

# Availability of Legislative Measures in the House of Representatives (The “72-Hour Rule”)

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## Availability of Legislative Measures in the House of Representatives (The “72 Hour Rule”)

House rules govern the length of time legislative measures must be available to Members before being considered on the floor. For measures reported from committee, a draft of the committee report must have been available for 72 hours. Conference reports must also have been available for 72 hours and special rules for considering measures for one legislative day. Bills and joint resolutions that have not been reported by committee, and therefore are not accompanied by a written report, may also not be considered on the House floor unless the text of the measure has been available for 72 hours. Proposed committee reports, unreported bills and joint resolutions, conference reports, and joint explanatory statements are considered available under these rules if they are publicly available in electronic form on a website designated by the Committee on House Administration for this purpose, <http://docs.house.gov>.

The House 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) considering a measure under the suspension of the rules procedure or by unanimous consent, (2) adopting a special rule that waives the 72-hour requirement, (3) adopting a special rule that waives the one-day requirement for another special rule, and (4) 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.

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## 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 the measures must be made available before being considered on the floor. Different House rules establish availability requirements for reported bills and resolutions, unreported bills and joint 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).

Under House rules, draft committee reports and unreported bills and joint resolutions are considered available under these rules if they are “publicly available in electronic form at a location designated by the Committee on House Administration.”<sup>1</sup> Conference committee reports and accompanying joint explanatory statements are also considered available if they are in electronic form at such a location.<sup>2</sup> It is not a requirement under the rule that the measures be available in the designated location. Instead, the House rule is meant to provide an additional means through which Members, congressional staff, and the general public can access these documents.<sup>3</sup>

### Reported Bills and Resolutions (Rule XIII, Clause 4(a))

Measures and other matters reported by committees may not be considered on the House floor until a draft of the committee report on the matter has been available for at least 72 hours.<sup>4</sup> Specifically, the “proposed text” of the committee report—except for any supplemental, minority, additional, or dissenting views—must be made available. Under House Rule XI, clause 2(l), committee members are guaranteed two calendar days to submit supplemental or other views for inclusion in a committee report—if notice of intent to file supplement views was given at the markup.<sup>5</sup> However, the committee majority, before receiving such views, can make a draft of the committee report available and start the 72-hour clock.<sup>6</sup>

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<sup>1</sup> Clause 3 of Rule XXIX. The designated website, “Bills to Be Considered on the House Floor,” is available at <http://docs.house.gov/>.

<sup>2</sup> Clause 8(a)(1)(A) of Rule XXII.

<sup>3</sup> According to the section-by-section analysis of the rules changes provided by the Rules Committee when it was proposed in the 112<sup>th</sup> Congress, “the provision is intended to place electronic distribution on par with traditional printing, rather than entirely replace it” (“Section-by-Section Analysis of the 112<sup>th</sup> Congress House Rules Package” *Congressional Record*, daily edition [January 5, 2011], p. H13).

<sup>4</sup> Until the House changed its rules at the start of the 116<sup>th</sup> Congress, committee reports, unreported legislation, and conference reports were previously required to be available for three days, excluding weekends and holidays unless the House was in session on such days. The previous three-day requirement was not necessarily 72 hours. For example, a matter could be taken up on a Wednesday morning having been available since Monday evening. In addition, under the new rule, time over weekends and holidays counts toward the 72-hour availability requirement, while under the previous rule it did not (unless the House was in session those days).

<sup>5</sup> The two calendar days do not include weekends and legal holidays unless the House is in session those days, and they begin the day after the markup. As a result, it is possible that the 72-hour availability requirement could be met before the time guaranteed for the submission of supplemental and other views expires.

<sup>6</sup> According to the section-by-section analysis of the rules changes provided by the Rules Committee when it was proposed in the 116<sup>th</sup> Congress, “any committee making the report available electronically must also make any such views available electronically promptly after they are submitted to the committee to avoid the possibility that the House would consider a measure prior to the availability of the complete accompanying report.”

The House rule exempts several kinds of measures specified in the rule, including resolutions reported by the Rules Committee.<sup>7</sup>

## **Unreported Bills and Joint Resolutions (Rule XXI, Clause 11)**

Bills and joint resolutions that have not been reported by committee, and therefore are not accompanied by a written report, may also not be considered on the House floor unless the text of the measure has been available for at least 72 hours. The 72-hour period can begin when the text is made available, even if that text is in the form of a draft bill that has not yet been formally introduced and numbered. When the House considers the legislation, whatever text was made available must be identical to the legislation as introduced for the availability requirement to have been met.<sup>8</sup>

If a measure has not been reported by a committee, it is generally not eligible for floor consideration unless it is called up under a procedure that waives the requirement that it be reported. Such procedures are discussed below in the section on waiving the availability requirements.

## **Conference Reports (Rule XXII, Clause 8(a))**

The House rule requires that before a conference report can be considered, its text and its accompanying joint explanatory statement must be available in the *Congressional Record* for 72 hours. Alternatively, the conference report can be considered if it has been made publicly available in electronic form at a location designated by the Committee on House Administration (currently <http://docs.house.gov/>). In addition, copies of a conference report and the joint explanatory statement must be available for at least two hours prior to its consideration.

According to the rule, this 72-hour 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 are usually 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 72-hour rule applies even as the House nears the end of a session. The 72-hour 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.<sup>9</sup> Near the end of a session, however, the House sometimes agrees to special rules reported by the Rules Committee that waive the availability requirement. This is discussed below in the section on waiving availability requirements.

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<sup>7</sup> The 72-hour rule also does not apply to (1) a resolution to fund committee operations 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.

<sup>8</sup> A rules change in the 117<sup>th</sup> Congress allowed the 72-hour availability period to begin when a text was made available prior to the formal introduction of the bill. The section-by-section analysis of the rules changes provided by the Rules Committee at the time the change was proposed stated, “Although the introduced measure must consist of the exact text of the language made electronically available prior to introduction in order to qualify under this updated rule, changes to a measure’s text made after introduction by a self-executing special rule do not impact this availability period” (*Congressional Record*, daily edition [January 4, 2021], p. H24).

<sup>9</sup> Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham Jr., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington: GPO, 2017), p. 366.

## 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 72 hours. If the rule 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, 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.

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 in the Rules

The House has several means for waiving its rules when it wishes to act expeditiously. For example, the House 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.<sup>10</sup> 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 72-hour availability requirement for bills, resolutions, or conference reports. A rule *only* waiving the availability requirement 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 72-hour 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

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<sup>10</sup> For more information on suspension of the rules, see CRS Report 98-314, *Suspension of the Rules in the House: Principal Features*, by Elizabeth Rybicki.

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 *only* waiving the 72-hour 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 72-hour 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 made available prior to consideration. 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 or Extending a 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.<sup>11</sup> 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 72-hour availability requirement for a resolution, bill, or conference report.<sup>12</sup>

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<sup>11</sup> Johnson, Sullivan, and Wickham, *House Practice*, p. 890.

<sup>12</sup> For example, in the 114<sup>th</sup> Congress, a rule, H.Res. 797, for the consideration of a conference report accompanying the Military Construction, Veterans Affairs, and Related Appropriations Act of 2017, was presented and considered on *different legislative days* but the *same calendar day*. The Rules Committee presented the special rule, H.Res. 797, for the consideration of the conference report, at 1:23 a.m. on the calendar day of June 23, 2016, and the legislative day of June 22. The House had not adjourned on June 22. The House adjourned at 1:34 a.m. on legislative day June 22 and met again on legislative and calendar day June 23 at 2:30 a.m. The House considered H.Res. 797 at 2:33 a.m. on June

From time to time, the House has also been known to recess after legislative business, but not adjourn, in order to give the Rules Committee time to complete and report a special rule. The rule could be reported very late or even early in the morning of the next calendar day. Regardless of whether or not it is the next calendar day when the rule is reported, if the House adjourns after it is reported, when it reconvenes it will be a new legislative day, and the layover requirement will be considered met.

## **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 as “same day rules.” They are also 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 rules<sup>13</sup> and to describe broad special rules that trigger some provisions of House rules and waive others for the remaining duration of a session.<sup>14</sup>

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 72-hour 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 same-day 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.

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23. (*Congressional Record*, daily edition, vol. 162 [June 22, 2016], p. 4126, and [June 23, 2016], pp. H4173-H4174.) See also, in the 107<sup>th</sup> Congress, a rule, H.Res. 600, for the consideration of a bill to establish the Department of Homeland Security (*Congressional Record*, daily edition, vol. 148 [November 13, 2002], pp. H8543, H8590-H8594).

<sup>13</sup> See, for example, the *Congressional Record*, daily edition (February 4, 1993), p. H552; (May 25, 1994), p. H4020; (July 26, 2002), p. H5957; (May 22, 2003), p. H4559; (December 7, 2004), p. H10993; (December 10, 2008), p. H10871; (December 9, 2009), p. H14481; (July 21, 2010), p. H5889; (August 1, 2014), p. H7192.

<sup>14</sup> See, for example, the *Congressional Record*, daily edition, (November 22, 1991), p. H10945; (October 2, 1992), p. H10681; (September 24, 1996), p. H10928; (December 7, 2006), p. H8896; (December 21, 2010), p. H8817. (October 4, 2013), p. H6246.

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