

Question of Consideration

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Research References

5 Hinds §§ 4936–4977
8 Cannon §§ 2436–2447
Manual §§ 778–781a
Deschler-Brown Ch 29

§ 1. In General

Generally; Purpose and Effect

The question of consideration is one of the methods available to the House that enables it to determine its agenda on a particular day. The rules provide that when any motion or proposition is made, a Member may demand the question “[w]ill the House now consider it?” Rule XVI clause 3. *Manual* § 778. This rule, which was adopted in its present form in 1880 (5 Hinds § 4936), permits the House, by simple majority vote, to protect itself on any day against business it may not want to consider on that day. 8 Cannon § 2447. The rule itself provides that the question is not to be put unless demanded. *Manual* § 778.

Any Member may raise the question of consideration (5 Hinds § 4936), even against matters of the highest privilege (5 Hinds § 4941), and notwithstanding that the Member in charge claims the floor for debate (5 Hinds §§ 4944, 4945; 6 Cannon § 404) or to move the previous question (5 Hinds § 5478). The question of consideration is not debatable (8 Cannon § 2447); such debate would defeat the purpose of the rule. If the House votes against consideration, it has the effect of preventing all debate on the pending measure at that time.

Form

MEMBER: Mr. Speaker, I raise the question of consideration.

THE SPEAKER: The gentleman raises the question of consideration. The question is, Will the House now consider it [the motion or proposition]?
As many as favor _____.

Where a report from the Committee on Rules is called up on the same legislative day on which reported, the Chair does put the question: “The

question is, will the House now consider the resolution.” See Rule XI clause 4(b).

When In Order

The question of consideration may be raised against a proposition after it has been read but before debate on it is to begin. 8 Cannon § 2447. The question of consideration is not in order after debate has begun (5 Hinds §§ 4937–4939) and does not lie until the initial reading has been concluded. 6 Cannon § 541; 8 Cannon § 2436. It may not be raised after the previous question has been ordered. 5 Hinds §§ 4965, 4966.

Voting on the Question

A negative vote on the question of consideration does not amount to a rejection of the proposition and does not prevent the measure from being brought before the House again at some later time. 5 Hinds § 4940. By the same token, an affirmative vote does not prevent the question of consideration from being raised on a subsequent day when the bill is again called up as unfinished business. 8 Cannon § 2438. If the question of consideration is raised but not voted on at adjournment it does not recur as unfinished business on the succeeding day. 5 Hinds §§ 4947, 4948.

It is in order to reconsider an affirmative vote on the question of consideration. 103–2, Oct. 4, 1994, p _____. The vote on the question of consideration, if decided in the negative, may not be reconsidered. 5 Hinds §§ 5626, 5627.

As Related to Points of Order

The House having decided to consider, a point of order raised against the pending matter with the object of preventing consideration, in whole or part, may be deemed untimely. 4 Hinds § 4598; 5 Hinds § 4952. In one instance, the House having given unanimous consent for the consideration of a measure with a proposed committee amendment, this action was held to be in effect an affirmative decision on the question of consideration, thus precluding a point of order against the amendment. 5 Hinds § 4952. Under the modern practice, however, unanimous consent for consideration of a bill, unless specifically including committee amendments, would not preclude a point of order against the committee amendments when separately reported.

A point of order against the eligibility for consideration of a bill which, if sustained, might prevent consideration, should be made and decided before the question of consideration is put. *Manual* § 781. But if the point relates merely to the manner of considering the bill, the point should be passed on after the House has decided the question of consideration. 5 Hinds

§ 4950. Points of order against a conference report are raised after the question of consideration has been decided in the affirmative. 94–2, Sept. 28, 1976, p 33019. See also Deschler Ch 20, § 17.13, where a point of order against consideration of a bill for failure of a committee quorum to report was permitted despite unanimous consent of the House to consider the bill, where the unanimous-consent request was not accompanied by a waiver of points of order.

Other Methods of Preventing Consideration

Immediate consideration of a measure can be avoided by use of the motions to postpone or to refer. (See *Manual* §§ 785–787.) Successful application of the motion to lay the measure on the table constitutes a final adverse disposition of the matter before the House (see LAY ON THE TABLE).

§ 2. Propositions Subject to the Question

The question of consideration has been applied to bills, resolutions, motions, and reports, and extends even to propositions of highest privilege. 5 Hinds § 4941; *Manual* § 780. The question may be demanded:

- Against a committee report relating to the seating of a Member. 5 Hinds § 4941.
- Against a resolution raising a question of the privilege of the House. 6 Cannon § 560.
- Against a bill which has been made in order on a particular day by a special order. 4 Hinds § 3175; 5 Hinds §§ 4953–4957.
- Against a bill on the Union Calendar on Calendar Wednesday before resolving into the Committee of the Whole. 8 Cannon § 2445.
- Against the motion to reconsider. 8 Cannon § 2437.
- Against a conference report. 8 Cannon § 2439; 94–2, Sept. 28, 1976, p 33019.

§ 3. Propositions Not Subject to the Question

The question of consideration lies only against an individual proposition, and may not be raised against a general class of business (5 Hinds § 4598) such as District of Columbia business generally (4 Hinds §§ 3308, 3309).

Some legislative propositions are considered under special rules which provide for the “immediate consideration” of the proposition. Under that procedure, the House votes on the question of consideration by voting on the resolution itself. For this reason, the question of consideration cannot be raised against such propositions. 5 Hinds §§ 4960–4963; 8 Cannon §§ 2440, 2441. The question of consideration is likewise inapplicable to a motion to

resolve into the Committee of the Whole, since the House expresses its will concerning consideration by voting on the motion. 85–2, May 21, 1958, p 9216; *Manual* § 780. Under modern practice, special rules authorize the Speaker to declare the House resolved into Committee of the Whole without motion, thereby precluding the question of consideration or any vote of the House. See Rule XXIII clause 1(b); *Manual* § 862.

Other propositions held not subject to the question of consideration include:

- A bill returned with the President’s veto. 5 Hinds §§ 4969, 4970.
- A motion relating to the order of business. 5 Hinds §§ 4971–4976; 8 Cannon § 2442.
- A motion to discharge committees. 5 Hinds § 4977.
- Propositions before the House merely for reference. 5 Hinds § 4964.
- A motion to take from the Speaker’s table a Senate bill substantially the same as a House bill already favorably reported and on the House Calendar. 8 Cannon § 2443.
- Reports from the Committee on Rules relating to the rules or order of business. Rule XI clause 4(b). *Manual* § 729a. See also 5 Hinds §§ 4961–4963.

§ 4. Application to Points of Order Against Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4) became effective January 1, 1996. The Act amends Title IV of the Congressional Budget Act and establishes committee report requirements and points of order against consideration. Section 423 and section 424 of the Congressional Budget Act establish committee report requirements. Section 425 and section 426 establish points of order against consideration.

Section 425(a)(2) establishes a point of order against any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of federal intergovernmental mandates by an amount that exceeds the \$50 million threshold in section 424(a)(1) unless it also provides spending authority or authorizes sufficient appropriations to cover the costs. Section 426(a) of the Act establishes a point of order against consideration of any rule or order that waives the application of section 425. Points of order under sections 425 and 426(a) of the Budget Act are disposed of not by a ruling of the Chair but by raising the question of consideration. Section 426(b)(2) establishes as a threshold premise for cognizability as a point of order under section 425 or 426(a) the specification of precise legislative language that is alleged to constitute a federal mandate.

Form

The gentleman from _____ makes a point of order that the resolution (H. Res. _____) violates section 426(a) of the Congressional Budget Act of 1974 by waiving all points of order (therefore necessarily including the application of section 425 of that Act) during the consideration of H.R. _____. In accordance with section 426(b)(2) of the Act, the gentleman has met his threshold burden to identify the language of the resolution that has that effect. Under section 426(b)(4) of the Act, the gentleman from _____ and a Member opposed will each control 10 minutes of debate on the point of order. Pursuant to section 426(b)(3) of the Act, after debate on the point of order the Chair will put the question of consideration, to wit: "Will the House now consider the resolution?"