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Proxy Voting and Polling in Senate Committee

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August 31, 2015

Congressional Research Service

7-5700

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Summary

In an effort to operate efficiently despite the competing scheduling demands placed on its members, all Senate standing committees permit “proxy voting” in some instances, and many of them permit certain questions to be “polled.” Proxy voting is a practice whereby an absent Senator authorizes a second, present Senator to cast a vote in addition to his or her own during a committee markup meeting. When polling, a committee or subcommittee asks its members to approve questions relating to legislation or internal committee business without formally meeting. Under Senate rules and precedents, committees have significant freedom to regulate their use of proxies and polls. Proxy votes may not be used, however, to constitute the quorum necessary to successfully order a committee report. In addition, Senators must be informed about and affirmatively request to vote by proxy on the motion to report. With respect to polling, Senate rules do not permit committees to order a measure or matter reported to the Senate by poll.

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Proxy Voting

Proxy voting is a practice by which an absent Senator authorizes a second, present Senator (usually the chairman or ranking minority Member) to cast a vote, in addition to his or her own, during a committee markup meeting.¹ The standing rules of the Senate give each committee the discretion to permit or ban proxy voting by its members. In the 114th Congress (2015-2016), every Senate standing committee, and all but one Senate select or special committee, has adopted rules permitting proxy voting in at least some circumstances.² Some Senate committees require proxy votes to be authorized in writing, often by letter (**Figure 1**) or proxy voting form. Other panels permit proxy votes to be authorized not only in writing but also orally or by “personal instruction.”

Although Senate rules give committees wide latitude in structuring the use of proxies, the Senate places specific limits on the practice as it relates to the motion to report a measure or matter to the Senate. These limitations are established in the precedents of the Senate and by Senate Rule XXVI.³ It is a fundamental principle of Senate parliamentary procedure that a “reporting quorum”—a numerical majority of the members of a committee—must be *physically present* when the committee votes to order a measure or matter reported to the parent chamber. Under paragraph 7(a)(1) of Rule XXVI, if less than a numerical majority is present for this vote, the measure or matter would not be considered properly before the Senate, and a point of order might be raised against its consideration.⁴ As such, under chamber precedents, proxies may not be used to constitute such a reporting quorum.⁵

If a quorum is physically present and proxies are used on the motion to report, they cannot make the difference in *successfully* ordering a measure or matter reported to the Senate. If, with a reporting quorum present, a majority of committee members present vote to order a measure reported, proxy votes to the contrary could prevent reporting. If, however, a majority of the reporting quorum votes against ordering a measure or matter reported, proxies could not count toward a majority vote to successfully report the measure or matter.

Under Rule XXVI, if a committee permits proxy voting on the motion to report, a Senator must be informed of the matter he or she is being recorded on by proxy. In addition, a Senator must have actively requested to vote by proxy on that question; so-called blind or general proxies are not permitted on this question.

Within the limits of Rule XXVI, each individual Senate committee has tailored different types of proxy rules to meet the needs of its members. Some panels permit the use of proxies on all questions with few restrictions. Still other panels limit their use or duration or dictate the form or the manner in which the proxy must be executed or preserved in the committee’s official records. Because of this variation, questions about a specific committee’s use of proxies might best be

¹ Voting by proxy is not permitted on the Senate floor. The House of Representative bans proxy voting both in its committees and on the floor, although Representatives have sometimes voted by proxy during conference committee deliberations.

² The Senate Special Committee on Aging has not adopted a proxy voting rule. It does not have legislative jurisdiction and thus may have less need for the practice.

³ The language of Senate Rule XXVI relating to proxy voting incorporates the provisions of Section 106(a) of the Legislative Reorganization Act of 1970 (P.L. 91-510. 84 Stat. 1140).

⁴ U.S. Congress, Senate, *Riddick’s Senate Procedure*, S.Doc. 101-28, 101st Cong., 2nd sess. (Washington: GPO, 1992), p. 1198.

⁵ *Ibid.*, p. 1192.

answered by examining the committee's official rules of procedure or consulting with the committee's chief clerk.⁶

Polling

Although the practice is not mentioned in the standing rules of the Senate, some committees also permit certain decisions to be made, or actions to be authorized, by a "poll" of committee members. Unlike proxy voting, "polling" takes place without a formal committee or subcommittee markup or business meeting. In a poll, the chairman (or a staff member designated by the chairman) asks each Senator on a committee or subcommittee to declare his or her position or grant his or her consent to taking a particular action relating to legislation or internal committee business. Polls may be conducted by telephone or by asking Senators to return a written polling document (**Figure 2**), often within a specified period of time.

Most Senate committees that permit questions to be polled require all Senators to agree to decide the matter in question by poll, and some committees require polling results to be unanimous as well. To this extent, polling might be viewed as an indirect form of obtaining the unanimous consent of committee members. It might also be viewed as analogous to other institutional mechanisms by which Senators indirectly grant their consent to actions, such as the "hotlining" of legislation for floor consideration or passage or the "blue slip" procedure used in the consideration of some presidential nominations.⁷

At certain points in its history, the Senate permitted committee reports to be authorized by poll, but that is no longer the case. Because (as has been noted) Rule XXVI requires a numerical majority of a committee to be physically present to authorize a report, it is not in order for a committee to order a measure or matter reported to the chamber by poll.⁸ A common practice that avoids this prohibition, however, is for a committee to poll its members on whether they will consent to having the committee discharged from the further consideration of a bill or nomination by a unanimous consent request made on the Senate floor. Senate subcommittees also often use polls to transmit bills or nominations to their full committees without formal markup sessions. Some Senate committees also permit members to be polled as a way of publicly recording their positions on questions they were unable to vote on in person or by proxy.

In the 114th Congress, seven Senate standing, select, or special committees have adopted written rules authorizing polling under at least some circumstances: Agriculture, Nutrition, and Forestry; Budget; Finance; Health, Education, Labor, and Pensions; Homeland Security and Governmental Affairs; Judiciary; and Special Aging.⁹

Even if a committee has not adopted a formal committee rule regulating polls, however, it does not necessarily mean that the committee may not utilize the practice. For example, although the Senate Committee on Appropriations lacks a written committee rule on polling, news reports

⁶ Each Congress, the Committee on Rules and Administration compiles individual Senate committee rules in a Senate document. The most recent compilation of committee rules is U.S. Congress, Senate, *Authority and Rules of Senate Committees 2011-2012*, S.Doc. 112-5, 112th Cong., 1st sess. (Washington: GPO, 2011). For committee rules adopted in the 114th Congress, see the *Congressional Record* or individual committee websites.

⁷ For more information, see CRS Report RL32013, *The History of the Blue Slip in the Senate Committee on the Judiciary, 1917-Present*, by Mitchel A. Sollenberger.

⁸ *Riddick's Senate Procedure*, p. 410.

⁹ CRS analysis of committee rules as published in the *Congressional Record* and accessed via the Legislative Information System of the U.S. Congress (LIS).

indicate that its subcommittees have passed appropriations bills to the full committee by poll without a formal public markup.¹⁰

Proxies, Polling, and the Senate “Clean-Up” Rule

Paragraph 7(a)(3) of Senate Rule XXVI contains provisions that, under certain circumstances, might bear on proxy votes or polls conducted by a Senate committee or subcommittee. Under this rule—which is sometimes colloquially called the “clean-up rule”—if a panel violates Senate procedures during its consideration of a measure or matter, these missteps will not be the subject of a floor point of order so long as the committee has properly conducted the vote to report. Paragraph 7 (a)(3) states:

Action by any committee in reporting any measure or matter in accordance with the requirements of this subparagraph 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.

The Senate included this provision in its rule book “to prevent the obstruction of legislation on the Senate floor, based upon the internal operations of a committee, by making the record vote of a committee on reporting a measure ... the final test of the legality of such action.”¹¹

In short, a properly conducted vote to order a measure or matter reported to the Senate “cleans up,” or absolves, potentially defective committee procedures that may have occurred, including those related to a proxy vote or committee poll taken earlier.

¹⁰ Emily Pierce, “Use of Appropriations ‘Polling’ Troubles Critics,” *Roll Call*, September 20, 2004, p. 1; Chuck Conlon, “There Are Markups, Then There’s ‘Polling,’” *CQ Today Online News*, July 16, 2008.

¹¹ U.S. Congress, Senate Committee on Government Operations, *Report to Accompany S. 844*, S.Rept. 91-202, 91st Cong., 1st sess. (Washington: GPO, 1969), p. 3.

Figure 1. Form of Senate Committee Proxy Voting Letter

Senator: _____

United States Senate
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE

I hereby give my proxy to Senator Ron Johnson to vote at the meeting of the Committee on Homeland Security and Governmental Affairs to be held on July 29, 2015 at 10:00 a.m., in Room 342 of the Dirksen Senate Office Building, in connection with the following matters:

NOMINATIONS

1. Denise T. Roth to be Administrator, U.S. General Services Administration;

Yes: _____ No: _____ Defer to Senator Johnson: _____

LEGISLATION

1. S. 1864, Department of Homeland Security Border Security Metrics Act of 2015;

Yes: _____ No: _____ Defer to Senator Johnson: _____

2. S. 1846, Critical Infrastructure Protection Act of 2015;

Yes: _____ No: _____ Defer to Senator Johnson: _____

- Johnson Amendment No. 1, in the nature of a substitute.

Yes: _____ No: _____ Defer to Senator Johnson: _____

3. S. 1869, Federal Cybersecurity Enhancement Act of 2015;

Yes: _____ No: _____ Defer to Senator Johnson: _____

- Ayotte-McCaskill Amendment No. 1 **as modified**, to require certification by the Secretary in order to access information transiting or traveling to or from an agency information system.

Yes: _____ No: _____ Defer to Senator Johnson: _____

- Ayotte-McCaskill Amendment No. 2 **as modified**, to improve the bill.

Yes: _____ No: _____ Defer to Senator Johnson: _____

- Paul Amendment No. 1, to prohibit liability immunity from applying to breaking user agreements with Internet customers.

Yes: _____ No: _____ Defer to Senator Johnson: _____

1

Senator: _____

- Heitkamp Amendment No. 3, to improve the bill (Am 1 and Am 2).

Yes: _____ No: _____ Defer to Senator Johnson: _____

- Heitkamp Amendment No. 4, in the nature of a substitute.

Yes: _____ No: _____ Defer to Senator Johnson: _____

- Paul Amendment No. 1, To amend Chapter 8 of title 5, United States Code, to provide that major rules of the executive branch shall have no force or effect unless a joint resolution of approval is enacted into law.

Yes: _____ No: _____ Defer to Senator Johnson: _____

11. S. 1170, Breast Cancer Research Stamp Reauthorization Act of 2015;

Yes: _____ No: _____ Defer to Senator Johnson: _____

12. H.R. 1531, Land Management Workforce Flexibility Act;

Yes: _____ No: _____ Defer to Senator Johnson: _____

Postal Naming Bills

1. S. 1826, to designate the facility of the United States Postal Service located at 99 West 2nd Street in Fond du Lac, Wisconsin, as the "lieutenant Colonel James 'Maggie' Megellas Post Office."

Yes: _____ No: _____ Defer to Senator Johnson: _____

2. S. 1596, to designate the facility of the United States Postal Service located at 2082 Stringtown Road in Grove City, Ohio, as the "Specialist Joseph W. Riley Post Office Building."

Yes: _____ No: _____ Defer to Senator Johnson: _____

Senator's Signature

Date

Source: Reproduced by CRS with the permission of the Committee on Homeland Security and Governmental Affairs.

Notes: This is the form of letter Senators on the Committee on Homeland Security and Governmental Affairs use to authorize votes by proxy in 2015. Other panels may permit or dictate different forms.

Figure 2. Example of Senate Committee Polling Document

<p>RON JOHNSON, WISCONSIN, CHAIRMAN</p> <p>JOHN MCCAIN, ARIZONA ROB PORTMAN, OHIO RAND PAUL, KENTUCKY JAMES LANKFORD, OKLAHOMA MICHAEL B. ENZI, WYOMING KELLY AYOTTE, NEW HAMPSHIRE JONI ERNST, IOWA BEN SASSE, NEBRASKA</p> <p>THOMAS R. CARPER, DELAWARE CLAIRE McCASKILL, MISSOURI JON TESTER, MONTANA TAMMY BALDWIN, WISCONSIN HEIDI HEITKAMP, NORTH CAROLINA CORY A. BOOKER, NEW JERSEY DARYL G. PETERK, MICHIGAN</p> <p>KEITH B. ASHDOWN, STAFF DIRECTOR GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR</p>	<p>United States Senate</p> <p>COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS</p> <p>WASHINGTON, DC 20510-6250</p>	
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February 19, 2015

**TO: MEMBERS OF THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**

<p>SENATOR RON JOHNSON EX OFFICIO MEMBER (Keith Ashdown) SENATOR JOHN MCCAIN (David Cole) SENATOR RAND PAUL (Brandon Brooker) SENATOR JAMES LANKFORD (John Cuaderes) SENATOR KELLY AYOTTE (Myles Matteson) SENATOR BEN SASSE (Chris Barkley)</p>	<p>SENATOR THOMAS R. CARPER EX OFFICIO MEMBER (Gabrielle Batkin) SENATOR JON TESTER (Tony McClain) SENATOR TAMMY BALDWIN (Jeremy Steslicki) SENATOR HEIDI HEITKAMP (Eric Bursch)</p>
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**FROM: SENATOR ROB PORTMAN, Chairman
SENATOR CLAIRE McCASKILL, Ranking Minority Member**

**VIA: DEREK LYONS, Chief Counsel
MARGARET DAUM, Minority Staff Director and Chief Counsel**

**RE: ADOPTION OF PERMANENT SUBCOMMITTEE ON INVESTIGATIONS'
RULES OF PROCEDURE FOR THE 114th CONGRESS**

Please indicate in the appropriate box below whether you favor or disapprove adoption of the attached Rules of Procedure for the Permanent Subcommittee on Investigations.

These Rules of Procedure are generally the same as those in effect for the Permanent Subcommittee on Investigations in the 113th Congress. We have, however, made several technical and stylistic changes throughout to enhance the Rules' clarity and internal consistency and to account for the structure of the Subcommittee's staff. For example, we have revised the Rules to distinguish clearly between the authorities and obligations of the Subcommittee Chairman, Ranking Minority Member, and Members and those of the Committee Chairman, Ranking Minority Member, and Members, without altering how the Rules allocate those authorities and obligations.

We have also made one nontechnical, nonstylistic change to Rule 9.3 to correct an apparent inconsistency. As in effect during the 113th Congress, Rule 9.3 allowed the Subcommittee to initiate

proceedings leading to civil or criminal enforcement against any witness who refused to answer a question after having been directed to do so by any Member of the Subcommittee. The Rule, however, authorized only the Chairman or a Member designated by the Chairman to direct a witness to respond to a question. We have addressed this inconsistency by revising Rule 9.3 to make clear that the Subcommittee may initiate proceedings leading to civil or criminal enforcement only after a witness has refused to answer a question after having been directed to do so by the Chairman or a Member designated by the Chairman.

A redline showing all changes from the Rules of Procedure in effect for the 113th Congress is enclosed.

Please sign and return this memorandum to SR-199 by Tuesday, February 24, 2015, or contact the Subcommittee's Chief Clerk, Kelsey Stroud (4-9868), and she will pick it up at your office. If you need further information about the Rules, please have your staff contact Brian Callanan at 224-5550 or Margaret Daum at 224-7061.

Yea / / Nay / /

U.S. Senator Date: February ____, 2015

Attachment

Source: Reproduced by CRS with the permission of the Committee on Homeland Security and Governmental Affairs.

Note: This is a polling form used by the Committee on Homeland Security and Governmental Affairs in 2015. Other panels may permit or dictate different forms.

Author Contact Information

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