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# The Discharge Rule in the House: Principal Features and Uses

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## Summary

The “discharge rule” of the House of Representatives allows a measure to come to the floor for consideration even if the committee of referral does not report it and the leadership does not schedule it. To initiate this action, a majority of House Members must first sign a petition for that purpose. After a petition has garnered 218 signatures, a motion to discharge may then be offered on the floor—but only after at least seven legislative days and only on a second or fourth Monday of a month.

The rule allows for two main methods of action: (1) The committee of referral may be discharged from a measure that has been before it for 30 legislative days or more; or (2) the Committee on Rules may be discharged from a special rule for considering such a measure if the rule has been before the committee for at least seven legislative days.

If a measure dealing with raising or spending money reaches the floor through the first method of action, it is considered in the Committee of the Whole, as if under an open rule. Other measures reaching the floor through this method of action are considered in the House under the one-hour rule, with the previous question in order. Under the second method of action, if the House takes up a measure under a special rule from which the Committee on Rules has been discharged, it is considered under the terms provided by the special rule.

Under either method of action, the layover periods required by the discharge rule permit the Committee on Rules to preempt the discharge attempt, and recover control of the floor agenda, by securing House adoption of an alternative special rule for considering the measure.

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## The Discharge Rule and Agenda Setting in the House

The “discharge rule” of the House of Representatives (Rule XV, clause 2) provides a means for the House to bring to the floor for consideration a measure (a bill or resolution) that has not been reported from committee.<sup>1</sup> Normally, each measure introduced in the House is routinely referred to a committee and cannot receive floor consideration until the committee reports. Because House committees are in general not required to report measures, they can normally prevent House action on any referred measure simply by taking no action thereon. This “gatekeeping” function is a key reason for the central position of committees in shaping the congressional agenda. The discharge rule provides one of the few procedures by which the House can circumvent this gatekeeping role.

More generally, the discharge rule offers the only means by which a majority of House Members may secure consideration of any measure against the simultaneous opposition of the committee of jurisdiction, the leadership of the majority party, and the Committee on Rules.<sup>2</sup> Other House procedures may permit bringing a measure to the floor over the opposition of some of these entities—but only through the concurrence of others. For example, the motion to suspend the rules and pass a measure can bring to the floor even an unreported measure, because the motion can suspend the rule requiring it to be reported before it can be considered. The Speaker, however, has discretion in recognition for this motion and, for this purpose, normally recognizes the chair of the committee of jurisdiction (or the chair’s designee). Similar practices govern recognition for requests to consider a measure by unanimous consent. Finally, the House can adopt a “special rule” directing that a specified unreported measure be “extracted” from committee and taken up on the floor. Special rules, however, are normally privileged for consideration only when reported by the Rules Committee.

### Main Features of the Discharge Procedure

The discharge procedure is designed to be difficult to accomplish so as to discourage Members from resorting routinely to a procedure that takes control of the floor agenda away from the Rules Committee and other leadership organs that are normally responsible for it. A discharge motion may be offered on the floor only if a majority of the entire membership of the House, 218 Members, first signs a petition in support of the action. (Delegates are not eligible to sign.) A Member may initiate such a petition only after the measure has remained in committee for at least 30 legislative days without being reported.<sup>3</sup> Seldom is a petition filed this soon; Members

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<sup>1</sup> The procedure is so called because it takes the measure away from the committee “charged” with it. Strictly speaking, therefore, it is the committee, not the measure, that is discharged.

<sup>2</sup> House Rules, however, do provide special means for bringing certain narrowly specified kinds of measures to the floor without concurrence from any of these entities. Examples include resolutions of inquiry, questions of the privileges of the House, and certain resolutions of approval and disapproval regulated by statutory “fast track” procedures.

<sup>3</sup> A new legislative day starts each time the House meets after adjourning. The number of legislative days that will occur cannot be known in advance. Although the schedule of House sessions is announced in advance by House leadership, the schedule is subject to change, and it is implemented only by action of the House, for example, on motions to fix the time to which to adjourn. For more information, see “Daily Sessions and Their Adjournments and Recesses” in CRS Report R42977, *Sessions, Adjournments, and Recesses of Congress*, by Richard S. Beth and Jessica Tollestrup.

generally refrain from initiating one until they consider it clear that the committee does not plan to act.

The discharge rule explicitly excludes private bills from being subject to discharge. The chair once asserted that a resolution to establish an investigating committee also is immune from discharge. Apparently, discharge may be sought on any other measure pending before committees of the House.

A Member obtains the petition form at the Clerk's desk in the House chamber, where pending petitions are also maintained and made available for signature.<sup>4</sup> Members may sign a petition only by going to the Clerk's desk while the House is in session. Members may sign or remove their names until the total of 218 is obtained, at which point the signature list is frozen and printed in the *Record*, and the motion is "entered" on the Discharge Calendar. Few petitions reach this point. For those that do, the process usually takes some months, although on three occasions the petition garnered the necessary signatures in one day.<sup>5</sup>

The motion to discharge may then be offered on the floor, but

- only at the beginning of a day's session that falls at least seven legislative days after the motion is entered;
- only on a "discharge day" (the second or fourth Monday of each month);<sup>6</sup> and
- not during the last six days of a session of Congress.

Any Member who signed the petition may offer the motion; normally the one who initiated the petition is recognized. The motion is debatable for 20 minutes, equally divided between supporters and opponents (typically, controlled by the Member calling it up and the chair of the committee to be discharged). If a simple majority of Members present and voting adopt the motion, the committee is discharged, and the House may proceed to consider the measure. Because the measure has not been reported, however, it comes to the floor in the form introduced, with no recommended committee amendments and no written committee report to guide Members or establish legislative history.

Once the House acts on a discharge motion on any measure, any further action under the discharge rule is precluded for any measure on the same subject during the same session of Congress (that is, roughly, for that calendar year). At the final *sine die* adjournment of a Congress, all legislative business terminates, including pending discharge petitions.

A discharge motion that never comes to the floor may still serve proponents' purposes, for a committee may sometimes respond to a discharge effort by reporting the measure on its own initiative. This response may become increasingly likely as the petition approaches or obtains the required 218 signatures. Even counting such cases, nevertheless, usually no more than one

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<sup>4</sup> The last issue of the *Congressional Record* for each week lists Members who have signed (or removed their signatures from) each pending discharge petition during that week. This listing identifies petitions by measure number but not by subject. The full texts of pending petitions, including measure titles and current lists of signers, appear on the website of the Clerk of the House at <http://clerk.house.gov/legislative/legvotes.aspx>.

<sup>5</sup> The three discharge petitions that received all 218 signatures in a single day include those related to H.Res. 450, for consideration of H.R. 597, to reauthorize the Export-Import Bank in 2015 (114<sup>th</sup> Congress); H.Res. 331, for consideration of H.J.Res 103, proposing a balanced budget amendment to the Constitution in 1994 (103<sup>rd</sup> Congress); and H.Res. 478, for consideration of S. 2475, which became the first minimum wage act (P.L. 75-718) in 1938 (75<sup>th</sup> Congress). For further information, see sources cited in footnote 7 below.

<sup>6</sup> On some occasions, when the announced House schedule contemplated no session on a discharge Monday, the House has by unanimous consent made eligible discharge business in order on the following Tuesday or some other day.

measure on which discharge is attempted reaches the House floor in a single Congress. Also, some such measures fail to pass the House, and only 30 have ever become law or otherwise received final approval.<sup>7</sup>

## Discharge on Unreported Measures

Within the structure of this general mechanism, the discharge rule incorporates two distinct approaches: The petition may be filed either directly on the unreported measure itself or on a special rule for its consideration. The first approach permits the committee of referral to nullify the discharge attempt by reporting the measure, for once the committee no longer has the measure in its possession, it can no longer be discharged. The committee may even wait until all 218 signatures are obtained and then report the measure before the next discharge day. The motion to discharge then cannot be called up, because it is moot. Although the measure is then procedurally available to be considered, it remains unlikely to reach the floor unless the reporting committee takes action to bring it up.

If a measure is referred to more than one committee, all the committees may be discharged simultaneously by a single petition. A measure referred to multiple committees remains eligible for action under the discharge rule until all committees of referral report it (or otherwise lose possession of it). In these circumstances a single committee cannot nullify the discharge attempt by reporting unless it is the last committee holding the measure.

If 218 signatures are obtained and the committee does not report the measure, the discharge motion may be called up, and the House may adopt it. Any Member who signed the petition may then move for the House to take up the measure under the appropriate general rules. (If this motion is defeated, the measure may later be taken up by any of the usual means, but these, again, are normally under the control of the leadership.)

If a measure reaching the floor by discharge is a “money bill” (including an authorization, appropriation, or revenue bill) House Rules mandate that it initially be considered in the Committee of the Whole; the proper motion is therefore that the House resolve into the Committee of the Whole for its consideration. If the House agrees to this motion, the measure is considered under the equivalent of an “open rule”: It is read by section for amendment, and any germane amendment is in order to each section. This form of consideration offers no possibility of limiting or structuring the amendment process or, conversely, of providing any waivers that prospective amendments might need. It also precludes limiting the time for general debate on the measure or placing it under the control of managers except by unanimous consent.

If the House agrees to discharge on a measure that is not a “money bill,” then the motion in order is that the House consider it. On agreement to this motion, the House considers the measure under

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<sup>7</sup> “Final approval” here includes *enactment into law* for bills and joint resolutions, *submission to the states for ratification* for joint resolutions proposing constitutional amendments, *agreed to by the House* for House resolutions, and *finally agreed to by both chambers* for concurrent resolutions. House floor consideration of most of these 30 measures occurred under procedures other than those of the discharge rule itself—usually either after the committee of jurisdiction reported them or else as explained below under “Recovery of Agenda Control through the Committee on Rules.” The only measures that have become law after passing the House under the discharge procedure itself are P.L. 75-718, the first minimum wage bill, in the 75<sup>th</sup> Congress (1937-1938), and P.L. 86-568, a federal pay bill, in the 86<sup>th</sup> Congress (1959-1960). For additional information, see CRS Report 97-856, *The Discharge Rule in the House: Recent Use in Historical Context*, by Richard S. Beth; and CRS Report 90-84 GOV, *The Discharge Rule in the House of Representatives: Procedure, History, and Statistics*, now archived but available in U.S. Congress, House Committee on Rules, Subcommittee on Rules of the House, *Discharge Petition Disclosure*, Hearing on H.Res. 134, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess., September 14, 1993 (Washington: GPO, 1993), pp. 175-293.

the “one-hour rule,” which permits the Member calling up the measure to move the previous question after one hour of debate. If the House orders the previous question, it then proceeds to vote on the measure in the form introduced before any Member has any opportunity to offer an amendment. Even if the House defeats the previous question, a Member who led the effort to do so then normally offers an amendment and is recognized for one hour for debate, at the end of which he or she moves the previous question on the amendment and the measure. Under these conditions, too, this first method of discharge provides no way to adapt the terms of consideration and amendment to the circumstances of the specific measure.

## **Discharge on Special Rules for Unreported Measures**

The second method of discharge was added to House Rules in 1931 as a means of avoiding the difficulties just discussed, and it became more common in the mid-1990s. Under this second approach, a Member must first draft and submit a special rule (which takes the form of a House resolution) providing that a specified measure be considered even if it remains unreported. The special rule may not permit the offering of any non-germane amendment nor provide for consideration of more than one measure. If the Rules Committee has not reported this resolution after seven legislative days, the same (or another) Member may file a petition to discharge that committee from considering it. At that point, the measure the special rule makes in order either must have remained in committee for at least 30 legislative days or must have been reported.

If the petition obtains the requisite 218 signatures, the motion in order on a discharge day is to discharge the Rules Committee from the resolution. If that motion is adopted, the House then automatically proceeds to consider the resolution under the one-hour rule, just as with any other special rule. Presumably, the Member who offered the motion to discharge would likely be recognized to control the one-hour debate on the resolution. The Member would normally yield half the hour to an opponent, most likely a representative of the Rules Committee, and would move the previous question on the resolution at the end of the debate. If the House orders the previous question and then agrees to the resolution itself, the terms of the resolution bring the desired measure out of committee and to the floor, just as with an “extraction rule” that the Rules Committee may report in the ordinary course of events.

This method permits supporters of a measure to propose whatever terms to regulate the consideration and amendment of the measure they find appropriate to the specific situation, just as the Rules Committee normally does. A special rule for such purposes normally provides that consideration continue on subsequent days, if necessary, until a final vote. Such a provision guards against the possibility that the leadership will recover control of the floor agenda by turning to other business before the House completes action on the desired measure.

This second approach to discharge also prevents the committee of jurisdiction from nullifying the discharge effort by reporting the measure and then taking no steps to call it up. If the special rule provides for considering a measure whether or not it has been reported, then even if the committee does report the measure, its action raises no obstacle to discharging the Rules Committee from consideration of the special rule.

House Rules also protect against the possibility that the Rules Committee itself might attempt to vitiate a discharge effort by reporting the special rule and then declining to call it up. If the committee reports any special rule and then fails to call it up within seven legislative days, House Rule XIII, clause 6(d), requires the Speaker to recognize any member of the committee for that purpose once he or she has given one day’s notice of intent to do so. This requirement protects

any discharge effort that can rely on cooperation from at least one member of the Rules Committee. Finally, if the committee reports the special rule adversely, House Rule XIII, clause 6(e), and House Rule XV, clause 3, require the Speaker, on any discharge day, to recognize any Member of the House for the purpose of calling up that special rule.

The chief potential difficulty with this second approach is that it requires Members to draft the special rule at the beginning of the process even though, by the time the measure reaches the floor, judgments about appropriate terms for consideration may have changed. Care may be required to formulate terms for consideration that are flexible enough to accommodate unforeseen circumstances, such as permitting amendments to be offered that may remedy problems recognized subsequently or that may attract broader support.

## **Discharge on Special Rules for Reported Measures**

When Members seek to discharge the Rules Committee from a special rule for considering an unreported measure, the actual obstacle to action is presumably not the Rules Committee but rather the committee to which the measure is referred. By contrast, if the Rules Committee declines to report a special rule for considering a measure that the committee of jurisdiction has reported, it can itself become the obstacle to consideration. Such action is not common today but was more frequent before the mid-1960s, when the committee often did not work as an organ of the leadership in managing the agenda.

The second method of discharge offers recourse in these circumstances as well, for Members may submit, and seek discharge on, a special rule for considering the already reported measure. This approach was used, for example, by supporters of campaign finance legislation in the 107<sup>th</sup> Congress. In such cases, the reporting committee might even support the attempt to discharge the Rules Committee.

## **Recovery of Agenda Control Through the Rules Committee**

Although the Rules Committee cannot nullify a discharge attempt directed against a special rule by reporting the special rule, in recent years it has often taken another course of action by which it may recover control of the floor agenda. Often after a discharge petition has obtained the required 218 signatures, and sometimes when such a result has seemed imminent, the committee has reported not the special rule on which discharge was being sought but its own special rule for considering the same measure (or, sometimes, for considering an alternative measure on the same subject).

The committee has then called up this special rule during the required layover period before the discharge motion can be brought to the floor. The House has then often adopted this resolution, in which case it has then considered the measure under the schedule and terms that the committee (and perhaps the leadership and the committee of jurisdiction) has found appropriate rather than those preferred by the supporters of discharge. These special rules have also provided that no further action take place pursuant to the original discharge petition.

As a result of these actions, supporters of the measure in question still succeed in securing House consideration of the subject, yet the leadership retains its normal control over the schedule and terms of action on the floor. For consideration of campaign finance legislation in the 107<sup>th</sup> Congress, however, the Rules Committee reported a special rule that was identical in text to the

one on which discharge had been sought. Under such conditions, the leadership's recovery of floor control might be viewed as merely nominal.

Ultimately, however, this course of action does not leave discharge proponents without recourse. If they dislike the terms for consideration that the Rules Committee proposes, they can attempt to defeat the committee's special rule, thereby retaining the capacity to call up their discharge motion on a subsequent discharge day. On some occasions, the prospect of such action has led to a negotiated agreement on the terms of consideration and discharge of the committee by unanimous consent.

## **For Further Reference**

U.S. Congress. House Committee on Rules. Subcommittee on Rules of the House. *Discharge Petition Disclosure*. Hearing on H.Res. 134. 103<sup>rd</sup> Cong., 1<sup>st</sup> sess. Washington: GPO, 1993.

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