



## H. Res. 5 – Adopting the Rules of the House of Representatives for the 115<sup>th</sup> Congress

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### **SCHEDULE FOR CONSIDERATION:**

Expected to be considered as a privileged matter in the House on January 3, 2017.

### **TOPLINE SUMMARY:**

[H. Res. 5](#) would, in general, adopt the Rules of the House from the 114<sup>th</sup> Congress as the Rules for the 115<sup>th</sup> Congress. The resolution would make a number of specific changes to the underlying Rules, as well as adopt a number of separate orders to govern the House during the 115<sup>th</sup> Congress.

### **CONSERVATIVE CONCERNS:**

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### **DETAILED SUMMARY AND ANALYSIS:**

The Rules of the House govern the activities of the House both on the House floor and within its committees. While the rules must be adopted by each Congress, they are generally stable over time and have evolved based on the precedents of House activity and generally small changes made at the convening of each Congress.

H. Res. 5 is traditionally used to adopt the rules, make any changes to the underlying rules, and adopt separate orders that are not codified in the House Rules, but which govern the body for the duration of the Congress. The resolution will be considered first inside the Republican Conference, where Members of the majority may propose amendments. After the convening of the 115<sup>th</sup> Congress, the Republican Conference reported version of H. Res. 5, including any amendments adopted in conference, will be considered by the full House after the election of the Speaker.

A detailed summary of the changes made to the House Rules and separate orders contained in H. Res. 5 follows below.

## Changes to House Rules

### *Decorum*

Rule II would be amended to authorize the House Sergeant-at-Arms to impose a fine on Members who use an electronic device to record or broadcast activity from the House floor in contravention of Rule XVII or any applicable Speaker's announced policy. Fines would be \$500 for first offenses, and \$2,500 for each subsequent offense, which would be deducted directly from a Member's salary.

Rule XVII would be amended to clarify that the House Committee on Ethics may investigate Members of conduct that is disruptive to legislative business or for impeding other Members from participating in floor activity.

These changes are intended to prevent abuses of the House floor that occurred when Democrats engaged in a sit-in to protest gun violence. Most members of the minority engaged in disruptive behavior, with some broadcasting activity in violation of the Rules of the House or accosting House staff and other Members. Rather than engage in disciplinary activity, Republican Leadership decided to use proactive changes to the House Rules to attempt to prevent such abuse from recurring.

Some concerns have been raised as to potential constitutional issues arising from the delegation of the House's authority to punish Members contemplated by the proposed changes to the Rules of the House. Article 1, Section 5, clause 2 of the Constitution provides the authority for each house of Congress to determine the rules of its proceedings and to punish Members for disorderly conduct or behavior. With regard to the proposed changes made by H. Res. 5, it has been suggested that it may be unconstitutional for the House to delegate to the Sergeant-at-Arms the authority to impose fines on Members. However, it is important to note that such delegation is in keeping with existing practice of the House in delegating Article 1 powers to non-Member entities for administrative purposes, including to House officers. For example, rule II provides for the Clerk of the House to maintain order and decide questions of order in absence of a Speaker, which is a delegation of the Article I, Section 5, clause 2 power to determine the rules of the proceedings of the House. With specific respect to the imposition of fines and fees, rule XXVI incorporates by reference the provisions of title I of the Ethics in Government Act of 1978, which proscribes the automatic imposition of a \$200 fee for any Member who is delinquent in the filing of a financial disclosure.

Pursuant to the Representative Meadows's amendment adopted during consideration of H. Res. 5 by the Republican Conference, a Member would be able to appeal any fine imposed to the House Committee on Ethics within 30 days.

### *Unauthorized Appropriations and Committee Oversight*

Rule X would be amended to require that in adopting oversight plans for the Congress, each standing committee would be required to include a list of all programs with lapsed authorizations that received appropriations in the prior year and all permanently authorized programs that have not been reviewed within the last three years. The plans would also include a list of programs the committee intends to reauthorize in the current Congress, and any oversight activity planned in support of such authorization.

This change is intended to begin addressing the problem of unauthorized appropriations. Clause 2(a)(1) of rule XXI generally prohibits the appropriation of funds for programs that are not authorized by law. However, this rule has been routinely waved, resulting in the vast majority of the Non-Defense discretionary spending, [\\$310 billion in FY2016](#), being unauthorized. Many conservatives have previously advocating for enforcing the current rule XXI prohibition in full or in part, in order to spur Congress to reevaluating the often decades-expired authorizations for federal programs and agencies and eliminate waste and mismanagement, as well as restore the proper size and scope of government.

While enhanced committee oversight and authorization plans are meritorious, it is worth noting that under the current practice of the Arney Protocol (see note at bottom of page 2 [here](#)), authorizing committees already have the power to prevent unauthorized programs from receiving appropriations. Thus enhanced oversight is likely to be helpful, but not sufficient to eliminate the abuse of appropriating for unauthorized programs.

### ***Budget Neutrality of Appropriations Amendments***

Rule XXI would be amended to prohibit amendments to appropriations bills that would result in a net increase of budget authority authorized by the bill. This change codifies current House practice.

### ***Duplication Analysis***

Rule XIII would be amended to require that committee reports include a statement as to whether any program established or reauthorized by the underlying legislation is duplicative of other federal programs. This change codifies current House practice.

### ***Subcommittee Restrictions***

Rule X would be amended to allow the Committee on Appropriations to maintain up to 13 subcommittees, Armed Services, Foreign Affairs and Oversight and Government Reform, up to 7 subcommittees; and Transportation and Infrastructure, up to 6 subcommittees. In general, House committees are limited to maintaining 5 subcommittees, or 6 if one is a subcommittee on oversight.

A separate standing order in H. Res. 5 would allow the Committee on Agriculture to maintain 6 subcommittees during the 115<sup>th</sup> Congress.

### ***Ramseyer Prints for Legislation As-Considered***

Pursuant to the Representative Posey's amendment that was during consideration of H. Res. 5 by the Republican Conference, after December 31, 2017, it would not be in order to consider legislation in the House that does not have a Ramseyer print for the version of the text that will be considered on the floor.

### ***Delegate Presiding***

Pursuant to the Delegate Radewagen's amendment that was during consideration of H. Res. 5 by the Republican Conference, Delegates and Resident Commissioners would now be allowed to act as Chair of the Committee of the Whole.

### ***Office of Congressional Ethics***

Pursuant to the Representative Goodlatte's amendment that was during consideration of H. Res. 5 by the Republican Conference, H. Res. 5 generally rename and reform the Office of Congressional Ethics (OCE).

Specifically, the amendment would:

- (1) rename the OCE the Office of Congressional Compliant Review (CCR);
- (2) place CCR under the authority and direction of the Committee on Ethics;
- (3) Require more timely notification to Members and the Committee on Ethics when an investigation is commenced or terminated;
- (4) Prohibit the release of information from the CCR to the public of any information not already released by the Committee on Ethics and prohibit the CCR from employing a communications staff;

- (5) Limit the scope of inquiry of the CCR to matters occurring within the last three Congresses, which matches the statute of limitations for review by the Committee on Ethics; and,
- (6) Prohibit the CCR from considering anonymous complaints.

### **Technical Changes**

H. Res. 5 would make numerous technical changes to the Rules, including:

*Recognition of Members* – Various rules would be changed to allow Members to act while seated and to remove references to walking in order to accommodate Members without the physical ability to do so.

*Presiding Member at the Convening of the Congress* – Rule II would be amended to give priority to a Member acting as Speaker pro tempore over the Clerk in preserving and deciding questions of order prior to the election of the Speaker.

*Successor of Interest* – Rule II would be amended to allow the House, Speaker, committee, or chair of a committee to continue as the successor in interest in litigation authorized during a previous Congress.

*Staff Floor Access* – Rule IV would be amended to no longer require staff allowed on the House floor to remain at the desk. This aligns with the current practice of the House.

*Member Records* – Rule VII would be amended to clarify that records and other work product created or received by a Member in the course of official duties are the personal property of that Member.

*Responding to Subpoenas* – Rule 8 would be amended generally to update and streamline the notification to the House when a Member, officer, or staff member receives a subpoena compelling disclosure or production of material related to the official functions of the House.

*Committee Hearings* – Rule XI would be amended to allow the Committee on Homeland Security to close hearings in the same fashion as the Armed Services Committee.

*Ramseyer Requirement* – Rule XII would be amended to correct an unintended consequence of the Ramseyer requirement adopted in the 114<sup>th</sup> Congress that resulted in a requirement for duplicative prints. The amended rule would still require the inclusion of a print showing changes to existing law.

*Authority to Postpone* – Rule XX would be amended to allow the chair to postpone questions on motions to recommit or the motion to concur in a Senate amendment.

### **Separate Orders**

#### ***Holman Rule***

H. Res. 5 would, for the first session of the 115<sup>th</sup> Congress, reinstate a provision of rule XXI known as the Holman Rule, which allows for amendments to appropriation bills to retrench expenditures provided for in the bill without constituting legislating on an appropriations bill, which is generally prohibited under clause 2(b) of rule XXI. Specifically, this standing order would allow amendments: reducing the amount of funds made available by the bill; reducing the number or salaries of officers of the United States; or, reducing the compensation of any person paid out of the Treasury. This form of rule XXI has been in force at various times through U.S. history, beginning in 1876, and most recently from 1911 through 1983.

More information on the Holman Rule is available from the House Parliamentarians in section 1043 of the House manual, available [here](#). Information regarding the type of amendments made in order under the Holman Rule is available in section 1062 of the manual.

This standing order is intended to “see if the reinstatement of the Holman rule will provide Members with additional tools to reduce spending during consideration of the regular general appropriation bill.”

### ***Direct Spending***

H. Res. 5 would establish a point of order against the consideration of any bill that would increase net deficits by \$5 billion or more in any of the 4 consecutive 10-year periods following enactment.

This point of order would not apply to legislation repealing or reforming the Affordable Care Act or the Obamacare components of the Health Care and Education Affordability Reconciliation Act of 2010, or to any legislation for which the chair of the Budget Committee makes an adjustment to the budget levels.

### ***Scoring for Land Conveyances***

Pursuant to the Representative Bishop’s amendment that was during consideration of H. Res. 5 by the Republican Conference, no provision directing a conveyance of federal land would be considered to increase outlays, direct spending, or budget authority, or decrease revenues.

### ***Standing Orders Carried Forward***

H. Res. 5 would continue several standing orders from the 114<sup>th</sup> Congress, including:

*Spending Reduction Accounts and Amendments* – H. Res. 5 would continue the requirement that appropriation bills include a spending reduction account and continue to allow amendments to be considered en bloc when only transferring funds to the spending reduction account.

*Social Security Solvency* – H. Res. 5 carries forward the prohibition on any legislation that reduces the actuarial balance of the Old Age trust fund of Social Security, except when such legislation would improve the combined Old Age and Disability trust funds.

*Staff Deposition Authority* – H. Res. 5 would continue the authority of House committees to order the taking of depositions, and would allow staff to take such depositions without Member attendance if the witness waives the requirement or the committee specifically authorizes the deposition to be taken without a Member present.

*IPAB* – H. Res. 5 would carry forward a standing order from the 113<sup>th</sup> and 114<sup>th</sup> Congress preventing restrictions on Congressional action to determine the method of consideration of IPAB recommendations or to repeal such provision.

*Budget Point of Order* – H. Res. 5 would continue a prohibition on the Committee of the Whole from rising and reporting an appropriations bill back to the House if, as amended, the new budget authority provided in the bill would exceed the applicable 302(b) budget allocation.

*Directed Rulemakings* – H. Res. 5 carries forward the requirement that committee reports include a disclosure listing the rulemakings directed to be carried out in the underlying legislation.

*Parallel Citations* – H. Res. 5 would continue the requirement to include citations to both U.S. Code and to Public Laws or Statutes at large in legislation, to the maximum extent possible.

*Congressional Member Organizations* – H. Res. 5 continues the provision from the 114<sup>th</sup> Congress allowing Members to more effectively make use of Member Organizations, including the Republican Study Committee.

## **Additional Matters**

### ***Reauthorizations***

H. Res. 5 would reauthorize the House Democracy Partnership, the Tom Lantos Human Rights Commission, and the Office of Congressional Ethics.

### ***Reading of the Constitution***

H. Res. 5 would allow the Speaker to recognize Members for the reading of the Constitution on any legislative day through January 13, 2017. Since Republicans regained the majority in 2011, each Congress has opened with the reading of the Constitution on the floor of the House.

### **COMMITTEE ACTION:**

The House Rules Committee's Subcommittee on Rules and Organization of the House held a hearing in April 2016 covering potential changes to rule XXI and held a hearing on general proposed changes to the House Rules in September 2016.

The House Republican Conference considered amendments to H. Res. 5 on January 2, 2017.

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