available in the House. In the Senate, a motion to proceed to consideration may not be necessary, as the Act states that any measure reported "shall become the pending business." The Senate interpreted an identical three-day deadline under the WPR to mean that a vote on passage will occur 72 hours after the measure has been reported and could choose to apply the same interpretation to the NEA.

In the event the text of each chamber's termination resolution is different, the NEA calls for the prompt appointment of conferees. The conference committee is directed to report back to each respective chamber within six calendar days. The House and Senate, in turn, also are directed to vote on the resulting conference report not later than six calendar days after the report is first filed.

Staff are advised to consult the House and Senate Parliamentarians regarding how legislation might be considered under the NEA.

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Introduction

The declaration of a national emergency by the President, pursuant to the National Emergencies Act (NEA), grants access to powers and authorities under certain statutes that would not otherwise be in effect.[1] The NEA was enacted during the 94th Congress (1975-1976), following congressional concerns about the continuous nature of invoked emergency authorities and the absence of congressional review after their activation.[2] The legislation terminated existing national emergencies and created a pair of mechanisms for congressional oversight of future presidential emergency declarations. This oversight includes procedures for expedited consideration of legislation terminating a national emergency, and continuous six-month review periods for Congress to consider taking up such legislation. This report focuses on the congressional procedures created by the NEA for the consideration of a joint resolution terminating a national emergency declaration (referred to in this report as a "termination resolution"). For a discussion of executive branch authorities and requirements under the NEA, see CRS Report 98-505, *National Emergency Powers*, by L. Elaine Halchin.

As one of the older expedited procedures still in effect, the NEA is less detailed than many more recent statutes with similar goals, which often contain more explicit instructions for Congress at each stage of a measure's consideration.[3] While the expedited procedures found in the NEA appear relatively straightforward as written, they are silent on a number of aspects of procedural consideration (e.g., amendments, committee discharge). Interpretation of these expedited procedures is also complicated by a number of factors:

- The procedures, as written, almost exclusively provide deadlines for action at each step of consideration in each chamber. These deadlines, however, lack any explicit procedural enforcement mechanisms to ensure certain procedural actions occur in the absence of congressional action in compliance with them.
- The legislative history of the NEA provides little additional insight into congressional intent regarding the precise execution of procedures meant to expedite consideration of legislation to terminate a national emergency.
- There are limited precedents on how legislation terminating a national emergency might be considered in each chamber. Only a handful of joint resolutions have been introduced on the subject, and none of those instances fully utilized the statutory expedited procedures provided under the NEA.

[1] For a list of statutes the President could invoke during a national emergency, see the "Statutory Authorities Triggered by Declaration or Existence of National Emergency" section of CRS Report RL31133, *Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications*, by Jennifer K. Elsea and Matthew C. Weed. Note as well that other kinds of emergency declarations can be made by the President or certain executive branch officials pursuant to other statutory frameworks, independent of the provisions of the NEA (e.g., an "emergency" or "major disaster," as defined by 42 U.S.C. §5122, can be declared by the President pursuant to the Stafford Act to access authorities not otherwise available through a national emergency declaration pursuant to the NEA). For more information, see CRS Report R46379, *Emergency Authorities Under the National Emergencies Act, Stafford Act, and Public Health Service Act*, coordinated by Jennifer K. Elsea.

[2] P.L. 94-412; 15 U.S.C. §1601 et seq.

[3] See CRS Report RS20234, *Expedited or "Fast-Track" Legislative Procedures*, by Christopher M. Davis, for an overview discussion of the types of provisions included in many modern expedited procedures.

Despite these uncertainties, it is apparent that these procedures—as with most expedited procedure statutes—are intended to limit debate so that a numerical majority might reach a final vote in each chamber.

This report first summarizes the procedures as written in the NEA itself. A brief examination of the legislative history to the NEA then connects these procedures with similar ones adopted in the War Powers Resolution of 1973 (WPR).[4] The Senate has established a greater body of floor precedents during consideration of WPR measures, which may provide insight into how a termination resolution might be considered under the NEA's procedures. Using WPR-related precedents to supplement ones associated with the NEA, the report next examines each phase of consideration for expedited consideration of a resolution of termination, including a discussion of any associated procedural ambiguities. The report concludes with short case studies of how Congress has chosen to consider legislation terminating national emergencies in three recent instances.

Overview of Congressional Procedures under the NEA

Expedited Procedures

Under Section 202(c) of the NEA (50 U.S.C §1622(c)), a joint resolution to terminate a national emergency declared by the President can be introduced in either chamber at any time. Upon introduction, such a resolution is referred to the "appropriate committee" of jurisdiction.[5] The Act then sets the following deadlines for expedited consideration of the terminating resolution:

- The committee of referral is to report one joint resolution along with its recommendations within 15 calendar days after the day of referral, unless the chamber "shall otherwise determine by the yeas and nays";
- Once reported, the terminating resolution "shall become the pending business" of the chamber and a vote on final passage is to occur within three calendar days thereafter (unless the chamber "shall otherwise determine by yeas and nays");
- After passage in the first chamber, the termination resolution is transmitted to the other chamber and is subject to the same process (15 calendar days for the second-chamber committee to report and then 3 calendar days for a floor vote on final passage).[6]

[4] P.L. 93-148, officially called the War Powers Resolution, is sometimes interchangeably referred to as the War Powers Act. Many of the legislative history documents accompanying the National Emergencies Act use the War Powers Act title when referencing that statute.

[5] The NEA specifically states referral to a single committee, in contrast with the current House Rule that requires legislation be referred to all committees with jurisdiction over the subject matter in the text of a bill or resolution. House Rules changes allowing for the referral of legislation to multiple committees took effect at the start of the 94th Congress, on January 3, 1975. The NEA was enacted on September 14, 1976, over a year later. It is unclear whether the NEA's requirement that terminating resolutions be referred to a single committee in the House was intentional to allow for more expedited consideration or unintentionally did not account for the then-new rules change allowing for referral of legislation to multiple committees.

[6] The NEA specifically provides that "a joint resolution passed by one House shall be referred to the appropriate committee of the other House" (50 U.S.C §1622(c)(3)), though the measure could instead be held at the desk pursuant to the terms of a special rule or by unanimous consent.

- If the resolution passes the second chamber, the House and Senate are directed to "promptly appoint" conferees to resolve any differences that may occur on the legislation between the two chambers;
- The conference committee is to report within six calendar days beginning on the day after conferees are appointed, and the committee is directed to report in disagreement within 48 hours if it fails to come to a resolution.
- Lastly, a vote on the conference report is to be held not later than six calendar days after the report is first filed in either chamber, notwithstanding any rules regarding the printing or layover of such report.

Only six termination resolutions have been submitted over the history of the Act. Both the House and the Senate have typically chosen to structure consideration of such measures through other parliamentary means (primarily through adoption of a special rule reported by the Rules Committee in the House and a unanimous consent agreement in the Senate) rather than relying on the statutory procedures described above. These alternative modes of consideration lend greater flexibility to both chambers and arguably provide greater procedural clarity than the procedures laid out under the NEA.

Six-Month Review Period

A six-month reoccurring termination review period for ongoing national emergencies is provided for in Section 202(b) of the NEA (50 U.S.C. §1622(b)). In practice, it appears Congress has interpreted this statute as providing an opportunity to deliberate and vote every six months. Congress does not meet and routinely consider terminating legislation on national emergencies every six months.

The text of Section 202(b) specifies that no later than six months after a national emergency is declared and for every six-month period the emergency remains active thereafter, "each House of Congress shall meet to consider a vote on a joint resolution to determine whether that emergency shall be terminated." In practice, it does not appear that Congress has consistently met to review the status of ongoing national emergencies.

The Senate Committee on Foreign Relations met during two consecutive six-month periods during the 96th Congress (1979-1980) in relation to a national emergency declared by President Carter regarding Iran.[7] Following committee consideration, letters were sent to the President by the Chair and Ranking Member of the Committee on Foreign Relations and published in the *Congressional Record* stating that the committee met pursuant to the requirements of the NEA and that it determined that a joint resolution terminating the national emergency was not warranted.[8] Since that time, CRS has not identified any public record of Congress or its committees meeting to discuss terminating an ongoing national emergency until the introduction of a terminating resolution in the House during the 109th Congress (2005-2006).[9]

[7] E.O. 12170; 44 *Federal Register* 65729.

[8] See *Congressional Record*, vol. 126, (May 14, 1980), pp. 11270-11271; and *Congressional Record*, vol. 126, (November 20, 1980), p. 30385. Notably, the chair of the Foreign Relations Committee at that time, Senator Frank Church (D-ID), had previously served as the chair of the Special Committee on Termination of the National Emergency—the committee which proposed draft legislation that heavily influenced the final text of the enacted NEA. Given his role in crafting the legislation, it is perhaps unsurprising that his committee would pay attention to the intent of the NEA in this regard.

[9] See the section entitled "H.J.Res. 69, 109th Congress" for more discussion of House action on that measure.

The subject of terminating a national emergency would not reemerge until the 116th Congress, during which multiple resolutions were introduced in response to a national emergency declared by President Trump regarding the southern border of the United States.[10]

A Brief Legislative History of the NEA

Legislative efforts to reform the status of national emergencies began in the Senate with the creation of the Special Committee on Termination of the National Emergency during the 92nd Congress (1971-1972).[11] The committee was initially formed to study the potential effects of terminating the only known active national emergency at the time, which had been declared by President Truman in 1950, in relation to "communist imperialism."[12] In pursuing its task, the committee discovered that there were actually a total of four national emergency declarations actively in effect.[13] The committee's work culminated in the 93rd Congress (1973-1974) with the introduction of legislation containing its recommendations—S. 3957, the National Emergencies Act, which was introduced on October 8, 1974. Language adding expedited procedures for terminating a national emergency first appeared in an amendment in the nature of a substitute offered during floor consideration of S. 3957. The amendment was offered by Senator Charles Mathias, on behalf of the members of the Special Committee on National Emergencies and Delegated Emergency Powers and himself (as co-chair of that committee). It was agreed to and passed without objection after brief remarks from Senator Mathias and Senator William Roth. S. 3957 saw no action taken by the House beyond referral to committee. Further legislative efforts on national emergencies reform would not resume until the next Congress.

Consideration of the issues raised by S. 3957 continued in the 94th Congress (1975-1976) when members of the House Committee on the Judiciary introduced H.R. 3884, "A bill to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies" on February 27, 1975.[14] The bill, as introduced, contained expedited procedures for the consideration of a concurrent termination resolution identical to those contained in S. 3957 as passed in the Senate during the previous Congress. The Committee on the Judiciary reported H.R. 3884 with amendments on May 21, 1975. In its report, the committee noted that the bill's expedited procedures "are very similar to those set forth in section 7 of P.L. 93-148, the War Powers Act, of November 7, 1973."[15]

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[10] 84 *Federal Register* 4949. Further discussion of the two terminating resolutions that saw floor action in Congress can be found in the sections entitled "H.J.Res 46, 116th Congress" and "S.J.Res. 54, 116th Congress."

[11] The Committee was reestablished in the 93rd Congress (1973-1974) by S.Res. 9, and would be continued and renamed as the Special Committee on National Emergencies and Delegated Emergency Powers by S.Res. 242 during the second session. The Committee issued its findings in interim and final reports under this new name.

[12] U.S. President (Truman), "Proclamation 2914: Proclaiming the Existence of a National Emergency," *Public Papers of the Presidents of the United States: Harry S. Truman, 1950* (Washington: GPO, 1965), pp. 746-747.

[13] In addition to the previously mentioned emergency declaration in 1950 by President Truman, the three other emergency declarations still found to still be in force at that time included: a President Truman declaration regarding a "banking crisis," and two declarations by President Nixon in 1970, pertaining to a "post office strike," and in 1971 "to implement currency restrictions and to enforce controls on foreign trade." See, U.S. Congress, Senate Special Committee on National Emergencies and Delegated Emergency Powers, *National Emergencies and Delegated Emergency Powers*, 94th Cong., 2nd sess., May 28, 1976, S.Rept. 94-922, pp. 1-7.

[14] A Senate companion measure to the National Emergencies Act legislation was submitted in the 94th Congress (S. 977 on March 6, 1975), but the Senate acted on the House bill, which was later enacted.

[15] U.S. Congress, House Committee on the Judiciary, *National Emergencies*, 94th Cong., 1st sess., May 21, 1975, H.Rept. 94-238, p. 7.

H.R. 3884 was considered on the House floor under the terms of a special rule reported by the House Committee on Rules on September 4, 1975. During debate, Representative Romano Mazzoli (D-KY) spoke about the bill's congressional review period for national emergencies, stating "every 6 months after declaration of a national emergency this bill requires that the Congress consider such a resolution of termination." Representative Mazzoli argued that:

> by adopting H.R. 3884 we are consciously and deliberately forcing ourselves to come to grips periodically—and ultimately—with the vexing problems of national emergencies. The blame as well as the glory will be on the shoulders of the Congress in the years ahead. But that is as it is supposed to be—that is the responsible course to take.[16]

H.R. 3884 subsequently passed the House, as amended, 388-40.

In the Senate, H.R. 3884 was referred to the Committee on Government Operations (predecessor to the present day Committee on Homeland Security and Governmental Affairs). The bill was reported favorably with amendments on August 26, 1976.[17] The committee stated in its report that the expedited procedures in the bill were not just similar to those in the War Powers Act, but were specifically "patterned" after them.[18] The War Powers procedures themselves were enacted to ensure "a safeguard against the possibility that Congressional action…could be obstructed or relayed [sic] through a filibuster or committee pigeonholing."[19] This link between the two acts suggests that the precedents established under the WPR could possibly be applied by the Senate to expedited consideration of legislation under the NEA. The Senate agreed to the committee-reported amendments and passed H.R. 3884 the next day on August 27.[20] The House concurred with the Senate's amendments on August 31, and the bill was sent to the President. H.R. 3884 was signed by President Gerald Ford and enacted as The National Emergencies Act on September 14, 1976.[21]

In 1983, a series of court decisions culminating with a ruling from the Supreme Court in *Immigration and Naturalization Service* v. *Chadha* (462 U.S. 919 (1983)), effectively determined that the "legislative veto" was unconstitutional.[22] The court's decision led Congress to amend dozens of existing disapproval procedures, including the National Emergencies Act, which had provided for the consideration of a concurrent resolution to disapprove an action taken by the President. In 1985, P.L. 99-93, the "Foreign Relations Authorization Act, Fiscal Years 1986 and

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[16] *Congressional Record*, vol. 121 (September 4, 1975), p. 27635.

[17] Most Senate amendments were technical in nature, but one substantive amendment clarified that the law was not granting the President any authority additional to that already in existing statutes to declare an emergency. U.S. Congress, Senate Committee on Government Operations, *National Emergencies Act*, 94th Cong., 2nd sess., August 26, 1976, S.Rept. 94-1168 (Washington: GPO, 1976), p. 3.

[18] Ibid, p. 4.

[19] U.S. Congress, Senate Committee on Foreign Relations, *War Powers*, 93rd Cong., 1st sess., June 14, 1973, S.Rept. 93-220, p. 30.

[20] *Congressional Record*, vol. 122 (August 27, 1975), pp. 28224-28227.

[21] The following year, H.R. 7738, the International Emergency Economic Powers Act (IEEPA) was enacted as P.L. 95-223. The legislation grants the President the ability to declare a national emergency regarding a situation "with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States," and provides Congress the option of terminating such a declaration using the same expedited parliamentary procedures contained in the NEA. CRS did not identify any examples, as of the 116th Congress (2019-2020), of a joint resolution introduced in the House or Senate terminating an international emergency declared under IEEPA.

[22] The legislative veto refers to passage of a concurrent or simple resolution—not requiring the President's signature to go into effect, but unilaterally effecting Presidential powers. For further discussion on the court's ruling, see Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham, Jr., *House Practice: A Guide to the Rules, Precedents, and Practices of the House* (Washington: GPO, 2017), Chapter 14, pp. 375-377.

1987," amended the NEA to require the use of a joint resolution instead of a concurrent resolution. The amended language originated in the Senate and was sponsored by Senator Mathias, who cited several reasons for the change:

> First, I am persuaded by the opinion of the Court that the use of a concurrent resolution is constitutionally inappropriate in this case in matters so grave or serious as a national emergency. We must assure the operation of the full constitutional process of lawmaking if at all possible. Second, as a practical matter, the view and the power of the Congress is fully expressed by either means, whether a concurrent resolution or joint resolution. If a majority of both Houses are for termination of a national emergency and the President disagrees, we are at the same point of impasse, whether the legislative means is a concurrent resolution or a joint resolution. If we come to such an impasse between the President and the Congress, either a two-thirds override is called for or the use of the appropriations power or other constitutionally sound remedies.[23]

Amending the NEA ensured that Congress retained a constitutionally sound procedural tool to terminate national emergencies after the *Chadha* decision.[24]

Expedited Consideration of a Joint Resolution

Because of its more generally worded text, and because there are few examples of the statute's application to a congressional measure, there are a number of questions as to how legislation might be considered under 50 U.S.C. §1622. However, as noted, the NEA procedures are nearly identical to those in the War Powers Resolution, a parliamentary mechanism with a more robust history of use. To some extent, therefore, precedents concerning the operation of the War Powers Act may provide guidance on how certain procedural aspects of the NEA could be resolved during congressional consideration.

Each section below examines the stages of consideration of a joint resolution terminating a national emergency under the expedited procedures of the NEA. Where possible, the discussion draws on statutory text and prior consideration of termination resolutions. Further guidance is drawn from WPR precedents when potentially applicable.

The expedited procedures of the NEA, as with all statutory rules enacted into law, are deemed as part of the rules of each chamber. Because Article 1, Section 5, of the Constitution provides that "Each House may determine the Rules of its Proceedings," so too can the House and Senate choose to modify or ignore the statutory rules of the NEA. The sections below also address how the House and Senate might consider a termination resolution by means other than what is provided in the NEA (e.g., by special rule in the House or by unanimous consent in the Senate).

This information is intended to provide insight on what Congress has done in the past and how related precedents could apply. The House and Senate Parliamentarians are the definitive arbiters of procedural decisions in their respective chambers and should be consulted for authoritative advice on the interpretation and application of the NEA procedures.

Legislative Form and Timing of Introduction

The NEA, as amended, requires legislation terminating a national emergency to be introduced in the form of a joint resolution. A joint resolution must be signed by the President or, if vetoed,

[23] *Congressional Record*, vol. 131 (June 7, 1985), p. 14948.

[24] For further reading, see the "Legislative Veto" section of CRS Report R42699, *The War Powers Resolution: Concepts and Practice*, by Matthew C. Weed.

overridden in each chamber of Congress by a two-thirds vote, in order to be enacted into law. Legislation to terminate a national emergency introduced in any other form, e.g., a bill, simple resolution, or concurrent resolution, would presumably not be subject to expedited consideration under NEA.

Unlike some other statutory expedited procedures, the NEA neither prescribes specific language that a joint resolution terminating a national emergency must contain, nor does it explicitly limit what language can be included. However, joint resolutions that have been introduced on the subject thus far have all been drafted as follows:

> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, pursuant to section 202 of the National Emergencies Act (50 U.S.C. 1622), the national emergency declared by the finding of the President on [date], in Proclamation [proclamation number] [Federal Register citation] is hereby terminated.[25]

It is possible that a joint resolution could be drafted in a different form and still be considered eligible for expedited consideration.[26]

As noted, the NEA states that Congress shall meet to "consider a vote on a joint resolution" to terminate a national emergency not later than six months after it has been declared by the President. It further stipulates that Congress shall meet to consider a vote within every six-month period thereafter while the emergency remains in effect. Because the NEA creates deadlines for consideration during back-to-back six-month windows, expedited consideration of a termination resolution seems to be effectively in order at any time (assuming Congress has not already voted on such a measure within any given six-month period). Furthermore, every six-month period appears to present a new opportunity for termination resolutions to be considered in an expedited fashion, regardless of whether a termination resolution has been considered and/or voted on in any prior six-month period.

Committee Consideration and Discharge

Under the terms of the statutory rule, a termination resolution is referred to the appropriate committee of jurisdiction upon introduction. Unlike some expedited procedures, the NEA does not designate specific committees for referral, nor does it explicitly allow for referral to multiple committees in the House, as is routine practice in that chamber.[27] Since the enactment of the NEA, six joint resolutions have been introduced regarding two declared national emergencies—Hurricane Katrina in 2005 and the southern border of the United States in 2019. These six resolutions were all referred to the Committee on Transportation and Infrastructure in the House, which has jurisdiction over "Federal management of emergencies and natural disasters," pursuant

[25] See H.J.Res. 69 in the 109th Congress (2005-2006), and H.J.Res. 46, S.J.Res. 10, S.J.Res. 54, H.J.Res. 75, and H.J.Re.s 85 from the 116th Congress (2019-2020).

[26] While there is no prescribed text under the statutory rule, a termination resolution drafted or amended to include nongermane text can destroy the privileged nature of the legislation. Such a case occurred in the 116th Congress (2019-2020) when the House considered H.J.Res. 37, to remove U.S. forces from Yemen. More specifically, the House adopted a motion to recommit H.J.Res. 37 with instructions directing that the resolution be reported back to the House with an amendment in regards to combating anti-Semitism. The motion was agreed to and the resolution was subsequently passed. The language added to H.J.Res. 37 by the motion to recommit was reportedly deemed nongermane by the Senate Parliamentarian, thereby making the legislation ineligible for expedited consideration under the WPR (see Katherine Tully-McManus, "House to Vote on War Powers Thursday," *Roll Call*, January 8, 2020). As a result, H.J.Res. 37 was not acted on by the Senate. Instead, the Senate took up and passed the matter in a Senate vehicle, S.J.Res. 7, which was later agreed to in the House and then vetoed by the President.

[27] See supra note 5.

to House Rule X. Three resolutions saw action in the Senate, all of which related to the 2019 declaration regarding the southern border and were referred to the Committee on Armed Services. Given the limited number of precedents, it is unclear whether referral of such legislation in the Senate would always be to the Committee on Armed Services, or if said committee received these particular resolutions due to the subject matter of the national emergency they referenced. If it is the latter, then it may be possible that termination resolutions relating to different national emergencies could be referred to the committee with jurisdiction over the predominant subject matter. In any case, the House and Senate Parliamentarians can advise on how legislation may be referred.

A committee that has been referred a joint resolution under the NEA has 15 calendar days to report one resolution, along with its recommendations, unless the parent chamber votes otherwise by roll call vote. According to the text of the Act, the 15-calendar-day count begins on the day after referral (meaning the day of referral appears to be treated as day zero in the 15-day count).[28] If the committee does not report on any of the next 15 calendar days, the Act does not explicitly specify a result. In practice, it appears that the committee may be discharged from further consideration of the measure. The process of discharge is different in each chamber, as detailed below.

Discharging a Committee in the House

In the House, after 15 calendar days, a privileged motion to discharge the committee is in order and may be offered by any Member.[29] Under clause 2 of Rule XV, a motion to discharge is debatable for 20 minutes, equally divided between proponents and opponents, and is followed by a vote (requiring the support of a simple majority to succeed).[30]

The House has previously tabled a motion to discharge a terminating joint resolution (see "H.J.Res. 69, 109th Congress" below). The motion to table is used to terminate debate and, if agreed to, permanently and adversely disposes of the proposition. Alternatively, the House might consider adopting an order to prohibit the tabling of a motion to discharge, as it did during the 116th Congress (2019-2020) for legislation considered under the WPR.[31]

[28] The NEA states that a joint resolution "shall be reported out by such committee together with its recommendations *within fifteen calendar days after the day on which such resolution is referred* to such committee" (emphasis added). See 50 U.S.C. §1622(c)(1).

[29] See U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States One Hundred Fifteenth Congress*, prepared by Thomas J. Wickham, 116th Cong., 2019, H.Doc. 115-177 (Washington: GPO, 2019), §1130(3), p. 1163.

[30] U.S. Congress, House, *House Practice, A Guide to the Rules, Precedents, and Procedures of the House*, prepared by Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham, Jr., 115th Cong., 2017, (Washington: GPO, 2017), §46, p. 434.

[31] As described above, in the 116th Congress, the House agreed to a separate order that prohibited the tabling of a motion to discharge legislation considered under the WPR (see H.Res. 6, Sec. 103(l)). The section-by-section summary of the resolution prepared by the Rules Committee explained that "House action on similar House procedures has made it unclear as to whether such a motion to table would be available. The order serves to provide certainty for all Members, Delegates, and the Resident Commissioner on this procedure" (*Congressional Record*, daily edition, vol. 165, (January 3, 2019), p. H28). While this order applies exclusively to the WPR, the House could similarly adopt another order that would prohibit the tabling of a motion to discharge legislation considered under the NEA.

Discharging a Committee in the Senate

It is unclear what the mechanism for discharge of a committee in the Senate would be under the statutory language of the NEA. If the Senate chooses to apply precedents established under the WPR to a joint resolution under the NEA, a committee that did not report would be automatically discharged after the 15 calendar day deadline set by the Act.[32] If discharge was not automatic, then it is likely a Senator could move to discharge the committee. A motion to discharge is not subject to debate limits and could require a cloture process (requiring the support of three-fifths of the Senate) to reach a final vote on the question of discharging the committee. However, it is also possible the Parliamentarian could determine that the expedited procedures of the NEA make a motion to discharge privileged. A privileged motion is not debatable, meaning cloture would be unnecessary to reach a vote on discharging the committee.

The Senate has yet to allow a committee to be discharged without intervening action, instead opting to do so by unanimous consent for the only two terminating resolutions that have received floor consideration to date.[33] Given that unanimous consent was reached, Senators might have expected discharge—through some mechanism—to be inevitable under the provisions of the NEA. Regardless of how discharge would occur under the statutory rule, by reaching unanimous consent the Senate determined when these terminating resolutions were considered.

House Floor Consideration

Under the NEA, following committee report or discharge, a qualifying joint resolution is to immediately become the pending business on the House floor. Absent other action by the House, the precise mechanism under which a joint resolution would be taken up "immediately" under the NEA is unclear. However, drawing from prior consideration of concurrent resolutions under the WPR, it appears likely that a privileged motion to begin consideration of the joint resolution would be in order. During the 106th Congress (1999-2000), the Chair of the Committee on Rules expressed his understanding of how a concurrent resolution would be considered under the WPR (the same process called for under the NEA):

> Both resolutions, H.Con.Res. 82 and H.J.Res. 44, have a unique procedural status under the War Powers Resolution of 1973. Without this rule, both Campbell resolutions will become the pending business of the House today as a result of having been reported by the Committee on International Relations. Motions to proceed to consideration of the resolutions would be privileged, and the resolutions would not be subject to general debate but would be subject to an open but clearly unfocused amendment process.[34]

A terminating resolution could be taken up if the House agreed to a privileged motion to resolve into Committee of the Whole House on the State of the Union (Committee of the Whole) to

[32] See U.S. Congress, Senate, *Riddick's Senate Procedure*, prepared by Floyd M. Riddick and Alan S. Frumin, 101st Cong., 1992, S.Doc. 101-28 (Washington: GPO, 1992), p. 501. On November 30, 1987, the Committee on Foreign Relations was automatically discharged from further consideration of S.J.Res. 217, a resolution being considered under Section 6 of the WPR. While the deadlines set by Section 6 of the WPR and the NEA differ, the two Acts shares identical language regarding a joint resolution becoming "the pending business of the House in question" upon being reported (or, in this case, discharged). By unanimous consent, however, did "not become the pending business automatically under the statute," but instead was placed on the *Senate Calendar of Business* where it could be called up at any time by the majority leader, in consultation with the minority leader. See *Congressional Record*, vol. 133 (November 30, 1987), pp. 33234, 33251.

[33] H.J.Res. 46 and S.J.Res. 54, both during the 116th Congr S.J.Res. 217 ess (2019-2020).

[34] *Congressional Record*, daily edition, vol. 145 (April 28, 1999), p. H2377.

consider the measure.[35] A termination resolution is fully amendable in the House, given the absence of any prohibition in the NEA.[36] Amendments in the House must be germane under House rules; floor amendments are generally considered in the Committee of the Whole under the five-minute rule.[37]

However, it may be unlikely in current practice that a House majority would choose to consider such a measure under this process. In modern practice, the House has considered measures for amendment under special rules from the Rules Committee that govern any amendment process. Such a rule can regulate the terms of consideration by limiting debate, limiting amendments or making them not in order at all, and waiving other parliamentary actions that could delay or end consideration.[38] A special rule might also include a provision making the procedures of the NEA inapplicable in the House, for a specific measure or generally.[39]

The NEA stipulates that a vote on a termination joint resolution is to occur within three calendar days after the committee of consideration has reported or been discharged. Unlike some other expedited procedures that explicitly prohibit a motion to recommit, the NEA does not include any such language. Therefore, such a motion, with or without instructions, appears to be in order by the Minority Leader or his designee even when the measure is considered under a rule from the Rules Committee.[40] Final passage requires the support of a simple majority.

Senate Floor Consideration

After a committee has reported or been discharged from further consideration of a termination joint resolution, the measure appears to immediately become the pending business on the floor.[41] If such is the case, the presiding officer would direct the clerk to read the joint resolution aloud, and the Senate would proceed to consider the measure, thereby avoiding the need for a motion to proceed to consideration.[42] Under regular Senate procedures, debate is in most cases not limited

[35] For further discussion, see CRS Report RL32200, *Debate, Motions, and Other Actions in the Committee of the Whole*, by Bill Heniff Jr. and Elizabeth Rybicki.

[36] The Act seems to implicitly envision an amending process by virtue of not requiring a joint resolution to contain specific text (meaning variations in drafting could occur) and by the inclusion of expedited procedures for resolving differences between the House and Senate. Those procedures, discussed later in the report, would only be necessary when each chamber insisted on its own amended version of the same legislative vehicle.

[37] For more information, see CRS Report 98-995, *The Amending Process in the House of Representatives*, by Christopher M. Davis.

[38] For example, points of order and motions to postpone or table are not explicitly prohibited in the NEA and are generally in order unless otherwise restricted by a rule or by a unanimous consent agreement.

[39] For example, Sec. 2 of H.Res. 144 (116th Congress) stated that "the provisions of section 202 of the National Emergencies Act (50 U.S.C. 1622) shall not apply during the remainder of the One Hundred Sixteenth Congress to a joint resolution terminating the national emergency declared by the President on February 15, 2019." In that case, the rule "turned off" expedited procedures for the consideration on future legislation related to a specific national emergency declaration.

[40] For more information, see CRS Report R44330, *The Motion to Recommit in the House of Representatives*, by Megan S. Lynch.

[41] This could mean that any business the Senate was considering would be disrupted, whether it be a nomination or treaty in executive session, post-cloture consideration of a measure, or any other pending business before the chamber.

[42] The NEA states that "any joint resolution so reported shall become the pending business of the House in question." There is no precedent of a terminating resolution being taken up on the floor in either chamber under that provision of the NEA. However, the WPR—which contains an identical provision to the NEA—has precedents demonstrating the immediacy of a resolution becoming the pending business upon being reported out by committee. On September 26, 1983, during the 98th Congress (1983-1984) Majority Leader Howard Baker stated that "this is the war powers resolution, and under the Act it becomes the pending business when filed. It was filed this moment," to explain why the

on a motion to proceed and, accordingly, it sometimes requires a cloture process (requiring a three-fifths vote) to limit debate and reach a vote (requiring a simple majority) on the motion to proceed. Instead of allowing a measure to immediately become the pending business on the floor, the Senate might choose to override the statutory procedure and reach agreement by unanimous consent to set a specific date and time when the body would consider the termination resolution. This frees the Senate to continue processing business on its own schedule instead of turning directly to the joint resolution. In that case, any individual Senator could object and force the chamber to begin immediate consideration of the legislation.

The NEA states that a floor vote is to be taken not later than three days after the joint resolution comes out of committee, and that time for debate is equally divided between proponents and opponents of the legislation. Under regular Senate procedures, there is typically no limit on debate of a measure pending on the floor, and sometimes cloture (and the associated three-fifths vote) is needed to reach a final vote on passage. Expedited consideration under the NEA was intended to ensure a vote on passage would occur, barring any other action (such as a motion to postpone consideration or to table the measure).

Notably, the WPR has a provision identical to the NEA's three-day consideration period for joint resolutions. The Senate has interpreted that provision to mean that a vote on such a measure will occur 72 hours after it becomes the pending business on the Senate floor, with time being consumed regardless of whether the Senate is in session or not and whether the Senate is actively debating the measure or not.[43] In the few instances the Senate has considered a joint resolution under the NEA on the floor, it has voted to pass the measure—pursuant to a unanimous consent agreement—on the same day as the resolution came out of committee. Absent such an agreement, it is possible that the 72 hour precedent under the WPR might similarly apply to floor consideration of a termination resolution under the NEA.

In the absence of any prohibition in the NEA, a joint resolution is amendable.[44] Under the standing Rules of the Senate, amendments only must be germane in certain limited circumstances.[45] As a result of a series of parliamentary inquiries and a point of order in the Senate in 2018, amendments to a measure considered under the WPR are required to be germane.[46] The Senate could establish a germaneness requirement for terminating resolutions under the NEA if a Senator initiated a similar parliamentary inquiry and the chair ruled similarly.

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presiding officer had just directed the clerk to read, authorizing U.S. forces in Lebanon. See *Congressional Record*, vol.164, (September 26, 1983), p 25746. Consideration under the NEA could be treated similarly if the Senate applies the reasoning as it did with the WPR.

[43] U.S. Congress, Senate, *Riddick's Senate Procedure*, prepared by Floyd M. Riddick and Alan S. Frumin, 101st Cong., 1992, S.Doc. 101-28 (Washington: GPO, 1992), p. 501. See, also, *Congressional Record*, vol.164, (September 26, 1983), p 25746.

[44] The Act seems to implicitly envision an amending process by virtue of not requiring a joint resolution to contain specific text (meaning variations in drafting could occur) and by the inclusion of expedited procedures for resolving differences between the House and Senate. Those procedures, discussed later in the report, would only be necessary when each chamber insisted on its own amended version of the same legislative vehicle.

[45] See CRS Report 98-853, *The Amending Process in the Senate*, by Christopher M. Davis, for more information.

[46] *Congressional Record*, daily edition, vol.164, (December 12, 2018), pp. S7482-S7483. The point of order stated that amendments to joint resolutions considered under 50 U.S.C. §1546(a) must be germane. 50 U.S.C. §1546 is the codification of Sec. 7 of the War Powers Resolution, pertaining to priority procedures for consideration of a concurrent resolution. The series of parliamentary inquiries offered prior to the point of order established concepts that broadly apply to expedited procedures, including those under the NEA. The Presiding Officer did not make a ruling directly on the point of order, citing that "the Senate had not previously considered this question," and submitted the question to the Senate for its decision. The Senate voted 96-3 to uphold the point of order.

Unlike the provisions found in the NEA, some expedited procedures are written in a way that limits floor "debate" of a measure, as opposed to "consideration" of a measure. In these circumstances, it is possible for Senators to continue to offer amendments after the time for debate has expired, leading to a series of back-to-back votes sometimes referred to as a vote-a-rama.[47] The language in the NEA states that a joint resolution "shall be voted on" within three calendar days, meaning debate and consideration end simultaneously, with no opportunity to offer further amendments. At the conclusion of floor consideration, a joint resolution needs a simple majority for passage.

Resolving Differences

The House and Senate may each consider and pass its own joint resolution terminating the same national emergency. These companion measures may contain identical text or may diverge as a result of how they were initially introduced or from amendments adopted during consideration. In either case, before it can be presented to the President, one measure must ultimately pass both the House and Senate with the same text. Some expedited procedures provide a mechanism that requires one chamber take action on a companion measure that has already passed the other.[48] However, the NEA does not contain any such mechanism.

If one chamber passes the joint resolution of the other without proposing any changes, then the legislative process is complete, and the measure will next be sent to the President. If, however, one chamber amends a bill passed by the other, then the chambers must resolve the differences until they have both agreed to the same text. In normal parliamentary practice, these differences can be resolved in two primary ways: through an exchange of amendments between the two chambers or by forming a conference committee to undertake negotiations.[49] The procedures under the NEA only address the possibility of going to conference and call for the "prompt" appointment of conferees in the case of disagreement. The Act does not provide for expedited consideration in the case of an exchange of amendments between the chambers. Therefore, a termination resolution could become indefinitely delayed if one chamber opted not to act on an amended version of the legislation from the other chamber.

Generally, in an exchange of amendments between the chambers, the House and Senate each have an opportunity to amend the amendments from the other chamber.[50] For example, the House might pass a joint resolution, send it to the Senate, where it could be passed with amendments and returned to the House. The House can then choose to concur with the Senate's amendments, concur with the Senate's amendments with an amendment, or disagree with the Senate's amendments. The same options are available to the Senate when it originates a measure that the House then passes with amendments.

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[47] See CRS Report R40665, *Congressional Budget Resolutions: Consideration and Amending in the Senate*, by Megan S. Lynch.

[48] For example, the Trade Act requires that "if prior to the passage by one House of an implementing bill or approval resolution of that House, that House receives the same implementing bill or approval resolution from the other House, then—the vote on final passage shall be on the implementing bill or approval resolution of the other House" (P.L. 93-618, Title I, §151; 19 U.S.C. §21919(e)).

[49] For more information on resolving differences between the House and Senate, see CRS Report 96-708, *Conference Committee and Related Procedures: An Introduction*, by Elizabeth Rybicki.

[50] A more in-depth discussion of amendment exchange between the House and Senate can be found in CRS Report R41003, *Amendments Between the Houses: Procedural Options and Effects*, by Elizabeth Rybicki.

In order for both chambers to proceed with a conference committee, either the House or Senate must first disagree to amendments from the other chamber or insist on its own amendments and request a conference. House conferees are appointed by the Speaker, and Senate conferees are appointed by the Senate Presiding Officer, who is given this authority by unanimous consent or motion. The NEA does not alter the regular procedures for forming a conference committee. While a majority in the House can quickly agree to send a measure to conference, doing so in the Senate could require the support of three-fifths of the Senate to invoke cloture on the relevant motion.[51]

Assuming the House and Senate agree to go to conference, the NEA lays out specific timelines for action, similar to the floor consideration provisions discussed earlier. Conferees have six calendar days, starting on the day after they are appointed, to make and file a report with their recommendations. The House and Senate then have a total of six calendar days during which both must vote on the conference report, starting on the day after the report is first filed, notwithstanding any rules concerning the printing or consideration of said report.[52] Under regular House and Senate procedures, the conference report is acted upon sequentially by the chambers and not simultaneously. In other words, it must be agreed to in the first acting chamber in order for the second chamber to act on it. If the conference report is agreed to in both chambers, the joint resolution is sent to the President to sign or veto.

If conferees do not reach an agreement within the first 48 hours of negotiations, the NEA directs each delegation to report in disagreement to their respective chambers. However, the NEA does not provide any further procedural requirements in the event that conferees report in disagreement or if the conference report is defeated in either chamber.[53] Under regular procedures, a second conference could be requested by either chamber, or differences could be resolved through the exchange of amendments.

Veto Override

As the NEA does not provide for expedited consideration of a vetoed joint resolution, the regular procedures of the House and Senate apply to a veto override attempt.[54] Under the Constitution, vetoed legislation is first returned to the chamber originating it, and a two-thirds supermajority is needed to override the President's veto and pass the measure.[55] In the House, the measure is typically debated under the Hour Rule. In the Senate, the measure could be considered under the terms of a unanimous consent agreement. Absent such an agreement, there is no limit on debate and reaching a final vote could require a cloture process (and the associated three-fifths vote

[51] See the "Arranging for a Conference" section of CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*.

[52] Outside of this expedited consideration, the Senate and House both have availability requirements on the text of the conference report before a vote is in order. Senate Rule XXVIII, clause 10(a)(1) stipulates that it is not in order to vote on a conference report until it has been made available to Senators and the public for at least 48 hours prior. House Rule XXII, clause 8(a)(1) requires a conference report to have been printed in the *Congressional Record* 72 hours prior and copies along with the accompanying joint explanatory statement made available to all members at least two hours prior to a vote being in order.

[53] The Budget Control Act, for example, provides expedited consideration of a request for a new conference in the event that a conference report is defeated (P.L. 93-344, Title X, §1017; 2 U.S.C. §688(d)(6)).

[54] For a more detailed overview, see CRS Report RS22654, *Veto Override Procedure in the House and Senate*, by Elizabeth Rybicki.

[55] U.S. Constitution, Article 1, Section 7.

threshold). If both the House and Senate each pass the joint resolution with two-thirds support, the measure is enacted into law, the President's veto notwithstanding.

Select Instances of Consideration of Joint Resolutions to Terminate a National Emergency

The termination resolutions discussed below represent only those that have received floor consideration in at least one chamber, to date. As of the date on this report, there have been three other termination resolutions submitted to Congress since the enactment of the NEA, none of which received floor consideration.[56]

H.J.Res. 69, 109th Congress

The introduction of H.J.Res. 69, during the 109th Congress (2005-2006), appears to be the first time a joint resolution to terminate a national emergency was submitted in either chamber. H.J.Res. 69 addressed the national emergency declared by President George W. Bush regarding Hurricane Katrina in 2005. The measure was introduced on October 20, 2005, by Representative George Miller, and referred to the Committee on Transportation and Infrastructure. On November 7, more than 15 calendar days after the measure was first referred to committee, Representative Miller offered a privileged motion to discharge the Committee on Transportation and Infrastructure from further consideration of H.J.Res. 69.[57] The motion was tabled without objection and the measure saw no further action.[58]

H.J.Res 46, 116th Congress

H.J.Res. 46 was introduced on February 22, 2019, by Representative Joaquin Castro and referred to the Committee on Transportation and Infrastructure. The joint resolution addressed the national emergency declared by President Donald J. Trump on February 15, 2019, concerning the southern border of the United States. Instead of giving the committee 15 calendar days to report the measure, the House instead considered H.J.Res. 46 four days later, under the terms of a special rule reported by the Committee on Rules (H.Res. 144). In addition to structuring consideration of the joint resolution, H.Res. 144 also stated that the expedited procedures of the NEA would not apply to any joint resolution terminating the February 15, 2019, national emergency for the remainder of the 116th Congress. The measure passed in the House, 245-182, on February 26.[59]

H.J.Res. 46 was received in the Senate on February 27, 2019, and referred to the Committee on Armed Services. On March 14, pursuant to a unanimous consent agreement reached the day prior, the Senate discharged the committee from further consideration of the joint resolution and proceeded to its immediate consideration, with no amendments in order.[60] The day the committee was discharged also marked 15 calendar days since the measure had been referred. Absent the

[56] See S.J.Res. 10, H.J.Res 75, and H.J.Res 85 from the 116th Congress (2019-2020).

[57] *Congressional Record*, vol. 151, (November 7, 2005), pp. 25133-25134.

[58] Notably, 14 calendar days after the introduction of H.J.Res. 69, on November 3, 2005, President Bush revoked the proclamation that was the subject of Representative Miller's joint resolution. This appears to be why Representative Miller allowed his motion to discharge to be tabled without a vote.

[59] *Congressional Record*, daily edition, vol.165, (February 26, 2019), pp. H2217-H2218.

[60] The text of the unanimous consent agreement can be found at *Congressional Record*, daily edition, vol.165, (March 13, 2019), p. S1853.

unanimous consent agreement, presumably the joint resolution would have been eligible for discharge. During debate on H.J.Res. 46, the Senate agreed by unanimous consent to limit further debate to 90 minutes. Following debate, the Senate passed the measure, 59-41.[61]

President Trump vetoed H.J.Res. 46 on March 15, and his veto message was laid before the House three days later. The House did not achieve the two-thirds threshold needed to override the President's veto when it voted 248-181, on March 26.[62]

S.J.Res. 54, 116th Congress

On September 10, 2019, approximately six months after the House and Senate passed H.J.Res. 46 (generally aligning with the six-month review period of existing national emergencies outlined under the NEA), S.J.Res. 54 was introduced in the Senate and referred to the Committee on Armed Services. The joint resolution proposed to terminate the same national emergency as H.J.Res. 46, in regard to the United States' southern border. On September 25, under the terms of a unanimous consent agreement reached the day prior, the Senate discharged the committee, considered the joint resolution with limited debate, and passed the measure, 54-41.[63] As when the Senate previously considered H.J.Res. 46, the Committee on Armed Services was discharged after 15 calendar days, matching the timeline set by the NEA.

S.J.Res. 54 was transmitted to the House on the same day it passed in the Senate, where it was held at the desk.[64] On September 27, the House considered S.J.Res. 54 under a special rule reported by the Committee on Rules (H.Res. 591) and passed the measure after one hour of debate, 236-174.[65]

President Trump vetoed S.J.Res. 54 on October 15, 2019. His veto message was received the next day in the Senate. On October 17, the Senate proceeded to debate S.J.Res. 54 pursuant to a unanimous consent agreement reached the day prior.[66] Following debate, the Senate voted 53-36, not securing the requisite two-thirds support needed to override the President's veto.[67]

[61] *Congressional Record*, daily edition, vol.165, (March 14, 2019), pp. S1857-S1882

[62] *Congressional Record*, daily edition, vol.165, (March 26, 2019), pp. H2814-H2815

[63] Text of the unanimous consent agreement is available at *Congressional Record*, daily edition, vol.165, (September 24, 2019) pp. S5668-S5669. Debate and passage of S.J.Res. 54 in the Senate can be found at *Congressional Record*, daily edition, vol. 165, (September 25, 2019), pp. S5674-S5681.

[64] S.J.Res. 54 was not eligible in the House for expedited consideration under provisions specified in the NEA pursuant to an earlier adopted special rule. More specifically, Section 2 of H.Res. 144 stated that for the remainder of the 116th Congress, section 202 of the National Emergencies Act would not apply to joint resolutions terminating the February 2019 emergency declaration. Absent this rule, it is likely that the resolution would not have been held at the desk and instead referred to the appropriate committee of jurisdiction as provided for under the NEA (50 U.S.C. §1622(c)(3)).

[65] Debate and passage of S.J.Res. 54 in the House can be found at *Congressional Record*, daily edition, vol.165, (September 27, 2019), pp. H8061-H8071.

[66] The text of the unanimous consent agreement can be found at *Congressional Record*, daily edition, vol.165, (October 16, 2019), p. S582.

[67] *Congressional Record*, daily edition, vol.165, (October 17, 2019), pp. S5869-S5875.

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