

Expedited Procedures Governing Senate Consideration of Legislation Waiving a Restriction Related to the Military Service of the Secretary of Defense

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[Section 179 of the Further Continuing and Security Assistance Appropriations Act, 2017 \(P.L. 114-254\)](#), establishes expedited or "fast track" parliamentary procedures governing Senate consideration of legislation that would waive a legal restriction related to the prior military service of the Secretary of Defense. Section 113(a) of Title 10 of the *U.S. Code* establishes that an individual "may not be appointed as Secretary of Defense within seven years after relief from active duty as a commissioned officer of a regular component of an armed force."¹ Unless waived, this restriction could be viewed as barring retired Marine Corps General James N. Mattis, who has been selected by President-elect Donald J. Trump to be Secretary of Defense, from serving in that capacity. General Mattis retired from active duty in 2013.

Section 179 of the act establishes special "fast track" procedures governing Senate consideration of a bill or joint resolution that would waive this seven-year restriction. The expedited procedures would apply only to Senate consideration of a bill waiving Section 113(a) of Title 10 for the first person appointed as Secretary of Defense following the enactment of [P.L. 114-254](#) who had been retired from active duty for at least three years.

In order to qualify for the expedited procedures, waiver legislation must be introduced during a 30-calendar day period that begins on the date that the 115th Congress (2017-2018) convenes. The legislation may be introduced by the Senate majority leader, minority leader, or their respective designees or by the chair or ranking minority member of the Committee on Armed Services. Both the title of the legislation and the matter after the enacting (or resolving) clause are stipulated.

Once introduced, the legislation is to be referred to the Senate Committee on Armed Services. If the committee has not reported the waiver legislation within five session days after the date of its referral, it is automatically discharged from the further consideration of the measure.

Once the legislation is pending on the Senate Calendar of Business (either by being reported or by the committee being discharged), a non-debatable motion to proceed to its consideration is in order. This motion may be repeated if it has previously been disagreed to. All points of order against the waiver legislation and its consideration are waived.

If the Senate adopts the motion to proceed, the waiver legislation would be pending and the Senate would consider the measure until it has disposed thereof. There would be up to 10 hours of debate, divided and controlled by the party floor leaders or their designees. A non-debatable motion to further limit debate is in order. Amendments and various potentially dilatory motions are barred. At the conclusion of debate, and after an optional quorum call, the Senate would automatically vote on passage of the waiver legislation.

Passage of the waiver legislation in the Senate requires an affirmative vote of three-fifths of Members chosen and sworn—60 votes if there is no more than one vacancy in the Senate—the same threshold required for cloture on most legislation. The expedited procedures contained in Section 179, however, would permit the Senate to call up and reach a final vote on the waiver legislation without expending the same amount of floor time that could be necessary to call the waiver legislation up under the Standing Rules of the Senate and reach a vote thereon through the cloture process. In this regard, arguably the primary benefit of the Section 179 procedures is that they are a time saver.

Should waiver legislation be subsequently vetoed, Senate consideration of a veto message would be limited to up to 10 hours.

Because the statute enacts these "fast track" procedures as a rule of the Senate, the Senate could adjust the provisions described above in whole or in part by unanimous consent.

Section 179 of [P.L. 114-254](#) does not establish any expedited procedures providing for House consideration of waiver legislation. Presumably such legislation would come to the House floor under the terms of a special rule reported by the House Committee on Rules or, depending on its level of support, under the Suspension of the Rules procedure.

Should waiver legislation ultimately be enacted, 10 U.S.C. 113(a) would no longer bar General Mattis from serving as Secretary of Defense. The Senate would still, however, have to consider and confirm his nomination.