

RULES

See also "Resolutions," pp. 1202–1213.

The Senate has readopted or made only seven general revisions of its rules since 1789—on March 26, 1806; January 3, 1820; February 14, 1828; March 25, 1868; January 17, 1877; January 11, 1884; and November 14, 1979. The rules of the Senate, however, are subject to amendment at any time and have been amended regularly in part in most, if not in all, Congresses since 1884, and on occasions several times in the same Congress.

If proposals to amend the rules should be filibustered, it would take a two-thirds vote to invoke cloture, but the vote on adoption would still only require a majority vote. Consideration of proposals to amend the rules is further complicated by Rule VIII, which provides that a "motion to proceed to the consideration of a bill or resolution during the Morning Hour is not debatable," but then excepts from this general rule "any motion to proceed to the consideration of any motion, resolution, or proposal to change any of the Standing Rules of the Senate."

While it takes only a majority vote to amend the rules, a two-thirds vote is required to suspend them, a day's notice having been given.

Rule V

[Suspension and Amendment of the Rules]

1. No motion to suspend, modify, or amend any rule, or any part thereof, shall be in order, except on one day's notice in writing, specifying precisely the rule or part proposed to be suspended, modified, or amended, and the purpose thereof. Any rule may be suspended without notice by the unanimous consent of the Senate, except as otherwise provided by the rules.

2. The rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules.

Rule VIII, Paragraph 2

[Rules Changes Debatable in Morning Hour]

All motions made during the first two hours of a new legislative day to proceed to the consideration of any matter shall be determined without debate, except motions to proceed to the consideration of any motion, resolution, or proposal to change any of the Standing Rules of the Senate shall be debatable. Motions made after the first two hours

of a new legislative day to proceed to the consideration of bills and resolutions are debatable.

Rule XII, Paragraph 1

[Voting Procedure]

When the yeas and nays are ordered, the names of Senators shall be called alphabetically: and each Senator shall, without debate, declare his assent or dissent to the question, unless excused by the Senate; and no Senator shall be permitted to vote after the decision shall have been announced by the Presiding Officer, but may for sufficient reasons, with unanimous consent, change or withdraw his vote. No motion to suspend this rule shall be in order, nor shall the Presiding Officer entertain any request to suspend it by unanimous consent.

Rule XVIII

[Business Continued From Session to Session]

At the second or any subsequent session of a Congress the legislative business of the Senate which remained undetermined at the close of the next preceding session of that Congress shall be resumed and proceeded with in the same manner as if no adjournment of the Senate had taken place.

Rule XIX, Paragraph 7

[No Introduction of Persons in Galleries]

No Senator shall introduce to or bring to the attention of the Senate during its sessions any occupant in the galleries of the Senate. No motion to suspend this rule shall be in order nor may the Presiding Officer entertain any request to suspend it by unanimous consent.

Amendment to Bill to Amend Rules Not Effective When Bill Passed Only by Senate:

On October 11, 1978, the Senate adopted an amendment to the Export-Import Banking Act to extend the life of the Select Committee on Indian Affairs, with a proviso that it become effective immediately upon adoption regardless of what happened to the bill to which it was offered. There was no ruling on this by the Chair. The Senator from Massachusetts (Mr. Brooke) also called up an amendment to the Humphrey-Hawkins bill (H.R. 50), to amend Senate rules involving Senate employment to prohibit discrimination thereon, etc., with the idea it too would become effective immediately upon adoption of the amendment

even if the bill was killed or died in conference. The majority leader (Mr. Byrd) took issue with this procedure. The Chair stated he had not ruled positively on this question but had merely made an observation. The majority leader (Mr. Byrd) assured the Senate if it had been a ruling he wanted to contest it. To avoid such a precedent being established, Mr. Brooke later withdrew his amendment completely, and the Senate adopted resolutions to continue the Select Committee on Indian Affairs and to finance it so that there would be no question but that the life of the Indian Affairs Committee had been properly extended.¹

Amendment to Resolution Amending Rules:

Germane amendments to a resolution amending the rules would be in order when the resolution is pending and are not subject to one day's notice, "if they deal with the same rule"; but a non-germane amendment would not be in order when it goes beyond the scope of the resolution,² except on one day's notice.³

Changes in, Power To Make:

Each House of Congress has a constitutional right to make its own rules.⁴

The standing rules of the Senate may be amended by a majority vote,⁵ but a two-thirds vote of the Senators present, a quorum being present, is required for their suspension,⁶ including motions for the purpose of proposing legislative amendments to general appropriation bills.⁷

A rule of the Senate set forth in the Legislative Reorganization Act of 1946 may be amended by a Senate resolu-

¹ Oct. 11, 1978, 95-2, *Record*, pp. 35554-98.

² Mar. 28, 1979, 96-1, *Record*, pp. 6522-23; Mar. 28, 1979, 96-1, *Record*, pp. 6532-34.

³ Mar. 28, 1979, 96-1, *Record*, pp. 6522-23.

⁴ Art. I, sec. 5; see also Dec. 20, 1892, 52-2, *Record*, p. 228.

⁵ Apr. 18, 1921, 67-1, *Journal*, p. 45, *Record*, p. 404; see Feb. 2, 1966, 89-2, *Record*, pp. 1935-36.

⁶ Jan. 31, 1929, 70-2, *Record*, p. 2516; Aug. 29, 1940, 76-3, *Record*, p. 11216; Apr. 29, 1941, 77-1, *Record*, p. 3398; July 24, 1947, 80-1, *Record*, pp. 9973-74; Mar. 15, 1945, 78-1, *Record*, pp. 2245, 2249; Mar. 24, 1944, 78-2, *Record*, pp. 3074-75; Dec. 8, 1943, 78-1, *Record*, pp. 10411, 10432; Apr. 7, 1942, 77-2, *Record*, pp. 3386-87; June 12, 1941, 77-1, *Record*, p. 5085; Aug. 4, 1939, 76-1, *Record*, pp. 11016, 11023, 11028; Apr. 5, 1938, 75-3, *Journal*, p. 277, *Record*, pp. 4727, 4735; Mar. 7, 1938, 75-3, *Journal*, p. 203, *Record*, p. 2905; Jan. 11, 12 and 13, 1915, 63-3, *Journal*, pp. 52-53, *Record*, pp. 1357, 1382, 1395, 1503-13; see also Apr. 28, 1949, 81-1, *Record*, p. 5233; June 28 and 29, 1916, 64-1, *Record*, pp. 10136-45, 10204-15.

⁷ Feb. 18, 1921, 66-3, *Journal*, pp. 120-121, *Record*, pp. 3366, 3372; Aug. 24, 1935, 74-1, *Record*, pp. 14451, 14465; Apr. 18, 1952, 82-2, *Record*, p. 4094.

tion,⁸ and nearly all of the provisions of that Act applicable only to Senate rules were repealed by Senate Resolution 274 of the 96th Congress; those applicable provisions were at the same time made parts of the standing rules of the Senate upon adoption of that resolution.

In 1931 a provision of a rule no longer applicable was amended by unanimous consent.⁹

Consideration of Rules Change:

Under Rule VIII, paragraph 2, a motion to take up a resolution to change Senate rules would be debatable even during the Morning Hour.

Continuity of Senate Rules:

Since 1789, the Senate has readopted or made only seven general revisions of its rules, as follows: March 26, 1806; January 3, 1820; February 14, 1828; March 25, 1868; January 17, 1877; January 11, 1884; and November 14, 1979.

In 1917, a question was raised as to the continuation of the rules of the Senate from one Congress to another, but no action was taken thereon.¹⁰

The Senate as a continuing body has been questioned on various occasions in recent years with a view to getting certain rule changes at the very opening of a new Congress, and thereby to modify certain of its rules. Since 1949, with a few exceptions and until the cloture rule (XXII) was amended in 1975,¹¹ to authorize the invoking of cloture by a three-fifths Constitutional majority, except for rules changes which require a two-thirds majority of the Senators present and voting, a quorum being present, certain Senators have made a continuous effort, at the beginning of each new Congress to establish the right of the Senate to change its rules at the very beginning of each new Congress, particularly to change rule XXII. The objective being to amend the rule by reducing the number of votes required to invoke cloture, making it easier to bring the debate to a close and to vote on the pending measure.

⁸ See Feb. 17, 1949, 81-1, *Record*, pp. 1327-28.

⁹ Jan 15, 1931, 71-3, *Record*, p. 2195.

¹⁰ Mar. 7, 1917, 65-1, *Record*, pp. 9-19.

¹¹ See S. Res. 4, adopted on Mar. 7, 1975, 94-1, *Journal*, p. 170.

In 1949, at the beginning of the Eighty-first Congress, a motion to take up Senate Resolution 15,¹² to amend the cloture rule, was debated from February 28, 1949, until March 10, 1949, when a motion to invoke cloture was filed, and a point of order was raised that the rule didn't apply to motions to take up; the Vice President overruled the point of order; an appeal was taken; a motion to table the appeal lost; and the Senate overruled the decision of the Chair. On March 15, after an informal compromise, the motion to take up was agreed to, and the rule was then amended to make it applicable to "any measure, motion, or other matter pending before the Senate, or the unfinished business," to require a two-thirds vote of Senators duly chosen and sworn, and that motions to consider proposed rules changes would always be debatable.¹³

No attempt to change rule XXII was made at the beginning of the Eighty-second Congress.

In the Eighty-third Congress on January 3, 1953, a motion was made "that in accordance with article 1, section 5 of the Constitution which declares that '* * * Each House may determine the rules of its proceedings. * * *,' the Senate take up for immediate consideration the adoption of rules for the Senate of the Eighty-third Congress."¹⁴ After debate of the motion for two days, on January 7, a motion to table was made and agreed to by a vote of 70 yeas to 21 nays.

In 1955, at the beginning of the Eighty-fourth Congress, no challenge was made as to the continuity of the Senate, nor was any fight made to amend rule XXII.

At the beginning of the Eighty-fifth Congress on January 3, 1957, the same motion made in the Eighty-third Congress was renewed "to take up for immediate consideration the adoption of rules for the Senate for the Eighty-fifth Congress." Pursuant to a unanimous consent agreement reached on the opening day the matter was discussed for the remainder of that day and on January 4, after debate, a motion to table the motion to consider the rules change was agreed to by a vote of 55 to 38.¹⁵

In 1959, at the beginning of the Eighty-sixth Congress, the fight to change the rules at the opening of a Congress continued. Senate Resolution 5 (to amend rule XXII, to

¹² S. Res. 15, Feb. 28-Mar. 10, 1949, 81-1, *Journal*, pp. 132-52.

¹³ Mar. 17, 1949, 81-1, *Journal*, p. 173.

¹⁴ Jan. 3, 1953, 83-1, *Journal*, p. 6.

¹⁵ Jan. 4, 1957, 85-1, *Journal*, pp. 7-8.

invoke cloture by “two-thirds of the Senators present and voting,” and make cloture applicable to rules changes as well as adding to rule XXXII a proviso that the rules of the Senate would continue from one Congress to the next unless they are changed as provided in the standing rules)¹⁶ was submitted but put over until the next day. On the following day a substitute amendment for the resolution was offered, providing that the rules of the Senate of the preceding Congress should be the same as the pending rules, other than rule XXII, and that this rule should be taken up for consideration as the next order of business. The substitute amendment was tabled on January 9, by a vote of 60 yeas to 36 nays.¹⁷ After various other amendments offered to the resolution were defeated, the resolution was adopted on January 12, by a vote of 72 yeas to 22 nays.¹⁸

After the adoption of Senate Resolution 5 in 1959, various other attempts were made at the opening of new Congresses to establish the right of the Senate to readopt its rules at the beginning of each Congress by a majority vote, particularly to amend rule XXII, but all such attempts were without success until 1975, when the cloture rule was amended to allow three-fifths of the Senators “duly chosen and sworn” to invoke cloture, except proposals to amend the rules which required a two-thirds vote of the Senators present and voting, a quorum being present.¹⁹

¹⁶ Jan. 7, 1959, 86-1, *Journal*, p. 5.

¹⁷ Jan. 9, 1959, 86-1, *Journal*, p. 7.

¹⁸ Jan. 12, 1959, 86-1, *Journal*, p. 37.

¹⁹ In 1961, at the opening of the 87th Congress the resolution (S. Res. 4) to change the rules was referred without action. (Jan. 11, 1961, 87-1, *Journal*, p. 40).

In the first session of the 88th Congress, Jan. 9, 1963, a resolution (S. Res. 9) was submitted for consideration and effort was made to put the question without further debate but the motion was tabled and the whole issue was left unacted on. (See proceedings for Jan. 15-Feb. 7, 1963, 88-1, *Journal*, pp. 38-120).

At the opening of the 89th Congress, Jan. 6, 1965, a resolution (S. Res. 6) was submitted for consideration. The resolution was referred with instructions that it be reported back by Mar. 9, 1965 (See Jan. 8, 1963, 89-1, *Journal*, p. 46); the resolution was reported but never considered.

On Jan. 10, 1967, at the opening of the 90th Congress, resolutions (S. Res. 6 and 7) were submitted and ordered to lie over under the rule; were laid down Jan. 10, and a motion was made for their immediate consideration; a point of order was made against the motion but a motion to table the point of order lost, and the point of order was sustained. The resolutions were debated further but not agreed to, the point of order having been sustained. (See Jan. 18-24, 1967, 90-1, *Journal*, pp. 44-69).

On Jan. 3, 1969, at the opening of the 91st Congress another attempt to change the rules was made. S. Res. 11 was submitted for consideration and on an attempt to invoke cloture the vote was 51 yeas to 47 nays, but the Chair ruled that cloture had been invoked. An appeal from the ruling of the Chair was taken and the Chair was reversed.

Continued

In the 1975 fight a resolution was submitted to make changes in rule XXII, and when an attempt was made to proceed immediately to the consideration of the changes a point of order was made against the motion by the majority leader. A motion to table the point of order was agreed to, leaving the question to act on the rules changes as the pending question but to avoid such a precedent, a motion was later made to reconsider the vote by which the point of order had been tabled and was agreed to, and then a vote to table the point of order was defeated; the point of order was then agreed to by a majority vote. An unofficial agreement having been reached, a cloture motion was filed on a motion to consider Senate Resolution 4 and was adopted by 73 yeas to 21 nays. The Senate then voted to consider the resolution. A substitute for the resolution was then agreed to and cloture was filed on the resolution which was adopted by 73 yeas to 21 nays; the resolution was then adopted.²⁰

After the cloture rule was amended as set forth above, there were several experiences with post cloture filibusters; then on February 22, 1979, the cloture rule was rewritten with a one-hundred hour limitation placed on the overall consideration of the measure or matter after cloture had been invoked. This overall limit applied to all aspects of consideration of the measure on which cloture had been invoked, including roll call votes, quorum calls, and any time consumed by the reading of amendments. The one hundred hour limitation was reduced to thirty hours pursuant to S. Res. 28 (99th Cong.) adopted on February 27, 1986, and ratified by a vote of the Senate on July 29.

On November 14, 1979, the Standing Rules of the Senate were recodified, without substantive changes in the existing Senate procedures by a vote of 97 yeas to 0

The attempt to change the rules failed. (See proceedings for Jan. 16-28, 1969, 91-1, *Journal*, pp. 50-103).

On Jan. 21, 1971, the opening of the 92d Congress, another resolution (S. Res. 9) was submitted, went over under the rule, and after debate on the following day went to the calendar. Consideration of the resolution continued for several days and cloture was attempted 4 times, but failed in each instance, and the resolution was indefinitely postponed on Mar. 10, 1971. (See proceedings of Jan. 26-Mar. 10, 1971, 92-1, *Journal*, pp. 24-162).

On Jan. 3, 1973, the opening of the 93d Congress, no action was taken to change the rules.

In the 94th Congress (1975) the Senate acted on a resolution and made changes in the cloture rule.

²⁰ See proceedings for Feb. 20-Mar. 7, 1975, 94-1, *Journal*, pp. 119-70.

nays.²¹ Then on March 25, 1980, the codification of 1979 was readopted in order to consolidate and renumber certain standing rules of the Senate.²²

The rules of the Senate continue from one Congress to another, “unless they are changed as provided in these rules.”²³

Day’s Notice for Amendments to Rules:

See below “Notice for Proposed Change in Rules,” pp. 1225–1227.

One day’s notice in writing is required before an amendment to the Standing Rules of the Senate may be offered, and the day contemplated is a calendar day, not 24 hours.²⁴

Day’s Notice for Suspension of Rules:

See “Day’s Notice for Suspension of Rules—Definition of,” pp. 713–714.

Definition of:

An amendment to a bill which would establish expedited procedures for the consideration of certain matters is not an amendment to the Standing Rules and therefore none of the special procedures set out for the consideration of such amendments to the Standing Rules apply.²⁵

Expedited Procedures:

See above “Definition of,” p. 1224.

House Rules:

Rules adopted by the House of Representatives do not “per se” in any way change the methods, procedures, and responsibilities of the Senate in its procedures.²⁶

Motions Not in Order:

See under “Motions,” p. 935.

²¹ S. Res. 274, 96th Congress; Nov. 14, 1979, 96-1, *Journal*, pp. 703–04.

²² S. Res. 389, 96th Congress.

²³ *See* Feb. 2, 1966, 89-2, *Record*, pp. 1935–36; *see also* Rule XXXII.

²⁴ Feb. 3, 1986, 99-2, *Record*, p. 1380.

²⁵ *See* July 25, 1985, 99-1, *Record*, p. 2448.

²⁶ Sept. 28, 1979, 96-1, *Record*, pp. 26682–83.

Notice for Proposed Change in Rules:

See also "Day," pp. 712-715, for definition of day.

A day's notice, as required by the rules, must be given of a proposed amendment to the rules of the Senate,²⁷ and it must be in writing.²⁸

Where a Senator in debate yields for a question, a notice in writing of a proposed amendment to the rules presented by the Senator to whom he yielded is not in order upon objection.²⁹

In the following two cases, it was held that the provision of Rule V had been complied with, as to a day's notice in writing before a motion would be in order "to suspend, modify, or amend, any rule, or any part thereof * * *":

(1) Where a resolution is submitted by unanimous consent to amend the rules and had been previously referred for 1 day to the Committee on Rules;³⁰ and (2) where the Senate on motion on February 4, 1896, proceeded to consider a Senate resolution to amend Rule XVI, which had been submitted almost 2 months prior thereto.³¹

Where a Senator gave notice in writing of his intention to move to amend a standing rule, and at the same time submitted a resolution for that purpose, which was referred to the Committee on Rules (now Committee on Rules and Administration), it was decided by the Senate that he could after 1 day make a motion in accordance with his notice, notwithstanding the original resolution had not been reported from the Committee.³²

The reading by a Senator of a notice, pursuant to Rule V (formerly Rule XL), of a proposed amendment to the rules of the Senate was held to be in compliance with the requirements of the rule as to giving notice.³³

A resolution providing for a limitation of debate during the remainder of a session and for that purpose modifying certain enumerated rules, submitted pursuant to a notice in writing, against which a point of order was made that two other rules not mentioned were materially modified and that the notice was not sufficiently specific, was held

²⁷ May 14, 1913, 63-1, *Record*, p. 1521.

²⁸ *Ibid.*; May 20, 1919, 66-1, *Record*, p. 63.

²⁹ Feb. 8, 1915, 63-3, *Journal*, p. 99, *Record*, p. 3375.

³⁰ May 14, 1930, 71-2, *Journal*, p. 352, *Record*, pp. 8923-24.

³¹ Feb. 4, 1896, 54-1, *Journal*, p. 111, *Record*, pp. 1277-85.

³² Apr. 12, 13, and 15, 1921, 67-1, *Journal*, pp. 23, 35, 39, *Record*, pp. 133, 203-212, 316-320.

³³ Feb. 8 and 11, 1915, 63-3, *Record*, pp. 3339-40, 3541-43.

to be in order on the ground that the purpose and spirit of the rule were stated in the resolution.³⁴

A resolution that it was expedient for the Senate to consider without delay a House bill was held to be merely an expression of opinion of the Senate and did not operate as a change of any rule.³⁵

The following resolutions have been held to be proposed changes in the rules and would not be in order unless a day's notice was given of the specific changes proposed, in compliance with the provisions of Rule V (formerly Rule XL) [that is the rule and parts thereof proposed to be changed]:

(1) A resolution providing for the consideration at its next session of favorably reported House bills on the Calendar;³⁶

(2) One limiting debate for the remainder of a session;³⁷

(3) One providing for the consideration for the remainder of a session during the Morning Hour of Senate and House bills alternately;³⁸

(4) One providing for the consideration of executive nominations in open session, contrary to paragraph 2, of Rule XXXVI (now Rule XXIX);³⁹ and

(5) One providing for the daily consideration of favorably reported House bills on the Calendar.⁴⁰

Pending a resolution in closed executive session declaring a policy of opposition on the part of the Senate to removals by the President of officers for alleged misconduct in cases where he refused to transmit papers relating thereto demanded by the Senate, an amendment providing for the consideration of such cases in open session was, on appeal, decided by the Senate to constitute a change of the rules, notice in respect to which had not been given as required by Rule XL (now Rule V).⁴¹

A resolution favoring open executive sessions except as to treaties, and directing the Committee on Rules to pre-

³⁴ Dec. 23 and 29, 1890, 51-2, *Journal*, pp. 46, 51; Jan. 20 and 22, 1891, 51-2, *Journal*, pp. 87, 90, *Record*, pp. 1565, 1667.

³⁵ Feb. 19, 1887, 49-9, *Record*, p. 1943.

³⁶ Aug. 2, 1886, 49-1, *Journal*, p. 1224, *Record*, p. 7846.

³⁷ Feb. 22, 1887, 49-2, *Journal*, p. 400, *Record*, p. 2058.

³⁸ Feb. 23, 1887, 49-2, *Journal*, p. 410, *Record*, p. 2103.

³⁹ July 9, 1886, 49-1, *Journal*, p. 1075, *Record*, p. 6676; Rule XXXVIII (now Rule XXXI) was amended in 1929 to require "all business in the Senate shall be transacted in open session" unless the Senate under Rule XXI goes into closed session.

⁴⁰ Feb. 13, 1885, 48-2, *Record*, p. 1617.

⁴¹ Mar. 26, 1886, 49-1, *Journal*, pp. 480-81, *Record*, pp. 2784-2809, 2810-28.

pare necessary amendments to the rules to carry out such purpose and present the same to the Senate for action thereon, is not in the nature of an amendment to the rules and does not come within the rule providing the procedure for amending the rules.⁴²

An order fixing a time for a vote on the final passage of a bill, proposed as an amendment to the standing rules of the Senate, was challenged as not being in fact such an amendment; the Senate, although debating it on several days as unfinished business, displaced it as such without taking any action thereon.⁴³

Reference of Resolutions To Change Rules:

See also "References to Committees," pp. 1150-1169.

A resolution to amend the rules, according to a ruling by the President pro tempore in 1913, can be referred on the day of its introduction only by unanimous consent,⁴⁴ but this is no longer the practice of the Senate.

Rules Change:

See also "Changes in, Power To Make," pp. 1219-1220.

The Senate has the sole authority to make its rules.⁴⁵

Under Rule VIII, paragraph 2, a motion to take up a resolution or motion to change Senate rules would be debatable even during the Morning Hour.

Submittal of Resolutions for Rule Changes:

See "Submittal of Resolutions," pp. 1210-1211.

Suspension of Rules:

See "Suspension of Rules," pp. 1266-1272.

Vote To Change Rules:

See "Changes in, Power To Make," pp. 1219-1220.

⁴² Apr. 6 and 7, 1914, 63-2, *Record*, pp. 6259, 6327.

⁴³ Feb. 11 and 12, 1915, 63-3, *Journal*, pp. 102, 106, *Record*, pp. 3543, 3627.

⁴⁴ Apr. 12, 1913, 63-1, *Record*, pp. 164, 165.

⁴⁵ *See* the proceedings of the Senate for Jan. 3, 1969 through Jan. 29, 1969, 91-1.

SEAL OF THE SENATE

See "Secretary of the Senate," pp. 1229-1233.

SECOND READING

See "Reading of Bill," pp. 240-248.

SECRECY, INJUNCTION OF

See "Treaties," pp. 1294-1310.

SECRET SESSION

See "Closed Doors," pp. 275-281.