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House Voting Procedures: Forms and Requirements

Updated February 3, 2023

Congressional Research Service

<https://crsreports.congress.gov>

98-228



The House of Representatives and Senate Explained

Congressional Procedure

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

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 **TheCapitolNet**

Summary

In the House, there are four forms of votes: voice vote, division vote, yea and nay vote, and recorded vote. In the Committee of the Whole, where much of the chamber's business is conducted, the forms are voice vote, division vote, and recorded vote. Members may vote in the House. Members, Delegates, and the Resident Commissioner may vote in the Committee of the Whole.

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Introduction

In the House, there are four forms of votes: voice vote, division vote, yea and nay (or roll call) vote, and recorded vote. In the Committee of the Whole, the forms are voice vote, division vote, and recorded vote. Members may vote in the House. Members, Delegates, and the Resident Commissioner may vote in the Committee of the Whole.

The Speaker counts division votes and determines if there is sufficient support for yea and nay votes and recorded votes. The Speaker also has the authority to postpone and cluster certain votes. Postponed votes occur within two legislative days.

In the House

Voice Vote

Most questions are initially put to a voice vote. Representatives will call out “aye” or “no” when a question is first put by the Speaker or Speaker pro tempore. As Rule I, clause 6, states, the Speaker will say, “Those in favor [of the question], say ‘Aye.’” Then the Speaker will ask: “Those opposed, say ‘No.’” Following the response, the Speaker states that, in his or her opinion, “the ayes [or the noes] appear to have it.” There is no record of how an individual Member votes on a voice vote.

Division Vote

Division votes are rare in current practice. Like a voice vote, this procedure does not provide a public record of how each Member voted. Rule XX, clause 1(a), states that if the Speaker is uncertain about the outcome of a voice vote, or if a Member demands a division, the House shall divide. “Those in favor of the question shall first rise from their seats to be counted,” and then those who are opposed to the proposition shall stand to be counted. Only vote totals (95 for, 65 against, for instance) are announced in this method of voting.

Yea and Nay Vote

Yay and nay votes provide a record of how each Member voted. These votes are taken by electronic device unless the computerized voting system malfunctions, in which case standby procedures outlined in Rule XX, clause 2(b), are used to conduct the votes.

The Constitution (Article I, Section 5) states that “the Yeas and Nays of the Members ... on any question” shall be obtained “at the Desire of one fifth of those present.” Under this provision, it does not matter if a quorum of the House (218 Members when the House has no vacancies) is not present to conduct business, because any Member can say, “Mr. [or Madam] Speaker, on that vote, I demand the yeas and nays.” If the demand is supported by one-fifth of those present, the Speaker will say that “the yeas and nays” are ordered.

Rule XX, clause 6, provides another type of yea and nay vote. If it is evident to a lawmaker that a quorum is not present in the chamber, he or she may object to a voice vote on that ground. Assuming the chair sustains the point of order, the chair will order a yea and nay vote. To make a quorum point of order, a Member says, “I object to the vote on the ground that a quorum is not present, and I make a point of order that a quorum is not present.” The actual vote will then simultaneously determine both issues: the presence of a quorum and the vote on the pending question.

In addition, clause 10 of Rule XX states that the “yeas and nays shall be considered as ordered” on final passage of a limited number of measures or matters, such as concurrent budget resolutions. The Constitution requires that votes to override presidential vetoes shall be determined by the yeas and nays.

Recorded Vote

Recorded votes also identify how each Member voted and are taken by electronic device. Under Rule XX, clause 1(b), if any Member, Delegate, or Resident Commissioner “requests a recorded vote, and that request is supported by at least one-fifth of a quorum, such vote shall be taken by electronic device.”

To obtain a recorded vote, a Member states, “Mr. [or Madam] Speaker, on that I demand a recorded vote.” If at least one-fifth of a quorum of 218—or 44 Members—stand and support the request, then the recorded vote will be taken by electronic device. The distinction between recorded votes and the yeas and nays is the number of Members required to support each request: one-fifth of *those present* for the yeas and nays and one-fifth of *a quorum* (44 of 218) for recorded votes.

In the Committee of the Whole

Three methods of voting are available in the Committee of the Whole: voice, division, and recorded. Yea and nay votes are not permitted.

Members, Delegates, and the Resident Commissioner have the right to vote in the Committee of the Whole. However, if the question is decided within the margin of votes cast by the Delegates and the Resident Commissioner, the committee shall rise and the Speaker shall put the question *de novo* (as if new) to the House.¹

Rule XVIII, clause 6(e) states that the “Chair shall order a recorded vote on a request supported by at least 25 Members, Delegates, and the Resident Commissioner.”² Thus, any Member, Delegate, or the Resident Commissioner may say, “I request a recorded vote,” and, if 25 supporters (the Member who made the request can be part of the tally, too) rise and are counted by the chair, the recorded vote will occur by electronic device.

If few Members are present in the chamber, a lawmaker who plans to request a recorded vote will usually say, “Mr. [or Madam] Chair, I request a recorded vote and, pending that, I make a point of order that a quorum is not present.” (A quorum in the Committee of the Whole is 100 Members, Delegates, and the Resident Commissioner.) Assuming that the point of order is sustained, the statement prompts a quorum call, and the Member who requested the recorded vote can ask 24 other colleagues to support his or her request as they come onto the floor.

¹ In the 103rd Congress (1993-1994), the Delegates and Resident Commissioner were provided the same powers and privileges as Members in the Committee of the Whole, including the right to vote on questions. This provision was revoked in the rules package of the 104th Congress (1995-1996), reinstated in the 110th Congress (2007-2008), revoked in the 112th Congress (2011-2012), and reinstated in the 116th Congress (2019-2020) as an amendment to clause 3(a) of Rule III. U.S. Congress, House, *Constitution, Jefferson’s Manual and the Rules of the House of Representatives of the United States* (hereinafter, *House Manual*), 115th Congress, prepared by Thomas J. Wickham, Parliamentarian, 114th Cong., 2nd sess., 2017, H.Doc. 114-192 (Washington: GPO, 2017), §675, p. 388.

² In the 116th Congress (2019-2020), H.Res. 6 amended clause 6(a) and clause 6(e) of Rule XVII, clarifying that Delegates and the Resident Commissioner of Puerto Rico count when establishing a quorum in the Committee of the Whole and when determining the requisite number present to request a recorded vote in the Committee of the Whole.

The Speaker's Authority

When the Speaker or chair of the Committee of the Whole counts to determine sufficient support for yea and nay votes or recorded votes, the accuracy of the count is assumed and cannot be challenged. This assumption also applies to division votes and determining the presence of a quorum.³

Under House Rule XX, clause 8, the Speaker has the authority to postpone and cluster certain votes. For most questions, postponed votes occur within two legislative days. A vote to agree to the Speaker's approval of the Journal, however, is to occur within the same legislative day.

Length of Time for Voting

Under Rule XX, clause 2(a), the minimum time for a vote by electronic device is 15 minutes in either the House or the Committee of the Whole. The 15-minute period is the *minimum* time allowed, rather than the maximum, for the conduct of a recorded vote. The chair has the discretion to hold the vote open longer.

The voting period for some votes may be shorter than 15 minutes under certain circumstances. The Speaker may reduce the voting time to not less than two minutes (Rule XX, clause 9) "on any question that follows another electronic vote or a report from the Committee of the Whole, if in the discretion of the Speaker Members would be afforded an adequate opportunity to vote." Certain votes in the Committee of the Whole may also be reduced to not less than two minutes, as noted in Rule XVIII, clause 6.

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Acknowledgments

This report was originally prepared by CRS Senior Specialist in American National Government Walter J. Oleszek. Please direct any inquiries to the current author.

³ According to the Parliamentarian, "one of the suppositions on which parliamentary law is founded is that the Speaker will not betray his duty to make an honest count on a division and the integrity of the Chair in counting a vote should not be questioned in the House." *House Manual*, §1012, p. 838.

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