

CRS Report for Congress

Received through the CRS Web

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

Elizabeth Rybicki
Analyst in American National Government
Government and Finance Division

Summary

House rules govern the length of time legislative proposals must be available to Members prior to being considered on the floor. For measures reported from committee, the committee report must have been available for three calendar days. Conference reports must also have been available for three calendar days, and special rules for considering measures for one legislative day. The House, however, also has several means by which it can choose to waive these availability requirements and call up, debate, and vote on a measure in a single calendar day, even if the text of the measure was not made available prior to consideration. These include (1) special rules that waive the three-day requirement; (2) special rules that waive the one-day requirement for other special rules; and (3) convening a second legislative day on the same calendar day. Waiving availability requirements allows the House to act quickly when necessary, such as near the end of a session. Sometimes Members oppose waiving availability requirements, and some Members refer to special rules that serve this purpose as “martial law” rules. This report will be updated if pertinent rules change.

Availability Requirements in House Rules

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

Bills and Resolutions (Rule XIII, clause 4(a)). Measures and other matters reported by committees may not be considered on the House floor until the committee report on the matter has been available to Members for at least three calendar days, excluding weekends and legal holidays, unless the House is in session on such days. The

House rule exempts several kinds of measures specified in the rule, including resolutions reported by the Rules Committee.¹

Conference Reports (Rule XXII, clause 8(a)). The House rule requires that before a conference report can be considered, its text must be available in the *Congressional Record* for three calendar days, excluding weekends and legal holidays (unless the House is in session on such days). In addition, copies of a conference report and its accompanying joint explanatory statement must be available for at least two hours prior to its consideration.

According to the rule, this three-day availability requirement does not apply during the last six days of a session. In contemporary practice, however, it is difficult to implement this exception to the rule. Adjournment resolutions usually are not approved until very shortly before the adjournment takes place. This practice usually makes it impossible to know when the “last six days” of a session begin. Absent a resolution setting a future date for adjournment, the three-day rule applies even as the House nears the end of a session. The three-day availability requirement for conference reports would cease to apply only in the last six calendar days before the constitutional end of a session on January 3.²

Special Rules (Rule XIII, clause 6(a)). The House frequently operates under special rules, or resolutions reported from the Rules Committee, *which can waive any or all of the above rules*. Special rules are required to lie over for one legislative day, which means the special rule cannot be reported and considered on the same legislative day. A legislative day is not necessarily a calendar day. A legislative day begins the first time the House meets after an adjournment and ends when the House adjourns again. Because the House typically adjourns at the end of a calendar day, legislative and calendar days usually coincide.

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

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

¹ The “three-day rule” also does not apply to (1) a “primary expense resolution” reported by the Committee on House Administration; (2) a resolution presenting a question of the privileges of the House reported by any committee; (3) a measure declaring war or a national emergency; or (4) a resolution of disapproval. In addition, according to Section 305(a)(1) of the Congressional Budget Act, a budget resolution is subject to a three-day layover requirement.

² William Holmes Brown and Charles W. Johnson, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington: GPO, 2003) (hereafter cited as *House Practice*), p. 354.

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

Waiving the Availability Requirements

The House has several means for waiving its rules when it wishes to act expeditiously. The House, for example, may set aside any of its availability requirements by unanimous consent. It may also call up and agree to a bill or conference report that has not met the availability requirements by a two-thirds vote to suspend the rules.³ As previously mentioned, according to Rule XIII, clause 6(a)(1), the one-day layover requirement for a special rule can be waived by two-thirds of the Members voting.

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

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

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

³ For more information on suspension of the rules, see CRS Report RL32474, *Suspension of the Rules in the House of Representatives*, by Thomas P. Carr.

made available prior to consideration.⁴ In order to achieve this result, however, the Rules Committee must have reported the additional special rule on the previous legislative day.

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

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

Creating a New Legislative Day. Although the House rarely chooses to do so, it could agree to call up and consider a measure in a single calendar day by convening two legislative days in a single calendar day.⁵ It would do this by agreeing to a motion to adjourn for a brief period at some point during its session. Agreement to this motion would terminate the legislative day, and when the House returned from its brief adjournment pursuant to this motion, a new legislative day would begin.

If the Rules Committee presents a special rule before the House adjourns, the rule can be considered on the next legislative day, regardless of how much time has elapsed. In other words, if a special rule were reported, and the House adjourned and then shortly thereafter reconvened, the special rule would have been available for one legislative day, meeting the layover requirement of the standing rule. The House could then consider the special rule that, among other things, could waive the three-day availability requirement for a resolution, bill, or conference report.⁶

⁴ For example, in the 108th Congress, the conference report on H.R. 4818, the 2005 Consolidated Appropriations Act, was called up, debated, and voted on in a single calendar day. On Oct. 9, 2004, the Rules Committee reported a resolution, H.Res. 846, that waived the one-day layover requirement for any “bill or joint resolution making general appropriations for the fiscal year ending September 30, 2005, an amendment thereto, or a conference report thereon.” The resolution was called up and agreed to on Nov. 20, 2004. That same calendar day, Nov. 20, the Rules Committee also reported a resolution, H.Res. 866, that waived all points of order against the conference report to accompany the bill H.R. 4818 and against its consideration. Under the terms of H.Res. 846, this resolution (H.Res. 866) was not required to lie over for one legislative day, and the House agreed to it on Nov. 20. Finally, the conference report was filed and agreed to on Nov. 20, since the three-day availability requirement for the conference report had been waived by H.Res. 866.

⁵ *House Practice*, p. 862.

⁶ For example, in the 107th Congress, a rule, H.Res. 600, for the consideration of a bill to
(continued...)

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

Special rules that waive availability requirements are sometimes referred to, particularly by their opponents, as “martial law” rules. The term has been used by Members of the House for at least 15 years, but it has not been applied consistently to any one type of special rule. It has been used, for example, to describe both special rules that waive the one-day layover requirement for subsequent special rules⁷ and to describe broad special rules that trigger some provisions of House rules and waive others for the remaining duration of a session.⁸

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

⁶ (...continued)

establish the Department of Homeland Security was presented and considered on *different legislative days* but the *same calendar day*. The Rules Committee presented the special rule, H.Res. 600, for the consideration of the homeland security bill, at 7:56 a.m. on the calendar day of Nov. 13, 2002 and the legislative day of Nov. 12, 2002. The House had not adjourned on Nov. 12. At the same time it also presented a special rule, H.Res. 601, to waive the one-day layover requirement for any rule providing for consideration of the Homeland Security bill. The House adjourned at 7:58 a.m. on legislative day Nov. 12 and met again on legislative and calendar day Nov. 13, 2002, at 10 a.m. The House considered and passed H.Res. 600 that afternoon. It never considered H.Res. 601. See the *Congressional Record*, daily edition, vol. 148, Nov. 13, 2002, pp. H8543, H8590-8594.

⁷ See, for example, the *Congressional Record*, daily edition, Feb. 4, 1993, p. H552; May 25, 1994, p. H4020; July 26, 2002, p. H5957; May 22, 2003, p. H4559; Dec. 7, 2004, p. H10993.

⁸ See, for example, the *Congressional Record*, daily edition, Nov. 22, 1991, p. H10945; Oct. 2, 1992, p. H10681; Sept. 24, 1996, p. H10928.