



H.Res. 5 – Adopting the Rules of the House of Representatives for the One Hundred Eleventh Congress

FLOOR SITUATION

On January 6, 2009, the 111th Congress is scheduled to begin with a quorum call and the election of the Speaker. The adoption of the rules package is the next order of business. Typically, a Member of the Democrat Leadership offers H.Res. 5 consisting of the new rules. At this point, since the rules have yet to be adopted, the House operates under “general parliamentary law,” and precedent generally suggests that means operating under the rules of the preceding Congress. The resolution is thus considered under the one-hour rule “in the House” (and not in the Committee of the Whole), and the Leadership is recognized for one hour, of which 30 minutes is customarily yielded to the Minority. The House then proceeds to vote on H.Res. 5.

BACKGROUND

Article I, Section 5, Clause 2 of the U.S. Constitution states that “each House may determine the Rules of its Proceedings.” The House of Representatives is not a continuing body; it has to reconstitute itself at the beginning of each new Congress. Accordingly, at the start of every new Congress, the House adopts new rules, normally the standing rules of the preceding Congress with various changes. (As a continuing body with only a third of its Members elected every two years, the Senate does not pass new rules each new Congress.)

SUMMARY

H.Res. 5 adopts the Rules of 110th Congress, as amended by the resolution, as the Rules for the 111th Congress. The highlights of the changes are as follows:

- **Inspector General Audits:** Requires the Office of Inspector General (OIG) to provide audit, investigative, and advisory services to the House in “a manner consistent with government-wide standards.” Under current rules, the OIG is only directed to conduct periodic audits—and inform the appropriate House entities as to the results—subject to the policy direction and oversight of the Committee on House Administration. According to the Republican staff at the House Committee on Rules, this section is intended to clarify audit work that the OIG currently does and allow the OIG to implement standards published in GAO’s [Government Auditing Standards](#).
- **Committee on Homeland Security Oversight:** Directs the Committee on Homeland Security to review and study on a continuing basis all Government activities, functions, and organizations within the Committee’s primary legislative jurisdiction. The oversight and legislative authority of other committees are not affected by this change. This rule change is meant to codify that affected agencies have a reporting relationship with the Committee on Homeland Security on matters within its jurisdiction.

Additional Functions of the Committee on House Administration: Grants the Committee on House Administration the authority to oversee the services provided by the Architect of the Capitol, except when those services are under the jurisdiction of the Committee on Transportation and Infrastructure.

Terms of Committee Chairman: Removes the term limits on committee and subcommittee chairs (three consecutive Congresses, or six years). This section also waives the tenure limitations on the chair or ranking member of the Budget Committee if they are severing a second consecutive term.



Calendar Wednesdays: Requires the clerk, when reading the list of committees for the purpose of bringing up Calendar Wednesday legislation, to only read committees that have given prior notice concerning legislation being brought to the floor under the Calendar Wednesday rule. A committee chair would have to notify the clerk the prior to legislative day in order to have the committee's name read, which is necessary to take advantage of the Calendar Wednesday rule.

Under current rules, the clerk is required to read the name of each committee, whether the committee seeks to bring up legislation under the Calendar Wednesday rule or not. Each committee chair is given an opportunity to call legislation of their choosing to the floor when the committee's name is read on Calendar Wednesday. Traditionally, the rule allows committee chairs to bring legislation that the Speaker has not scheduled directly to the floor without any prior notice.

In addition, this section would strike a two-thirds vote requirement to dispense with Calendar Wednesday proceedings.

- **Postponement Authority:** Grants the chair the authority to postpone consideration of a measure prior to its passage when the previous question is operating to adoption or passage of a measure pursuant to a special order of business. Under the rule, the chair could postpone consideration until such time as designated by the Speaker.
- **Motions to Recommit:** Limits the Minority's ability to offer motions to recommit to those with instructions to report back "forthwith", e.g. those that if adopted will amend the bill immediately without the bill leaving the House floor. This rule change will bar Republicans from offering motions with instructions to report back "promptly," and thereby send the bill back to committee to make a particular change if adopted. This change will force all motions to recommit to comply with the Democrat PAYGO rules, thus blocking Republican efforts to strike tax increases in various legislation or offer tax reduction amendments that are not "paid for" with tax increases.
- **Conduct of Votes:** Removes a provision in House Rules which prohibits votes from being held open for the sole purpose of reversing the outcome of a vote. This rule change is in accordance with the recommendation of the Select Committee to Investigate the Voting Irregularities of August 2, 2007.
- **Earmarks:** Extends the current earmark rules and provides a new point of order (codifying a resolution adopted during the 110th Congress) against conference reports of appropriations bills whose joint explanatory statements prepared by the managers fail to contain a list of "air-dropped" earmarks—where an earmark has been passed by neither the House nor the Senate—and the requesting Member *or* a statement that no such earmarks are included. The point of order would be disposed of by a question of consideration.
- **PAYGO:** Revises and extends the PAYGO ("pay as you go") point of order in the House that prohibits the consideration of any direct spending *or tax legislation* that would have the net affect of increasing the deficit or reducing the surplus over one, five, and ten years. The resolution provides an exception for measures designated as "emergencies." In addition, the resolution allows the Majority to consider two separate bills (for instance, one containing spending and one containing a tax increase) as one legislative item for PAYGO purposes. According to the Rules Committee Minority staff, this change is intended to allow the Majority to avoid having offsets expand the germaneness test for purposes of amendment.

It is important to note that PAYGO treats new tax and spending policies differently because current law or "the baseline" assumes that all spending will continue at current rates into the



future (adjusted for inflation) even if discretionary or set to expire, whereas low tax rates scheduled to sunset are not expected to continue at such levels. As a result, a bill to extend the 2001 or 2003 tax cuts or make them permanent would be subject to a PAYGO point of order as a new reduction in revenues that either increases the deficit or reduces the surplus.

- **Disclosure of Member Employment Negotiations:** Requires Members, Delegates, and the Resident Commissioner to file a disclosure statement with the Committee on Standards of Official Conduct within three days of that individual beginning to negotiate future employment or compensation. During the 110th Congress, Members did not need to disclose employment negotiations once their successor was elected.
- **Budget Allocation Point of Order:** Retains the point of order against the motion to rise and report an appropriations bill to the House if the bill exceeds its budget allocation. This point of order has been in effect since the 109th Congress and provides a budget safeguard against appropriations bills that exceed their budget allocations *during* floor consideration (for instance, an offset may be struck during consideration).
- **Medicare Trigger:** Turns off the Medicare “trigger” provision included in the Medicare Modernization Act (MMA). The “trigger” requires the Medicare trustees to report to the President and Congress when the Medicare program is projected to receive more than 45% of its funding from general revenues. The MMA language also requires the President to submit legislation remedying the funding warning, and directs the House and Senate Committees of jurisdiction to report a bill remedying the warning for floor votes. The House rules package would turn off the requirement for the Committees to report legislation, and prevent any Member (with the support of one-fifth of all House Members) from offering a motion to discharge legislation remedying the warning should the respective Committees fail to take timely action. At a time when the Medicare trustees report that the program faces *nearly \$86 trillion in future unfunded obligations*, some may be concerned that the Majority’s action will make it harder for Congress to consider legislation to slow Medicare’s growth, burdening future generations with unsustainable entitlement obligations and debt.
- **Extension of Committees and Commissions:** Continues the Select Committee on Energy Independence and Global Warming without any legislative jurisdiction. This Select Committee will be comprised of 15 Members appointed by the Speaker, and six Members appointed by the Minority Leader. The House Democracy Assistance Commission is extended through the 111th Congress. Additionally, the Tom Lantos Human Rights Commission is extended through the 111th Congress, as well as the Office of Congressional Ethics, which will be treated as a standing committee of the House.

In addition, the Committee on Standards of Official Conduct must continue to empanel investigative subcommittees within 30 days of a Member being indicted or criminal charges are filed. This is a continuation of 110th Congress procedure, pursuant to H.Res. 451.

- **Bolton and Miers Lawsuits:** Allows the Judiciary Committee to continue the lawsuit against White House Chief of Staff Josh Bolton and former White House Counsel Harriet Miers. This lawsuit is a result of the House holding Mr. Bolton and Ms. Miers in contempt of Congress for failure to comply with Judiciary Committee subpoenas during the 110th Congress. The rules package also allows the Judiciary Committee to issue subpoenas, take deposition, and add parties to a lawsuit regarding the firing of certain United States Attorneys.



- **Consideration of H.R. 11 and H.R. 12:** Allows for the consideration of H.R. 11 (Lilly Ledbetter Fair Pay Act) and H.R. 12 (Paycheck Fairness Act) under closed rules later this week. Each bill shall be debatable for one hour and will have one motion to recommit.
- **Gender Neutrality of House Rules:** Contains several provisions which remove gendered references within the House Rules to make the rules "gender neutral". These clarifications do not amount to any substantive rules changes.

STAFF CONTACT

For questions or further information contact Adam Hepburn, Andy Koenig, or Russ Vought at x55107.