



Bypassing Senate Committees: 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. Provisions of Senate Rule XIV and unanimous consent, however, allow the Senate to bypass a measure's referral to committee. Unanimous consent can also be used to truncate a committee's consideration of a measure.

Rule XIV requires measures to be read twice before referral to committee. After the second reading, by objecting to further proceeding under Rule XIV, a Senator, normally the majority leader (or a designee) acting on his own initiative or at the request of any Senator, prevents referral to committee. The measure is placed directly on the Senate Calendar of General Orders. Unanimous consent is also used to bypass referral and place measures on the calendar. Placing a measure on the calendar, however, does not guarantee floor consideration.

The Senate regularly uses unanimous consent to consider and pass noncontroversial legislation that has not been referred to committee. Unanimous consent can also be used to truncate a committee's consideration of a noncontroversial measure referred to it, and for the Senate to pass the measure. The Senate leadership uses an informal process called "clearance" (or "hotlining") to determine if any Senator would object to a specific bill or joint resolution being considered and passed by unanimous consent.

This report examines the framework of these alternatives applicable to bills and joint resolutions. Concurrent and simple resolutions are not examined here. This report will not be updated unless Senate procedures change.

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Introduction

When a Senator introduces a bill or joint resolution, the measure is usually 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.¹

Senate Rule XIV, paragraph 2 requires that bills and resolutions have three readings before passage, and that they be read twice before being referred to committee.² 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, paragraph 3). Most bills and resolutions are read twice “without any comment whatsoever from the floor”³ and referred to committee on the same day that they are introduced by a Senator or received from the House.⁴

Senate Rule XVII, paragraph 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 certain bills and joint resolutions.⁵

Under Rule XVII, paragraph 1, the presiding officer formally refers bills and joint resolutions; practically, the parliamentarian refers measures in behalf of the presiding officer. 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, paragraph 1.⁶

¹ 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.

² 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, 101st Cong., 2nd sess. (Washington: GPO, 1992), pp. 1290-1291 (hereafter *Riddick’s Senate Procedure*).

³ *Ibid.*, pp. 1150-1151.

⁴ For example, on October 1, 2009, Senate bills S. 1735-S. 1748 and S.J.Res. 20 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[.]” “Introduction of Bills and Joint Resolutions,” *Congressional Record*, daily edition, vol. 155, October 1, 2009, pp. S10060-S10061.

Also on October 1, 2009, the Senate received a message from the House that the House had passed H.R. 1053, H.R. 1333, H.R. 1727, and H.R. 1771, “in which it requests the concurrence of the Senate[.]” A *Congressional Record* entry stated: “The following bills were read the first and second times by unanimous consent, and referred as indicated.” “Message from the House” and “Measures Referred,” *Congressional Record*, daily edition, vol. 155, October 1, 2009, p. S10058.

⁵ 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 appears not to have been used. Joint and sequential referrals, however, have been made by unanimous consent.

⁶ This rule (para. 6) also allows the introduction of such measures 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 111th Congress, Senators may be allowed to bring to the desk bills, joint resolutions, concurrent resolutions, and simple resolutions, for referral to appropriate committees.” Senator Harry Reid, remarks in the Senate, “Unanimous Consent Agreement,” *Congressional Record*, daily edition, vol. 155, January 6, 2009, p. S6.

The Senate may, however, use provisions of Senate Rule XIV or unanimous consent to completely or partially bypass potential referral of a bill or joint resolution to a Senate committee. The purpose of doing so could be to have a measure placed directly on the Senate's Calendar of Business, which under General Orders lists measures eligible for floor consideration, or to immediately consider a measure.

Senators might also convert introduced bills and resolutions into an amendment form and offer their proposal as a germane, relevant, or nongermane amendment, including amendments in the nature of a substitute and managers' amendments, to another measure being considered on the Senate floor. They might also choose not to introduce a bill or resolution, but only seek to amend another measure. This report does not examine the use of the amendment process as a way to bypass Senate committees.⁷

This report examines the framework and use of Rule XIV and unanimous consent to place bills and joint resolutions directly on the calendar and of unanimous consent requests to call up and pass noncontroversial measures. In the remainder of this report, "bill" or "bills" will be used to refer to bill(s) and joint resolution(s).

Using Rule XIV to Bypass a Senate Committee

Senate Rule XIV, paragraph 4, states: "... 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 after two readings is prevented from being referred to committee and is placed directly on the calendar. It is usually the 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 a measure.⁸

For example, this procedure was used to place directly on the calendar S. 1858. On October 22, 2009, the presiding officer recognized the majority leader for this colloquy with the chair

Mr. REID. It is my understanding that S. 1858 is at the desk and due for its first reading.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

⁷ For example, in the 111th Congress, the Health, Education, Labor, and Pensions Committee and the Finance Committee originated health-care bills, S. 1679 and S. 1796, respectively. The majority leader called up H.R. 3590, a House-passed bill concerning application of the first-time homebuyer's tax credit to members of the armed forces. Once the Senate invoked cloture on the motion to proceed to consider H.R. 3590, the majority leader offered an amendment in the nature of a substitute for the text of H.R. 3590. The amendment was the majority leader's version of health-care reform, different from either of the reported bills. "Service Members Home Ownership Tax Act of 2009—Motion to Proceed," *Congressional Record*, daily edition, vol. 155, November 21, 2009, p. S11967. For explanation of the amendment process in the Senate, see CRS Report 98-707, *Senate Amendment Process: General Conditions and Principles*, by Walter J. Oleszek; CRS Report 98-614, *Amendments in the Senate: Types and Forms*, by Christopher M. Davis; and CRS Report 98-853, *The Amending Process in the Senate*, by Betsy Palmer.

⁸ See also *Riddick's Senate Procedure*, pp. 225-226 and 240-248.

A bill (S. 1858) to require Senate candidates to file designations, statements, and reports in electronic form.

Mr. REID. Mr. President, I ask for a second reading but object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will be read for the second time on the next legislative day.⁹

In the next edition of the calendar on October 26, this action was recorded in the section Bills and Joint Resolutions Read the First Time. The measure was held at the desk.

Since objection had been heard to the second reading, the presiding officer recognized Senator Reid the next legislative day, October 26:

Mr. REID. Mr. President, I am told that S. 1858 is at the desk and is due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title for the second time.

The legislative clerk read as follows:

A bill (S. 1858) to require Senate candidates to file designations, statements, and reports in electronic form.

Mr. REID. Mr. President, I object to any further proceeding with regard to this bill [in order to place it on the calendar under the provisions of rule XIV].

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will be placed on the calendar.¹⁰

S. 1858 had received its second reading, but there was objection to further proceeding on referral of the bill to committee. The presiding officer, under Rule XIV, ordered that the bill be placed on the Senate Calendar. In the calendar beginning October 27, S. 1858 appeared as Calendar Order No. 187 in the section General Orders, with other measures available for floor consideration.

This same procedure is followed to have House-passed bills placed directly on the Senate Calendar.¹¹

Broadly, the two purposes of preventing referral of a bill to a committee 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.¹² While placing a bill directly on the calendar

⁹ Senator Harry Reid, remarks in the Senate, "Measure Read the First Time—S. 1858," *Congressional Record*, daily edition, vol. 155, October 22, 2009, p. S10709.

¹⁰ Senator Harry Reid, remarks in the Senate, "Measure Placed on the Calendar—S. 1858," *Congressional Record*, daily edition, vol. 155, October 26, 2009, p. S10711.

¹¹ See, for example, Senator Mark Begich, remarks in the Senate, "Measures Read the First Time—H.R. 3548, H.R. 3590, S. 1772," *Congressional Record*, daily edition, vol. 155, October 8, 2009, p. S10327; and Senator Harry Reid, remarks in the Senate, "Measures Placed on the Calendar—H.R. 3548, H.R. 3590, S. 1772," *Congressional Record*, daily edition, vol. 155, October 13, 2009, p. S10333.

¹² On occasion, a Senator introduces a bill, which is referred to committee, and later introduces an identical or similar (continued...)

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 discharging a committee from a bill's consideration, and procedural requirements, like the two-day availability of a committee report, may be obviated.

In the 110th Congress, at least 157 bills were placed directly on the calendar using the Rule XIV procedure.¹³ For example, S. 5, the Stem Cell Research Enhancement Act, was an important legislative initiative. A reason that it might have been placed directly on the calendar was that the full Senate already considered related measures in the 109th Congress and the underlying issues had been debated over the course of several Congresses. In October 2008, two Senate bills dealing with the economic crisis (S. 3688 and S. 3689) were placed directly on the calendar, thereby allowing the majority leader to expeditiously call them up for consideration by the Senate.

As mentioned, House-passed bills might also be placed directly on the calendar using the Rule XIV procedure. The Senate might choose this option when a Senate measure is already on the calendar, a Senate committee is in the process of completing consideration of companion legislation, 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 110th Congress included H.R. 2, increasing the federal minimum wage, and H.R. 4040, amendments to the Consumer Product Safety Act.

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 other Senators, to give added visibility to specific bills and to avoid potential inaction or hostility in a Senate committee. Republican Senators in the 110th Congress, for example, used this procedure to put bills such as S. 2973, a Republican energy bill, directly on the calendar.

Measures Placed on Calendar by Unanimous Consent

By unanimous consent, bills may also be read the first and second times and placed on the calendar. This procedure was used in the 110th Congress for House-passed bills such as H.R. 137, increasing criminal sanctions pertaining to animal fighting. The Senate companion measure, S. 261, was reported from Senate committee the same day the House passed its measure.

(...continued)

measure and places it directly on the calendar under Rule XIV. The Senator might do this to bypass a committee's hostility to the first measure: the committee would neither report the measure nor allow it to be discharged by unanimous consent. Alternately, as mentioned in the introduction to this report, a Senator can seek to offer a measure in the form of an amendment to another measure.

¹³ These 157 measures were identified by a search of the *Congressional Record* on the Legislative Information System. Such a search of the 109th Congress identified at least 119 measures.

Using Unanimous Consent to Bypass Committees for Floor Consideration

Senate floor consideration of a bill could be characterized as a two-step process. There is first debate and a decision by the Senate whether to consider a measure: a vote on, or unanimous consent to, a motion to proceed to consideration of the measure. There is then debate, amendment, and a vote on final passage of the measure itself.

On many pieces of noncontroversial legislation, Senate leaders use an informal process called “clearance” (or “hotlining”). Senators are notified of pending noncontroversial bills to determine if any Senator would object to proceeding to consider and then passing a specific measure by unanimous consent—with little or no debate, no motion or amendment unless it is sought as part of clearance, and no votes.¹⁴ 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.

On major legislation, the majority leader also attempts to obtain unanimous consent to proceed to consideration of a measure. The majority leader might seek unanimous consent even if the measure was not referred to or reported by a committee. If successful, the majority leader will propound a unanimous consent request on the Senate floor to proceed to consideration. If unsuccessful, the motion to proceed is debatable and therefore may be filibustered; procedural objections in the form of points of order might also be available to opponents. Once the motion to proceed is agreed to by vote or by unanimous consent, consideration of the measure begins. The majority leader might seek a complex unanimous consent agreement or a series of such agreements (also called “time-limitation agreements”) that structure debate and the amendment process to bring the Senate to a vote on final passage.

This section of the report illustrates the use of unanimous consent to bypass or truncate committee consideration of noncontroversial legislation and expeditiously pass such bills on the Senate floor.¹⁵

Same-Day Consideration

The Senate may pass some noncontroversial bills the day they are introduced, for example, in the 111th Congress, S. 1818, the Morris K. Udall Scholarship and Excellence in National Environmental Policy Amendments Act:

¹⁴ Measures may be taken up during time set aside for morning business (in a period dubbed the “wrap-up period”), or during the conduct of legislative business, when the unanimous consent request temporarily suspends other business if other business is before the Senate.

¹⁵ For an explanation of how the Senate might consider major legislation, see CRS Report 96-548, *The Legislative Process on the Senate Floor: An Introduction*, by Valerie Heitshusen; CRS Report RS20668, *How Measures Are Brought to the Senate Floor: A Brief Introduction*, by Christopher M. Davis; CRS Report 98-225, *Unanimous Consent Agreements in the Senate*, by Walter J. Oleszek; and CRS Report RS20594, *How Unanimous Consent Agreements Regulate Senate Floor Action*, by Richard S. Beth.

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 1818.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1818) to amend the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 to honor the legacy of Stewart L. Udall, and for other purposes.

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

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times 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 ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (S. 1818) was read the third time and passed, as follows:

The bill (S. 1818) was ordered to be engrossed for a third reading, was read the third time, and passed[.]¹⁶

The Senate may also pass some noncontroversial House-passed bills when they are received. For example, the Senate received a message from the House March 18, 2009, regarding H.R. 1512, the short-term Federal Aviation Administration Extension Act, and passed the bill that day:

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 1512.

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

The assistant legislative clerk read as follows:

A bill (H.R. 1512) to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

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

Mr. REID. Mr. President, I ask unanimous consent the bill be read three times and passed; the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the measure be printed in the RECORD.

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

The bill (H.R. 1512) was ordered to be read a third time, was read the third time, and passed.¹⁷

¹⁶ Senator Harry Reid, remarks in the Senate, "Morris K. Udall Scholarship and Excellence in National Environmental Policy Amendments Act of 2009," *Congressional Record*, daily edition, vol. 155, October 20, 2009, p. S10585.

If the measure is a joint resolution rather than a bill, and the joint resolution has a preamble,¹⁸ the unanimous consent request on passage must encompass the preamble. So, for example, Senator Reid made this request pertaining to H.J.Res. 26, posthumously proclaiming honorary citizenship for Casimir Pulaski:

I ask unanimous consent the joint resolution be read a third time and passed, *the preamble be agreed to*, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.¹⁹ (*Emphasis added.*)

Measure Held at the Desk

House bills might be received by the Senate or Senate bills introduced with no immediate further proceedings on them. They are held at the desk, sometimes pending a decision on referring them to committee, passing them without committee consideration, or obtaining clearance from all Senators. For example, H.R. 3663, pertaining for pharmacy durable medical equipment accreditation, was received in the Senate October 1, 2009. Although other bills were received from the House that day and referred, no further proceedings occurred on H.R. 3663. On October 5, the Senate took up and passed H.R. 3663 by unanimous consent. To proceed to consideration, Senator Richard J. Durbin simply stated:

I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3663, which was received from the House.²⁰

The bill was passed by unanimous consent.

Anticipating House Action

The Senate might anticipate passage of a measure by the House, and agree by unanimous consent to Senate passage. For example, the Senate in the 109th Congress 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.²¹

(...continued)

¹⁷ Senator Harry Reid, remarks in the Senate, "Federal Aviation Administration Extension Act of 2009," *Congressional Record*, daily edition, vol. 155, March 18, 2009, p. S3379.

¹⁸ Introductory text, sometimes called "whereas clauses," preceding the resolving clause of a resolution.

¹⁹ Senator Harry Reid, remarks in the Senate, "Proclaiming Casimir Pulaski to be an Honorary Citizen of the United States Posthumously," *Congressional Record*, daily edition, vol. 155, October 22, 2009, p. S10709.

²⁰ Senator Richard J. Durbin, remarks in the Senate, "Pharmacy DME Accreditation Delay," *Congressional Record*, daily edition, vol. 155, October 5, 2009, p. S10117.

²¹ Senator Mitch McConnell, remarks in the Senate, "Unanimous Consent Agreement—H.R. 241," *Congressional Record*, daily edition, vol. 151, January 6, 2005, p. S41. See also *Riddick's Senate Procedure*, pp. 230-231.

Truncating Committee Action

Noncontroversial Senate bills and House-passed measures are often referred to committee. A committee might later be discharged from a measure's consideration. For example, S. 735, the Protecting Incentives for Adoption of Children with Special Needs Act, was introduced March 30, 2009, and referred to the Finance Committee, which three days later was discharged from its consideration:

Mr. REID. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of S. 735 and the Senate proceed to its 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. 735) to ensure States receive adoption incentive payments for fiscal year 2008 in accordance with the Fostering Connections to Success and Increasing Adoptions Act of 2008.

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

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, the motion to reconsider be laid upon the table, with no intervening action or debate, 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. 735) was ordered to be engrossed for a third reading, was read the third time, and passed[.]²²

Several House-passed bills naming postal facilities were referred to the Homeland Security and Governmental Affairs Committee in the 109th 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*.²³

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²² Sen. Harry Reid, remarks in the Senate, "Adoption Incentive Payments for Fiscal Year 2008," *Congressional Record*, daily edition, vol. 155, April 2, 2009, p. S4397.

²³ See, for example, the legislative history of H.R. 120 (109th Cong.), a bill naming a U.S. Postal Service facility for former Rep. Dalip Singh Saund.