

Assembly of Congress

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Research References

- 1 Hinds §§ 1–10; 5 Hinds §§ 6758–6762
- 6 Cannon §§ 1–5
- 1 Deschler Ch 1
- Manual § 245

§ 1. In General; Day of Convening

Generally

The Constitution provides that each regular session of Congress shall begin on January 3 unless Congress by law appoints a different day. U.S. Const. amend. XX, § 2. A joint resolution, which has not been considered privileged, is used to provide for the convening of a Congress on a day other than that specified by the Constitution. 94–2, Oct. 1, 1976, p 35130. See also H.J. Res. 377, providing for the convening of the 97th Congress, second session, on Jan. 25, 1982, rather than on Jan. 3, 1982. For other laws appointing a different day for assembling, see *Manual* § 243. The joint resolution may originate either in the House (95–1, Dec. 15, 1977, p 38948) or in the Senate (93–1, Dec. 17, 1973, p 42059).

The President has the constitutional authority to convene the Congress earlier than on the day it has fixed for its reconvening. He may exercise this authority on “extraordinary occasions” by convening either or both Houses. U.S. Const. art. II, § 3. A number of early Congresses were convened by Presidential proclamation (1 Hinds §§ 10, 12). The last session so convened was in the 76th Congress.

Pro Forma Meetings

Upon completion of the legislative business for a session, the House may schedule pro forma meetings for the remainder of the constitutional term. 96–1, Dec. 14, 1979, p 36200. For example, as the first session of

the 96th Congress drew to a close, the House, by unanimous consent, agreed to convene every third day for the remainder of the session, including a final pro forma meeting immediately prior to the constitutional expiration of the session at noon on Jan. 3, 1980. 96–1, Dec. 20, 1979, p 37317. Similarly, in the 102d Congress, pursuant to the concurrent resolution that placed the two Houses in an intrasession adjournment from November 27, 1991, until January 3, 1992, the House convened at 11:55 a.m. on that day for its final meeting of the first session. Because section 2 of the 20th Amendment requires the Congress to assemble at noon on January 3 of each year unless another date is set by law, when the Speaker announced adoption of a simple motion to adjourn on the last day of the first session at two minutes before that time he declared the House adjourned *sine die* so that the second session could be convened at noon. 102–2, Jan. 3, 1992, p ____.

Alternatively, the House may recess pursuant to a rule reported from the Committee on Rules at the end of a session for periods not in excess of three days, 104–1, Dec. 21, 1995, p ____.

§ 2. Hour of Meeting

Generally; Hourly Schedules

Each House has plenary power over the time of its meetings during the session. If the time of meeting has not been previously set by resolution, the House, by standing order having the force of the common law, meets each day at noon. Deschler Ch 1 § 3. However, it is the customary practice of the House to adopt a resolution establishing an hourly schedule for its daily meetings. 88–2, Jan. 7, 1964, p 5; 92–1, Jan. 21, 1971, p 15; 97–2, Jan. 25, 1982, p 62. In the 104th Congress, for example, the House adopted a resolution (Jan. 4, 1995, H. Res. 8) establishing as a standing order the daily hours of meeting.

Such schedules are designed to provide sufficient committee time for hearings and markups early in the session, and sufficient floor time later for authorization and appropriation bills. Resolutions setting daily meeting times are considered privileged even though they are not reported from the Committee on Rules since they are essential to the operation of the House where there is no standing order in place. 97–2, Jan. 25, 1982, p 62. But subsequent resolutions changing the hour of meeting, unless reported as privileged from the Committee on Rules, require unanimous consent for consideration. See, for example, 95–2, June 29, 1978, p 19507.

The meeting hour may be subsequently changed to a different hour on certain days of the week pursuant to the adoption of a resolution setting forth the new convening time. 95–1, June 30, 1977, p 21685. And the House

may by unanimous consent vacate a previous order providing for the House to meet only at certain times for the remainder of the session, and agree to meet at a different time. 95–1, Nov. 29, 1977, p 38003.

Adjournments to a Different Hour

The motion that when the House adjourns it adjourn to a day and time certain may be used to enable the House to meet at an hour different from that provided by the standing order. For a general discussion of this motion (which is a privileged motion at the Speaker's discretion) see ADJOURNMENT. In addition, the House may agree by unanimous consent to meet at an earlier hour on the following day rather than at noon. 88–1, Dec. 23, 1963, p 25499; 90–2, Sept. 11, 1968, p 26488. And if the time of meeting has not been previously set, the House may agree to a motion to adjourn which fixes the hour of the next meeting (5 Hinds §§ 5362, 5363).

§ 3. Organizational Business—First Session

Functions of the Clerk

At the beginning of a new Congress, under the modern practice (see 103–1, Jan. 5, 1993, p ____), the Clerk elected in the prior Congress calls the House to order. In the event of his absence or incapacity, the Sergeant at Arms from the prior Congress calls the House to order. 98–1, Jan. 3, 1983, p 29. After the opening prayer and Pledge of Allegiance, he:

- Announces the receipt of credentials of Members-elect.
- Causes a quorum to be established, by roll call by states, by electronic device.
- Announces the filing of credentials of Delegates-elect and of the Resident Commissioner.
- Recognizes for nominations for Speaker.
- Appoints tellers for the alphabetical roll call vote by surname for Speaker.
- Announces the vote.
- Appoints a committee to escort the Speaker to the Chair.

Election of Speaker

The election of the Speaker is ordinarily the first order of business at the opening of a new Congress after the ascertainment of a quorum. Candidates for the office are nominated by the chairmen of the Democratic Caucus and the Republican Conference. See, for example, 103–1, Jan. 5, 1993, p _____. The Speaker may be chosen by a viva voce vote on a roll call with tellers, the Members responding with the name of the nominee of their choice when called on the roll. Deschler Ch 1 § 6. Although the Clerk ap-

points tellers for the election (87–2, Jan. 10, 1962, p 5) the House and not the Clerk determines what method of voting to use. Deschler Ch 1 § 6.

Status and Rights of Members-elect

Where the certificate of election of a Member-elect, in due form, is on file with the Clerk, he is entitled as of right to be included on the Clerk's roll. *Page v United States* (1888) 127 US 67. Those Members whose names appear on the Clerk's roll are entitled to vote for a new Speaker at the beginning of a Congress and to participate in other organizational business prior to the administration of the oath. They may debate propositions, propose motions, offer resolutions, and make points of order (Deschler Ch 2 § 2); and they may be named to serve on House committees when sworn. 4 Hinds §§ 4477, 4483, 4484. They may not introduce bills until after they have been sworn. *Manual* § 300.

All Members-elect whose credentials have been received by the Clerk are included on the first roll call, on opening day, to establish a quorum. Members-elect not responding on that call and not appearing to take the oath when it is administered *en masse* on opening day are not included on further roll calls until they have taken the oath. Generally, see OATHS.

Notices and Messages

At the beginning of a new Congress, the House by various resolutions: (1) directs that a message be sent to the Senate to inform that body that a quorum of the House has been established and that the Speaker and Clerk have been elected; (2) establishes a select committee to notify the President that a quorum of the House has assembled and is ready to receive any communication he may wish to make; and (3) directs the Clerk to inform the President of the selection of Speaker. See 94–1, Jan. 14, 1975, pp 15–19; 103–1, Jan. 5, 1993, p ____.

§ 4. Organizational Business—Second Session

At the beginning of a second session of a Congress, the House is ordinarily called to order by the Speaker, although in his absence the House may be called to order by the Clerk (87–2, Jan. 10, 1962, p 5) or by a previously designated Speaker pro tempore (89–2, Jan. 10, 1966, p 5). Following the opening prayer, the Speaker orders, without motion, a call of the House to establish a quorum. 98–2, Jan. 23, 1984, p 74. The call of the House may be taken by electronic device (102–2, Jan. 24, 1992, p ____), but the Speaker may elect not to use the electronic system for that purpose. 94–2, Jan. 19, 1976, p 140.

Members-elect, elected to fill vacancies occurring in the first session, are not included on the roll call to ascertain the presence of a quorum when the second session convenes; their names are included on the roll only after their certificates of election have been laid before the House and the oath administered to them. Similarly, the names of those Members who resigned during adjournment are stricken from the roll and are not called to establish a quorum. 87–2, Jan. 10, 1962, p 5.

§ 5. Adoption of Rules

The Constitution gives each House the power to determine the rules of its proceedings. U.S. Const. art. I § 5 clause 2. The Supreme Court has interpreted this clause to mean that the House possesses nearly absolute power to adopt its own procedural rules. *United States v Ballin* (1892) 144 US 5. This power cannot be restricted by the rules or statutory enactments of a preceding House. Deschler Ch 1 § 10.1. Thus, the adoption of the three-day availability rule by the 91st Congress did not bind the 92d Congress. 92–1, Jan. 22, 1971, p 132.

The rules of the House for each Congress are adopted by resolution. See, for example, 89–1, Jan. 4, 1965, pp 21–25; 90–1, Jan. 12, 1967, p 430. Ordinarily, the House adopts the rules of the prior Congress but with various amendments. 5 Hinds § 6742; 103–1, Jan. 5, 1993, p _____. A resolution adopting rules is subject to amendment when the previous question is voted down (90–1, Jan. 10, 1967, pp 31–33) or by the minority in a motion to recommit with instructions. Such a resolution is not subject to a demand for a division of the question or for a separate vote on each rule (Deschler Ch 1 § 10.8) absent prior adoption of a special rule permitting a division of the resolution (104–1, Jan. 4, 1995, p _____).

As with other House-passed measures, the House may by unanimous consent direct the Clerk, in the engrossment of a House resolution providing for the adoption of rules, to make certain technical corrections in the text of the resolution. 90–1, Jan. 12, 1967, p 430.

§ 6. Procedure Prior to Adopting Rules

Prior to the adoption of formal rules, the House operates under general parliamentary law, as modified by certain traditional House rules and practices, and by portions of Jefferson’s Manual. 5 Hinds §§ 6761–6763; 8 Canon § 3386. Statutes incorporated into the rules of the prior Congress do not control the proceedings of the new House. 92–1, Jan. 22, 1971, p 132. They must be re-adopted as part of the rules of the new House in the resolution adopting those rules.

Prior to the adoption of rules by the House, those rules which embody practices of long-established custom will be enforced as if already in effect. 6 Cannon § 191. Thus, prior to adoption of the rules, the Speaker may maintain decorum by directing a Member who has not been recognized in debate beyond an allotted time to be removed from the well, and by directing the Sergeant at Arms to present the mace as the traditional symbol of order. 102–1, Jan. 3, 1991, p ____.

Procedures common to general parliamentary law applicable in the House prior to the adoption of its formal rules include:

- The motion for a call of the House. 4 Hinds § 2981; Deschler Ch 1 § 9.
- Points of order of no quorum. 96–1, Jan. 15, 1979, p 10.
- The motion to refer, subject to the motion to table. 103–1, Jan. 5, 1993, p ____.
- Demands for the yeas and nays. 5 Hinds §§ 6012, 6013; Deschler Ch 1 § 9.
- The motion for the previous question (5 Hinds §§ 5451–5455; 90–1, Jan. 10, 1967, p 14), which takes precedence over a motion to amend. 91–1, Jan. 3, 1969, pp 25–27.
- The motion to amend after rejection of the previous question (90–1, Jan. 10, 1967, p 14; 87–1, Jan. 3, 1961, pp 23–25), with any amendment being subject to the point of order that it must be germane. 91–1, Jan. 3, 1969, pp 23–25.
- The practice that Members may engage in debate only when recognized, such recognition being at the discretion of the Speaker. 102–1, Jan. 3, 1991, p ____.
- The hour rule for debate on a question. 92–1, Jan. 22, 1971, p 132.
- Losing the right to resume after yielding the floor. 5 Hinds §§ 5038–5040.
- Recognition for an amendment after the defeat of the previous question, under the hour rule, with the proponent of the amendment controlling the time. 91–1, Jan. 3, 1969, pp 27–29.
- The motion to commit after ordering of the previous question. 5 Hinds § 6758; 97–1, Jan. 5, 1981, p 112; 98–1, Jan. 3, 1983, p 50.
- Withdrawal of a resolution before action is taken thereon. 92–1, Jan. 21, 1971, p 13.
- The motion to lay on the table. 5 Hinds § 5390; Deschler Ch 1 § 9.
- The motion to postpone to a day certain. 92–1, Jan. 21, 1971, p 14.
- The motion to adjourn. 1 Hinds § 89; Deschler Ch 1 § 9.

Specific standing rules of the House held *not* applicable prior to adoption of its formal rules include:

- The rule permitting 40 minutes of debate after the moving of the previous question on a matter on which there has been no debate. 5 Hinds § 5509; 87–1, Jan. 3, 1961, p 23.
- The three-day availability rule for the consideration of committee reports. 92–1, Jan. 22, 1971, p 132.

§7. Taking Up Legislative Business

Generally

Congress is not assembled until both the House and Senate are in session with a quorum present. 6 Cannon § 5. But once the two Houses have assembled, elected officers, sworn Members, and adopted rules, the resumption of legislative business is in order. See 1 Hinds §§ 130, 140, 237; Deschler Ch 1 § 11. In rare instances, a major bill has been considered and passed even before the completion of organization by the adoption of rules. Deschler Ch 1 § 12.8. However, a bill will not be considered in the House before the administration of the oath to Members-elect, because of the statutory requirement that the oath precede the consideration of general business. 2 USC § 25. And, as a matter of long-established custom, the two Houses usually do not begin transacting legislative business at the beginning of a Congress until after the President has delivered his state of the Union Message. See 1 Hinds §§ 81, 122–125; Deschler Ch 1 § 11. On one recent occasion the House as part of the resolution adopting its standing rules also adopted a special order providing for the immediate consideration of a bill introduced that day (104–1, Jan. 4, 1995, p ____). On occasion the House has convened for its second session on Jan. 3 but then conducted no legislative business (including approval of its Journal or referral of bills) for several days. 96–2, Jan. 22, 1980, p 187; 102–2, Jan. 22, 1992, p ____.

Old Business

Upon convening for a second or third session during the term of a Congress, the House resumes all business that was pending either before the House or before committees at the adjournment *sine die* of the preceding session. 5 Hinds § 6727; *Manual* § 901. Similarly, conference business between the two Houses continues over an adjournment between the first and second sessions of a Congress. 5 Hinds §§ 6760–6762. However, since Congress does not allow the past proceedings of one Congress to bind its successor, business remaining at the end of one Congress does not carry over to the beginning of a new Congress. Deschler Ch 1 § 11.

Bills may be placed in the hopper on opening day and are referred as expeditiously as possible following adoption of the rules (94–1, Jan. 14, 1975, p 34); however, due to the large number of bills introduced on opening day, the Speaker may delay their referral but with all referrals ultimately printed as being made on opening day. 86–1, Jan. 7, 1959, p 161.