

# CRS Report for Congress

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## Routes to the Senate Floor: Rule XIV and Unanimous Consent

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### Summary

Most bills and joint resolutions introduced in the Senate, and many House-numbered bills and joint resolutions received by the Senate after House passage, are referred to committee. Some provisions of Senate Rule XIV and some unanimous consent requests, however, allow the Senate to completely or partially bypass a measure's potential consideration by a Senate committee. This report examines the framework and use of these alternatives. (Concurrent and simple resolutions are not covered by this report.) This report will not be updated unless Senate procedures change.

When a Senator introduces a bill or joint resolution, the measure is often referred to committee, pursuant to provisions of Senate Rules XIV, XVII, and XXV. When the House informs the Senate that it has passed a bill or joint resolution that was introduced in that chamber, the measure is also often similarly referred to a Senate committee.<sup>1</sup>

Senate Rule XIV, para. 2 requires that bills and resolutions have three readings before passage, and that they be read twice before being referred to committee.<sup>2</sup> Although a Senator may demand that the readings occur on three different *legislative* days under paragraph 2, bills and joint resolutions may be read twice on the same day "for reference" (referral) if there is no objection (Rule XIV, para. 3). Most bills and resolutions are read twice (understood in practice to occur by unanimous consent) and referred to committee on the same day that they are introduced by a Senator or received from the House.<sup>3</sup>

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<sup>1</sup> Senate rules contain procedures for the processing of concurrent and simple resolutions, which are not covered in this report. See especially Senate Rule XIV, para. 6.

<sup>2</sup> The "third reading" occurs after Senate consideration of a measure and before the vote on final passage. See U.S. Congress, Senate, *Riddick's Senate Procedure*, S.Doc. 101-28, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1992), pp. 1290-1291 (hereafter *Riddick's Senate Procedure*).

<sup>3</sup> For example, on Sept. 30, 2005, Senate bills S. 1804 - S. 1808 were introduced. The *Congressional Record* entry stated: "The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:"; the bill numbers, official titles, and committees to which they were referred were then listed.

(continued...)

Senate Rule XVII, para. 1 states that a measure should be referred to the committee “which has jurisdiction over the subject matter which predominates....” Rule XXV contains the jurisdictions of the Senate’s standing committees. There also exist agreements between committees that might govern the referral of bills and joint resolutions concerning certain subject matter. Under Rule XVII, para. 1, the presiding officer formally refers bills and joint resolutions; practically, the parliamentarian refers measures in behalf of the presiding officer.<sup>4</sup> The introduction and referral of bills and joint resolutions, and the referral of House-passed bills and joint resolutions, occurs as “morning business,” pursuant to Senate Rule VII, para. 1.<sup>5</sup>

The Senate may, however, use provisions of Senate Rule XIV or certain unanimous consent requests to completely or partially bypass potential consideration of a bill or joint resolution by a Senate committee. The purpose of doing so could be to have a measure placed directly on the Senate Calendar<sup>6</sup> or to immediately consider a measure. This report examines the framework and use of Rule XIV and unanimous consent for such purposes.

## Using Rule XIV to Bypass a Senate Committee

Senate Rule XIV, para. 4, states: “... and every bill and joint resolution introduced on leave, and every bill and joint resolution of the House of Representatives which shall have received a first and second reading without being referred to a committee, *shall, if objection be made to further proceeding thereon, be placed on the Calendar.*” (*Emphasis added.*)

Therefore, through objection, a bill or joint resolution after two readings is prevented from being referred to committee and is placed directly on the Calendar. It is usually the

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<sup>3</sup> (...continued)

“Introduction of Bills and Joint Resolutions,” *Congressional Record*, daily edition, vol. 151, Sept. 30, 2005, p. S10796.

Also on Sept. 30, the Senate received a message from the House that the House had passed H.R. 3824, “in which it requests the concurrence of the Senate(.)” A subsequent *Congressional Record* entry stated: “The following bill was read the first and second times by unanimous consent, and referred as indicated:”; H.R. 3824, with its official title, was listed, followed by the name of the Senate committee to which it was referred. “Message from the House” and “Measures Referred,” *Congressional Record*, daily edition, vol. 151, Sept. 30, 2005, p. S10796.

<sup>4</sup> Rule XVII, para. 3 allows a measure to be referred to more than one committee, jointly or sequentially, by motion of the majority and minority leaders; this procedure has not been used. Joint and sequential referrals, however, have been made by unanimous consent.

<sup>5</sup> This rule (para. 6) also allows the introduction of bills and joint resolutions by delivery to the presiding officer’s desk, “in the absence of objection.” In addition, in a unanimous consent request (similar to ones in previous Congresses), the Senate permitted, “That for the duration of the 109<sup>th</sup> Congress, Senators may be allowed to bring to the desk bills, joint resolutions, concurrent resolutions, and simple resolutions, for referral to appropriate committees.” Senator Bill Frist, remarks in the Senate, “Unanimous Consent Requests,” *Congressional Record*, daily edition, vol. 151, Jan. 4, 2005, p. S7.

<sup>6</sup> Formally, the *Calendar of Business*, published daily when the Senate is in session. The Calendar’s General Orders section lists measures eligible for Senate floor consideration.

majority leader, or his designee, acting on his own or at the request of any other Senator, who objects to “further proceeding” — committee referral — on the measure.<sup>7</sup>

For example, this procedure was used to place directly on the Calendar S. 1718, a Hurricane Katrina-related bill. On September 19, 2005, while the Senate was conducting morning business, the presiding officer recognized the majority leader for this colloquy:

Mr. FRIST. I understand there is at bill at the desk. I ask for its first reading.

The PRESIDING OFFICER. The clerk will report.

(The legislative clerk then read the bill, S. 1718, by title, as provided in Rule XIV.)

Mr. FRIST. Now I ask for its second reading and in order to place the bill on the calendar under rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard.<sup>8</sup>

S. 1718 had now been read once. In the Senate Calendar dated September 20, 2005, this action was recorded in the section Bills and Joint Resolutions Read the First Time. The measure was held at the desk.

Since objection was heard to the second reading on the same day as the first reading, the presiding officer recognized Senator Robert Bennett, the majority leader’s designee, the next legislative day, September 20, during the Senate’s conduct of morning business:

Mr. BENNETT. Mr. President, I understand there is a bill at the desk that is due for a second reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the second time.

(The assistant legislative clerk then read the bill, S. 1718, by title.)

Mr. BENNETT. Mr. President, in order to place the bill on the calendar under the provisions of rule XIV, I object to further proceeding.

The PRESIDING OFFICER. Objection having been heard, the bill will be placed on the calendar.<sup>9</sup>

S. 1718 had now received its second reading, but there was objection to further proceeding on it. The presiding officer, under Rule XIV, ordered that the bill be placed on the calendar. In the Senate Calendar beginning September 21, 2005, S. 1718 appeared in the section General Orders, with other measures available for floor consideration.

This same procedure is followed to have House-passed bills and joint resolutions placed directly on the Senate Calendar.<sup>10</sup>

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<sup>7</sup> See also *Riddick’s Senate Procedure*, pp. 225-226, 240-248.

<sup>8</sup> Senator Bill Frist, remarks in the Senate, “Measure Read the First Time — S. 1718,” *Congressional Record*, daily edition, vol. 151, Sept. 19, 2005, p. S10200.

<sup>9</sup> Senator Robert Bennett, remarks in the Senate, “Measure Placed on the Calendar — S. 1718,” *Congressional Record*, daily edition, vol. 151, Sept. 20, 2005, p. S10246.

<sup>10</sup> See, for example, the legislative history on the Legislative Information System of H.R. 1797 (109<sup>th</sup> Cong.), a bill providing compensation to a tribe of Indians for the use of tribal land.

Broadly, the two purposes of preventing the referral of a bill or joint resolution to a committee and placing it directly on the Calendar are: (1) to facilitate the full Senate's opportunity to consider the measure; or (2) to bypass a committee's potential inaction or, to the sponsor, potential hostile action.<sup>11</sup> While placing a bill or joint resolution directly on the Calendar does not guarantee that the full Senate will ever consider it, the measure is available for floor consideration and certain procedural steps, like committee reporting or floor approval of amendments to the measure desired by the sponsor, and procedural requirements, like the two-day availability of a committee report, may be obviated.

In the 109<sup>th</sup> Congress, through September 30, 2005, 49 bills and joint resolutions were placed directly on the Calendar using the Rule XIV procedure.<sup>12</sup> A measure such as S. 397, the Protection of Lawful Commerce in Arms Act, was an important legislative initiative. A reason that it might have been placed on the calendar was that the full Senate considered but defeated a related bill in the 108<sup>th</sup> Congress. Eleven Senate bills dealing with the aftermath of Hurricane Katrina were also placed directly on the Calendar, thereby allowing the majority leader to expeditiously call them up for consideration by the Senate.

House-passed bills and joint resolutions might also be placed directly on the Calendar using the Rule XIV procedure when a Senate measure is already on the Calendar, an amendment to the House measure is already in discussion among interested Senators, support for the House-passed measure is stronger in the full Senate than in the committee to which it would be referred, or for another reason. House-passed measures placed on the Calendar in this way in the first nine months of the 109<sup>th</sup> Congress included H.R. 8, Death Tax Repeal Permanency Act of 2005; H.R. 810, Stem Cell Research Enhancement Act of 2005; and H.R. 2745, United Nations Reform Act of 2005.

The procedure under Rule XIV is also used by the minority party, or a Senator with a viewpoint different on an issue from that of most Senators, to give added visibility to specific bills and joint resolutions and to avoid potential inaction or hostility in a Senate committee. Democratic Senators in the 109<sup>th</sup> Congress used this procedure to put bills such as S. 851, Fiscal Responsibility for a Sound Future Act, and S. 1062, Fair Minimum Wage Act of 2005, directly on the Calendar.

## **Measures Placed on Calendar by Unanimous Consent**

Bills and joint resolutions may also be read the first and second times by unanimous consent and placed on the Calendar. This procedure was used in the first nine months of the 109<sup>th</sup> Congress for House-passed bills such as H.R. 3, the highway and transit bill. The Senate's transportation bill was reported from Senate committee shortly after the Senate received the House-passed measure.

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<sup>11</sup> On occasion, a Senator introduces a bill or joint resolution, which is referred to committee, and later introduces an identical or similar measure and has it placed directly on the Calendar, under Rule XIV. The Senator might do this to bypass committee hostility to the first measure. Alternately, a Senator can avoid the Calendar completely by seeking to offer the measure as an amendment to another measure. See CRS Report 98-707, *Senate Amendment Process: General Conditions and Principles*, by Walter Oleszek.

<sup>12</sup> These 49 measures were identified by a search of the *Congressional Record* in the Legislative Information System. Such a search of the 108<sup>th</sup> Congress identified 114 measures.

## Other Uses of Unanimous Consent to Bypass Committees

The majority leader seeks unanimous consent to expeditiously process legislation. The Senate uses a practice called “clearance” to notify Senators of pending noncontroversial bills and joint resolutions to determine if any Senator would object to passing a specific measure by unanimous consent, with little or no debate.<sup>13</sup> The process of passing noncontroversial measures may include bypassing a Senate committee or truncating committee action, although a committee might well have played a key role in the development of the noncontroversial measure sought to be passed or in its clearance.

**Same-Day Consideration.** The Senate may pass some noncontroversial bills and joint resolutions the day they are introduced, for example, S. 1752, reauthorizing the United States Grain Standards Act:

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1752, introduced earlier today.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1752) to amend the United States Grain Standards Act to reauthorize that Act.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1752) was read the third time and passed, as follows:

(The text of the bill was printed in the *Congressional Record*.)<sup>14</sup>

The Senate may also pass some noncontroversial House-passed bills and joint resolutions when they are received. For example, the Senate received a message from the House July 19 regarding H.R. 3332, and passed the bill that day:

Mr. FRIST. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 3332 received from the House.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3332) to provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st century.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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<sup>13</sup> Measures are usually taken up during the time for morning business (in a period dubbed the “wrap-up period”), but also during the conduct of legislative business, when a unanimous consent order temporarily suspends, in effect, the business under consideration by the Senate.

<sup>14</sup> Senator Bill Frist, remarks in the Senate, “Amending the United States Grain Standards Act,” *Congressional Record*, daily edition, vol. 151, Sept. 22, 2005, p. S10392. A bill or joint resolution might also be held at the desk by unanimous consent pending later action.

The PRESIDING OFFICER. Without objection, it is so ordered.  
The bill (H.R. 3332) was read the third time and passed.<sup>15</sup>

The Senate might anticipate passage of a measure by the House, and agree by unanimous consent to Senate passage based on that anticipation. For example, the Senate anticipated House passage of H.R. 241, following the Indian Ocean tsunami:

Mr. McCONNELL. I ask unanimous consent that when the Senate receives from the House H.R. 241, the Senate proceed to its immediate consideration, that the bill be read three times, passed, and the motion to reconsider be laid on the table without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.<sup>16</sup>

**Truncating Committee Action.** Noncontroversial Senate bills and resolutions and House-passed measures are often referred to committee. A committee might later be discharged from a measure's consideration. For example, S. 1613, Livestock Mandatory Reporting Act amendments, was introduced September 6, 2005, and referred to the Agriculture Committee, which seven days later was discharged from its consideration:

Mr. FRIST. I ask unanimous consent that the Committee on Agriculture be discharged from further consideration of S. 1613 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1613) to amend the Livestock Mandatory Reporting Act of 1999 to extend the termination date for mandatory price reporting.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1613) was read the third time and passed, as follows:

(The text of the bill was printed in the *Congressional Record*.)<sup>17</sup>

Several House-passed bills naming postal facilities were referred to the Homeland Security and Governmental Affairs Committee early in the 109<sup>th</sup> Congress, which the committee *ordered reported*. The committee was subsequently discharged from further consideration of the measures, ending committee action before the bills were *reported*.<sup>18</sup>

<sup>15</sup> Senator Bill Frist, remarks in the Senate, "Providing Extension of Programs Funded out of the Highway Trust Fund," *Congressional Record*, daily edition, vol. 151, July 19, 2005, p. S8499.

<sup>16</sup> Senator Mitch McConnell, remarks in the Senate, "Unanimous Consent Agreement — H.R. 241," *Congressional Record*, daily edition, vol. 151, Jan. 6, 2005, p. S41. See also *Riddick's Senate Procedure*, pp. 230-231.

<sup>17</sup> Senator Bill Frist, remarks in the Senate, "Amending Livestock Mandatory Reporting Act of 1999," *Congressional Record*, daily edition, vol. 151, Sept. 13, 2005, p. S9995.

<sup>18</sup> See, for example, the legislative history on the Legislative Information System of H.R. 120 (109<sup>th</sup> Cong.), a bill naming a U.S. Postal Service facility for former Rep. Dalip Singh Saund.