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House Rules Changes Affecting Floor Proceedings in the 118th Congress (2023-2024)

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SUMMARY

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March 30, 2023

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House Rules Changes Affecting Floor Proceedings in the 118th Congress (2023-2024)

As agreed to in the House, H.Res. 5, a resolution adopting the rules of the House of Representatives, provided amendments to the standing rules and separate orders that affect floor proceedings in the 118th Congress (2023-2024). The rules package changed legislative procedures, as well as access to the Hall of the House.

The House rules package amended clause 2(a) of Rule IX to enable any Member to offer a privileged resolution causing a vacancy in the Office of the Speaker. The amendment struck subparagraph (3) of that rule as adopted in the 117th Congress, which had afforded privilege only to resolutions offered at the direction of a party caucus or conference.

H.Res. 5 made a technical amendment to clause 6(a) of Rule XV to specify an exact availability period for legislation called up for consideration pursuant to the Calendar Wednesday procedure. Under the rule, a committee chair, or a designated committee member, must provide notice to the House requesting that a bill or resolution be considered pursuant to the procedure at least 72 hours in advance rather than on the "preceding legislative day."

Amendments to the rules reduced the minimum time available for votes that follow another vote conducted electronically. The minimum time for a vote in a series of electronic votes was changed from five minutes to two minutes.

The rules package amended clause 2(a)(14) of Rule IV to remove two positions granted floor privileges while the House is in session. H.Res. 5 struck the provision allowing territorial governors and the mayor of the District of Columbia admittance "to the Hall of the House or rooms leading thereto."

The rules package also included separate orders that alter floor procedure for the duration of the 118th Congress but are not incorporated into the standing rules of the House:

- A bill or joint resolution may not be introduced unless the sponsor submits for printing in the *Congressional Record* a statement identifying the measure's single subject.
- A Member may raise a point of order against the consideration of a special rule reported by the Committee on Rules that waives the House requirement that amendments be germane. The presiding officer shall dispose of the point of order by putting the "question of consideration" to the House.
- If a measure placed on the Consensus Calendar contradicts any legislative protocols announced by the majority leader, the majority leader is directed to submit a statement to the *Congressional Record* that includes "a determination with respect to such noncompliance."
- The Speaker may designate "district work periods." During such periods, certain "recess instructions" will apply, and each day will not constitute a calendar and legislative day for specified procedures relating to the War Powers Resolution, resolutions of inquiry, motions to instruct or discharge conferees, and the Consensus Calendar.

H.Res. 5 did not re-establish the standing order in the 117th Congress rules package (H.Res. 8) that allowed proxy voting on the House floor during pandemic-related "covered periods," as designated by the Speaker. In the 118th Congress, Members must be physically present in the chamber to vote.

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Introduction

On January 9, 2023, the House agreed to H.Res. 5, a resolution adopting the rules for the 118th Congress (2023-2024). As is customary, the resolution provided that the rules of the prior Congress be readopted with specific amendments. The resolution also contained several separate orders related to House procedure.[1]

This report identifies selected changes to House rules that affect floor proceedings, including the consideration of legislation and access to the House chamber.[2] It discusses rules that have been altered or eliminated and compares the rules of the 118th Congress to the standing rules and orders in force during the 117th Congress (2021-2022).[3]

Consideration of Measures and Motions

Resolution Raising a "Question of the Privileges of the House" Causing a Vacancy in the Office of the Speaker

The House rules package amended clause 2(a) of Rule IX to delete language from the rule added in the 116th Congress (2019-2020) that restricted the ability of a Member[4] to offer a privileged resolution "raising a question of the privileges of the House" that would declare a vacancy in the Office of the Speaker. The amendment struck subparagraph (3) of clause 2, which stated that resolutions "causing a vacancy in the Office of Speaker shall not be privileged except if offered by direction of a party caucus or conference."[5]

Clause 2 of Rule IX concerns "questions of privilege" affecting the "rights of the House collectively."[6] Under circumstances specified in the rule, resolutions raising valid questions of the

[1] The House agrees to its standing rules as one of the first orders of business at the start of each new Congress. Generally, as in H.Res. 5, the House agrees to many of the same rules as in the previous Congress, with amendments to those rules and separate orders packaged as a simple House resolution and presented to the House. Separate orders have the force and effect of rules but are not codified in the standing rules of the House. They remain in effect for the duration of the Congress unless a subsequent resolution provides for their adjustment.

[2] This report does not discuss changes related to the budget process, committee procedure, or the administration of Congress (i.e., salaries, staff training, and membership requirements on boards and commissions). For more information about budget process changes in the 118th Congress, see CRS Report R47384, *Changes to House Rules Affecting the Congressional Budget Process Included in H.Res. 5 (118th Congress)*, by James V. Saturno and Megan S. Lynch.

[3] See H.Res. 5; U.S. Congress, House, *Rules of the House of Representatives, One Hundred Eighteenth Congress*, prepared by Cheryl L. Johnson, Clerk of the House of Representatives, 118th Cong., 1st sess., 2023; U.S. Congress, House, *Constitution, Jefferson's Manual and the Rules of the House of Representatives of the United States One Hundred Seventeenth Congress* (hereinafter *House Manual*, 117th Congress), 116th Cong., 2nd sess., 2021 (Washington: GPO, 2021); Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham Jr., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington: GPO, 2017) (hereinafter *House Practice*). For information on changes to floor procedure in the 117th Congress, see CRS Report R46790, *House Rules Changes Affecting Floor Proceedings in the 117th Congress (2021-2022)*, by Jane A. Hudiburg.

[4] In this report, the term *Member* includes the Delegates and the Resident Commissioner except when it pertains to voting procedure in the House. The Delegates and the Resident Commissioner cannot vote in the House proper, but in the 118th Congress, they can vote in the Committee of the Whole subject to an automatic revote in cases in which their votes have been decisive.

[5] *House Manual*, §699.

[6] Rule IX, cl. 1. For more information about "questions of the privileges of the House," see CRS Report R44005,

privileges of the House are privileged, a designation that affords them a higher precedence for floor consideration than non-privileged legislative motions or measures.[7] These resolutions, if reported by a committee or offered from the floor by the majority leader or the minority leader, are to be considered at the time that they are offered.[8] Other resolutions raising questions of the privileges of the House are privileged for consideration at a time designated by the Speaker within two legislative days after the Member announces to the House the intention to offer the resolution.[9] Under long-standing House precedents, a resolution declaring a vacancy in the Office of the Speaker is considered to raise a valid question of privilege.

At the start of the 116th Congress (2019-2020), the House amended Rule IX to insert a new clause 2(a)(3), which provided that resolutions causing a vacancy in the Office of Speaker would henceforth be privileged only if offered by direction of a party caucus or conference. Prior to this amendment, any Member might have presented such a resolution on his or her own. By striking subparagraph (3), the 118th Congress's rules package restores the rule to its form in earlier Congresses. That is, any Member may again offer a privileged resolution to vacate the Office of the Speaker provided that the Member provides advance notice to the House as described in the rule.

Requirement with Respect to Single-Subject Legislation

In a separate order, the House required that, during the 118th Congress, a bill or joint resolution may not be introduced unless the sponsor submits for publication in the *Congressional Record* a statement that identifies the "single subject" of the measure. This requirement became effective on February 1, 2023. Prior to that date, sponsors "to the extent practicable" were to submit the statements before "committee or House consideration."

The Single Subject Statement is similar to the Constitutional Authority Statement, which is required to accompany the introduction of bills and joint resolutions.[10] At the time the bill or joint resolution is introduced, the sponsor is to submit the Single Subject Statement along with the Constitutional Authority Statement on a form prepared by the Clerk. Both statements are to be printed in the *Congressional Record* and shall "be made publicly available in electronic form by the Clerk."[11]

Questions of the Privileges of the House: An Analysis, by Megan S. Lynch.

[7] See CRS Report 98-315, *Privileged Business on the House Floor*, by James V. Saturno.

[8] Resolutions concerning the Origination Clause are also afforded privilege and may be considered at the time they are offered. The Constitution's "Origination Clause" requires that the House originate all bills raising revenue. Members may enforce this prerogative through the adoption of a resolution returning a Senate revenue measure to the Senate, an action known as "blue slipping" because the resolution is printed on blue paper. U.S. Constitution, art. 1, §7, cl. 1; CRS Report R46556, *Blue-Slipping: Enforcing the Origination Clause in the House of Representatives*, by James V. Saturno.

[9] Rule IX, cl. 2(a)(1).

[10] Constitutional Authority Statements are required by clause 7(c) of Rule XII. Pursuant to that rule, when introducing a bill or joint resolution, Members must cite the specific powers granted to Congress in the U.S. Constitution to enact the legislation.

[11] H.Res. 5; see House Committee on Rules, "Constitutional Authority and Single Subject Statements," https://rules.house.gov/rules-and-resources/constitutional-authority-and-single-subject-statements.

Question of Consideration for Germaneness

In another separate order, the rules package establishes in the 118th Congress a "question of consideration" for any special rule reported by the House Committee on Rules that waives points of order related to the germaneness of amendments. Such waivers make in order amendments that might otherwise be in violation of clause 7 of Rule XVI, which states, "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."[12]

In the 118th Congress, if a reported special rule waives the germaneness point of order, a Member may make a point of order against the special rule itself. The presiding officer is to dispose of the point of order by putting the "question of consideration" to the House. This mechanism allows the House to debate and vote on whether to consider the special rule from the Rules Committee notwithstanding its inclusion of a waiver of the germaneness rule. The question of consideration is debatable for 20 minutes evenly divided between the Member making the point of order and an opponent of the point of order. If the House agrees to the question of consideration, the special rule is then considered.[13] If the House does not agree to the question of consideration, the special rule is not considered.

Determination with Respect to Placement of a Measure on the Consensus Calendar

A separate order contained in H.Res. 5 directs the majority leader to submit a statement to the *Congressional Record* if a measure placed on the Consensus Calendar contradicts any legislative protocols announced by the majority leader. This statement is to include "a determination with respect to such noncompliance" and shall be submitted "not later than 2 legislative days" after the measure is placed on the Consensus Calendar.

The Consensus Calendar provides an alternative route to the floor for certain unreported House bills and resolutions that enjoy broad bipartisan support. Pursuant to Rule XV, the House is to consider at least one measure listed on the calendar during every week that it convenes, except during the first and last weeks of a Congress.[14] In order to be placed on the calendar, a House-originated measure must (1) not have been reported by its committee of primary jurisdiction, (2) have accumulated at least 290 cosponsors, (3) have been subject to a motion to place the measure on the Consensus Calendar filed by the measure's sponsor, and (4) have maintained at least 290 cosponsors for a cumulative total of 25 legislative days following the filing of the motion.[15]

The majority leader's protocols provide guidance regarding the scheduling and consideration of legislation in the House. They represent leadership priorities but are not rules of the House and are not enforced by points of order on the floor. The 118th Congress protocols include the use of "sunset requirements" in joint resolutions and bills, discretionary authorizations, the suspension

[12] Among the considerations the presiding officer weighs when ruling on a germaneness point of order is whether the amendment adds a new subject to the text, the fundamental purpose of the amendment, and its committee jurisdiction. *House Manual*, §928; *House Practice*, ch. 26, pp. 543-602.

[13] The question of consideration does not determine whether or not the special rule waives germaneness but whether or not the House will consider the special rule regardless of any waivers it might contain.

[14] For more information about the Consensus Calendar, see CRS Report R46485, *The House Consensus Calendar: Establishment, Principal Features, and Practice in the 116th Congress (2019-2020)*, by Jane A. Hudiburg.

[15] See CRS Report R46485, *The House Consensus Calendar: Establishment, Principal Features, and Practice in the 116th Congress (2019-2020)*, by Jane A. Hudiburg.

of the rules procedure, commemorative legislation, and major amendments made in order by special rules reported by the Committee on Rules.[16]

Modifications to Calendar Wednesday

H.Res. 5 made a technical change to clause 6(a) of Rule XV to require that, in order for a bill or resolution to be considered pursuant to "Calendar Wednesday" procedure, a request must be announced to the House "at least 72 hours in advance." Prior to the rules change, the notice was to occur "on the preceding legislative day." The amendment conforms the notice period for measures considered under the Calendar Wednesday procedure to the availability periods required for most other committee reports, unreported bills and joint resolutions, and conference reports.[17]

Procedures During District Work Periods

Announcement of District Work Periods

Another separate order in H.Res. 5 granted the Speaker the power to designate "district work periods," which may occur when the House is not expected to conduct legislative business for an extended period. These district work periods are informally called "recesses" and include the annual August "recess" and certain "recesses" that may occur around national holidays.[18]

"Recess Instructions" During District Work Periods

The separate order also approved "recess instructions" for the duration of the 118th Congress during such periods declared by the Speaker. In previous Congresses, the House, prior to an extended legislative break, routinely approved recess instructions via a separate House resolution. The 118th Congress separate order eliminates the need for the House to agree to a resolution before each district work period.

The recess instructions provide that, in the 118th Congress, on any legislative day that occurs during a designated district work period, the *Journal of the House of Representatives*, containing the previous legislative day's proceedings, will be considered as approved by the Speaker.[19] The chair "may at any time declare the House adjourned to meet at a date and time within the limits of

[16] The majority leader provides the complete list of 118th Congress floor protocols at https://www.majorityleader.gov/schedule/floor-protocols.htm.

[17] As specified in clause 4(a) of Rule XIII, clause 11 of Rule XXI, and clause 8(a) of Rule XXII, respectively. See CRS Report RS22015, *Availability of Legislative Measures in the House of Representatives (The "72-Hour Rule")*, by Elizabeth Rybicki. For more information about the Calendar Wednesday procedure, see CRS Report RS20067, *How Measures Are Brought to the House Floor: A Brief Introduction*, by Christopher M. Davis.

[18] During such periods, the House is usually not in recess in the common meaning of that term. If the House and Senate have not adopted a concurrent resolution of adjournment, each continues to hold brief pro forma sessions at least twice a week in order to comply with the constitutional requirement that neither house of Congress "shall, without the Consent of the other, adjourn for more than three days.... " U.S. Constitution, art. 1, §5, cl. 4. For more information about recesses and daily sessions of the House, see CRS Report R42977, *Sessions, Adjournments, and Recesses of Congress*, by Valerie Heitshusen.

[19] Thus, a demand for a vote on agreeing to the Speaker's approval will not be order. For more information about the *House Journal* and its approval by the Speaker, see CRS Report R45209, *The House Journal: Origin, Purpose, and Approval*, by Jane A. Hudiburg.

clause 4, section 5, article I of the Constitution," and the Speaker may appoint Members to perform the duties of the chair "as though under clause 8(a) of rule I."[20]

Calendar and Legislative Days During District Work Periods

In addition, the separate order states that each day during a designated district work period will not constitute either a calendar day or a legislative day[21] for specified procedures contained in House rules.[22] These procedures are those contained in Section 7 of the War Powers Resolution (P.L. 93-148), clause 7 of Rule XIII (resolutions of inquiry), clause 7(c)(1) of Rule XXII (motions to instruct or discharge managers of conference committees), and clause 7 of Rule XV (the Consensus Calendar).

War Powers Resolution

Section 5(c) of the War Powers Resolution (P.L. 93-148) contemplates that Congress, by concurrent resolution, can direct the President to withdraw U.S. troops from foreign hostilities if there is not a specific statutory authorization for committing the troops or a declaration of war.[23] Pursuant to Section 7 of the act, any such concurrent resolution introduced shall be referred to the House Foreign Affairs Committee,[24] which shall report the resolution within 15 calendar days.[25] The concurrent resolution is to become the pending business of the House when reported and voted on within three calendar days.

The separate order states that calendar days, as they relate to the Section 7 procedures, will not be counted during announced district work periods. Thus, in the 118th Congress, under certain circumstances, committee and House consideration of Section 5(c) concurrent resolutions might extend beyond the 15- and three-calendar-day deadlines described in the act.

Resolutions of Inquiry

Resolutions of inquiry are formal requests for information from the President or executive branch departments. In the House, a Member may introduce the inquiry in the form of a simple House resolution, which is referred to the committee of jurisdiction. If the resolution is properly drafted, the committee is to report the resolution within 14 legislative days after its introduction.[26] If they

[20] Clause 8(a) of Rule I states: "The Speaker may appoint a Member to perform the duties of the Chair. Except as specified in paragraph (b), such an appointment may not extend beyond three legislative days." Paragraph (b) allows an extension of up to 10 days in the case of illness; *House Manual*, §632.

[21] A calendar day is the normal 24-hour period that comprises a day of the week. A legislative day begins when the House meets after an adjournment and ends when the House again adjourns. Generally, in the House, a legislative day takes place on one calendar day. However, it is possible for the House to adjourn and meet again in the same calendar day, creating two legislative days, or have a legislative day that spans more than one calendar day. Rule XV, cl. 7(c).

[22] The separate order does not affect other procedures, such as the introduction of bills and resolutions that are otherwise in order when the House is in pro forma session during a district work period. Pro forma sessions, though brief, are legislative days.

[23] For more information about the War Powers Resolution, including questions concerning the constitutionality of Section 5(c), see CRS Report R42699, *The War Powers Resolution: Concepts and Practice*, by Matthew C. Weed.

[24] Or the Senate Committee on Foreign Relations, "as the case may be." P.L. 93-148.

[25] While the War Powers Resolution does not provide an explicit enforcement mechanism should the House Committee on Foreign Affairs elect not to report the concurrent resolution within 15 calendar days, the House has interpreted the procedure to include a privileged motion to discharge the committee in the absence of a timely report. See CRS Report RL30599, *Expedited Procedures in the House: Variations Enacted into Law*, by Christopher M. Davis.

[26] This 14-day period does not include the days of introduction and discharge. See CRS Report R40879, *Resolutions of*

do not do so, a motion to discharge the committee from the further consideration of the resolution is privileged.[27] In the 118th Congress, legislative days, for the purposes of the 14-day committee-reporting requirement, will not be counted during designated district work periods.

Motions to Instruct Conferees

The House and Senate may form a conference committee to resolve differences in legislative text before agreeing to the same version of a bill, joint resolution, or concurrent resolution. In the House, motions to instruct managers provide nonbinding guidance to House conferees, such as to insist on a House position, to accept a Senate position, or to reach an agreement between the House and Senate positions.[28]

A Member may offer a privileged motion to instruct conferees—the Representatives sent to negotiate with the Senate on behalf of the House—or to discharge and re-appoint conferees if the Member, on the previous calendar day, announces to the House the intention to do so *and* the conference committee has been appointed for at least 45 calendar days and 25 legislative days and has not reported. The count of days commences when both the House and Senate have formally appointed conferees on the floor. In the 118th Congress, the count of days will pause when the House is in an announced district work period.

Consensus Calendar

In the 118th Congress, legislative days that occur during an announced work period will not count toward fulfilling the 25-legislative day requirement as it pertains to the Consensus Calendar procedure. The accumulation of legislative days will resume once the designated work period is completed.

Voting

Two-Minute Votes

H.Res. 5 amended clause 9 of Rule XX to reduce the minimum time allotted for electronic votes that occur after another electronic vote. In an electronic vote series, votes that occur after the first vote in the series are to remain open for "not less than two minutes" rather than for not less than five minutes.[29]

Clause 2 of Rule XX states that the "minimum time for a record vote or quorum call by electronic device shall be 15 minutes." Notwithstanding this rule, clause 9 allows the Speaker to reduce the minimum time for the second or subsequent electronic vote in a series "on any question that follows another electronic vote or a report from the Committee of the Whole, if in the discretion

Inquiry: An Analysis of Their Use in the House, 1947-2017, by Christopher M. Davis.

[27] If the committee reports the resolution within the 14-legislative-day time frame, the resolution may be called up only by a Member designated by the committee. For that reason, committees may report a resolution of inquiry (favorably, unfavorably, or without recommendation) in order to preserve control over the resolution's consideration. See CRS Insight IN10661, *Resolutions of Inquiry in the House*, by Christopher M. Davis.

[28] See CRS Report 98-381, *Instructing House Conferees*, by Elizabeth Rybicki.

[29] During a series of electronic votes, two minutes is the minimum time allowed for each vote. The maximum time for voting is not fixed and may be extended at the discretion of the chair. See CRS Report 98-988, *Voting and Quorum Procedures in the House of Representatives*, coordinated by Elizabeth Rybicki.

of the Speaker Members would be afforded an adequate opportunity to vote." As amended, clause 9 now allows for a two-minute minimum time for such votes and continues to require, "to the maximum extent possible," that notice for a reduced-time vote "be issued prior to the first electronic vote in a series."[30]

Termination of Proxy Voting

The rules package did not include a separate order authorizing proxy voting in the House or in the Committee of the Whole during pandemic-related "covered periods," as designated by the Speaker.[31] Initially established as a separate order in the 116th Congress (2019-2020) by H.Res. 965 and re-established in the 117th Congress (2021-2022) by H.Res. 8, proxy voting allowed a Member who expected to be absent from the House chamber due to such an emergency to designate another Member to vote on his or her behalf under specified circumstances.[32] In the 118th Congress, Members must be physically present in the chamber to cast a vote.

Hall of the House

Access to the Hall of the House

The rules package amended clause 2(a)(14) of Rule IV to strike the provision allowing territorial governors and the mayor of the District of Columbia admittance "to the Hall of the House or rooms leading thereto" while the House is in session. The governors of states continue to retain floor privileges, as do, among other positions, specified congressional officers, high-level federal officials, and staff members under certain circumstances.[33]

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[30] *House Manual*, §1032.

[31] For information about proxy voting in the 116th and 117th Congresses, see CRS Report R46790, *House Rules Changes Affecting Floor Proceedings in the 117th Congress (2021-2022)*, by Jane A. Hudiburg.

[32] During pandemic-related "covered periods in the 116th and 117th Congresses, Members were allowed to vote by proxy in the House proper but not in the Committee of the Whole.

[33] Clause 2(a) of Rule IV specifies the positions afforded floor privileges under all or specified circumstances.

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