

H.RES. 5
ADOPTING RULES FOR THE 112TH CONGRESS

SECTION-BY-SECTION ANALYSIS

Section 1. Resolved Clause.

This section provides that the Rules of the 111th Congress are the Rules of the 112th Congress, except with the amendments contained in section 2 of the resolution, and orders contained in sections 3, 4, and 5.

Section 2. Changes to the Standing Rules.

Citing Authority under the Constitution. Paragraph (a) creates a new clause 7 in rule XII providing that a Member may not introduce a bill or joint resolution unless the sponsor also submits a statement citing as specifically as practicable the power or powers under the Constitution authorizing the enactment of that bill or joint resolution. The statement will appear in a separate section in the Congressional Record and be made available to the public in electronic form.

While the rule requires that a Member submit the statement at the same time as the bill is introduced, there is nothing in the rule to prevent the sponsor of the bill from submitting an additional statement later in the process if he or she wants to revise the initial statement. With regard to electronic availability, appearance in the electronic version of the Congressional Record will initially satisfy the electronic availability requirement of this paragraph. However, ultimate the intention is that the Clerk will make the statements available in a searchable, sortable, and downloadable database as soon as practicable.

With respect to Senate bills, the provision authorizes the chair of a committee of jurisdiction, prior to consideration of the Senate bill, to submit a statement as if the chair were the sponsor. Finally, the provision also repeals the current requirement for a similar statement in committee reports.

When a Member introduces a bill or joint resolution, the Clerk must ensure that a statement required under this paragraph accompanies the measure. However, the Clerk is not required to evaluate the content of the statement or its adequacy; those are matters to be considered by Members during consideration of the legislation.

Three-Day Availability for Unreported Bills. This provision adds a new clause to rule XXIX establishing a point of order against consideration of a bill or joint resolution that has not been available for three calendar days. This provision mirrors existing layover rules prohibiting consideration of bills reported by a committee or conference reports.

Transparency for House and Committee Operations. Subparagraph (1) directs the Committee on House Administration to establish and maintain standards for documents made available in electronic form by the House and its committees. Subparagraph (2) provides that a measure or matter will have been considered as having been “available” within the meaning of the rules if it was publicly available in electronic form at a location designated by the Committee on House Administration.

The intention of these provisions is to ensure that Members and the public have easy access to bills, resolutions, and amendments considered in committee and by the House. The standard for electronic documents is intended to evolve over time. While the standard may initially include more static formats such as a searchable PDF, the intention is to eventually transition to more flexible structured data formats, such as XML, as the tools become available to ease the creation and ensure the integrity of House documents. With respect to availability, the provision is intended to place electronic distribution on par with traditional printing, rather than entirely replace it. Finally, the rule contemplates a singular location that will direct Members and the public to the text of measures to be considered by the House and its committees.

Subparagraph (3) amends clause 2(g)(3) of rule XI to provide for a minimum notice period of 3 days for a committee meeting. This joins the current requirement for 7 days notice for a committee hearing. The provision maintains the current ability of the Chair, with the concurrence of the ranking minority member, to waive both notice periods if they find good cause to start the hearing or meeting sooner. The provision can also be waived by a majority vote of the committee.

Subparagraph (4) requires that the chair of the committee make the text of the measure or matter being marked up publicly available in electronic form at least 24 hours prior to commencement of the meeting. This provision is intended to ensure that members have the text of the measure or matter in sufficient time to review the measure and draft any amendments. Accordingly, if the committee is considering a committee print, or the Chair of a committee intends to use an amendment in the nature of a substitute as the base text for purposes of further amendment, circulation of that text will satisfy this requirement. While the rule requires that the text be circulated at least 24 hours in advance of the meeting, that text should be circulated as early as possible to provide members the maximum amount of time to review the measure or matter and draft any desired amendments.

Subparagraph (5) requires that the chair of a committee make the results of any record vote publicly available in electronic form with 48 hours of the vote, while subparagraph (6) requires that the text of any adopted amendment be made similarly available, along with the text of the measure being marked up, within 24 hours of commencement of the markup or adoption of the amendment.

Subparagraph (7) requires the posting of non-governmental witness “truth-in-testimony” information (with appropriate redactions, such as a home address or phone number, to protect the privacy of the witness). Subparagraph (8) requires public availability in electronic form of the committee rules.

Subparagraph (9) requires each Committee, to the maximum extent practicable, to provide audio and video coverage of each committee hearing or meeting and maintain recordings that are easily accessible to the public. This subparagraph is not intended to require audio and video coverage in situations where it would be technically impracticable, such as where a hearing or meeting is held in a room without audio and video broadcast equipment, or create a defect with a hearing or meeting if a webcast or recording is not available due to technical issues.

Subparagraph (10) strikes an exception, adopted in the 110th Congress, for the Committee on Rules to accurately report its votes in committee reports to accompany a rule, joint rule, or a special order of business.

Subparagraph (11) amends clause 2(d)(1) of rule X to require committees, during development of their oversight plan, to include proposals to cut or eliminate mandatory and discretionary programs that are inefficient, duplicative, outdated, or more appropriately administered by State or local governments.

Initiatives to Reduce Spending and Improve Accountability.
Subparagraph (d)(1) replaces the current “pay-as-you-go” requirements with a “cut-as-you-go” requirement. The provision prohibits consideration of a bill, joint resolution, conference report, or amendment that has the net effect of increasing mandatory spending within a five-year or ten-year budget window. This provision continues the current practice of counting multiple measures considered pursuant to a special order of business which directs the Clerk to engross the measures together after passage for purposes of compliance with the rule and provides a mechanism for addressing “emergency” designations.

Subparagraph (2) strikes the “Gephardt rule” that provides for the automatic engrossment and transmittal to the Senate of a joint resolution changing the public debt limit, upon the adoption by Congress of the budget resolution, thereby avoiding a separate vote in the House on the public debt-limit legislation. Subparagraph (3) adds a new clause to rule XXIX that clarifies that the chair of the Committee on the Budget, rather than the entire committee, is authorized to provide guidance to the presiding officer on the budgetary impact of legislative proposals. This change reflects the current practice under majorities of both parties.

Subparagraph (4) modifies clause 3 of rule XXI, pertaining to transportation obligation limitations, to protect the balances of the Highway Trust Fund by establishing a point of order against 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.

Subparagraph (5) modifies clause 7 of rule XXI, which places restrictions on reconciliation directives contained in a budget resolution. The new modification would specify that it would not be in order to consider a budget resolution or amendments thereto, or a conference thereon which would have the effect of increasing net direct spending.

Other Changes to House Operations. Paragraph (e)(1) provides the Chair of the Committee of the Whole with authority to employ two minute voting during a series of votes.

Subparagraph (2) changes the current rule regarding electronic devices, which prohibits the use of mobile phones and personal computers on the floor, to prohibit the use of any mobile electronic device that is disruptive of the decorum. This change will give the Speaker greater latitude in deciding which mobile electronic devices may or may not be used by Members on the floor.

For historical purposes, it is important to note that the use of electronic devices in the chamber of the U.S. House of Representatives is governed by the rules of the House. In the 111th Congress, the fourth sentence of clause 5 of rule XVII read as follows: “A person may not smoke or use a wireless telephone or personal computer on the floor of the House.”

The House first adopted a rule prohibiting the use of “personal, electronic office equipment (including cellular phones and computers)” on the floor in 1995. The rule was specifically changed in 2003 to prohibit the use of “a wireless telephone or personal computer,” thereby tacitly permitting a smartphone (e.g., a BlackBerry) to be used on the floor.

No formal ruling has been made by the Speaker on whether an electronic-tablet device (e.g., an iPad) might constitute a “personal computer” within the meaning of the version of the rule in 111th Congress. Members of the House have used them on the floor, both informally and even while under recognition, without reprimand. The Parliamentarian has informally advised that they may be used unobtrusively pending review of the broader questions their proliferation might engender. Wi-Fi service has not been enabled in the chamber of the House. However, like many smartphones, some electronic-tablet devices have wireless-data capability that enables internet access in the chamber.

As the popularity of electronic-tablet devices increases, the House has observed how Members use them and their effect on decorum and has evaluated whether the use of electronic-tablet devices poses either audible or visual impairments to decorum in the chamber. Unlike bulkier notebook and laptop

computers, electronic-tablet devices can be used without obscuring the Member behind a screen or creating the visual of a sea of screens across the chamber. In addition, these devices are implemented with silent keyboards that limit audible disruptions.

The House has reconsidered the way it regulates the use of such devices. Rather than continuing to address devices by category (e.g., “phones” or “computers”), the current rule will instead will address them by their attributes (e.g., form-factor or character). The rule speaks generally of devices that are disruptive of the decorum of the House and leaves it to the Speaker to enunciate policies to react to changes in technology. (This approach already has been employed to extend the prohibition on the use of wireless telephones also to the wearing of wireless headsets while in the chamber.)

Subparagraph (3) updates the House rules governing the media to eliminate references to specific media organizations.

Subparagraph (4) ends the ability of delegates and the Resident Commissioner to vote in, and preside over, the Committee of the Whole House on the state of the Union.

Subparagraph (5) strikes clause 11 of rule XVIII, which allows a motion to strike a provision from a bill that is asserted to be an unfunded mandate, even if the amendment would not otherwise be in order during consideration of the bill.

Subparagraph (6) clarifies the Armed Services Committee jurisdiction over Department of Defense administered cemeteries. The jurisdiction of the Committee on Veterans’ Affairs with respect to cemeteries for veterans remains unchanged.

Subparagraphs (7) through (9) change, respectively, the name of the Committee on Education and Labor to the Committee on Education and the Workforce, the Committee on Standards of Official Conduct to the Committee on Ethics, and the Committee on Science and Technology to the Committee on Science, Space, and Technology. Subparagraph (10) eliminates the Select Oversight Panel of the Committee on Appropriations.

Subparagraph (11) reduces the size of the Permanent Select Committee on Intelligence from a total of 22 members (13 from the majority party) to 20 members (12 from the majority party). The next subparagraph restores the term limit rules for committee chairs to the same state it existed in the 109th Congress.

Subparagraph (13) increases the frequency of committee activity reports from once per congress to four times per congress. This provision is intended to provide the House with more frequent updates regarding the oversight and legislative activities of the committees.

Subparagraph (14) modifies existing staff deposition authority for the Committee on Oversight and Government Reform by requiring the committee to adopt a rule requiring that a member of the committee be present at any deposition conducted by a staff member. The deponent is permitted to waive this requirement.

Technical and Clarifying Changes. These provisions correct a host of typographic and other simple errors. Subparagraph (1) corrects a typographic error, and subparagraph (2) corrects an errant reference to simple resolutions. The next subparagraph corrects an unintentional narrowing of the circumstances regarding the Speaker's regulation of access to the floor, and the following provision corrects another word that was inadvertently removed during the recodification of the House rules in the 106th Congress. Lastly, the provision eliminates unnecessary usage of "Members of the House" and makes clear that the Clerk does not have to disclose actual Member signatures, just their names, when making a disclosure under clause 13 of rule XXIII.

Section 3. Separate Orders.

Budget Matters. Subparagraphs (a)(1) through (3) clarify that section 306 of the Budget Act (prohibiting consideration of legislation with the Budget Committee's jurisdiction, unless reported by the Budget Committee) only applies to bills and joint resolutions and not to simple or concurrent resolutions. It also makes a section 303 point of order (requiring adoption of budget resolution before consideration of budget-related legislation) applicable to text made in order as an original bill by a special rule. Specified or minimum levels of compensation for Federal office will not be considered as providing new entitlement authority.

Subparagraph (4) prevents the Committee of the Whole from rising to report a bill to the House that exceeds an applicable allocation of new budget authority under section 302 (b) (Appropriations subcommittee allocations) as estimated by the Budget Committee and creates a point of order.

Budget Enforcement. Subsections (b)(1) and (2) require the chair of the Committee on the Budget to submit for printing in the Congressional Record budget aggregates and allocations contemplated by section 301 (Content of the Concurrent Resolution on the Budget) for 2011, and 2011 through 2015. Publication of these aggregates and allocations will be considered to be the adoption of a concurrent resolution on the budget for fiscal year 2011. This provision is intended to give the Chair of the Committee on the Budget authority to set aggregates and allocations to complete the unfinished fiscal year 2011 budget resolution cycle, taking into account the latest CBO baseline, including its 5-year projections.

Emergencies and Contingencies. Subparagraphs (c)(1) and (2) provide for exemptions for designated emergencies and the continuation of contingency operations related to the Global War on Terror.

Deficit-Neutral Revenue Reserve. Paragraph (d) allows the Budget Committee to make appropriate budget adjustments prior to the adoption of a budget resolution to account for the repeal or modification of the Patient Protection and Affordable Care Act and the Health Care and Education Affordability Reconciliation Act of 2010.

Limitation on Advanced Appropriations. Subparagraphs (e)(1) through (3) restrict the ability to provide advanced appropriations by establishing an aggregate spending ceiling.

Compliance with Section 13301 of the Budget Enforcement Act of 1990. Paragraph (f) provides temporary budget enforcement for matters related to certain off budget trust funds.

Limitation on Long-term Spending. Subparagraphs (g)(1) and (2) prohibit the consideration of measure which increase mandatory spending above \$5,000,000,000 for any 10 year window within a 40 year period.

Exemptions. Subparagraphs (h)(1) through (7) authorize the Budget Committee Chair, prior to the adoption of a budget resolution, to exempt from estimates the budgetary effects of the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003. It also exempts the budgetary effects of the repeal of the Patient Protection and Affordable Care Act and Education Affordability Reconciliation Act of 2010. The budgetary effects of AMT relief, estate tax, trade agreements and small business tax relief are also exempted. The exemption is limited to measures which do not increase the deficit or revenues over the ten-year budget window, except for increases in revenue which meet certain specific criteria.

Determinations for PAYGO Acts. Paragraph (i) allows the Chairman of the Budget Committee to take into account the exemptions provided under paragraph (h) for the purpose of complying with Statutory PAYGO.

Spending Reduction Amendments in Appropriations Bills. Paragraph (j) requires that in each general appropriations bill there be a “spending reduction” account, the contents of which is a recitation of the amount by which, through the amendment process, the House has reduced spending in other portions of the bill and indicated that such savings should be counted towards spending reduction. It provides that other amendments that propose to increase spending in accounts in a general appropriations bill must include an offset of equal or greater value.

Certain Subcommittees. This section waives clause 5(d) of Rule X to allow the Committees on Armed Services and Foreign Affairs up to seven

subcommittees each, and the Committee on Transportation and Infrastructure up to six subcommittees. This is a standard provision carried in the rules package during the last several congresses.

Exercise Facilities for Former Members. This section continues the prohibition on access to any exercise facility which is made available exclusively to Members, former Members, officers and former officers of the House and their spouses to any former member, former officer, or spouse who is a lobbyist registered under the Lobbying Disclosure Act of 1995.

Numbering of Bills. This provision reserves the first 10 numbers for bills (H.R. 1 through H.R. 10) for assignment by the Speaker and the second 10 numbers (H.R. 11 through H.R. 20) for assignment by the Minority Leader.

Section 4. Committees, Commissions, and House Offices

Subparagraphs (a) and (b) reauthorize the House Democracy Partnership and the Tom Lantos Human Rights Commission.

Subparagraph (c) reauthorizes the Office of Congressional Ethics for the 112th Congress.

Subparagraph (d) continues House Resolution 451, 110th Congress, directing the Committee on Standards of Official Conduct (now Ethics) to empanel investigative subcommittees within 30 days after the date a Member is indicted or criminal charges are filed.

Section 5. Additional Orders of Business

Reading of the Constitution. This paragraph allows the Speaker to recognize Members for the reading of the Constitution on the legislative day of January 6, 2011.

Providing for Consideration of Certain Motions to Suspend the Rules. This provision provides that on January 6, 2011 the Speaker may entertain motions to suspend the rules related to reducing the costs of operation of the House and allow two hours of debate equally divided and controlled by the proponent and an opponent.