



BASIC » TRAINING

PARLIAMENTARY PROCESS,
FACTS, AND STRATEGIES

Rules Changes for the 112th Congress

On January 5, 2011, the House adopted H.Res. 5, the rules package for the 112th Congress. This package executed changes in the standing rules of the House, and put in place numerous standing orders for this Congress. The package addressed issues of transparency, budget enforcement, House operations, and other matters. When taken together with changes to the Republican Conference rules, the Speaker's announced policies and other changes to legislative operations announced by the Majority Leader and committees, the package represents one of the most fundamental shifts in the operations of the House in recent memory.

IMPROVEMENTS IN TRANSPARENCY FOR THE HOUSE AND COMMITTEES

One of the key improvements in the rules for the 112th Congress is a renewed emphasis on transparency in the consideration of legislation for both Members and the public. This commitment is manifested in the rules in a number of different ways:

Three day availability of bills. In past congresses, the House rules prohibited consideration of bills reported by a committee and conference reports on the floor until the third calendar day (except Saturdays, Sundays and Federal holidays, except when the House is in session) after the text of the bill or conference report was "available." (Clause 4 of rule XIII & clause 8 of rule XXII, respectively.) H.Res. 5 added a new provision (clause 11 of rule XXI) which applied this requirement to unreported measures, such as a bill which is considered pursuant to a rule without having been reported. The Majority leadership has indicated that they will generally not be waiving these rules (unlike past practice under majorities of both parties), and the Majority Leader has indicated that he

intends to hold bills considered under suspension to a similar standard. See figure 1 for an explanation of how to count the 3-day layover.

Three day notice for markups. Prior to the 112th Congress, the Rules of the House required 7-day notice for committee hearings, and established no minimum notice period for "meetings," which most commonly are markups. Various committees established their own standards, some requiring several days notice for meetings, while others had no minimum standard at all. The 112th Congress rules established a minimum 3 day notice period for meetings in order to provide Members and the public with sufficient opportunity to review the matters to be considered by the committee.

Similarly, committees are required to provide the text of the measure being marked-up at least 24 hours prior to the beginning of the meeting to allow Members time to draft amendments. The legislative history which accompanied H.Res. 5 clarified that this requirement

DAY 1

Measure becomes "available" —

- "Publicly available in electronic form"
- Printed

DAY 2

Measure "lays over"

DAY 3

Measure may be considered —

- Floor consideration
- Committee markup

Figure 1. How the 3-day layover operates for bills and conference reports

should apply to whatever the markup vehicle is, including a committee print or an amendment in the nature of a substitute.

Electronic availability. Most provisions in the House rules which toll consideration of a measure or matter begin counting the layover period from the point at which the measure becomes "available." The



traditional measure of availability has been when printed copies are delivered to the House by the Government Printing Office. New for the 112th Congress, clause 3 of rule XXIX provides that if a measure is “publicly available in electronic form,” it is considered to be “available” for purposes of the other rules.

The rules also direct the Committee on House Administration to establish standards for documents in electronic form, and to establish a single location to check for availability. Until that site is chosen, the majority website of the Committee on Rules is the place to check availability for matters for floor consideration, and the majority website for each committee is the location for matters slated for committee consideration.

Other transparency requirements for committees. The 112th Congress rules package also put in place transparency requirements for committees with respect to other items. Most notably:

- » Record votes in committee must be posted online within 48 hours;
- » The text of any amendments adopted by the committee must be posted within 48 hours;
- » Witness “Truth-in-Testimony” information regarding Federal grants & contracts must also be posted online;
- » Each committee must post its rules online; and
- » Committees must webcast and archive recordings of their hearings and meetings to the maximum extent practicable.

Committee oversight and activities reports. In an effort to improve oversight and measure results, the rules package requires committees to improve the information they provide the House. With respect to the committee oversight plans which must be provided to the Committee on Oversight and Government Reform during the first few months of the Congress, the rule now requires that Committees specifically examine Federal programs, particularly mandatory spending programs, that may be inefficient or duplicative and recommend their elimination.

The activities report, which previously had only been required to be filed at the end of each Congress, must now be completed

four times per Congress, twice each session. By increasing the frequency of these reports, committees will be more accountable to the House.

SPENDING AND BUDGET ENFORCEMENT

Given the fiscal situation facing the Nation, spending control was a major objective of the 112th rules package. In addition to the routine items included in the package to provide for interim budget enforcement pending House adoption of a budget resolution, H.Res. 5 also included several items intended to ease the ability to cut spending while making spending and revenue increases more difficult. In addition to the new CUTGO rule described on the next page, there were several other new budget changes:

Requiring votes on the debt limit. The rules package repealed the “Gephardt Rule,” (formerly rule XXVIII) which allowed passage of a debt limit increase in conjunction with consideration of a budget resolution without a separate vote on the debt limit measure.

Changing the treatment of transportation trust funds. Since the 105th Congress, clause 3 of rule XXI has protected the obligation limitations for the transportation trust fund against reduction in a bill, conference report, or through an amendment to a bill on the floor.

In order to ensure that Members could offer amendments to reduce those obligation limitations, as well as to protect the stream of revenue dedicated to the trust fund, clause 3 was modified this congress to only prohibit consideration of any general appropriation bill or joint resolution, or accompanying conference report, that provides spending authority from balances in the trust fund (other than those from transfers from the General Fund of the Treasury) or reduces or limits the accruing balances of that trust fund for anything other than activities authorized for the highway or mass transit programs.

Limitation on long-term spending. H.Res. 5 contained a standing order which mirrors an existing point-of-order enforced in the Senate against consideration of programs with spending that falls outside the traditional 5- and 10-year budget windows.



NEW RULES FOR THE 112TH YOU NEED TO KNOW

#1: CONSTITUTIONAL AUTHORITY STATEMENTS

The rule requires that a Member who introduces a bill or joint resolution also submit a “constitutional authority statement” accompanying the bill. This statement should cite the

provision(s) of the Constitution which provide the authority for enacting the measure with as much specificity as possible. If a Member does not submit the statement, the bill will be re-

turned unprocessed. For more information of compliance with the rule, see the “Important Policies” section of the Rules Committee web site.



This point of order prohibits consideration of a bill or joint resolution that has the effect of creating a net increase in mandatory spending of more than \$5 billion in any of the four 10-year periods following the regular 10-year budget window. The ultimate effect is to create a 50-year

scoring window to better measure the long-term effects of legislation.

OTHER CHANGES TO HOUSE OPERATIONS

H.Res. 5 also contained a number of minor changes to the operations of the House, including—

- » optional 2-minute voting during consideration of amendments in the committee of the whole;
- » restoration of term limits for the chairs of committees; and
- » elimination of voting by the delegates and resident commissioner in the committee of the whole.

CUTGO (“CUT-AS-YOU-GO”) FOR MANDATORY AND DISCRETIONARY SPENDING

One of the biggest changes in budget enforcement from the 110th and 111th congresses is the change in clause 10 of rule XXI, known previously as the PAYGO (“pay-as-you-go”) rule. That rule provided that any increase in mandatory spending be offset with either an equal decrease in mandatory spending or increase in revenue.

The 112th Congress adopted a new rule which excludes revenues from the calculation of the mandatory spending offset, meaning that increases in mandatory spending may only be offset with

equal or greater decreases in mandatory spending. Figures 2a and 2b show the difference between calculating PAYGO and CUTGO compliance.

Just as with the PAYGO rule in place during the 110th and 111th Congresses, the provision must be compliant with CUTGO in the current year, the budget year, and over the 5 and 10 year budget windows.

The Republican Conference also changed its its guidelines for bills considered under suspension of the rules to require that

new authorizations be “offset” by elimination or reduction of an existing program and increases in authorization levels be matched to a reduction in the authorization for another existing program. The Majority Leadership is also expected to issue guidance placing similar restrictions on authorizing bills considered pursuant to a rule or other method.

The goal of both the rule and the accompanying policies is to stop growth in the size and scope of the Federal government and prioritize spending cuts over revenue increases.

	Direct Spending	Revenues
Item 1.....	- \$1,000
Item 2.....	- \$6,000
Item 3.....	\$7,000
Totals.....	- \$7,000	\$7,000

Figure 2a. Under PAYGO, the increases in direct spending can be offset with an equal increase in revenue and both sides of the ledger may be used to determine whether spending balances.

	Direct Spending	Revenues
Item 1.....	- \$7,000
Item 2.....	\$7,000
Item 3.....	\$7,000
Totals.....	\$0	\$7,000

Figure 2b. Under CUTGO, the spending side of the ledger must balance, and revenues are not used in the computation.

#2: USE OF ELECTRONIC DEVICES ON THE FLOOR

In another major change, the House altered the language governing the use of electronics on the floor to give the Speaker more latitude to respond to changes in technology. Rather than the language previously contained in the rule which

prohibited the use of a “wireless telephone or personal computer” on the floor, the amended rule simply prohibits the use of a “mobile electronic device which impairs decorum.” Going forward, the Speaker will have the ability to adjust policies as need-

ed to account for technological changes while ensuring that the decorum of the House and its proceedings are not affected. For instance, the Speaker announced that tablet devices, like the iPad, may be used on the floor.

SPENDING REDUCTION AMENDMENTS IN GENERAL APPROPRIATIONS BILLS

H.Res. 5 also included a standing order intended to assist Members seeking to use the amendment process to reduce discretionary spending in general appropriations bills.

Under prior practice, if the House adopted an amendment to a general appropriations bill reducing the funds appropriated to a particular program, the amount of that reduction became “headroom” under the overall spending limit for the bill. The effect was to provide another member with the ability to offer an amendment increasing spending later in the bill, making it nearly

impossible to reduce the overall spending in a particular appropriations measure.

H.Res. 5 changes this effect by requiring that general appropriations bills contain a “spending reduction account” which will allow a Member offering an amendment to reduce the spending level in one part of the bill and increase the level allocated to the spending reduction account. It is not in order to consider an amendment which reduces the level in the spending reduction account.

Further, H.Res. 5 also prohibits consid-

eration of any amendment proposing to increase net budget authority in the bill, meaning that if spending is reduced in one part of the bill, another Member cannot offer an amendment to utilize the “headroom” created by the earlier adopted reduction.

While this provision does not change the actual budget allocations for the bill, it does protect spending reductions through House consideration and provides a marker for the Appropriations Committee as it conferences the bill with the Senate.

Options for Changing House Practice

RULES CHANGES ARE NOT ALWAYS THE ONLY—OR BEST—OPTION

When the majority party contemplates changes to the way the House operates, they have multiple avenues to effectuate that change. The options range from the formal to the informal, and give the majority varying levels of flexibility in the application and enforcement of the changes. These mechanisms fall along a spectrum (as illustrated in figure 3), ranging from the most formal and highly enforceable to less formal and more flexible.

The options available to the majority include:

» **Changes to the Standing Rules of the House**—The most formal kind of change is an amendment to the standing rules of the House. Generally, these rules are enforceable through a point of order available to any Member.

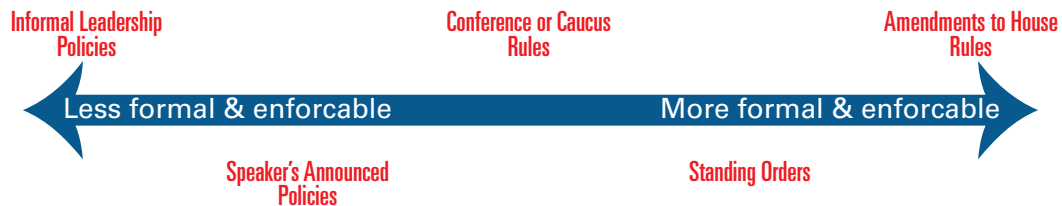


Figure 3. Spectrum of types of rule and policy changes related to House rules.

» **Standing Orders**—A standing order has the same parliamentary effect as an amendment to the Rules of the House in that it is both formal and easily enforceable; however, because it is an order, and not an amendment to the standing rules, it is only effective during the current congress, and would have to be renewed at the beginning of each Congress.

» **Conference/Caucus Rule Changes**—The House Republican Conference or the House Democratic Caucus can adopt rules which effectively bind the majority party leadership with respect

to floor scheduling or other policies, which has an effect on the House as a whole. These rules are only enforceable within the party caucus, and not by a Member from the opposite party.

» **Speaker's Announced Policies**—On the opening day of each congress, and at other points should circumstances warrant, the Speaker makes a number of announcements regarding how the Chair will exercise his or her discretion in applying the rules of the House. These policies are printed in the Congressional Record for reference. These policies usually

address issues of decorum or administration of the House, and are usually enforced through the Chair's power of recognition rather than from the floor through a point of order.

» **Informal Policies**—The majority leadership (or committee leadership) may use less formal policies to guide how it uses its discretionary authority, such as how they will schedule the floor or process amendments. These policies are usually unenforceable, other than by the leadership.