

Chapter 52

Special Orders of Business

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Research References

- 4 Hinds §§ 3152-3265
- 7 Cannon §§ 758-845
- Deschler Ch 21 §§ 16-19
- Manual* §§ 734, 855, 857-859

§ 1. In General

Jurisdiction and Authority

A resolution that specifies the manner in which a measure is to be taken up and the procedures to be followed during its consideration is called a “special order of business” or “special rule.” Such a resolution, once adopted by the House, gives privilege to the measure to be considered. Deschler Ch 21 § 16. The Committee on Rules has jurisdiction to report such resolutions under clause 1(o) of rule X. *Manual* § 733. By adoption of a special order of business, the House establishes the parameters of its agenda on an ad hoc basis. Special orders of business are distinct from “special-order speeches,” which are discussed in CONSIDERATION AND DEBATE.

Because of the wide diversity of their use in the legislative process, special orders of business are discussed in many other chapters in this work. Measures not taken up under a special order of business may be taken up by unanimous consent or considered under suspension of the rules or may be privileged in their own right under other standing rules or statutes.

Restrictions on Authority of the Committee on Rules

The broad power of the Committee on Rules to report resolutions varying the order of business or providing a special order is expressly restricted by clause 6(c) of rule XIII, which protects the motion to recommit. *Manual*

§ 857. The restriction relating to the motion to recommit, which is considered a fundamental prerogative of the minority, preserves the opportunity to include proper instructions in the motion to recommit a bill or joint resolution as described in clause 2(b) of rule XIX. *Manual* § 857.

In the 104th Congress, the restriction relating to the motion to recommit was extended to prohibit the Committee on Rules from recommending a rule or order that would prevent a motion by the Minority Leader or a designee to recommit a bill or joint resolution with instructions to report back an amendment otherwise in order, except in the case of a Senate bill or joint resolution for which the text of a House-passed measure is being substituted. *Manual* § 857. For a discussion of the restriction before it was extended to include amendatory instructions, see *Manual* § 859. In the 111th Congress, clause 2 of rule XIX was amended to provide that the instructions contained in the motion to recommit a bill or joint resolution must direct the committee to report amendment(s) back to the House “forthwith” (resulting in the amendment(s) being immediately before the House for consideration). For more on the motion to recommit, see REFER AND RECOMMIT; see also *Manual* § 1002b.

A special order of business providing for consideration of a bill under suspension of the rules does not violate clause 6 of rule XIII because no motion to recommit is available under suspension. *Manual* § 859; 8 Cannon § 2267.

Section 425 of the Congressional Budget Act of 1974 precludes consideration of a measure imposing Federal intergovernmental mandates above a specified threshold amount. *Manual* § 1127; 2 USC § 658e(a). Section 426 precludes the consideration of a special order of business that waives points of order under section 425 of the Congressional Budget Act. However, this restriction is “enforced” by a Member raising a point of order against the rule and then the House disposing of the question of consideration on the rule. The attention of the House is thus focused on the waiver. After limited debate, the House may decide to proceed with consideration of the rule. See UNFUNDED MANDATES.

In similar fashion, clause 9 of rule XXI establishes a point of order against consideration of certain measures for failure to disclose (or disclaim the presence of) certain earmarks, limited tax benefits, and limited tariff benefits, and permits a vote on the question of consideration with respect to a rule waiving such a point of order. See BUDGET PROCESS.

Application to Various Measures

The privilege of the Committee on Rules to report special orders of business extends to special orders for the consideration of individual bills

or classes of bills or the consideration of a specified amendment to a bill and the prescription of a mode of considering such amendment. 5 Hinds § 6774; 8 Cannon § 2258; see § 6, *infra*.

Customarily, a committee that has reported, or has jurisdiction over, a measure requests the Committee on Rules to provide a special order of business for its consideration. However, the Committee on Rules also may provide for consideration of an unreported bill. 8 Cannon § 2259; Deschler Ch 21 §§ 16.15-16.17. It may even provide for the consideration of a bill that has not yet been introduced or permit consideration of a measure that comes into existence by virtue of adoption by the House of the special order of business. *Manual* § 855; 8 Cannon § 3388. For example, it may provide for consideration of a joint resolution originated upon adoption of the special order of business consisting of the text of a Senate-passed joint resolution identical to a measure previously rejected by the House under a separate statutory approval procedure. 99-2, Apr. 15, 1986, p 7531.

The Committee on Rules also may recommend a “hereby” resolution that provides for a concurrent resolution correcting the enrollment of a bill to be considered as adopted by the House upon the adoption of the special order of business. 108-1, H. Res. 71, Feb. 13, 2003, p 3793; 105-1, H. Res. 232, Oct. 6, 1997, p 21264. Similarly, it may provide that a Senate amendment pending at the Speaker’s table and otherwise requiring consideration in Committee of the Whole be “hereby” considered as adopted upon adoption of the special order of business or considered as adopted with a further specified amendment. *Manual* § 855; Deschler Ch 21 § 16.11. In both cases, there is no bill or joint resolution pending initial final passage. Therefore, the stricture under clause 6(c) of rule XIII against denying a motion to recommit with instructions is not operative.

A special order of business may make in order two or more propositions. It also may link more than one passed measure separately considered into one engrossment. *Manual* § 476.

Special orders of business that prescribe procedures for the consideration of conference reports and amendments between the Houses may:

- Waive points of order against a conference report and against its consideration. 107-1, Dec. 12, 2001, p 25089.
- Provide for the immediate consideration of a conference report when it is eventually reported from the committee of conference. Deschler Ch 21 § 16.
- Permit a motion to “hook-up” a House-passed measure with a similar Senate-passed measure and a motion to go to conference. 107-1, July 12, 2001, p 13097.
- Provide for a motion to dispose of Senate amendments to a House bill. 104-1, Dec. 13, 1995, p 36290.

- Permit a third-degree amendment to be offered to a Senate amendment. 103-1, Sept. 30, 1993, p 23148.
- Allow conferees to refile a conference report in a corrected form without a new meeting or new signatures. 104-1, Nov. 17, 1995, p 33741.
- With respect to a measure in conference, discharge managers on the part of the House and lay the bill on the table or dispose of an amendment in disagreement (the House being in possession of the official papers). 5 Hinds § 6526; 110-1, Dec. 12, 2007, p 34003.
- Restrict the availability of an otherwise privileged motion under clause 4 of rule XXII to the Majority Leader only. 113-2, July 31, 2014, p____; 113-1, Sept. 30, 2013, p____.

The Committee on Rules has reported as privileged a special order of business nearly identical to one previously rejected by the House, but it was held not to constitute “another of the same substance” within the meaning of *Jefferson’s Manual* because it provided a different scheme for general debate. *Manual* § 515.

At the convening of a new Congress, a special order of business has been offered as privileged to provide for consideration in the House of a resolution to adopt the rules of a new Congress. *Manual* § 60.

Waivers

The Committee on Rules may report and call up as privileged resolutions temporarily waiving or altering any rule of the House, including statutory provisions enacted as an exercise of the rulemaking authority of the House, that would prohibit the consideration of a bill or otherwise establish an exclusive procedure for consideration of a particular type of measure. *Manual* § 857. For example, the Committee on Rules has reported as privileged a resolution waiving statutory rulemaking provisions of the Trade Act (rendering a motion to discharge inapplicable to a particular bill). 110-2, Apr. 10, 2008, p 5640.

Points of order do not lie against the consideration of a special order of business for waiving points of order against a measure, as it is for the House to determine, by a majority vote on the adoption of the resolution, whether certain rules should be waived. Deschler Ch 21 § 16.9. However, a House or statutory rule may contain language restricting the authority of the Committee on Rules to recommend a waiver. See, *e.g.*, UNFUNDED MANDATES; QUESTION OF CONSIDERATION.

Under clause 6(g) of rule XIII, the report accompanying a special order of business shall, “to the maximum extent possible,” be specific with respect to any waiver of a point of order against the underlying measure or against its consideration. *Manual* § 863.

§ 2. Reporting Special Orders of Business

Generally; Typography

Under clause 3(g) of rule XIII, a report from the Committee on Rules repealing or amending a standing rule must include a Ramseyer-type comparative print; that is, appropriate typography showing the proposed omissions or insertions. This clause does not apply to resolutions that merely provide temporary waivers of rules during the consideration of particular legislative business. *Manual* § 848.

Privilege and Precedence of Reports

A report from the Committee on Rules enjoys high privilege. 8 Cannon § 2260. A report from the Committee on Rules takes precedence over a motion to consider a measure that is “highly privileged” pursuant to a statute enacted as an exercise of the rulemaking authority of the House, acknowledging the constitutional authority of the House to change its rules at any time. *Manual* § 857. It also takes precedence over a privileged motion to discharge a committee, and over District of Columbia business that is privileged on District Day. Deschler Ch 21 §§ 17.7, 17.8.

Although highly privileged, a report from the Committee on Rules yields to the presentation of conference reports (5 Hinds § 6449) and to a question of the privileges of the House (8 Cannon § 3491). A report is not in order after the House has voted to go into the Committee of the Whole. 5 Hinds § 6781.

Once a special order of business is under debate, the House can postpone further consideration and proceed to other business only by unanimous consent. Deschler Ch 21 § 17.11. However, under clause 2 of rule XVI, the manager of the resolution can withdraw it from consideration before a decision has been made thereon. Deschler Ch 21 § 18.41. If the resolution is later reoffered, debate under the hour rule begins anew. Deschler Ch 21 § 17.11 (note).

Reporting to the House; Calling Up

Under clause 6(d) of rule XIII, the Committee on Rules must present a special order of business resolution to the House within three legislative days of the time when it orders such resolution reported. *Manual* § 861.

Ordinarily, a report from the Committee on Rules is called up for consideration by a member of that committee who has been so authorized. However, under clause 6(d) of rule XIII, if the report has been on the House Calendar for seven legislative days without being called up, any member of the committee may call it up provided the member gives notice of one cal-

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endar day of an intention to do so. This rule may be invoked by a minority member of the committee. *Manual* § 861.

Under clause 6(e) of rule XIII, in the event an adverse report is made by the Committee on Rules on a special order of business, any Member of the House may call up the report and move the adoption of the resolution on a day when motions to discharge committees are in order. *Manual* § 861; see DISCHARGING MEASURES FROM COMMITTEES.

Same-day Consideration

A resolution reported from the Committee on Rules relating to the order of business may not be considered on the same legislative day as reported under clause 6(a) of rule XIII unless so determined by a vote of not less than two-thirds of the Members voting, a quorum being present. This requirement does not apply to resolutions called up during the last three days of a session. *Manual* § 857. The Committee on Rules may report a resolution waiving this requirement. *E.g.*, 93-2, Dec. 19, 1974, p 41572.

The two-thirds vote needed for same-day consideration does not alter the requirement that a simple majority must actually adopt the resolution. Deschler Ch 21 § 18.7. If consideration is ordered by a two-thirds vote, a point of order that the resolution has not been printed does not lie. *Manual* § 857.

Under clause 6(a)(2) of rule XIII, the two-thirds vote requirement for same-day consideration does not apply if the only effect of a rule is to waive the three-day layover requirement for a particular reported bill or the three-day layover and two-hour availability requirements for a conference report and amendments in disagreement. *Manual* § 857.

A report filed by the Committee on Rules at any time before the convening of the House on the next legislative day may be called up for immediate consideration without the two-thirds requirement. If the House continues in session into a second calendar day and then meets again that day, or convenes for two legislative days on the same calendar day, any report filed on the first legislative day may be called up on the second without the question of consideration being raised. *Manual* § 857.

§ 3. Forms

Filing a Rule

MEMBER: M__ . Speaker, by direction of the Committee on Rules, I present a privileged report for filing under the rule.

SPEAKER: The Clerk will report the title of the resolution. [*After Clerk reports title.*] Referred to the House Calendar and ordered printed.

Calling Up a Rule

MEMBER: M___. Speaker, by direction of the Committee on Rules, I call up House Resolution _____ and ask for its immediate consideration.

SPEAKER: The Clerk will report the resolution. [*Unanimous consent to waive the reading in full is customarily not entertained.*] The gentle _____ from _____ is recognized for one hour.

Calling Up Rule on Same Day It Is Filed

MEMBER: M___. Speaker, by direction of the Committee on Rules, I present a privileged report.

SPEAKER: The Clerk will report the title of the resolution. [*After Clerk reports title.*] Referred to the House Calendar and ordered printed.

MEMBER: M___. Speaker, by direction of the Committee on Rules, I call up House Resolution _____ and ask for its immediate consideration.

SPEAKER: The Clerk will report the resolution. [*Unanimous consent to waive the reading in full is customarily not entertained.*] The question is, will the House consider the resolution. [*If two-thirds of those voting, a quorum being present, vote in the affirmative.*] Two-thirds of those present having voted in the affirmative, the resolution shall be considered. The gentle _____ from _____ is recognized for one hour.

§ 4. Consideration of Special Orders of Business**Debate**

Special orders of business reported from the Committee on Rules are considered in the House under the hour rule. Therefore, a Member recognized to call up a special order of business by direction of the Committee on Rules manages one hour of debate. Deschler Ch 21 § 18. Other Members may be recognized only if yielded time. Deschler Ch 21 § 18.15. It is customary for the Member calling up the resolution to yield 30 minutes of the hour to a minority member of the Committee on Rules for purposes of debate only. Deschler Ch 21 § 18.15 (note). The minority member is permitted to yield time to other Members.

Debate on a special order of business may range to the merits of the measure to be made in order because the question of consideration of the bill is involved. However, it should not range to the merits of a measure not to be considered under that special order of business. *Manual* § 948.

Amendments and Divisibility

Under clause 5(b) of rule XVI, a special order of business resolution is not divisible. *Manual* § 919. The manager of the special order of business may offer one or more amendments thereto, and authorization of the committee is not required. Deschler Ch 21 § 18.23. The resolution is not otherwise subject to amendment from the floor unless the manager yields for that

purpose or unless the House rejects the previous question. Deschler Ch 21 § 18.19.

Dilatory Motions Not Permitted

The question of consideration may not be raised against a report from the Committee on Rules. 5 Hinds §§ 4961, 4962; 8 Cannon §§ 2440, 2441. The clause forbidding dilatory motions has been construed strictly. 5 Hinds §§ 5740-5742. As such, the following have been excluded:

- A motion to commit or recommit after the ordering of the previous question. 5 Hinds §§ 5593-5601; 8 Cannon §§ 2270, 2750, 2753.
- An appeal from the Chair's decision not to entertain the question of consideration or a motion to lay the pending resolution on the table. 5 Hinds § 5739.
- A motion to postpone to a day certain. *Manual* § 858.
- A motion to table an amendment offered by the manager of the rule. *Manual* § 858.

A motion to reconsider the vote on the motion for the previous question on the rule (and on any pending amendment thereto) is not dilatory and may be laid on the table without carrying with it the resolution itself. *Manual* § 858; 5 Hinds § 5739.

In the event that the motion for the previous question is rejected on a privileged resolution from the Committee on Rules, the provisions of clause 6(b) prohibiting "dilatory" motions no longer strictly apply. As such, the resolution is subject to proper amendment, further debate, or a motion to table or refer, subject to being preempted by a preferential motion offered by another Member. *Manual* § 858.

Only one motion to adjourn is admissible during the consideration of a report from the Committee on Rules, and the motion may not be offered when another Member has the floor. *Manual* § 858. Where the House adjourns during the consideration of a report from the Committee on Rules, further consideration of the report becomes unfinished business on the following day, and debate resumes from the point where interrupted. *Manual* § 858.

Rejection of Motion for Previous Question

In the event that the motion for the previous question is rejected, the Member who has led the opposition will be recognized for one hour unless preempted by a preferential motion, such as the motion to table, which may be offered by any Member. The Member recognized may yield time, may offer an amendment to the resolution, and may move the previous question on the amendment and the resolution. Deschler Ch 21 § 18.

Voting

A special order of business requires a majority vote for adoption. 4 Hinds § 3169. Under clause 8 of rule XX, the Speaker has the authority to postpone for up to two legislative days a record vote on the motion for the previous question or on the adoption of a rule. *Manual* § 1030; see VOTING.

§ 5. Modification of Special Orders of Business**By Resolution**

The Committee on Rules may report a privileged resolution modifying the operation or effect of a previous special order of business adopted by the House. Such a resolution may provide additional procedures to govern the further consideration of a measure already pending in Committee of the Whole and may include limitations on further debate or amendments. 8 Canon § 2258; Deschler Ch 21 §§ 16.26, 16.27.

By Unanimous Consent in the House

A unanimous-consent request to modify the terms established by a special order of business providing for the consideration of a measure in the Committee of the Whole may be made after its adoption by the House and before completion of consideration of the underlying measure in the Committee. 99-2, Sept. 24, 1986, p 25890.

A unanimous-consent request may not be entertained in the Committee of the Whole if the request would materially modify procedures required by a special order of business adopted by the House. Such requests must be made in the House. For examples of requests that may not be entertained in the Committee of the Whole, see COMMITTEES OF THE WHOLE; *Manual* § 993a.

Although the House may alter the terms of an adopted special order of business to make an additional amendment in order in the Committee of the Whole, the Chair may decline to entertain a unanimous-consent request to admit an additional amendment unless assured the request has been cleared. This practice is consistent with the Speaker's announced policy of conferring recognition for unanimous-consent requests for the consideration of unreported bills and resolutions only when assured that the majority and minority floor and committee leaderships have no objection. *Manual* §§ 857, 956.

The Member offering an amendment in the Committee of the Whole pursuant to a special order of the House has the burden of proving that it meets the description of the amendment made in order. *Manual* § 993b.

By Unanimous Consent in the Committee of the Whole

The chair of the Committee of the Whole may entertain a unanimous-consent request to modify a special order of business if the request proposes merely an incidental or minor change to the special order. For examples of unanimous-consent requests have been entertained in Committee of the Whole, see COMMITTEES OF THE WHOLE; *Manual* § 993b.

By unanimous consent the House may delegate to the Committee of the Whole authority to entertain unanimous-consent requests to change procedures contained in an adopted special order of business. *Manual* § 993b.

§ 6. Procedures Prescribed by Special Orders of Business

In recent Congresses, special orders of business have provided for the consideration of amendments in a variety of ways, from “open” rules (which are silent on the amendment structure) to “closed” (which preclude all amendments). In between these two extremes, special orders of business have:

- Specified consideration that is open in part and restricted in part. 106-1, Aug. 4, 1999, p 19460.
- Permitted only specified amendments. 107-1, Aug. 1, 2001, p 15414.
- Required first-degree amendments to be printed in the *Congressional Record*. 107-1, July 19, 2001, p 13870.
- Specified that certain amendments be “considered as adopted,” often referred to as “self-executed.” 107-1, Aug. 1, 2001, p 15414.
- Authorized the floor manager to offer en bloc amendments consisting of the text of other amendments made in order. 107-1, Sept. 19, 2001, p 17221.
- Restricted the number of permissible pro forma amendments and who may offer such amendments. 114-1, June 24, 2015, p ____.
- Left the amendment process open only for a specified period of time. 106-2, May 10, 2000, p 7481.
- Authorized a Member to offer a limited set of amendments from a “pool” of eligible amendments. 111-1, July 29, 2009, p 19677.

Although the Committee on Rules may announce a policy that it intends to make in order only preprinted amendments, the committee may in fact, without violating a rule of the House, report a special order of business making in order an unprinted amendment. *Manual* § 857.

An amendment may be “self-executed” by adoption of a special order of business even if, considered separately, it would violate a rule of the

House. For example, a special order may “self-execute” an amendment that contains:

- An appropriation in violation of clause 4 of rule XXI. *Manual* § 855.
- An appropriation in violation of clause 2 of rule XXI. *Manual* § 855.
- Nongermane provisions in violation of clause 7 of rule XVI. *Manual* § 855.

Normally, a rule that precludes any amendment, or permits only one amendment, provides for the consideration of the measure in the House. A rule that permits more than one amendment normally provides for consideration in the Committee of the Whole.

One procedure involving the consideration of amendments is called “king of the hill.” Although regular order does not permit further amendments to a text once it has been amended in its entirety, a “king of the hill” rule permits several substitute amendments to be voted on in the Committee of the Whole, with only the last one adopted to be considered as finally adopted and reported to the House. The Committee on Rules also has reported a special order of business providing for a variation of that procedure. This procedure permits consideration of conflicting amendments in a series, with only the one winning the most votes being finally voted on in the House. This is sometimes known as a “Queen of the Hill” or “Top Vote Getter” procedure.

Special orders of business often make in order as original text something other than the text of the introduced measure. For example, the base text may be specified to be:

- A substitute reported by the committee of jurisdiction (the most common text made in order). 107-1, May 10, 2001, p 7772.
- A substitute reported by the committee of primary jurisdiction modified by amendments reported by a committee of secondary jurisdiction. 107-2, Apr. 10, 2002, p 4140.
- The text of another introduced bill or a specified preprinted amendment (such as in the report accompanying the special order of business). 107-1, Oct. 3, 2001, p 18585.
- An amendment first adopted in the Committee of the Whole. 104-1, Aug. 2, 1995, p 21678.
- Introduced text as modified by amendments printed in the report accompanying the special order of business. 107-1, Dec. 6, 2001, p 24143.
- A “committee print” representing reported text not yet available as a Union Calendar print. 109-1, Sept. 29, 2005, p 21777.

The Committee on Rules may report resolutions that provide special procedures to expedite consideration or accomplish specific results. For example, a resolution may authorize priority in recognition for the offering of

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amendments to Members who had their amendments preprinted in the *Congressional Record*.