

Veto of Bills

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Research References

- 4 Hinds §§ 3520–3552
- 7 Cannon §§ 1094–1115
- 7 Deschler Ch 24 §§ 17–23
- U.S. Const. art. I § 7
- Manual §§ 104, 107–109, 112–114

§ 1. In General; Veto Messages

Generally

The authority for the President to disapprove—veto—a bill is spelled out in the Constitution, U.S. Const. art. I § 7 clause 2. The same clause addresses the process by which the Congress can override a veto.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two thirds of that House, it shall become a law. . . . If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

The President has a 10-day period in which to approve or disapprove a bill. He can sign the bill into law or he can return it to the House of its origination with a message detailing why he chooses not to sign. If he fails to give his approval by affixing his signature during that period, the bill will become law automatically, without his signature. However, if before

the end of that 10-day period the Congress adjourns *sine die* and thereby prevents the return of the bill, the bill does not become law if the President has taken no action (i.e., approval) regarding it. At this stage, the bill can become a law only if the President signs it. The President's failure to act under these circumstances is referred to as a "pocket" veto. Deschler Ch 24 § 17. Pocket vetoes, see § 7, *infra*.

The 10-day period given the President under the Constitution in which to approve or reject a bill may be considered as beginning at midnight on the day on which the bill is presented to him. The day on which the bill is presented to the President is not counted in the computation (Deschler Ch 24 § 17.1) nor are Sundays.

Under the usual practice, bills are considered to have been "presented to the President" at the time they are delivered to the White House. But bills have been delivered to the White House while the President was abroad and effectively held by the White House for presentation to the President upon his return to the United States. *Manual* § 105.

Where the President exercises his veto authority he returns the enrollment with a sealed message setting forth his objections. An enrolled House bill returned to the Clerk during a recess with a "memorandum of disapproval" setting forth the objections of the President has been treated by the House as a return veto. 102-1, Sept. 11, 1991, p ____.

§ 2. House Action on Vetoed Bills

Veto messages are laid before the House on the day received by the Speaker. They are then read and entered in the Journal. 89-1, Sept. 13, 1965, p 23623; 91-2, Aug. 11, 1970, pp 28170-72.

A veto message of a House bill having been laid down and read, the Speaker first announces:

The objections of the President will be spread at large upon the Journal and the message and bill will be printed as a House document.

If the House does not wish to proceed immediately to reconsider the bill, the motions to lay on the table, to postpone consideration or to refer are available at this point in the proceedings. See § 4, *infra*.

When the message is laid before the House, the question on passage is considered as pending—so that no motion from the floor to reconsider the bill is necessary. 7 Cannon §§ 1097-1099. However, the previous question cannot be moved on reconsideration until the question is stated by the Chair. If the House wishes to proceed to the consideration of the message and address the question of passing the bill over the President's veto, it can

defeat any preferential motion which is offered and proceed to the main issue.

If no preferential motions are offered, the Chair then states the question as follows:

The pending question is whether the House will, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding.

§ 3. — Consideration as Privileged

The consideration of a veto message from the President is a matter of high privilege, and may interrupt consideration of other business (such as a conference report) if the previous question has not been ordered. 95–2, Oct. 5, 1978, p 33704. Though its consideration may be postponed to a day certain, it remains highly privileged and becomes the unfinished business on that day. 91–2, Jan. 27, 1970, p 1365. A vetoed bill may be laid on the table (7 Cannon § 1105), but it is still highly privileged and a motion to take it from the table is in order at any time (4 Hinds § 3550; 5 Hinds § 5439). A vetoed bill received in the House by way of the Senate is considered as if received directly from the President and supersedes the regular order of business. 4 Hinds § 3537; 7 Cannon § 1109. The privilege accorded vetoed bills does not extend to a bill reported in lieu of a vetoed bill. 4 Hinds § 3531; 7 Cannon § 1103.

Though highly privileged, the consideration of a vetoed bill yields to:

- A timely demand for a quorum. 4 Hinds § 3522; 7 Cannon § 1094.
- Unfinished business from the preceding day with the previous question ordered. 8 Cannon § 2693.
- A matter being considered as a question privileged under the Constitution, such as a contested election. 5 Hinds § 6642.
- A motion to adjourn. 4 Hinds § 3523.

§ 4. — Motions in Order

Generally

The constitutional mandate that “the House shall proceed to reconsider” a vetoed bill (U.S. Const. art. I § 7) means that the House shall proceed to consider it under the rules of the House, and that the ordinary motions under the House rules are in order. *Manual* § 108. The motions to lay the bill on the table, to postpone to a day certain, and to refer are in order; and they take precedence in the order named over the question of reconsideration (and possible override) of the bill until the previous question is ordered. A Member may not invoke the previous question on the question of

reconsideration as preferential where the Chair has not yet stated the question to be pending on overriding the veto. 95–2, June 28, 1978, p 19332. See also 7 Cannon § 1105.

Postponement

While the House usually takes immediate action on a veto message from the President, the consideration of the message may be postponed to a day certain by unanimous consent or by motion. 91–2, Jan. 27, 1970, p 1365; 94–1, Dec. 19, 1975, p 41880; 95–2, June 21, 1978, p 18311. The postponement may be for a few days (86–2, Feb. 23, 1960, p 3257) but has been for as long as eight months and into the next session of the same Congress (99–1, Dec. 17, 1985, p 37477). A Member moving to postpone further consideration of a veto message to a day certain is recognized to control one hour of debate on the motion. 91–2, Jan. 27, 1970, p 1365. Such a postponement is not in violation of the constitutional requirement that the House “shall proceed to reconsider” a vetoed bill. 100–2, Aug. 3, 1988, p 20278.

When consideration of a veto message is postponed to a day certain, it becomes unfinished business on that day, and may be voted on, referred to committee, or again postponed as the House determines. 98–1, Oct. 20, 1983, p 28618.

Referral to Committee

A veto message from the President may be referred to a committee by unanimous consent (89–1, Sept. 13, 1965, p 23623) or by motion (89–2, Oct. 11, 1966, p 26051; 90–1, Dec. 11, 1967, p 35754). Such a referral is in order in the House on a bill that the Senate has already passed over the President’s veto. 94–2, Jan. 26, 1976, pp 374, 875.

A motion to refer a veto message to committee takes precedence over the question of reconsideration. 99–1, Mar. 7, 1985, p 4955; 98–1, Oct. 25, 1983, p 29188. But while the ordinary motion to refer may be applied to a vetoed bill, the motion is not in order pending the demand for the previous question or after it is ordered on the constitutional question of reconsideration. 7 Cannon § 1102.

Discharge of Committee

A motion to discharge a committee from the consideration of a vetoed bill is privileged (4 Hinds § 3532), under the modern practice can be debated under the hour rule (101–2, Mar. 7, 1990, p 3620) and is renewable every day, notwithstanding the tabling of a prior motion. 100–2, Aug. 10, 1988,

p 21589. When the motion to discharge is agreed to, the veto message is pending as unfinished business. *Manual* § 108.

§ 5. — Debate

Debate on the question of overriding the President's veto of a bill is under the hour rule. 91–2, Jan. 28, 1970, pp 1483, 1552; 91–2, June 25, 1970, pp 21529–32; 91–2, Aug. 13, 1970, pp 28758, 28779. The previous question may be moved at any time during the debate. 7 Deschler Ch 24 § 22. The Speaker normally recognizes the chairman of the committee or subcommittee which reported the bill to control the debate on the veto message. Compare 92–2, Aug. 16, 1972, p 28415.

§ 6. — Voting; Disposition of Bill

Under the Constitution, a vetoed bill becomes law when it is reconsidered and passed by the requisite two-thirds vote in each House. U.S. Const. art. I § 7. The two-thirds vote required to pass the bill is two-thirds of the Members voting, a quorum being present, and not two-thirds of the total membership of the House. 4 Hinds §§ 3537, 3538; 7 Cannon § 1111. The Constitution further requires that the vote on passage of a bill over the President's veto must be by the yeas and nays. 86–1, Sept. 10, 1959, p 18982; 86–2, July 1, 1960, pp 14451, 15183.

The motion to reconsider is not in order on the vote on the question of overriding a veto. 5 Hinds § 5644; 8 Cannon § 2778.

When a vetoed House bill is reconsidered and passed in the House, the House sends the bill and veto message to the Senate and informs that body that it passed by the constitutional two-thirds vote. See 86–2, July 1, 1960, p 15343; 91–2, June 25, 1970, pp 21529–32. When the House fails to pass a bill over the President's veto, the bill and veto message are referred to committee, and the Senate is informed of the action of the House. 7 Deschler Ch 24 § 23.

§ 7. Pocket Vetoes

Generally; Use After Final Adjournment

Under the Constitution, if the President neither signs nor returns a bill within 10 days (Sundays excepted) it becomes law as if he had signed it, unless Congress by its adjournment “prevents its return.” U.S. Const. art. I § 7. The President is said to “pocket veto” a bill where he takes no action on the bill during the 10-day period and where the Congress adjourns before the expiration of that time in such a manner as to prevent the return of the

bill to the originating House. 7 Deschler Ch 24 § 18. If Congress, at the end of a two-year term, adjourns *sine die* within the 10-day period, the return of the bill is prevented within the meaning of this provision of the Constitution; therefore, if the President does not sign it, the bill does not become law but dies as a result of the President's pocket veto. *The Pocket Veto Case*, 279 US 655 (1929), *dicta* at p 680. *Manual* § 112. A constitutional debate still lingers with respect to the conditions under which the President may exercise his pocket veto authority during certain types of adjournment of a Congress. The executive and legislative branches have sometimes held different perspectives with respect to the conditions surrounding an adjournment and their impact on the return of a bill disapproved by the President.

During Intersession Adjournments

The Supreme Court has held that the President's return of a bill to the originating House was prevented when the Congress adjourned its first session *sine die* fewer than 10 days after presenting the bill to him for his approval. Because neither House was in session to receive the bill, the President was prevented from returning it, and a pocket veto was upheld. *The Pocket Veto Case*, 279 US 655 (1929). A more recent appellate court decision suggested that the return of a bill during an adjournment between sessions was not prevented within the meaning of the Constitution if the originating House has appointed an agent for the receipt of Presidential veto messages, and that the validity of a pocket veto is governed not by the type or length of adjournment but whether the conditions surrounding the adjournment raise an impediment to the actual return of the bill. *Barnes v Kline*, 759 F2d 21 (D.C. Cir. 1985), vacated as moot by the Supreme Court in *Burke v Barnes*, 479 US 361 (1987). In 1989, as part of the concurrent resolution providing for the *sine die* adjournment of the first session, the Congress affirmed its position that an intersession adjournment does not prevent the return of a bill where the Clerk and the Secretary of the Senate are authorized to receive messages during the adjournment. H. Con. Res. 239, 101-1, Nov. 21, 1989, p _____. When the second session of the 101st Congress convened, the House asserted its right to reconsider a bill returned with a Presidential "memorandum of disapproval" received during the *sine die* adjournment. See 101-2, Jan. 23, 1990, p _____. Under the standing rules of the House since the 97th Congress, the Clerk has been authorized to receive messages from the President at any time that the House is not in session. Rule III clause 5. *Manual* § 647b.

During Intrasession Adjournments

An adjournment of Congress during a session does not prevent the President from returning a bill which he disapproves so long as appropriate arrangements are made by the originating House for the receipt of Presidential messages during the adjournment. Thus, it has been held that a Senate bill cannot be pocket-vetoed by the President during an "intrasession" adjournment of Congress to a day certain for more than three days, where the Secretary of the Senate has been authorized to receive Presidential messages during such adjournment. *Kennedy v Sampson*, 511 F2d 430 (D.C. Cir. 1974). See also *Kennedy v Jones*, 412 F Supp 353 (D.D.C. 1976). The Supreme Court has held that the adjournment of the House of origin for not exceeding three days while the other branch of the Congress remained in session, did not prevent a return of a vetoed bill to the House of origin. *Wright v U.S.*, 302 U.S. 583 (1938).