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Availability of Legislative Measures in the House of Representatives (The “Three-Day Rule”)

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Summary

House rules govern the length of time legislative measures must be available to Members before being considered on the floor. For measures reported from committee, the committee report must have been available for three calendar days, excluding weekends and legal holidays unless the House is in session on such days. Conference reports must also have been available for three calendar days, and special rules for considering measures for one legislative day. Bills and joint resolutions that have not been reported by committee, and therefore are not accompanied by a written report, also may not be considered on the House floor unless the measure has been available for at least three calendar days, again excluding weekends and legal holidays unless the House is in session on such days. Committee reports, unreported bills and joint resolutions, conference reports and joint explanatory statements are considered available under these rules if they are publicly available in electronic form on a website designated by the Committee on House Administration for this purpose, <http://docs.house.gov>.

The House has several means by which it can choose to waive these availability requirements and call up, debate, and vote on a measure in a single calendar day, even if the text of the measure was not made available prior to consideration. These include (1) adopting a special rule that waives the three-day requirement; (2) adopting a special rule that waives the one-day requirement for another special rule; and (3) convening a second legislative day on the same calendar day. Waiving availability requirements allows the House to act quickly when necessary, such as near the end of a session. Sometimes Members oppose waiving availability requirements.

The House typically considers measures under procedures that prevent Members from objecting to the consideration of a measure that has not met the availability requirements in the Rules of the House. The majority party leadership, however, has established “legislative protocols” communicating its intent to make publicly available for three days the text of measures to be considered under suspension of the rules, except in circumstances where the majority leader determines that “significant harm will be caused by the delay in the consideration of the measure.” In addition, under these announced leadership policies, except in “the most exigent” circumstances, the Rules Committee will not call up a special rule that treats a new, major amendment as having been adopted until the third calendar day that the amendment has been available. The legislative protocols are not enforceable on the House floor through points of order; they are guidelines for majority party leadership scheduling decisions. They are available at <http://www.majorityleader.gov/protocols/>.

Contents

Availability Requirements in House Rules.....	1
Reported Bills and Resolutions (Rule XIII, Clause 4(a)).....	1
Unreported Bills and Joint Resolutions (Rule XXI, Clause 11).....	1
Conference Reports (Rule XXII, Clause 8(a)).....	2
Special Rules (Rule XIII, Clause 6(a)).....	2
Waiving the Availability Requirements in the Rules.....	3
Waiving Availability Requirements by Special Rule.....	3
Creating or Extending a Legislative Day.....	4
Special Rules Near the End of a Session.....	4
Majority Party Leadership Protocols.....	5

Contacts

Author Contact Information.....	7
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Availability Requirements in House Rules

The rules of the House of Representatives generally grant Members an opportunity to review legislative measures by governing the length of time the measures must be made available before being considered on the floor. Different House rules establish availability requirements for reported bills and resolutions, unreported bills and joint resolutions, conference committee reports, and special rules (resolutions reported by the Rules Committee intended to regulate floor consideration of a measure named in the resolution).

Under House rules, committee reports and unreported bills and joint resolutions are considered available under these rules if they are “publicly available in electronic form at a location designated by the Committee on House Administration.”¹ Conference committee reports and accompanying joint explanatory statements are also considered available if they are in electronic form at such a location.² It is not a requirement under the rule that the measures be available in the designated location; instead, the House rule is meant to provide an additional means through which Members, congressional staff, and the general public can access these documents.³

Reported Bills and Resolutions (Rule XIII, Clause 4(a))

Measures and other matters reported by committees may not be considered on the House floor until the committee report on the matter has been available for at least three calendar days, excluding weekends and legal holidays unless the House is in session on such days.⁴ The House rule exempts several kinds of measures specified in the rule, including resolutions reported by the Rules Committee.⁵

Unreported Bills and Joint Resolutions (Rule XXI, Clause 11)

Bills and joint resolutions that have not been reported by committee, and therefore are not accompanied by a written report, also may not be considered on the House floor unless the measure has been available for at least three calendar days, excluding weekends and legal holidays unless the House is in session on such days. If a measure has not been reported by a committee, it is generally not eligible for floor consideration unless it is called up under a procedure that waives the requirement that it be reported. Such procedures are discussed below in the section on waiving the availability requirements.

¹ Clause 3 of Rule XXIX. The designated website, “Bills to Be Considered on the House Floor,” is available at <http://docs.house.gov/>.

² Clause 8(a)(1)(A) of Rule XXII.

³ According to the section-by-section analysis of the rules changes provided by the Rules Committee when it was proposed in the 112th Congress, “the provision is intended to place electronic distribution on par with traditional printing, rather than entirely replace it” (“Section-by-Section Analysis of the 112th Congress House Rules Package” *Congressional Record*, January 5, 2011, daily edition, p. H13).

⁴ In addition, according to Section 305(a)(1) of the Congressional Budget Act, a budget resolution is subject to a three-day layover requirement.

⁵ The “three-day rule” also does not apply to (1) a resolution to fund committee operations reported by the Committee on House Administration; (2) a resolution presenting a question of the privileges of the House reported by any committee; (3) a measure declaring war or a national emergency; or (4) a resolution of disapproval.

Conference Reports (Rule XXII, Clause 8(a))

The House rule requires that before a conference report can be considered, its text and its accompanying joint explanatory statement must be available in the *Congressional Record* for three calendar days, excluding weekends and legal holidays (unless the House is in session on such days). Alternatively, the conference report can be considered if it has been made publicly available in electronic form at a location designated by the Committee on House Administration (currently <http://docs.house.gov/>). In addition, copies of a conference report and the joint explanatory statement must be available for at least two hours prior to its consideration.

According to the rule, this three-day availability requirement does not apply during the last six days of a session. In contemporary practice, however, it is difficult to implement this exception to the rule. Adjournment resolutions usually are not approved until very shortly before the adjournment takes place. This practice usually makes it impossible to know when the “last six days” of a session begin. Absent a resolution setting a future date for adjournment, the three-day rule applies even as the House nears the end of a session. The three-day availability requirement for conference reports would cease to apply only in the last six calendar days before the constitutional end of a session on January 3.⁶

Special Rules (Rule XIII, Clause 6(a))

The House frequently operates under special rules, or resolutions reported from the Rules Committee, *which can waive any or all of the above rules*. Special rules are required to lie over for one legislative day, which means the special rule cannot be reported and considered on the same legislative day. A legislative day is not necessarily a calendar day. A legislative day begins the first time the House meets after an adjournment and ends when the House adjourns again. Because the House typically adjourns at the end of a calendar day, legislative and calendar days usually coincide.

Rule XIII also provides several exceptions to the layover requirement for special rules. First, a special rule may be considered the same day it is presented if it proposes only to waive the rules mandating that committee reports and conference reports be available for three days. If the rule, however, in addition to waiving the availability requirement, also sets the terms for the consideration of the matter, perhaps by waiving points of order, then the rule is required to lie over for one legislative day.

Second, a special rule may be considered the same day it is presented to the House in the last three days of a session. In modern practice, however, as mentioned above, the House rarely agrees to an adjournment date far in advance, usually making it impossible to know when “the last three days” begin.

Third, the one-day layover requirement for special rules can be waived if two-thirds of the Members voting agree to the waiver (a quorum being present). In addition, as discussed below, the Rules Committee may report a special rule that waives the one-day layover requirement for subsequent special rules.

⁶ Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham Jr., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington: GPO, 2017), p. 366.

Waiving the Availability Requirements in the Rules

The House has several means for waiving its rules when it wishes to act expeditiously. For example, the House may set aside any of its availability requirements by unanimous consent. It may also call up and agree to a bill or conference report that has not met the availability requirements by a two-thirds vote to suspend the rules.⁷ As previously mentioned, according to Rule XIII, clause 6(a)(1), the one-day layover requirement for a special rule can be waived by two-thirds of the Members voting.

The House can also waive the availability requirements by a simple majority. If a majority of the House desires to do so, the House can vote on a measure the same calendar day that the text was made available to Members. The House usually does this by agreeing to two special rules, as explained below. It may also achieve the same result by convening for two legislative days on the same calendar day in the manner also described below.

Waiving Availability Requirements by Special Rule

The Rules Committee may report a special rule that waives the three-day availability requirement for bills, resolutions, or conference reports. A rule *only* waiving the availability requirement can be presented and called up on the same day. Special rules, however, often set the terms for considering a measure as well. A special rule for the consideration of a measure might waive the three-day availability requirement but also structure the amending process. Such a rule would be required to lie over for one legislative day (unless this requirement was waived by a two-thirds vote). Similarly, a rule for the consideration of a conference report often waives points of order against the conference report and against its consideration. Under current House rules, that special rule is also required to lie over for one legislative day, unless the requirement is waived by a two-thirds vote. In short, special rules *only* waiving the three-day availability requirement are not required to lie over for one legislative day.

To waive the one-day layover requirement of Rule XIII, clause 6(a) for a special rule, the Rules Committee may report a special rule that waives this requirement. The rule providing this waiver is subject to the same one-day layover requirement. If such a special rule is adopted, the House can then consider and adopt a special rule providing for the consideration of a measure later on the same legislative day. The special rule for the consideration of the measure can waive the three-day availability requirement for the measure. In this way, the House of Representatives, by majority vote, has the potential to call up, debate, and pass a measure in a single day, even if the measure has not been made available prior to consideration. In order to achieve this result, however, the Rules Committee must have reported the additional special rule on the previous legislative day.

In summary, a simple majority of the House can call up, debate, and vote on a measure in a single calendar day, regardless of how long the text has been available, by taking the following steps:

- *First, the House agrees to a special rule waiving the one-day layover requirement for any special rule for the consideration of a specified matter. (This rule is required to lie over for one legislative day.)*

⁷ For more information on suspension of the rules, see CRS Report 98-314, *Suspension of the Rules in the House: Principal Features*, by (name redacted) .

- *Second, the House agrees to a separate special rule setting the terms of consideration of the measure and waiving any availability requirements for the measure itself.* (This rule need not lie over for one legislative day. The first special rule waived the one-day layover requirement for this special rule.)
- *Third, the House calls up, debates, and votes on the measure.*

Creating or Extending a Legislative Day

Although the House rarely chooses to do so, it could agree to call up and consider a measure in a single calendar day by convening two legislative days in a single calendar day.⁸ It would do this by agreeing to a motion to adjourn for a brief period at some point during its session. Agreement to this motion would terminate the legislative day, and when the House returned from its brief adjournment pursuant to this motion, a new legislative day would begin.

If the Rules Committee presents a special rule before the House adjourns, the rule can be considered on the next legislative day, regardless of how much time has elapsed. In other words, if a special rule were reported, and the House adjourned and then shortly thereafter reconvened, the special rule would have been available for one legislative day, meeting the layover requirement of the standing rule. The House could then consider the special rule that, among other things, could waive the three-day availability requirement for a resolution, bill, or conference report.⁹

From time to time, the House has also been known to recess after legislative business, but not adjourn, in order to give the Rules Committee time to complete and report a special rule. The rule could be reported very late or even early in the morning of the next calendar day. Regardless of whether or not it is the next calendar day when the rule is reported, if the House adjourns after it is reported, when it reconvenes it will be a new legislative day, and the layover requirement will be considered met.

Special Rules Near the End of a Session

In the contemporary House, it is not uncommon for the Rules Committee to report several special rules at the end of a session that waive the availability requirements for subsequent special rules for the consideration of certain specified measures. In the past, the House has also agreed to resolutions reported by the Rules Committee near the end of a session that waived availability requirements in general.

Special rules that waive availability requirements are sometimes referred to as “same day rules.” They are also sometimes referred to, particularly by their opponents, as “martial law” rules. The term has been used by Members of the House for at least 15 years, but it has not been applied consistently to any one type of special rule. It has been used, for example, to describe both special

⁸ Johnson, Sullivan, and Wickham, *House Practice*, p. 890.

⁹ For example, in the 114th Congress, a rule, H.Res. 797, for the consideration of a conference report accompanying the Military Construction, Veterans Affairs, and Related Appropriations Act of 2017, was presented and considered on *different legislative days* but the *same calendar day*. The Rules Committee presented the special rule, H.Res. 797, for the consideration of the conference report, at 1:23 a.m. on the calendar day of June 23, 2016, and the legislative day of June 22. The House had not adjourned on June 22. The House adjourned at 1:34 a.m. on legislative day June 22 and met again on legislative and calendar day June 23 at 2:30 a.m. The House considered H.Res. 797 at 2:33 a.m. on June 23. (*Congressional Record*, daily edition, vol. 162 (June 22, 2016), p. 4126 and (June 23, 2016), pp. H4173-H4174.) See also, in the 107th Congress, a rule, H.Res. 600, for the consideration of a bill to establish the Department of Homeland Security (*Congressional Record*, daily edition, vol. 148 (November 13, 2002), pp. H8543, H8590-H8594).

rules that waive the one-day layover requirement for subsequent special rules¹⁰ and to describe broad special rules that trigger some provisions of House rules and waive others for the remaining duration of a session.¹¹

Supporters of end-of-session resolutions that waive availability requirements sometimes argue that these special rules are meant to achieve the same end as the standing rules that make certain provisions of House rules inapplicable during the final days of the session. As mentioned above, the three-day availability requirement for conference reports does not apply in the last six days of a session. The one-day layover requirement for special rules does not apply in the last three days of a session. In recent years, Congress has not agreed to a concurrent resolution setting an adjournment date until just before adjournment takes place. As a result, these standing rules are not triggered in the contemporary House. By agreeing to a same day rule near the end of the session, the House can achieve the same end as the existing, but technically inapplicable, standing rules that waive availability requirements at the end of a session. Opponents of these end-of-session resolutions sometimes argue that all Representatives should be guaranteed some time to examine legislative proposals, regardless of when they are presented during the course of a session.

Majority Party Leadership Protocols

The various House rules requiring measures to be available prior to their consideration can be waived. In fact, in practice, a Member usually cannot raise a point of order against considering a measure, regardless of whether or not it had been made available in advance. This is because the House takes up measures under procedures that suspend all standing rules that would interfere with the expedited consideration of the legislation (suspension of the rules) or under the terms of a special rule that typically waives all points of order that could be raised against consideration of the measure.¹²

Since the 112th Congress (2011-2012), however, the majority party leadership has announced its intention to make the text of measures to be considered on the floor publicly available prior to consideration. Legislative protocols posted on the website of the Committee on Rules “are intended to guide the Majority Leadership in the scheduling and consideration of legislation on the House floor.”¹³ The protocols cannot be enforced on the House floor, meaning that no Member can raise a point of order against the consideration of a measure for failing to meet the requirements of the protocol.

The two protocols relating to the availability of measures are:

Availability of Measures Considered Under Suspension of the Rules

Purpose

¹⁰ See, for example, the *Congressional Record*, daily edition, February 4, 1993, p. H552; May 25, 1994, p. H4020; July 26, 2002, p. H5957; May 22, 2003, p. H4559; December 7, 2004, p. H10993; December 10, 2008, p. H10871; December 9, 2009, p. H14481; July 21, 2010, p. H5889; August 1, 2014, p. H7192.

¹¹ See, for example, the *Congressional Record*, daily edition, November 22, 1991, p. H10945; October 2, 1992, p. H10681; September 24, 1996, p. H10928; December 7, 2006, p. H8896; December 21, 2010, p. H8817. October 4, 2013, p. H6246.

¹² CRS Report R44734, *How Legislation Is Brought to the House Floor: A Snapshot of Parliamentary Practice in the 114th Congress (2015-2016)*, by (name redacted) .

¹³ Legislative protocols available at <http://www.majorityleader.gov/protocols/>.

This protocol is designed to ensure that the requirement that bills be publicly available for three days prior to their consideration applies to bills considered under suspension of the rules.

Protocol

Measures proposed to be considered through a motion to suspend the rules, shall be publicly available in an electronic format for three days prior to their consideration. For purposes of determining public availability, the measure must be available for three days in the substantive form in which it is proposed to be passed or adopted. At the time the House considers the motion to suspend the rules, only revisions that are purely technical or grammatical in nature are permitted to the text that was made publicly available in accordance with this protocol.

The Majority Leader may waive this protocol in limited, exigent circumstances where he determines that significant harm will be caused by the delay in the consideration of the measure. In such instances, the text of the proposed measure shall be made publicly available as soon as practicable.

Availability of Major Amendments Self-Executed by the Committee on Rules

Purpose

The Rules Committee sometimes makes certain amendments in order as original text or provides that amendments be considered as adopted (“self-executes”) as a bill comes to the floor. This protocol is intended to ensure that bills brought to the floor under a rule where new text is self-executed into a bill are consistent with the current three-day layover requirements for reported and unreported bills and joint resolutions, as well as conference reports.

Protocol

With respect to major amendments “self-executed” by the Committee on Rules, including amendments in the nature of a substitute or other amendments that substantially rewrite the text of a bill (other than a committee amendment in the nature of a substitute reported by a committee), the manager of the rule will not proceed to consideration until the third calendar day on which the text of any such amendment has been available. Waivers of this policy by the Rules Committee will be rare, and only in the most exigent of circumstances.

Amendments which are not considered “major amendments” for purposes of this policy include those amendments which are intended to correct technical or compliance issues (such as a CUT-GO/PAYGO or budget act violation) with a portion of a bill. Similarly, a simple amendment to strike a portion of a bill is not considered a major amendment.

Any amendment self-executed by the Rules Committee must be submitted to the Committee and must have a sponsor.

Measures to be considered under suspension of the rules are usually announced and their texts posted online by the start of the week (<http://docs.house.gov/floor/>). The text of measures to be considered under special rules, including any major amendments that are going to be considered as adopted, are usually available on the Rules Committee website two days before the rule is considered by the House (<http://rules.house.gov/>). In other words, it is a common pattern that the text is posted some time on day 1, the Rules Committee meets to consider a rule for that text

usually in the afternoon or evening of day 2, and the House considers the rule and the text it makes in order on day 3.

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