



Senate Rules for Committee Markups

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Congressional Procedure

A Practical Guide to the Legislative Process in the U.S. Congress

Richard A. Arenberg

“**A**ll committees are different” is an oft-made comment. It underscores that each panel has its own history, customs, decisionmaking styles, procedures, jurisdiction, and so on. What this means for Senate markups—sessions where committee members consider changes in the text of the measure or matter before them—is that these drafting meetings also reflect the “personality” of each committee. To a large extent, each committee has considerable flexibility in how it goes about “marking up” a measure or matter before it. For instance, during the 110th Congress, committee rules for the Senate Foreign Relations Committee stipulate that, insofar as practicable, “proceedings of the Committee will be conducted without resort to the formalities of parliamentary procedure.” By comparison, other committees identify detailed procedures for their markup meetings.

Senate Rule XXVI, clause 2, states that “each committee shall adopt rules (not inconsistent with the Rules of the Senate) governing the procedure of such committee.” This requirement, however, does not mandate strict parallelism between committee rules and Senate rules. Committees need not embrace procedures identical to those applied on the floor of the Senate. For example, a supermajority vote is required to invoke cloture in the Senate; the Judiciary Committee allows a majority of its members to end debate provided that at least one minority lawmaker votes to support this non-debatable motion.

Senate rules, however, do impose certain limited requirements and prohibitions on committees during the markup stage. They specify, for instance, meeting, quorum, openness, proxy voting, and reporting requirements. These and other related topics are outlined in Senate Rule XXVI, which is titled “Committee Procedure.”

Markup Meetings during Senate Sessions

A committee may not meet on any day (1) after the Senate has been in session for two hours, or (2) after 2:00 p.m. when the Senate is in session. This prohibition does not apply to the Appropriations and Budget Committees, and it may be waived for any other committee either by unanimous consent or by joint agreement of the majority and minority leaders or their designees. (Clause 5 (a))

Quorum at Meetings

A committee or subcommittee may establish its own quorum requirements for transacting business at meetings, so long as the quorum is not less than one-third of its entire membership. (Clause 7 (a)(1))

Open Markup Meetings

Committee and subcommittee meetings are open to the general public unless the committee decides in open session by majority vote to close a meeting or series of meetings. The Senate rule enumerates six reasons for closing committee meetings, specifically when discussions will involve national security, internal staff management, law enforcement agents or information, the privacy of an individual, the release of trade secrets, and matters required to be kept confidential under other legal provisions. (Clause 5 (b))

Proxy Voting

Any committee may adopt rules providing for proxy voting. However, clause 7 (a)(3) of Rule XXVI stipulates that no “vote of any member of any committee to report a measure or matter may be cast by proxy...” This rule has been interpreted to mean that, if a physically present committee majority (see below) votes “yes” on reporting a matter, proxies could be cast to change that decision to “no.” On the other hand, if a physically present majority quorum votes “no” on reporting, proxies cannot be employed to change that outcome to “yes” because it would violate the Senate rule against reporting a measure by proxy votes. Senate rules further state that “proxies may not be voted when the absent committee member has not been informed of the matter on which he [or she] is being recorded and has not affirmatively requested that he [or she] be so recorded.” (Clause 7 (a)(3)) Under Senate precedents, it is not in order to use proxies to establish a quorum.

Vote to Report a Measure or Matter

Senate rules stipulate that “no measure or matter or recommendation shall be reported from any committee unless a majority of the committee were physically present.” (Clause 7 (a)(1)) Further, Senate rules require “the concurrence of a majority of the members of the committee who are present” to report a measure or matter to the floor. (Clause 7 (a)(3)) Senate precedents prohibit the polling of committee members to report a measure or matter.

The “Clean Up” Provision

Clause 7(a)(3) might be called the “clean up” provision. If committees violate the procedures of Rule XXVI, such as conducting secret markups contrary to the terms of Clause 5 (b), that impropriety will have no effect if committees follow proper procedures for voting to report measures or matters to the floor. As Clause 7 (a)(3) states:

Action by any committee in reporting any measure or matter in accordance with the requirements of this subparagraph [the majority physically present rule] shall constitute the ratification by the committee of all action theretofore taken by the committee with respect to that measure or matter, including votes taken upon the measure or matter or any amendment thereto, and no point of order shall lie with respect to that measure or matter....

Worth highlighting is that many important markup practices are unregulated by formal Senate rules. One involves the choice (usually made by the committee or subcommittee chair) of what is to be marked up: a Senate bill, a House bill, the chair’s prepared “mark,” or something else. For further information, see CRS Report 98-311, *Senate Rules Affecting Committees*, by Betsy Palmer.

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