

H. RES. 5
(111TH CONGRESS)

SECTION-BY-SECTION ANALYSIS

Adopting Rules for the 111th Congress

January 6, 2009

[Pages H6-20]¹

SUMMARY OF HOUSE RULES PACKAGE,
OPENING DAY OF THE 111TH CONGRESS,

SECTION-BY-SECTION OF RULE CHANGES – 111TH CONGRESS

The changes in the standing rules of the House made by [House Resolution 5](#) include the following:

SEC. 2. CHANGES TO THE STANDING RULES.

(a) Inspector General Audits.—

In response to the recommendation of the chairman and ranking minority member of the Committee on House Administration, this provision amends clause 6(c)(1) of rule II to clarify the non-traditional audit work that the Inspector General does in the areas of business process improvements, services to enhance the efficiency of House support operations, and risk management assessments. The change also will allow the Inspector General to implement guidance and standards published in the Government Accountability Office's Government Auditing Standards.

(b) Homeland Security.—

This provision amends clause 3(g) of rule X to direct the Committee on Homeland Security to review and study on a primary and continuing basis all Government activities, programs, and organizations relating to homeland security within its primary legislative jurisdiction.

Nothing in this rule shall affect the oversight or legislative authority of other committees under the Rules of the House.

The change in clause 3 of rule X clarifies the Committee on Homeland Security's oversight jurisdiction over

¹ This summary material and section-by-section was placed in the Congressional Record (See [Volume 155, No. 1; January 6, 2009, 111th Congress, 1st Session](#)).

government activities relating to homeland security within its primary legislative jurisdiction, including the interaction of all departments and agencies with the Department of Homeland Security. Consistent with the designation of the Committee on Homeland Security as the committee of oversight in these vital areas, the House expects that the President and the relevant executive agencies will forward copies of all reports in this area, in addition to those already covered by clause 2(b) of rule XIV, to the Committee on Homeland Security to assist it in carrying out this important responsibility.

This change is meant to clarify that the various agencies have a reporting relationship with the Homeland Security Committee on matters within its jurisdiction in addition to the agencies' reporting relationships with other committees of jurisdiction.

(c) Additional Functions of the Committee on House Administration.—

This provision amends clause 4(d) of rule X to give the Committee on House Administration oversight of the management of services provided to the House by the Architect of the Capitol, except those services that lie within the jurisdiction of the Committee on Transportation and Infrastructure under clause 1(r).

(d) Terms of Committee Chairmen.—

This provision strikes clause 5(c)(2) of rule X to eliminate term limits for committee and subcommittee chairs and includes a conforming amendment to clause 5(a)(2)(C) of rule X to provide an exception to the Budget Committee tenure limitations for a chair or ranking minority member serving a second consecutive term in the respective position.

(e) Calendar Wednesday.—

This provision amends clause 6 of rule XV to require the Clerk to read only those committees where the committee chair has given notice to the House on Tuesday that he or she will seek recognition to call up a bill under the Calendar Wednesday rule. This will replace the requirement that the Clerk read the list of all committees, regardless of whether a committee intends to utilize the rule. The provision makes conforming changes to clause 6 of rule XV and clause 6 of rule XIII, including the deletion of the requirement of a two-thirds vote to dispense with the proceedings under Calendar Wednesday.

(f) Postponement Authority.—

This provision adds a new paragraph (c) to clause 1 of rule XIX to give permanent authority to the Chair to postpone further consideration of legislation prior to final passage when the previous question is operating to adoption or passage of a measure pursuant to a special order of business. This codifies a practice that has become routine during the 110th Congress.

(g) *Instructions in the Motion to Recommit.*—

This provision amends clause 2(b) of rule XIX to provide that a motion to recommit a bill or joint resolution may include instructions only in the form of a direction to report a textual amendment or amendments back to the House forthwith. The provision makes no change to the straight motion to recommit.

(h) *Conduct of Votes.*—

In response to the bipartisan recommendation of the Select Committee to Investigate the Voting Irregularities of August 2, 2007, this provision deletes the following sentence in clause 2(a) of rule XX: “A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote.”

(i) *General Appropriation Conference Reports.*—

This provision codifies [House Resolution 491](#), 110th Congress, which was adopted by unanimous consent. The provision provides a point of order against any general appropriations conference report containing earmarks that are included in conference reports but not committed to conference by either House and not in a House or Senate committee report on the legislation. A point of order under the provision would be disposed of by the question of consideration, which would be debatable for 20 minutes equally divided.

(j) *PAYGO.*—

This provision amends clause 10 of rule XXI to make the following changes:

(1) A technical amendment to align the PAYGO rules of the House with those of the Senate so that both houses use the same CBO baselines;

(2) The changes would also allow one House-passed measure to pay for spending in a separate House-passed measure if the two are linked at the engrossment stage; and

(3) The changes would also allow for emergency exceptions to PAYGO for provisions designated as emergency spending in a bill, joint resolution,

amendment made in order as original text, conference report, or amendment between the Houses (but not other amendments).

The new clause 10(c)(3) of rule XXI provides that the Chair will put the question of consideration on a bill, joint resolution, an amendment made in order as original text by a special order of business, a conference report, or an amendment between the Houses that includes an emergency PAYGO designation. The Chair will put the question of consideration on such a measure without regard to a waiver of points of order under clause 10 of rule XXI or language providing for immediate consideration of such a measure.

The intent of this exception to pay-as-you-go principles is to allow for consideration of measures that respond to emergency situations. Provisions of legislation may receive an emergency designation if such provisions are necessary to respond to an act of war, an [\[Page H12\]](#) act of terrorism, a natural disaster, or a period of sustained low economic growth. A measure that includes any provision designated as emergency shall be accompanied by a report or a joint statement of managers, as the case may be, or include an applicable “Findings” section in the legislation, stating the reasons why such provision meets the emergency requirement according to the following criteria.

In general, the criteria to be considered in determining whether a proposed expenditure or tax change meets an emergency designation include: (1) necessary, essential, or vital (not merely useful or beneficial); (2) sudden, quickly coming into being, and not building up over time; (3) an urgent, pressing, and compelling need requiring immediate action; (4) unforeseen, unpredictable, and unanticipated; and (5) not permanent, but rather temporary in nature. With respect to the fourth criterion above, an emergency that is part of an aggregate level of anticipated emergencies, particularly when normally estimated in advance, is not “unforeseen.”

(k) Disclosure by Members of Employment Negotiations.—

This provisions amends clause 1 of rule XXVII to close the loophole in the rule that allowed lame-duck Members, Delegates, and the Resident Commissioner to directly negotiate future employment or compensation without public disclosure. The rule will now apply to all current Members, Delegates, and the Resident Commissioner requiring them, within 3 business days after the commencement of such negotiation or agreement of future employment or compensation, to file with the Committee on

Standards of Official Conduct a statement regarding such negotiations or agreement.

(l) *Gender Neutrality*.—

This provision amends the Rules of the House to render them neutral with respect to gender. These changes are not intended to effect any substantive changes.

(m) *Technical and Codifying Changes*.—

Upon the recommendation of the Parliamentarian, this provision contains the following technical and codifying changes:

(1) Clarify that the authority of the Clerk to receive messages on behalf of the House includes both recesses and adjournments (clause 2(h) of rule II);

(2) Restore the Speaker's regulatory authority for all of rule IV (regarding access to the House floor), which was inadvertently narrowed when the House last amended clause 4 of rule IV by the adoption of [House Resolution 648](#), 109th Congress (clause 4(b) of rule IV);

(3) Clarify that the scheme set forth in the rule for temporary management of a committee will apply pending the House filling a permanent vacancy of a chairman (clause 5(c) of rule X);

(4) Clarify that the majority-party Member in the next Congress, who was most senior on the committee in the preceding Congress, has voucher authority pending establishment and repopulation of the committee (clause 7(e) of rule X);

(5) Delete an unnecessary cross reference (clause 8(a) of rule X);

(6) Reinsert the exception, inadvertently dropped in recodification in the 106th Congress, that privileged matters are not automatically laid on the table when reported adversely (unlike nonprivileged matters reported adversely, which are automatically laid on the table) (clause 2(a) of rule XIII);

(7) Correct an internal cross reference (clause 5(c)(3) of rule XX);

(8) Clarify the availability of a motion to adjourn during merger of a quorum call and the yeas and nays to include only the clause 6 version of the yeas and nays (clause 6(c) of rule XX);

(9) Correct a grammatical error in the rule to clarify that notice to instruct conferees at a stalled conference is

given by a “proponent” and not by a “motion.” (clause 7(c)(3) of rule XXII);

(10) Clarify that the rule prohibiting campaign funds for official expenses applies to “office space, office furniture, or office equipment” (clause 1(b)(2) of rule XXIV); and

(11) Corrects an internal cross reference (clause 5(i)(2) of rule XXV).

SEC. 3. SEPARATE ORDERS.

(a) *Budget Matters.*—

(1)-(3) These three provisions retain instructions on the interpretation of sections 303, 306, and 401 of the Congressional Budget Act, that have been in place since the 106th, 107th, and 109th Congresses, respectively.

(4) This provision would retain the point of order against the motion to rise and report an appropriations bill to the House where the bill, as proposed to be amended, exceeded its 302(b) budget allocation. The point of order was created in the 109th Congress and continued in the 110th Congress.

(b) *Certain Subcommittees.*—

This provision would continue to waive the requirements of clause 5(d)(1) of rule X, which limits the number of subcommittees for each committee to five, for the following committees: Armed Services, Foreign Affairs, and Transportation and Infrastructure.

(c) *Exercise Facilities for Former Members.*—

This provision continues the standing order of the House, first adopted in the 109th Congress, which prohibits former Members, spouses of former Members, and former officers of the House from using the Members gym if those individuals are registered lobbyists.

(d) *Numbering of Bills.*—

This provision continues the practice of reserving the first 10 bill numbers for designation by the Speaker throughout the 111th Congress.

(e) *Medicare Cost Containment.*—

This provision turns off Section 803 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 during the 111th Congress.

SEC. 4. COMMITTEES, COMMISSIONS, AND HOUSE OFFICES.

(a) *Select Committee on Energy Independence and Global Warming.*—

This provision continues the Select Committee on Energy Independence and Global Warming through the 111th Congress.

(b) *House Democracy Assistance Commission.*—

This provision continues the House Democracy Assistance Commission.

(c) *Tom Lantos Human Rights Commission.*—

This provision continues the Tom Lantos Human Rights Commission except that it allows the Commission to collaborate closely with professional staff members of other relevant committees and to use resources that the Committee on Foreign Affairs is authorized to obtain from other offices of the House.

(d) *Office of Congressional Ethics.*—

This provision continues the Office of Congressional Ethics and provides that the Office shall be treated as a standing committee of the House for purposes of section 202(i) of the Legislative Reorganization Act of 1946, concerning consultants for Congressional committees.

(e) *Empanelling Investigative Subcommittee of the Committee on Standards of Official Conduct.*—

This provision continues [House Resolution 451](#), 110th Congress, directing the Committee on Standards of Official Conduct to empanel investigative subcommittees within 30 days after the date a Member is indicted or criminal charges are filed.

(f) *Continuing Authorities for the Committee on the Judiciary and the Office of General Counsel.*—

This provision authorizes the Committee on the Judiciary and the House General Counsel to continue the lawsuit derived from the House holding White House Chief of Staff Josh Bolten and former White House Counsel Harriet Miers in contempt of Congress for failure to comply with Judiciary Committee subpoenas, which was initiated in the 110th Congress. With respect to the continued investigation into the firing of certain United States Attorneys, this provision authorizes: (1) the chairman of the Judiciary Committee to issue subpoenas and (2) the taking of depositions by Members or counsel, which shall be governed by rules printed in the Congressional Record by the Rules Committee chair or otherwise prescribed by the

Judiciary Committee; and (3) the Judiciary Committee and General Counsel to add as a party to the lawsuit any individual subpoenaed by the Committee in the 110th Congress who failed to comply.

Judiciary Committee Deposition Rules: In accordance with the Committee receiving special authorization by the House for the taking of depositions in furtherance of a Committee investigation, the chair, upon consultation with a designated minority member, may order the taking of depositions pursuant to notice or subpoena. The designated minority member shall be the ranking minority member or, if a ranking minority member has not been elected, the highest ranking member of the Committee as it was constituted at the end of the preceding Congress who is a member of the minority party in the present Congress.

The chair or majority staff shall consult with the designated minority member or minority staff, respectively, at least two days before any notice or subpoena for a deposition is issued. Upon completion of such consultation, all members shall receive written notice that a notice or subpoena for a deposition will be issued.

A notice or subpoena issued for the taking of a deposition shall specify the date, time, and place of the deposition and the method or methods by which the deposition will be recorded. The chair shall designate the number of majority members and majority counsel to conduct the deposition; the designated minority member shall be permitted to appoint an equal number of minority members and an equal number of minority counsel to conduct the deposition.

A deposition shall be taken under oath or affirmation administered by a member or a person otherwise authorized to administer oaths and affirmations.

A deponent shall not be required to testify unless the deponent has been provided with a copy of such rules of procedure then in being prescribed by the Committee, this rule as applicable, section 4 of [House Resolution 5](#), and rule X and rule XI of the Rules of the House of Representatives.

A deponent may be accompanied at a deposition by counsel to advise the deponent of the deponent's rights. Only members and Committee counsel, however, may examine the deponent. No one may be present at a deposition other than members, Committee staff designated by the chair or designated minority member, such individuals as may be required to administer the oath or affirmation and transcribe or record the proceedings, the deponent, and the deponent's counsel (including personal counsel and counsel for the entity employing the deponent if the scope of the deposition

is expected to cover actions taken as part of the deponent's employment). Observers or counsel for other persons or entities may not attend.

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Questions in a deposition shall be propounded in rounds, alternating between the majority and minority. A single round shall not exceed 60 minutes per side, unless the members or counsel conducting the deposition agree to a different length of questioning. In each round, a member or Committee counsel designated by the chair shall ask questions first, and the member or Committee counsel designated by the designated minority member shall ask questions second.

Any objection made during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. The deponent may refuse to answer only when necessary to preserve a privilege. In instances where the deponent or counsel has objected to a question to preserve a privilege and accordingly the deponent has refused to answer the question to preserve such privilege, the chair may rule on any such objection after the deposition has adjourned. If the chair overrules any such objection and thereby orders a deponent to answer any question to which a privilege objection was lodged, such order shall be filed with the clerk of the Committee and shall be provided to members and the deponent no less than three days before being implemented.

If a member of the Committee appeals in writing the order of the chair, the appeal shall be preserved for Committee consideration. A deponent who refuses to answer a question after being directed to answer by the chair in writing may be subject to sanction, except that no sanctions may be imposed if the ruling of the chair is reversed on appeal. Consistent with clause 2(k)(8) of rule XI of the Rules of the House of Representatives, the committee shall remain the sole judge of the pertinence of testimony and evidence adduced at its hearings.

Deposition testimony shall be transcribed by stenographic means and may also be video recorded. The Clerk of the Committee shall receive the transcript and any video recording and promptly forward such to minority staff at the same time the Clerk distributes such to other majority staff.

The individual administering the oath, if other than a member, shall certify on the transcript that the deponent was duly sworn. The transcriber shall certify that the transcript is a true, verbatim record of the testimony, and the transcript and any exhibits shall be filed, as shall any video recording, with the clerk of the Committee in Washington, DC. In no case shall any

video recording be considered the official transcript of a deposition or otherwise supersede the certified written transcript.

Depositions shall be considered to have been taken in Washington, DC, as well as the location actually taken, once filed with the clerk of the Committee for the Committee's use.

After receiving the transcript, majority staff shall make available the transcript for review by the deponent or deponent's counsel. No later than ten business days thereafter, the deponent may submit suggested changes to the chair. The majority staff of the Committee may direct the Clerk of the Committee to note any typographical errors, including any requested by the deponent or minority staff, via an errata sheet appended to the transcript. Any proposed substantive changes, modifications, clarifications, or amendments to the deposition testimony must be submitted by the deponent as an affidavit that includes the deponent's reasons therefor. Any substantive changes, modifications, clarifications, or amendments shall be included as an appendix to the transcript. Majority and minority staff both shall be provided with a copy of the final transcript of the deposition with any appendices at the same time.

SEC. 5. SPECIAL ORDERS OF BUSINESS.

This section consists of a special order of business providing for consideration of the following two bills (the text of each of which is identical to the 110th House-passed versions):

(1) [H.R. 11](#)--Lilly Ledbetter Fair Pay Act, to amend title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973 to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes, and

(2) [H.R. 12](#)--Paycheck Fairness Act, to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes. The special order allows for separate consideration of each measure under a closed rule. After adoption of the second bill, the text of [H.R. 12](#) will be added to [H.R. 11](#) and [H.R. 12](#) will be laid on the table.