

Chapter 14

Congressional Procedures Enacted in Law

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Research References

U.S. Const. art. I, § 7
Manual § 1130

§ 1. In General

Congress has enacted numerous laws reserving for itself the right of review by approval or disapproval of certain actions of the executive branch or of independent agencies. These laws take various forms, often including expedited procedures. For example, the Alaska Natural Gas Transportation Act of 1976 permits the privileged consideration of joint resolutions approving Presidential decisions on the Alaska natural gas transportation system when those resolutions are reported from committee or are discharged after 30 days. 15 USC §§ 719f, 719g; *Manual* § 1130(18); 95-1, Nov. 1, 1977, p 36347. Another statute sets forth a similar procedure for congressional approval or disapproval of certain actions by the District of Columbia Council. District of Columbia Home Rule Act, §§ 602(c), 604; *Manual* § 1130(5). The *House Rules and Manual* carries a compilation of current texts of congressional disapproval provisions that include expedited procedures. *Manual* § 1130.

§ 2. Constitutionality

Federal court decisions indicate that congressional action to approve or disapprove an executive branch determination should be undertaken by way of a bill or joint resolution and not by way of a simple or concurrent resolution or through committee action. In 1983, the Supreme Court declared in *Immigration and Naturalization Service v. Chadha* (462 U.S. 919 (1983)) that a statute permitting the disapproval of a decision of the Attorney General by simple resolution of one House (“one-House veto”) was unconstitutional. The Court said the device violated the doctrine of separation of powers and the doctrines of bicameralism and presentment. The Court found the one-House veto to be legislative in nature and thereby requiring identical

texts to pass both Houses and be presented to the President. In an earlier decision, the Court of Appeals specifically held a “one-House veto” in the Natural Gas Policy Act of 1978 (15 USC § 3341(b)) unconstitutional. In its decision, the District of Columbia Court of Appeals said that the primary basis for its holding was that the one-House veto violates article I, section 7, of the Constitution both by preventing the President from exercising the veto power and by permitting legislative action by only one House of Congress. The circuit court also found the one-House veto to contravene the separation of powers principle implicit in articles I, II, and III because it authorizes the legislature to share powers properly exercised by the other two branches of government. The court declared that article I, section 7, sets forth the fundamental prerequisites to the enactment of Federal laws—bicameral passage of legislation and presentation for approval or disapproval by the President—and held that congressional disapproval of final agency rules must comply with these requirements. The court added that Congress may choose to use a resolution of disapproval as a means of expediting action, but only if it acts by both Houses and presents the resolution to the President. *Consumer Energy Council of America, et al. v. FERC*, 673 F.2d 425 (D.C. Cir. 1982), *aff’d* 463 U.S. 1216 (1983).

In the light of these decisions, Congress has amended several statutes to convert procedures involving simple or concurrent resolutions of approval or disapproval to procedures requiring joint resolutions to be presented to the President for signature or veto. *Manual* § 1130.

§ 3. Consideration in the House

Many “legislative procedure” statutes prescribe special procedures for the House to follow when reviewing executive branch actions. For a compilation of the relevant provisions of such statutes, see *Manual* § 1130. These procedures technically are rules of the House, enacted expressly or implicitly as an exercise of the House’s rulemaking authority. At the beginning of each Congress, it is customary for the House to reincorporate by reference in the resolution adopting its rules such legislative procedures as may exist in current law. Nevertheless, because the House retains the constitutional right to change its rules at any time, the Committee on Rules may report a resolution varying (or disabling) such procedures. *Manual* § 1130.

Where a law enacted as a rule of both Houses provides special procedures during consideration of a joint resolution approving a Presidential determination, and the House adopts a special order of business providing for consideration of such a joint resolution in the House, the Speaker will never-

theless interpret the special statutory provisions to apply if consistent with the special order of business. 97-1, Dec. 10, 1981, p 30486.

