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## **“Fast-Track” or Expedited Procedures: Their Purposes, Elements, and Implications**

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# “Fast -Track” or Expedited Procedures: Their Purposes, Elements, and Implications

## Summary

“Fast-track” or expedited procedures are special legislative procedures that apply to one or both houses of Congress and that expedite, or put on a fast track, congressional consideration of a certain measure or a narrowly defined class of measures.

Congress typically has enacted sets of expedited procedures into law when (1) the same law imposes a deadline for congressional action on a measure in one or both houses, and (2) Congress wants to ensure, or at least increase the likelihood, that the House and Senate have an opportunity to vote on the measure before the deadline is reached. Most often, these procedures have applied to action on joint resolutions by which Congress can disapprove some action that the President or an executive branch official proposes to take. In other cases, Congress has enacted fast-track procedures to expedite House and Senate action on a bill that is a “package proposal” recommended by the President to address a complex and multi-faceted issue.

To achieve their purpose, fast-track procedures may (1) set a time limit for the committee of jurisdiction to report the measure; (2) prevent that committee from killing the measure by failing to act on it; (3) make the measure privileged for floor consideration, either immediately or after a brief layover period, whether the measure was reported from the committee of jurisdiction or that committee was discharged; (4) prohibit floor amendments, including committee amendments, and impose stringent time limits on debate during floor consideration of the measure and all questions relating to it; and (5) provide for prompt floor consideration, with little or no debate, of any identical companion bill or resolution received from the other house. Not all sets of expedited procedures have included all these provisions. However, failing to include any one of them, whether accidentally or deliberately, can create significant opportunities for delay or inaction in one or both houses.

To greater or lesser degrees, expedited procedures are inconsistent with at least five characteristics of the more conventional procedures of the House and Senate. Fast-track procedures (1) impinge on the ability of committees to control their agendas, schedules, and workloads; (2) create exceptions to the general practice that the House and Senate usually consider only measures that have been approved by their committees; (3) intrude on the power of a voting majority on the House or Senate to determine whether a measure will be considered on the floor; (4) reduce the authority of the majority party and its leaders to set the floor agenda and the daily floor schedule; and (5) deny the House and Senate the ability they usually have to set conditions for floor debate and amendment that are appropriate for each measure that is considered. However, the house to which a set of expedited procedures applies is free to enforce, amend, waive, suspend, ignore, or even repeal them as it sees fit, just as if they were standing rules.

Fast-track procedures can be useful or necessary if Congress is to reach certain legislative goals. Expedited procedures may be evaluated, therefore, by asking if or

when their utility justifies setting aside the Congress's usual procedures and the principles and relationships these procedures embody.

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# “Fast-Track” or Expedited Procedures: Their Purposes, Elements, and Implications

This report<sup>1</sup> discusses certain provisions of law that commonly are known as “fast-track” or expedited procedures. They are so labeled because these statutory provisions contain special legislative procedures that apply to one or both houses of Congress and that expedite, or put on a fast track, congressional consideration of a certain measure or a narrowly defined class of measures. This report first presents the nature, purpose, and elements of fast-track procedures. Then the report discusses some of the most important ways in which these procedures differ from the normal procedures of the House and Senate and, therefore, how the use of expedited procedures can affect the legislative process in Congress.<sup>2</sup>

Most of the analysis that follows can be summarized by three basic points. First, fast-track procedures are intended to achieve a purpose that is not common to most other legislative procedures in Congress. Second, these expedited procedures differ from the more conventional procedures of the House and Senate in ways that affect the activities of congressional committees, the relationship between committees and their parent chambers, the prerogatives of the majority and the rights of the minority, the locus of control over the floor schedule in the House and Senate, and the ability of individual Representatives and Senators to shape public policy through debate and amendments. Third, therefore, fast-track procedures may be evaluated by asking if or when their utility justifies setting aside the Congress’s usual procedures and the principles and relationships these procedures embody.

## Purposes and Elements of Fast-Track Procedures

Congress typically has enacted sets of expedited procedures into law when (1) the same law imposes a deadline for congressional action on a measure in one or both houses, and (2) Congress wants to ensure, or at least increase the likelihood, that the full membership of the House and Senate have an opportunity to vote on the measure before the deadline is reached. Most often, these procedures have applied to congressional consideration of joint resolutions by which Congress can disapprove

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<sup>1</sup> This report was written by Stanley Bach, formerly a Senior Specialist in the Legislative Process at CRS. Dr. Bach has since retired, but the other listed author updated the report and is available to answer questions concerning its contents.

<sup>2</sup> The last section of this report is based on testimony presented by Dr. Bach before the House Rules Committee during its 1984 hearings on the implications of, and possible congressional responses to, the Supreme Court decision in *Immigration and Naturalization Service v. Chadha*, in which the Court held the legislative veto to be unconstitutional. House Committee on Rules, *Legislative Veto After Chadha*, hearings, 98<sup>th</sup> Cong., 2<sup>nd</sup> sess., Mar. 22, 1984.

(and thereby nullify) some action that the President or an executive branch official proposes to take. In other cases, Congress has enacted fast-track procedures to expedite House and Senate action on a bill that is a package proposal recommended by the President to address a complex and multi-faceted issue. Examples of the latter are the expedited procedures for approving or disapproving recommendations for military base closures and for enacting legislation to implement major international trade agreements.

Fast-track procedures can affect the process of considering legislation in one or both houses, in committee and on the floor. This process normally is governed primarily by the standing rules of the House and Senate. However, Congress does not adopt fast-track procedures as additional parts of these rules. Instead, expedited procedures are written into law, even though they affect only the internal organization and procedure of one or both houses of Congress. Congress enacts them into law under the constitutional authority of each house to “determine the rules of its proceedings.” These provisions of law, which are known as “rule-making” provisions, have the same force and effect as any of the standing rules that the House or Senate has adopted. They are no more binding on either house, and no more enforceable in court, simply because they were enacted into law.

The house to which a set of expedited procedures applies is free to enforce, amend, waive, suspend, ignore, or even repeal them as it sees fit, just as if they were standing rules. For example, the House can modify or set aside any fast-track procedures by adopting a resolution that the House Rules Committee reports for that purpose. In the Senate, the same procedures can be waived or superseded by a unanimous consent agreement. Congress usually decides to enact rule-making provisions into law, rather than adopting them as rules, because those provisions are inextricably related, politically or procedurally, to other provisions of the same law that affect the actions of the President or executive branch officials.

Well-known laws containing rule-making provisions include the War Powers Act of 1973, the Trade Act of 1974, the Defense Base Closure and Realignment Act of 1990, and the Congressional Accountability Act of 1995. The texts of these and other rule-making provisions are reprinted in each edition of the *House Rules and Manual*<sup>3</sup>; some also appear in editions of the *Senate Manual*.<sup>4</sup>

Expedited procedures are designed to ensure, or increase the likelihood, that the House and Senate will be able to act promptly on a certain bill or resolution, or on certain kinds of measures. For example, Congress may enact a law giving a department or agency the authority to make a decision or issue a regulation. In the same law, Congress also may give itself the opportunity to reject that decision or

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<sup>3</sup> U.S. House of Representatives, *Constitution, Jefferson’s Manual and Rules of the House of Representatives of the United States, 108<sup>th</sup> Congress, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess.*, H.Doc. 107-284 (2003), pp. 1041-1042. (Hereafter cited as the *House Rules and Manual*.)

<sup>4</sup> Not all rule-making provisions of law are sets of fast-track procedures. For example, most of the requirements and prohibitions that govern the congressional budget process were enacted as parts of the Congressional Budget Act of 1974 and the Budget Enforcement Act of 1990.

regulation by enacting a joint resolution of disapproval. In such cases, the law also is likely to contain a deadline by which Congress should act on a disapproval resolution, as well as a set of expedited procedures to make it more likely that Congress will have the opportunity to vote on the resolution before the deadline is reached.

Fast-track procedures usually include precise definitions of the measures for which those procedures can be used. The statute creating the procedures may specify what kinds of provisions a bill may or must include if it is to be eligible for consideration under the special legislative procedures. Alternatively, the expedited procedures may contain the exact text of what the measure (usually a joint resolution) can provide if it is to qualify for expedited consideration. If the procedures can be used to consider various measures of the same kind, the text of the bill creating those procedures may define the text of the measures and include one or more blanks that are to be filled in to identify, for example, the specific regulation, action, or nation to which the measure applies. For example, one provision of the Trade Act of 1974, as amended, defines in the following terms the joint resolutions that Congress can consider under certain fast-track procedures:

The term “approval resolution” means only a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: “That the Congress approves the extension of nondiscriminatory treatment with respect to the products of \_\_\_\_\_ transmitted by the President to the Congress on \_\_\_\_\_,” the first blank space being filled with the name of the country involved and the second blank space being filled with the appropriate date.

The purpose of expedited procedures is not to guarantee that one or more bills *will* become law, but to help make it possible for the House and Senate to vote on whether they *should* become law. The normal legislative process in Congress is a time-consuming process that most bills do not survive. Without fast-track procedures, there would be good reason to fear that the bills to which those procedures apply might not reach the stage at which the House and Senate could vote on passing them, or at least not by the deadline that a statute imposes for congressional action.

To achieve their purpose, therefore, complete and effective sets of fast-track procedures provide (1) that the bill or resolution to which they apply cannot be blocked or delayed unduly in a committee of either house, (2) that the measure, whether or not reported from committee, can reach the House or Senate floor promptly for consideration, (3) that the measure cannot be amended, in committee or on the floor, and (4) that a final floor vote within the time permitted cannot be prevented through delay in either house. Because measures subject to expedited procedures typically are not amendable, there is less need to protect against possible delays that can occur in the process of resolving legislative differences between the House and the Senate.

Translating these general requirements into specific procedural arrangements, fast-track procedures may:

1. Set a time limit for the committee of jurisdiction to report the measure;
2. Provide for automatic discharge of the committee from further consideration of the measure, or for a privileged motion to discharge the committee, with no debate or limited debate, if the committee fails to report within the time limit;
3. Make the measure privileged for floor consideration, either immediately or after a brief layover period, whether the measure was reported from the committee of jurisdiction or that committee was discharged;
4. Prohibit floor amendments, including committee amendments, and impose stringent time limits on debate during floor consideration of the measure and all questions relating to it; and
5. Provide for prompt floor consideration, with little or no debate, of any identical companion bill or resolution from the other house.

Not all sets of expedited procedures have included all these provisions. However, failing to include any one of them, whether accidentally or deliberately, can create significant opportunities for delay or inaction in one or both houses.

As an example, consider the provisions of S. 2400 and H.R. 2621 of the 105<sup>th</sup> Congress, reported respectively by the Senate Finance Committee and the House Ways and Means Committee. A primary purpose of these bills was to make available fast-track procedures during House and Senate consideration of bills to implement certain trade agreements. For this purpose, both bills proposed to apply to each trade implementing bill the expedited procedures previously enacted into law as Section 151 of the Trade Act of 1974, as amended.

The procedures in Section 151 include all the five elements listed above, and even contain the unusual requirement that a vote on final passage of a trade implementing bill “shall be taken in each House on or before the close of the 15<sup>th</sup> day” of session after the committee (or committees) of jurisdiction either reported it or was discharged from considering it further. This set of fast-track procedures is complete and effective in that it probably would make it impossible for the opponents of a trade implementing bill to prevent the House and Senate from voting, within the time permitted for congressional action, on whether or not to pass it. The expedited procedures do not guarantee that the House or Senate would pass the bill, but they do guarantee that Members of both houses would have the opportunity to do so.

S. 2400 and H.R. 2621 also proposed to apply expedited procedures to two other kinds of measures: resolutions affecting for how long the President could make certain trade agreements, and resolutions affecting whether a particular trade implementing bill could be considered under the fast-track provisions of Section 151. However, the expedited procedures applicable to these resolutions were not quite as complete or effective as those governing consideration of trade implementing bills. The fast-track procedures for considering these resolutions did expedite House and



Senate action on them—for example, by limiting debate on each such resolution and prohibiting amendments to it. However, these procedures did not require a vote on final passage of the resolution and, more important, they did not ensure that the resolution would even reach the House or Senate floor at all.

The fast-track procedures applicable to one of these resolutions were to come into play only if and when the House or Senate committee of jurisdiction chose to report it. These procedures did not affect the authority of either committee to effectively kill the resolution by failing to act on it. If the committee did fail to report the resolution, the committee was not automatically discharged, nor did the expedited procedures provide for a privileged motion to discharge. Thus, the proposed fast-track procedures did not increase the likelihood that the House or Senate actually would vote on every resolution to which they applied. The procedures only expedited House and Senate action on resolutions that enjoyed committee support.

In this case, it is very likely that the expedited procedures for considering the resolutions were left incomplete deliberately. The committees that reported the two bills evidently wanted to retain veto power over the resolutions, but they also wanted to expedite floor consideration of any such resolutions that the committees approved. These fast-track procedures were ineffective in the sense that they did not ensure or even make it more likely that a qualifying resolution would reach the House or Senate floor for debate and for a final and timely vote. However, these procedures probably were effective in achieving the goal of expediting final floor votes on resolutions when the House or Senate committee wanted those votes to take place.

As S. 2400 and H.R. 2621 demonstrate, fast-track provisions can take various forms. It is not enough to know that there are special procedures for Congress to follow in acting on a certain bill or resolution. Instead, it is necessary to examine the details of each set of fast-track procedures to understand how they supplant the conventional procedures of the House and Senate, and precisely what procedural effects they are likely to have.<sup>5</sup>

## **Expedited and Conventional Procedures**

Some of the implications and consequences of enacting effective expedited procedures emerge from a comparison of these procedures with more conventional House and Senate procedures for acting on proposed legislation. In some respects, it is difficult to talk about “conventional” procedures. First, there are variations among the procedures that House and Senate committees generally follow. Second, the House has as many as five different sets of procedures for considering measures on the floor, and the House regularly adopts special rules that include procedural arrangements and restrictions that apply to individual measures. And third, the Senate operates under special procedures when it invokes cloture, and the Senate frequently sets aside many of its rules in favor of simple or complex procedural arrangements on which it agrees by unanimous consent.

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<sup>5</sup> For a review and discussion of the different forms of fast-track procedures available in the House, see CRS Report RL30599, *Expedited Procedures in the House: Variations Enacted Into Law*.

Nonetheless, there are a number of characteristics that typify the legislative process—more or less, and more often than not. In general, expedited procedures are, to greater or lesser degrees, inconsistent with five of these characteristics.

### **1. Committees generally control their agendas, schedules, and workloads.**

Congress does not usually require its committees to act on certain measures or kinds of measures, nor do the House and Senate usually impose deadlines for committee action. There are exceptions to this generalization, just as there are exceptions to virtually every generalization about how Congress does its business. For example, secondary referrals of legislation in the House usually are accompanied by reporting deadlines, and House committees are expected to act promptly on resolutions of inquiry. However, House and Senate committees generally have the discretion to decide what measures within their jurisdictions they will consider, when the committees will consider them, and if and when they will report those measures back to the House or Senate for floor consideration.

The Appropriations and Budget Committees are exceptions in that they have responsibility for specific and limited sets of measures, and they face time constraints imposed by congressional rules and the fiscal calendar. However, the timetable of the congressional budget process can be modified, waived, or ignored as Congress sees fit. In general, whether the measure at issue is a public bill or whether it is a simple resolution, such as a committee funding resolution or a House special rule, the pressures on committees to act usually are grounded in political or governmental necessity, not in procedural requirements.

Consequently, House and Senate committees generally are able to set their own agendas, establish their own priorities, and control their own workloads. Committees make these decisions within fairly broad and generally accepted limits: congressional rules should be followed whenever possible; government activities should not be halted for lack of necessary legislative action; and key presidential proposals and intense public concerns should receive a hearing. Still, these constraints leave committees with considerable latitude for action and inaction. And it is by inaction that committees make one of their most important contributions to the legislative process, as they separate the relatively few measures that, in their judgment, should receive floor action from the many more that should not.

By contrast, expedited procedures generally deprive committees of the control they normally enjoy over their agendas and schedules. Effective expedited procedures typically set a time limit for committee action, and provide for automatic discharge or a privileged motion to discharge if the committee fails to act within the deadline. Thus, expedited procedures confront a committee with the choice between acting within an imposed deadline or having the measure taken away from it. Furthermore, the timing of committee action is determined largely by when the executive branch acts or when a measure is introduced; the committee does not control when the clock begins to run on the limited time during which it is expected to act. The effect of expedited procedures on a committee's workload also can be significant, depending, of course, on how frequently they can be and are invoked.

## **2. The House and Senate generally consider only measures that have been approved by their committees.**

The control that committees normally exercise over their own activities is crucial because committee inaction often is conclusive. Again as a general rule, a bill is likely to be moribund unless it receives favorable committee action. In this context, however, there is a significant difference between the House and the Senate.

Although the two houses give their committees much the same discretion, the House is more likely to abide by committee inaction or the timing of committee action. If a House committee fails to act on a bill, or fails to act quickly enough to satisfy its proponents, they have relatively little recourse. The discharge procedure is so difficult as to be a last resort, and the House has amended its rules to make it more difficult for Members to propose policy initiatives in the form of limitation amendments to appropriations bills. The House Rules Committee has the authority to propose a special rule for floor consideration of a bill that the committee of jurisdiction has yet to report. However, the Rules Committee has been reluctant to use this authority, sometimes called its power of extraction. The Rules Committee also has been reluctant to propose waiving the House's germaneness rule so that the text of one bill can be offered as a floor amendment to another measure on an entirely different subject.

By contrast, the rules of the Senate result in less deference to committee agenda and scheduling decisions. If a Senate committee fails to report a measure, the text of that bill or resolution can be offered as a nongermane floor amendment to most other measures (although the fact that the committee of jurisdiction has not considered the amendment can be a persuasive argument against it). Alternatively, the text of a bill that remains in committee may be re-introduced as a new measure and placed directly on the Senate's calendar of legislative business with precisely the same procedural standing it would have had if it had been referred to committee and then reported. (However, a motion to call up the bill on the floor may well be opposed by some or all of the committee's members.) In short, while committee inaction in the Senate is a significant impediment to legislative action, it is not as difficult an obstacle to surmount or circumvent as it is in the House.

Notwithstanding these differences between the House and Senate, the usual practice and expectation in both houses is that the measures considered on the floor are measures that have been selected or developed, and then studied and approved, by the committee or committees of jurisdiction. Effective expediting procedures, on the other hand, alter the normal implications and consequences of committee inaction on a measure. Instead of meaning the death of a bill or resolution, inaction means that a committee may lose much of its control over the measure, which can reach the floor anyway. The prospect of automatic discharge or a privileged motion to discharge is a strong incentive for a committee to act, even if its action takes the form of an adverse report and a recommendation that the measure not pass.

Underlying the more usual procedures of the House (and, to a lesser extent, those of the Senate) is the fact that more measures are introduced than can possibly be considered on the floor. From this fact follows the presumption that some considerable deference is due to the judgments of the standing committees as they

screen the measures referred to them. Effective expediting procedures are at odds with this presumption, in that they permit certain measures to reach the floor because of the general class to which they belong, not because of committee judgments about their individual merits.

### **3. A voting majority of Representatives or Senators generally can determine whether a measure will be considered on the floor.**

Although the lack of committee action normally can determine which bills will *not* reach the House or Senate floor, the committees normally cannot compel floor consideration of the measures they have reported favorably. As a general rule, voting majorities of the House and Senate retain ultimate control of their floor schedules, at least as defined by the measures they consider.

In the House, a majority can prevent a bill or resolution from being considered by means such as defeating a special rule from the Rules Committee for considering the measure, or, in theory at least, by other means such as defeating the motion to resolve into Committee of the Whole to consider a privileged general appropriations bill, or by raising the question of consideration and voting against considering the measure (under the Calendar Wednesday rule, for example). Motions to suspend the rules are an exception of sorts; the House cannot decline to consider a bill that is brought to the floor under the suspension procedure. However, passing a bill by this procedure requires a two-thirds vote, so there usually is little point in considering a bill under suspension if it does not clearly enjoy support by a majority of members. Regarding the most complicated and controversial bills, the Rules Committee is responsible for recommending an order of business through the special rules it reports. Yet it remains for the entire House, by majority vote, to accept or reject each such resolution.

The situation in the Senate is complicated by the absence of devices to terminate debate by majority vote. Consequently, the votes of 60 Senators may be required to invoke cloture on motions to consider bills, though most measures reach the Senate floor by unanimous consent. Still, even if a simple voting majority in the Senate cannot always call up the measures on which it wishes to act, a simple majority can prevent consideration of measures—but not nongermane amendments—on which it prefers *not* to act. Given the rights of Senators to debate (and thereby delay action) and a natural desire of the majority party leadership to use limited floor time efficiently and productively, the intense opposition of one Senator or a small minority of Senators may be sufficient to postpone floor consideration of a bill, temporarily or even indefinitely.

In this respect, the differences between expedited and more conventional procedures lie not in the measures that the House and Senate must consider, but in the votes that Members can be made to cast.

Expedited procedures generally do not provide for automatic or mandatory floor consideration of the measures to which they apply. Instead, these procedures generally make in order a privileged motion to consider, on which there can be only limited debate or no debate at all. Either house still can vote not to consider the measure. But a vote for or against consideration has clear and obvious policy

implications; a bill or resolution that is not considered cannot be passed (unless as an amendment to another measure). So a decision by roll-call vote not to consider a measure does not protect Representatives or Senators against the need to take a public position on the issue the measure addresses.

The difference between these and more common procedures lies in the fact that the House or Senate usually is not even presented with a measure, or a motion to consider it, unless there is a reasonable presumption that a majority is prepared to pass it. Under expedited procedures, there is a greater likelihood that Members will be presented with measures, or at least votes relating to them, that a majority may prefer not to confront. The reason for this difference lies in the implications of expedited procedures for majority party control over floor scheduling.

#### **4. Setting the floor agenda and the daily schedule generally is a prerogative of the majority party, acting through its leadership.**

By and large, the majority party leadership of the House and Senate enjoy at least a negative control over the floor agenda. Although any Senator may move to consider any measure on the legislative calendar, such motions (or the equivalent unanimous consent requests) actually are made only by the majority leader or another Senator acting at his behest or with his concurrence. It is by this means that the majority leader can exercise some control over the daily floor schedule and the more long-term legislative agenda. If other Senators did not defer to the majority leader in this regard, the conduct of business on the Senate floor would become far less predictable, to the detriment of all Senators and the expedient transaction of essential or important business.

In the House, the Rules Committee is very unlikely to report a special rule for a bill or resolution when the majority party leadership actively opposes consideration of that measure. Also, although a variety of matters are privileged for floor consideration, it is the responsibility of the committee and party leaders to arrange specific dates and times for their consideration. In the case of motions to suspend the rules, the Speaker has the discretionary power to decide if and when such a motion can be made on the floor. Even when a Member wishes to call up a privileged motion or measure on the floor, the Speaker often can retain considerable discretion over the daily floor schedule by deferring its consideration for one or more days, or even by using his power of recognition to permit another Member to call up a different privileged matter instead.

The agenda control of the majority party leaders is more effective as a negative than as an affirmative power; as a general matter, these leaders in either house are better able to prevent consideration of measures they oppose than to secure consideration of measures they support. And there are limits on their negative power. In the Senate, the majority leader can prevent or delay Senate floor consideration of *measures*, but his control over the *issues* that reach the Senate floor is severely limited by the right of Senators to propose nongermane amendments. In the House, it is possible, in theory at least, for measures to reach the floor, through the House's discharge or Calendar Wednesday procedures, even over the opposition of the Speaker and the other majority party leaders.

To secure floor action on contentious bills, the leaders in each house require the support of at least a majority vote on the floor. In the Senate, this takes the form of a majority vote on the debatable motion to proceed to consideration of a bill, when unanimous consent to consider it cannot be obtained. Should the motion be filibustered, a minimum of 60 votes is required to invoke cloture on the motion. In the House, scheduling most contentious bills for floor action requires the support of a majority on the Rules Committee to report special rules for considering them (which, in today's House, rarely is a problem for the majority party leaders), and majority votes on the floor to adopt these resolutions. The Speaker does have unilateral discretion to allow the House to consider specific bills under suspension of the rules. However, the House usually does not consider bills under suspension in the face of widespread minority party opposition because passage of a bill under suspension requires enough minority party support to produce a two-thirds majority vote.

Even within these limits, the majority party leaders in each house exercise a powerful influence, if not control, over the floor schedule and agenda. It is noteworthy when they cannot arrange for consideration of a bill they support, or when they cannot block floor action on a bill they oppose. By contrast, expedited procedures tend to undermine majority party leadership control over what business the House and Senate transact on the floor. In the House, fast-track procedures also bypass the Rules Committee's responsibilities for the order of business on the floor.

Expedited procedures often make the bills and resolutions to which they apply privileged business, even if such a measure has not been reported by the committee of jurisdiction (unlike most other privileged measures in the House). Precisely because expedited procedures are designed to ensure an opportunity for floor action within a limited time period, there is a strong presumption that an expedited measure should be scheduled for consideration by the leadership. If it is not, some rule-making statutes allow it to be called up by any Member of either party, whether or not at the direction of the committee of jurisdiction. Other expedited procedures make in order a non-debatable motion to consider a bill or resolution. In the latter case, the House or Senate can vote against considering the measure in question, but the majority party leaders cannot control whether or when this vote will take place. Furthermore, the timing of floor action under fast-track procedures is constrained by the date of the executive action that triggers those procedures, and by the deadline imposed by statute for congressional action.

##### **5. The House and Senate generally can set conditions for floor debate and amendment that are appropriate for each measure that they consider.**

The standing rules and precedents of each house specify the procedures for debate and amendment that are to govern consideration of measures on the floor. However, each chamber has one or more ways in which it can modify these procedures. In the Senate, cloture can be invoked if necessary. More often, the Senate sets aside its general rules by unanimous consent in favor of a negotiated agreement concerning one amendment or even the entire process of considering a measure. In the House, the Rules Committee reports special rules to supplement or supplant certain general rules of the House—for example, by specifying the length and control of general debate, by restricting or expanding the range of floor

amendments that are in order, and by expediting final action in the House after the Committee of the Whole rises and reports. The House also has available the procedures under suspension of the rules as an alternative to considering measures in Committee of the Whole or in the House under the one-hour rule.

By such means, the House and Senate can, and often do, adjust their floor procedures to suit the characteristics of the specific measures before them. Some bills require more time for debate and more opportunity for amendment than others, and Congress's procedures allow each house to take such differences into account. Expedited procedures, on the other hand, typically do not permit this kind of flexibility, though it bears repeating that the House can adopt a special rule from the Rules Committee that supersedes or revises fast-track procedures as they would apply to a specific measure.

More often than not, these procedures set limits on debate and prohibit all floor amendments. These restrictions may be necessary, given the deadlines for congressional action and the purpose of most measures considered under fast-track procedures—namely, to approve or disapprove specific actions, regulations, or legislative proposals proposed by the executive branch. However, the same period for debate may not be appropriate for all measures considered under the expediting procedures of the same statute. Furthermore, these restrictions usually permit Congress only to approve or disapprove, but not to modify by amendment, the proposed executive policy (except through a new statute that does not enjoy the advantages of the expedited procedures).

When expedited procedures apply to measures other than joint resolutions of approval or disapproval, their constraints on floor consideration can be even more important. For instance, the procedures of the Budget Act governing Senate floor action on reconciliation bills impose both time limitations on debate and a germaneness requirement on amendments that would not apply to such a bill if the Senate were to consider it under its normal rules. On the one hand, the debate limitations prevent Senators from filibustering a reconciliation bill. On the other hand, the germaneness requirement limits the floor amendments that Senators can offer to such a bill, even relevant amendments that propose to achieve comparable savings by somewhat different, though related, means.

Similarly, the expedited procedures in the Trade Act of 1974, discussed above, that provide for House and Senate consideration of bills to implement major trade agreements, prevent Congress from adopting any amendments to certain bills the President proposes. For this reason, the statute that makes the expedited procedures available also requires an elaborate process of consultation and negotiation between executive branch officials and the appropriate congressional committees in an attempt to ensure that congressional preferences, which cannot be expressed through floor amendments, are taken into account when such an implementation bill is being drafted.

It bears emphasizing that there are exceptions to each of the five generalizations discussed here. Yet these generalizations do identify typical characteristics of the legislative process in Congress. In significant ways, effective sets of expedited procedures are inconsistent with these characteristics. They impose unusual

requirements on standing committees, both as to what measures House and Senate committees should consider and when committees should consider them. Fast-track procedures also take from the standing committees, especially in the House, one of their most important powers: the power to do nothing, and thereby prevent measures from coming to the floor for debate and passage.

Fast-track procedures also create an additional and major class of privileged measures—measures that deal with a wide array of subjects and that can vary considerably in importance—that enjoy priority access to the floor in both houses. Consideration of these measures can be brought to a vote on the House and Senate floor, even over the opposition of the committees of jurisdiction. Furthermore, any Member of either party usually can propose that the House or Senate consider one of these privileged measures if it is not scheduled through the normal practices and prerogatives of the majority party and its leaders. Finally, measures that the House and Senate considers under expedited procedures generally are subject to limited debate and no amendments. The result is to prevent or severely limit Representatives and Senators in exercising two of their most valued rights as legislators.

## **Conclusion**

Congress has enacted fast-track procedures in recognition of the fact that more conventional procedures in the House and Senate generally are not well-designed to ensure that certain measures move from introduction to conclusive floor action within relatively short periods of time. Whether or when the House or Senate votes on a measure usually depends on (1) agenda decisions made by the committee of jurisdiction, (2) the schedule that the committee sets in light of the preferences of its members, and the competing demands on its time and attention, (3) action in the House by the Rules Committee in reporting a special rule to govern House floor consideration of the measure (unless the House considers it instead under suspension of the rules), and the prospects in the Senate for limiting floor debate and amending activity by unanimous consent, (4) floor scheduling decisions usually made by the majority party leadership in cooperation with the appropriate committee leaders, and (5) the interest of Members in debating and amending the measure.

Expediting procedures can reduce or avoid the uncertainties that so often result from these factors. Fast-track procedures can protect against the usual consequences of committee inaction, they can enable any member to force a floor vote on considering a measure, and they assure prompt disposition of the measure if the House or Senate does consider it. Because effective fast-track procedures limit floor debate and preclude amendments, whether germane or not, these procedures probably have greater consequences for the Senate than for the House, given the historic importance to the Senate and the strategic importance to Senators of the right to filibuster and to offer nongermane amendments. The consequences for the House, while important, are less dramatic because the House already can impose comparable restrictions on itself by accepting them in the form of special rules proposed by the Rules Committee. The House also can adopt special rules that waive or supersede the application of any fast-track procedures whenever a majority of the House agrees that the procedures are inappropriate.



Congress is most likely to enact fast-track procedures when it places more value on making certain timely decisions on the floor than on adhering to its normal procedures and the principles underlying them. In evaluating expedited procedures, Congress may ask whether they are necessary in individual cases, and what effect they have collectively on the legislative process in the House and Senate.