Bypassing Senate Committees: Rule XIV and Unanimous Consent

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November 6, 2013
Summary

Most bills and joint resolutions introduced in the Senate, and many House-numbered bills and joint resolutions received by the Senate after House passage, are referred to committee. Provisions of Senate Rule XIV and unanimous consent, however, allow the Senate to bypass a measure’s referral to committee. Unanimous consent can also be used to truncate a committee’s consideration of a measure.

Rule XIV requires measures to be read twice before referral to committee. By objecting after the second reading under Rule XIV, a Senator, normally the majority leader (or another Senator in the majority leader’s stead), acting on his own initiative or at the request of any Senator, prevents referral to committee. The measure is placed directly on the Senate Calendar of General Orders. Unanimous consent is also used to bypass referral and place measures on the calendar. Although placing a measure directly on the calendar may facilitate calling it up later for consideration on the Senate floor, placement on the calendar does not guarantee floor consideration.

The Senate also regularly uses unanimous consent to consider and pass noncontroversial legislation that has not been referred to committee. Unanimous consent can also be used to truncate a committee’s consideration of a noncontroversial measure referred to it, normally by discharging a committee from further consideration of measure referred to it, and for the Senate to then pass the measure. The Senate leadership uses an informal process called “clearance” (or “hotlining”) to determine if any Senator would object to a specific bill or joint resolution being considered and passed by unanimous consent.

On major legislation, the majority leader also typically attempts to obtain unanimous consent to proceed to the consideration of a measure, whether or not it was referred to or reported by a committee.

This report examines the framework of these alternatives applicable to bills and joint resolutions. Procedures applicable to concurrent and simple resolutions are not examined here. Use of a germane, relevant, or nongermane amendment instead of a bill or joint resolution is also not examined. This report will not be updated again in the 113th Congress unless Senate procedures change.
Introduction

When a Senator introduces a bill or joint resolution, the measure is usually referred to committee, pursuant to provisions of Senate Rules XIV, XVII, and XXV. When the House informs the Senate that it has passed a bill or joint resolution that was introduced in that chamber, and the Senate receives the measure, the measure is also often referred to a Senate committee.1

Senate Rule XIV, paragraph 2 requires that bills and joint resolutions have three readings before passage, and that they be read twice before being referred to committee.2 Although a Senator may demand that the readings occur on three different legislative days under paragraph 2, bills and joint resolutions may be read twice on the same day “for reference” (referral) if there is no objection (Rule XIV, paragraph 3). Most bills and resolutions are read twice “without any comment whatsoever from the floor”3 and referred to committee on the same day that they are introduced by a Senator or received from the House.4

Senate Rule XVII, paragraph 1 states that a measure should be referred to the committee “which has jurisdiction over the subject matter which predominates....” Rule XXV contains the jurisdictions of the Senate’s standing committees. Precedents from referral decisions based on these rules guide referrals of newly introduced measures. There also exist agreements between committees that might govern the referral of certain bills and joint resolutions.5

Under Rule XVII, paragraph 1, the presiding officer formally refers bills and joint resolutions; practically, the parliamentarian refers measures in behalf of the presiding officer. The introduction and referral of bills and joint resolutions, and the referral of House-passed bills and joint resolutions, occurs as “morning business,” pursuant to Senate Rule VII, paragraph 1.6

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1 Senate rules contain procedures for the processing of concurrent and simple resolutions, which are not covered in this report. See especially Senate Rule XIV, para. 6.
3 Ibid., pp. 1150-1151.
4 For example, on September 10, 2013, Senate bills H.R. 1489-S. 1493 and S.J.Res. 22 were introduced. The Congressional Record entry stated: “The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated[.]” “Introduction of Bills and Joint Resolutions,” Congressional Record, daily edition, vol. 159 (September 10, 2013), p. S6327.
5 Rule XVII, para. 3 allows a measure to be referred to more than one committee, jointly or sequentially, by motion of the majority and minority leaders; this procedure appears never to have been used. Joint and sequential referrals, however, have been made by unanimous consent. See CRS Report 98-242, Committee Jurisdiction and Referral in the Senate, by Judy Schneider.
6 This rule (para. 6) also allows the introduction of such measures by delivery to the presiding officer’s desk, “in the absence of objection.” In fact, in a unanimous consent request similar to ones in previous Congresses, the Senate permitted “... that for the duration of the 113th Congress, Senators may be allowed to bring to the desk bills, joint resolutions, concurrent resolutions, and simple resolutions, for referral to appropriate committees.” Senator Harry Reid, remarks in the Senate, “Unanimous-Consent Requests,” Congressional Record, daily edition, vol. 159 (January 3, 2013), p. S7.
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The Senate may, however, use provisions of Senate Rule XIV or unanimous consent to bypass potential referral of a bill or joint resolution to a Senate committee. It may also use unanimous consent to facilitate floor action on a measure, whether or not it was referred to committee. The purpose of doing so could be to have a measure placed directly on the Senate’s Calendar of Business, which under General Orders lists measures eligible for floor consideration, or to immediately call up and consider a measure.

Senators might also convert introduced bills and resolutions into an amendment form and offer their proposal as a germane, relevant, or nongermane amendment, including amendments in the nature of a substitute and managers’ amendments, to a measure being considered on the Senate floor. They might also choose not to introduce a bill or resolution at all, but only seek to amend another measure. This report does not examine the use of the amendment process as a way to bypass Senate committees.7

This report examines the framework and use of Rule XIV and unanimous consent to place bills and joint resolutions directly on the calendar and of unanimous consent requests to call up and pass noncontroversial measures. In the remainder of this report, “bill” or “bills” and “measure” or “measures” will be used to refer to bill(s) and joint resolution(s).

Using Rule XIV to Bypass a Senate Committee

Senate Rule XIV, paragraph 4, states: “... every bill and joint resolution introduced on leave, and every bill and joint resolution of the House of Representatives which shall have received a first and second reading without being referred to a committee, shall, if objection be made to further proceeding thereon, be placed on the Calendar.” (Emphasis added.)

Therefore, through objection, a bill after two readings is prevented from being referred to committee and is placed directly on the Senate’s Calendar of Business. It is usually the majority leader (or a Senator in the majority leader’s stead), acting on his own or at the request of any other Senator, who objects to “further proceeding”—committee referral—on a measure.8

For example, this procedure was used to place directly on the calendar S. 164. On January 28, 2013, the presiding officer recognized Senator Jeanne Shaheen for this colloquy with the chair:9

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7 For example, in the 113th Congress, S. 783 and S. 1513 were introduced in the Senate; they would amend the Helium Act. S. 783 was reported by the Energy and Natural Resources Committee on July 29, 2013 (S.Rept. 113-83). Following discussion among interested Senators, S. 1513 was introduced September 17, 2013, and placed directly on the Senate Calendar. In the meantime, the House passed a companion measure, H.R. 527. The majority leader called up H.R. 527, and the text of S. 1513 was agreed to as an amendment in the nature of a substitute to H.R. 527. “Responsible Helium Administration and Storage Act,” Congressional Record, daily edition, vol. 159 (September 19, 2013), pp. S6632-S6634. For explanation of the amendment process in the Senate, see CRS Report 98-707, Senate Amendment Process: General Conditions and Principles, by Walter J. Oleszek; CRS Report 98-614, Amendments in the Senate: Types and Forms, by Christopher M. Davis; and CRS Report 98-853, The Amending Process in the Senate, by Christopher M. Davis.

8 See also Riddick’s Senate Procedure, pp. 225-226 and 240-248.

9 Although Senator Shaheen and all Senators could object to the reading of a measure to prevent its referral to committee, a Senator, other than the majority leader or the sponsor of the bill or joint resolution, who makes an objection is normally acting in the stead of the majority leader.
Mrs. SHAHEEN. Mr. President, I understand that there is a bill at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title for the first time.

The legislative clerk read as follows:

A bill (S. 164) to prohibit the United States from providing financial assistance to Pakistan until Dr. Shakil Afridi is freed.

Mrs. SHAHEEN. Mr. President, I now ask for its second reading, and in order to place the bill on the calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection having been heard, the bill will receive its second reading on the next legislative day.10

In the next edition of the Senate Calendar on January 29, this action was recorded in the section Bills and Joint Resolutions Read the First Time. The measure was held at the desk.

Since objection had been heard to the second reading, the presiding officer recognized Majority Leader Harry Reid the next legislative day, January 29:

Mr. REID. Mr. President, I am told that S. 164 is at the desk and is due for a second reading.

The PRESIDENT pro tempore. The clerk will read the bill by title for the second time.

The legislative clerk read as follows:

A bill (S. 164) to prohibit the United States from providing financial assistance to Pakistan until Dr. Shakil Afridi is freed.

Mr. REID. Mr. President, I object to any further proceeding with regard to this legislation at this time [in order to place it on the calendar under the provisions of rule XIV].

The PRESIDENT pro tempore. Objection is heard.

The bill will be placed on the calendar.11

S. 164 had received its second reading, but there was objection to further proceeding on referral of the bill to committee. The presiding officer, under Rule XIV, ordered that the bill be placed on the Senate Calendar. In the calendar beginning January 30, S. 164 appeared as Calendar Order No. 8 in the section General Orders, with other measures eligible for floor consideration.

This same procedure is followed to have House-passed bills and joint resolutions placed directly on the Senate calendar.12


12 See, for example, Senator Harry Reid, remarks in the Senate, “Measure Read the First Time—H.R. 2218,” Congressional Record, daily edition, vol. 159 (July 29, 2013), p. S6028; and Senator Harry Reid, remarks in the (continued...)
Broadly, the two purposes of preventing referral of a bill to a committee by placing it on the Senate Calendar are (1) to facilitate the full Senate’s opportunity to consider the measure; or (2) to bypass a committee’s potential inaction or, to a bill’s sponsor, potential hostile action. Although placing a bill directly on the calendar does not guarantee that the full Senate will ever consider it, the measure is available for floor consideration and certain procedural steps, like committee reporting or discharging a committee from a bill’s consideration, and procedural requirements, like the two-day availability of a committee report, may be obviated.

In the 112th Congress, at least 136 bills were placed directly on the calendar using the Rule XIV procedure. For example, S. 47, the Violence Against Women Reauthorization of 2013, was an important legislative initiative. A reason that it might have been placed directly on the calendar was that the Senate Judiciary Committee had reported a related measure in the 112th Congress (S. 1925; S.Rept. 112-153), which had passed the Senate. On January 22, 2013, in the 113th Congress, Judiciary Chairman Patrick Leahy introduced S. 47, which was read a first and second time and placed on the calendar on January 28, thereby enabling the majority leader to expeditiously call up the bill in the Senate.

As mentioned, House-passed bills might also be placed directly on the calendar using the Rule XIV procedure. The Senate might choose this option when a related Senate measure is already on the calendar; a Senate committee is in the process of completing consideration of companion legislation; an amendment to the House measure is already in discussion among interested Senators and the House-passed measure will be the Senate’s legislative vehicle; support for the House-passed measure is stronger in the full Senate than in the committee to which it would be referred; the House-passed measure includes tax or appropriations provisions, which must originate in the House; or for another reason. House-passed measures placed on the calendar in this way in the 113th Congress include H.R. 251, the South Utah Valley Electric Conveyance Act, and H.R. 1960, the National Defense Authorization Act for Fiscal Year 2014, where companion Senate bills were already pending on the calendar.

(...continued)


13 On occasion, a Senator introduces a bill, which is referred to committee, and later introduces an identical or similar measure and places it directly on the calendar under Rule XIV. The Senator might do this to bypass a committee’s hostility to the first measure: the committee would neither report the measure nor allow it to be discharged by unanimous consent. Alternately, as mentioned in the introduction to this report, a Senator can seek to offer a measure in the form of an amendment to another measure. Senator Mark Udall did not publicly explain his reasons for introducing a bill that was referred to committee, introducing an identical second bill that was placed directly on the Senate Calendar, or subsequently submitting the same bill in the form of an amendment to a measure being considered on the Senate floor, but he pursued all of these options. See S. 509, introduced by Senator Udall on March 8, 2011, and referred to the Banking, Housing, and Urban Affairs Committee, and S. 2231, introduced by Senator Udall on March 22, 2012, and placed directly on the calendar. See also Senator Mark Udall, “Jumpstart Our Business Startups Act,” remarks in the Senate, Congressional Record, daily edition, vol. 158 (March 15, 2012), pp. S1695-S1696.

14 These 136 measures were identified by a search of the Congressional Record on the Legislative Information System. Such a search of the 111th Congress identified at least 105 measures placed directly on the Senate Calendar by use of the Rule XIV procedure.

15 Although the Senate considered S. 47 and subsequently passed the bill, not every measure placed directly on the calendar is assured rapid or any consideration. The majority leader may call up a measure on the calendar, but he still must obtain the Senate’s agreement first to consider the measure (agreement to a motion to proceed) and, if successful, then obtain the Senate’s agreement to complete consideration and vote on final passage.
The procedure under Rule XIV is also used by the minority-party Senator, or by a majority-party Senator with a viewpoint different on an issue from that of other Senators of his or her party, to give added visibility to specific bills and to avoid potential inaction or hostility in a Senate committee. A Republican Senator in the 113th Congress, for example, used this procedure to put directly on the calendar S. 201, a bill to prohibit the sale and delivery of military hardware to Egypt.

**Measures Placed on the Senate Calendar by Unanimous Consent**

By unanimous consent, bills may also be read the first and second times and placed directly on the calendar. This procedure was used in the 113th Congress for bills such as H.R. 1155, an act to reform the National Association of Registered Agents and Brokers. The Senate companion measure, S. 534, had been reported earlier from a Senate committee and was pending on the Senate Calendar. 

**Using Unanimous Consent to Bypass Committees for Floor Consideration**

Senate floor consideration of a bill could be characterized as a two-step process. There is first debate and a decision by the Senate whether to consider a measure: a vote on, or unanimous consent to, a motion to proceed to consideration of the measure. There is then debate, possible amendment, and a vote on final passage of the measure itself.

On many pieces of noncontroversial legislation, Senate leaders use an informal process called “clearance” (or “hotlining”). Senators are notified of pending noncontroversial bills to determine if any Senator would object to proceeding to consider and then passing a specific measure by unanimous consent—with little or no debate, no motion or amendment unless it is sought as part of clearance, and no recorded votes. The process of passing noncontroversial measures may include bypassing a Senate committee or truncating committee action, although a committee might well have played a key role in the development of the noncontroversial measure sought to be passed or in its clearance.

On major legislation, the majority leader also attempts to obtain unanimous consent to proceed to consideration of a measure. The majority leader might seek unanimous consent even if the

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16 The Senate might also use a combination of the Rule XIV proceeding and unanimous consent to place a measure directly on the calendar. For example, in the 112th Congress, S. 223 was read the first time, the second reading was objected to, and the second reading was directed to occur on the next legislative day. Since the Senate would not be in session on the next calendar day, the majority leader asked unanimous consent that S. 223 “be considered to have received a second reading, an objection made to further proceedings, and the bill placed on the calendar” on the next calendar day. Senator Harry Reid, remarks in the Senate, “Order for Measure To Be Placed on the Calendar—S. 223,” *Congressional Record*, daily edition vol. 157 (January 27, 2011), p. S347.

17 Measures may be taken up during time set aside for morning business (in a period dubbed the “wrap-up period”), or during the conduct of legislative business, when a unanimous consent request temporarily suspends other business when other business is before the Senate.
measure was not referred to (or reported by a committee. If successful in obtaining clearance on 
the motion to proceed or perhaps to discharge a committee from further proceedings on a measure 
and then to proceed to its consideration), the majority leader propounds a unanimous consent 
request on the Senate floor to proceed to consideration.\textsuperscript{18}

This section of the report illustrates the use of unanimous consent to bypass or truncate 
committee consideration of legislation and, particularly for noncontroversial legislation, to 
expeditiously pass such bills on the Senate floor.\textsuperscript{19}

**Same-Day Consideration**

The Senate may pass some noncontroversial bills the day they are introduced, for example, in the 
113\textsuperscript{th} Congress, S. 716, to modify the STOCK Act requirements:

Mr. COONS. Madam President, I ask unanimous consent that the Senate proceed to the 
consideration of S. 716, introduced earlier today.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 716) to modify the requirements under the STOCK Act regarding online access to 
certain financial disclosure statements and related forms.

There being no objection, the Senate proceeded to consider the bill.

Mr. COONS. I ask unanimous consent that the bill be read three times and passed, the 
motion to reconsider be laid upon the table, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.\textsuperscript{20}

The Senate may also pass some noncontroversial House-passed bills when they are received. For 
example, the Senate received a message from the House September 30, 2013, regarding H.R. 
3210, the Pay Our Military Act, and passed the bill that day:

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the 
consideration of H.R. 3210, which was received from the House in the last 24 hours. I ask

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\textsuperscript{18} If unsuccessful in obtaining clearance, the motion to proceed is debatable and therefore may be filibustered. Once the 
motion to proceed is agreed to by vote, through the cloture procedure, or by unanimous consent, consideration of the 
measure begins. The majority leader might seek a complex unanimous consent agreement or a series of such 
agreements (also called “time-limitation agreements”) on major legislation that structures debate and the amendment 
process to ultimately bring the Senate to a vote on final passage.

\textsuperscript{19} For an explanation of how the Senate might consider major legislation, see CRS Report 96-548, *The Legislative 
Brought to the Senate Floor: A Brief Introduction*, by Christopher M. Davis; CRS Report 98-225, *Unanimous Consent 
Agreements in the Senate*, by Walter J. Oleszek; and CRS Report RS20594, *How Unanimous Consent Agreements 
Regulate Senate Floor Action*, by Richard S. Beth.

\textsuperscript{20} Senator Chris Coons, remarks in the Senate, “Modifying the Requirements under the Stock Act.,” *Congressional 
Record*, daily edition, vol. 159 (April 11, 2013), p. S2583. For another example, see Senator Mark Udall, remarks in the 
7014.
unanimous consent that the bill be read three times, passed, and the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The bill (H.R. 3210) was ordered to a third reading, was read the third time, and passed.21

If the measure is a joint resolution rather than a bill, and the joint resolution has a preamble,22 the unanimous consent request on passage must encompass the preamble. So, for example, Senator Reid made this request pertaining to S.J.Res. 22, to grant congressional consent to a change in a compact between the states of Missouri and Illinois:

I ask unanimous consent the joint resolution be passed, the preamble be agreed to, the motion to reconsider be made and laid upon the table, there be no intervening action or debate, and any statements be printed in the Record.23 (Emphasis added.)

Measure Held at the Desk

House bills might be received by the Senate, or Senate bills might be introduced, with no immediate further proceedings on them. They are held at the desk, sometimes pending a decision on referring them to committee, passing them without committee consideration, or obtaining clearance from all Senators. For example, H.R. 3095, pertaining to requirements regarding sleep disorders of truckers, was received in the Senate on September 27, 2013. Although other bills were received from the House that day and referred, no further proceedings occurred on H.R. 3095. On October 4, the Senate took up and passed H.R. 3095 by unanimous consent. To proceed to consideration, Majority Leader Reid simply stated,

I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3095, which is at the desk.24

The bill was passed by unanimous consent.25

Anticipating House Action

The Senate might anticipate passage of a measure by the House, and agree by unanimous consent to Senate passage. For example, the Senate in the 113th Congress anticipated House passage of a bill that would provide an extension for special short-term Iraqi immigrant visas:

22 Introductory text, sometimes called “whereas clauses,” preceding the resolving clause of a resolution.
Mr. REID. Mr. President, I ask unanimous consent that if the Senate receives a bill from the House which is identical to S. 1566, a bill providing a short-term extension of Iraq special immigrant visas, as passed by the Senate, then the bill be read three times and passed and the motion to reconsider be laid on the table with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.26

Truncating Committee Action

Noncontroversial Senate bills and House-passed measures are often referred to committee. A committee might later be discharged by unanimous consent from a measure’s consideration. (If unanimous consent cannot be obtained, a motion to discharge could be made.)27 For example, S. 309, awarding a Congressional Gold Medal to World War II members of the Civil Air Patrol, was introduced on February 13, 2013. On May 20, 2013, the measure was discharged by unanimous consent from the Senate Banking Committee and passed by the Senate:28

Mrs. BOXER. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of S. 309 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 309) to award a Congressional Gold Medal to the World War II members of the Civil Air Patrol.

There being no objection, the Senate proceeded to consider the bill.

Mrs. BOXER. I ask unanimous consent the Harkin amendment, which is at the desk, be agreed to, the bill as amended be read three times and passed, and the motion to reconsider be laid upon the table, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.29


27 See also Riddick’s Senate Procedure, pp. 802-806.

28 A committee might also be discharged automatically after a measure has been pending before it for a period of time, pursuant to congressional procedures in law. See, for example, S.J.Res. 6 and S.J.Res. 27 (112th Cong.), discharged by petition pursuant to 5 U.S.C. 802(c). “Discharge Petitions (S.J.Res. 6 and S.J.Res. 27),” Congressional Record, daily edition, vol. 157 (November 3, 2011), p. S7141. The procedure contained in 5 U.S.C. 802(c), a provision of the Congressional Review Act on review of proposed regulations, states that, after a joint resolution has been pending in committee for 20 days, the resolution may be discharged by a petition supported by 30 Senators.

Although legislation might be discharged from a committee that has taken no formal action on a measure, legislation might also be discharged following formal committee action. For example, in the 113th Congress, the Energy and Natural Resources Committee held hearings on S. 812, concerning a U.S.-Mexico agreement on transboundary hydrocarbon reservoirs. S. 812 was subsequently discharged from the committee. In a similar occurrence in the 112th Congress, S. 3238, naming an outpatient clinic, was discharged from the Veterans’ Affairs Committee following committee hearings. Also in the 112th Congress, S. 3250, the Sexual Assault Forensic Evidence Reporting Act of 2012 (the SAFER Act), was discharged from the Judiciary Committee after the committee ordered the bill to be favorably reported.

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