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“Fast Track” Congressional Consideration of Recommendations of the Base Realignment and Closure (BRAC) Commission

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Summary

The recommendations of the 2005 Base Realignment and Closure (BRAC) Commission will automatically take effect unless, within a stated period after the recommendations are submitted to the House and Senate, Congress adopts a joint resolution of disapproval rejecting them in their entirety. Congressional consideration of this disapproval resolution is not governed by the regular rules of the House and Senate, but by special expedited or “fast track” procedures laid out in statute. This report describes these expedited parliamentary procedures and explains how they differ from the regular legislative processes of Congress. This report will be updated as needed. See [<http://www.crs.gov/products/browse/is-defense.shtml>] for additional information on military base closures.

BRAC Recommendations on “Fast Track”

In response to concern about the government’s inability to close unneeded military facilities, Congress in 1988, and again in 1990, enacted statutory provisions establishing a process intended to insulate base closings from the “political” considerations that are part of the regular lawmaking process. Under this process, the recommendations of a bipartisan Base Realignment and Closure (BRAC) Commission would be submitted to Congress, and automatically take effect unless Congress passed legislation disapproving them. To ensure that Congress could promptly act if it so chose, the statute created special “fast track” or expedited legislative procedures laying out the terms for House and Senate consideration of legislation striking down the BRAC Commission’s report. Such “fast track” procedures governed congressional consideration of four previous rounds of base closures and will govern consideration of the recommendations of the 2005 BRAC Commission.

On or about May 16, 2005, the Department of Defense (DOD) is expected to send to the BRAC Commission its recommendations of domestic military installations to be closed or realigned. After reviewing them, the BRAC Commission is to, not later than

September 8, 2005, forward revised findings to the President. If the President certifies these recommendations, he will submit them to Congress. The package of suggested base closures will automatically take effect unless Congress adopts a joint resolution of disapproval rejecting the entire package within the 45 day¹ period beginning on the date of the President's submission, or the sine die adjournment of the session, whichever occurs earlier.

Congressional consideration of a BRAC resolution of disapproval is governed not by the standing rules of the House and Senate, but by special expedited procedures laid out in the Defense Base Closure and Realignment Act of 1990, as amended, (P.L. 101-510, 10 U.S.C. 2687 note). The procedures have the same force and effect as standing House and Senate rules, and exempt the joint resolution of disapproval from many of the time-consuming steps and obstacles that apply to most measures Congress considers. For example, the act states when a joint resolution may be introduced, dictates its text, limits committee and floor consideration of the measure, prohibits amendments, and establishes an automatic "hook-up" of joint resolutions passed by both chambers.

Features of the BRAC Expedited Procedure²

Introduction. Ordinarily, Members of either house of Congress may introduce legislation at any time that their chamber is in session during a two-year Congress. Under the BRAC law, however, a joint resolution of disapproval must be introduced within the 10-day period beginning on the date the President transmits a certified BRAC report to Congress. A respective joint disapproval resolution may be introduced by any Member in either chamber and when it is, it is referred to the House or Senate Committee on Armed Services. There is no limit to the number of measures that can be introduced, and in the past, multiple disapproval resolutions have been introduced aimed at the same BRAC report.³

Text of the Joint Resolution. Provisions are included in the law specifying the text of the disapproval resolution. These are meant to make it clear to Members exactly which legislation is eligible to be considered under the expedited procedure. The joint resolution of disapproval must not contain a preamble. The title of the measure is to read: "Joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission." The text of the joint resolution after the resolving clause is to read: "That Congress disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on *BLANK*," with the appropriate date filled in the blank.

Committee Action. With certain exceptions — for example, when time limits are placed on the sequential referral of a bill by the Speaker — Congress generally does not mandate that a committee act on a bill referred to it within a specified time frame, or at all. The BRAC statute, however, places deadlines on the Armed Services Committee to

¹ In calculating the 45-days, recesses of more than three days by either chamber are not counted.

² The Defense Base Closure and Realignment Act of 1990 is part A of title XXIX of P.L. 101-510; 10 U.S.C. 2687 note. Congressional disapproval procedures are located in §2908.

³ **Table 1** lists BRAC disapproval resolutions introduced in the House and Senate.

act, and creates a mechanism to take the resolution away from them if they do not report it. These expediting provisions are intended to make it impossible for a joint resolution of disapproval to be long delayed or killed outright in committee.

As noted, upon introduction, a joint resolution of disapproval is referred to the House or Senate Committee on Armed Services. If the committee does not report a joint resolution of disapproval by the end of a 20-day period beginning on the date the President transmits the BRAC report to Congress, the panel is automatically discharged from its further consideration, and the measure is placed directly on the House's Union Calendar or the Senate's Calendar of Business.

It is important to note that, under the terms of the BRAC statute, the Armed Services Committee must report just one resolution of disapproval; if multiple joint resolutions of disapproval are introduced by several Members and referred to committee, the panel must only report one resolution or a substitute for it within the 20-day time frame in order to forestall the automatic discharge of all of the others.

Calling Up the Joint Resolution on the Floor. On or after the third day following the day the House or Senate Armed Services Committee reports the joint resolution, or is discharged from its consideration, any Member may move in their chamber to proceed to the consideration of the joint resolution. The BRAC law stipulates, however, that a Member must first, on the preceding calendar day, have given notice of the intention to offer the motion to proceed. This notice can be avoided in the House of Representatives if the motion is being made at the direction of the committee of referral. The motion can be made even if the body has previously rejected an identical motion to the same effect. This provision serves as incentive for the chamber to get to an up-or-down vote on the underlying joint resolution; if a motion to proceed is defeated, supporters can simply re-offer it until it passes, or force the chamber to expend time and energy disposing of repeated motions. Points of order against the resolution and its consideration are waived.

In the Senate, under most circumstances, a motion to proceed to the consideration of a measure is debatable. Under the BRAC statute, however, the motion to proceed to the consideration of the joint resolution of disapproval is not debatable in either chamber, and it cannot be amended or postponed. Appeals of the decision of the chair relating to consideration of the joint resolution are decided without debate. If the motion is adopted, the chamber immediately considers the joint resolution without intervening motion, order, or other business. Once the chamber has chosen to take up the joint resolution by adopting the motion to proceed, consideration of the measure is, in a sense, "locked in." It remains the unfinished business of the chamber until disposed of. Other business cannot intervene, the joint resolution can not be laid aside, and it must be disposed of before other business can be taken up.

Floor Debate. In the absence of a special rule dictating otherwise, the House ordinarily debates measures under the one hour rule. In the Senate, debate is ordinarily unlimited except by unanimous consent, by the invocation of cloture, or by some other special procedure, such as that governing budget reconciliation.

In keeping with its "fast track" nature, floor consideration of the BRAC joint resolution of disapproval is limited. Debate in a chamber on the joint resolution, and all

debatable motions and appeals connected with it, is limited to not more than two hours, equally divided. A non-debatable motion to further limit debate is in order.

Motions and Amendments. The BRAC statute limits Members' ability to delay consideration of the joint resolution of disapproval by barring amendments and motions which would ordinarily be permissible under House and Senate rules. Amendments to the measure, a motion to postpone its consideration, or motions to proceed to the consideration of other business are not permitted. A motion to recommit the joint resolution to committee is not in order nor is a motion to reconsider the vote by which the joint resolution is agreed to or disagreed to.

Voting. It is virtually impossible to avoid a final vote on the joint resolution once a chamber has decided to take it up. At the conclusion of debate, and after a single quorum call (if requested), without intervening motion, a chamber immediately votes on passage of the joint resolution of disapproval.

Automatic Legislative "Hookup." If, before voting upon a disapproval resolution, either chamber receives a joint resolution passed by the other chamber, that engrossed joint resolution is not referred to committee. The second chamber proceeds to consider its own joint resolution as laid out in the statute, until the point of final disposition, when the vote taken will be on the engrossed resolution passed by the first chamber. After the second chamber votes on the first chamber's joint resolution, it may no longer consider its own version. This provision is included to avoid the need to reconcile differences between the chambers' versions or expend time choosing whether ultimately to act upon the House or Senate joint resolution.

Either Chamber May Alter The Expedited Procedure

The fact that an expedited procedure is contained in statute does not mean that another law must be passed in order to alter it. Article I, Section 5 of the Constitution gives each chamber of Congress the power to determine the rules of its proceedings; as a result, statutory expedited procedures like those in BRAC can (like all rules of the House or Senate) be set aside, altered, or amended by either chamber at any time. As House Parliamentarian Emeritus Charles W. Johnson observes, a chamber may "change or waive the rules governing its proceedings. This is so even with respect to rules enacted by statute."⁴ These changes can be accomplished, for example, by the adoption of a special rule from the House Committee on Rules, by suspension of the rules, or by unanimous consent agreement.

Instances of this ability to "rewrite" expedited procedure statutes have occurred during consideration of base closure joint resolutions of disapproval. For example, in the 101st Congress, Representative George E. Brown, Jr. (D-CA) introduced H.J. Res. 165, a joint resolution disapproving the recommendations of the 1988 Commission on Base Realignment and Closure. Under the terms of the 1988 BRAC statute, the House Committee on Armed Services had to report a joint disapproval resolution prior to March

⁴ William Holmes Brown and Charles W. Johnson, *House Practice, A Guide to the Rules, Precedents, and Procedures of the House*, 108th Cong., 1st sess. (Washington: GPO, 2003), ch.50, §4, p. 826.

15, 1989, or be automatically discharged of it. The statute further permitted any Member, at any time three days after this report or discharge, to make a motion to proceed to the immediate consideration of the resolution. The House, however, “rewrote” these statutory terms as they related to the consideration of H.J.Res. 165. On March 21, 1989, Representative Les Aspin (D-WI) asked unanimous consent that, notwithstanding the provisions of the BRAC law, it not be in order to move to proceed to the consideration of H.J.Res. 165 prior to April 18, 1989.⁵

Still later, on April 11, 1989, a second unanimous consent request laid aside not only the terms of the BRAC expedited procedure statute, but the those of Representative Aspin’s March 21 unanimous consent request, as well. This new request dictated that, notwithstanding the provisions of the BRAC statute dictating that, once taken up, the disapproval resolution remain the unfinished business of the chamber until disposed of without intervening business, not more than eight hours of debate take place on H.J.Res. 165 on April 12, 1989, and when the Committee of the Whole rose on that day, the resolution would not be considered again until April 18, when two additional hours of debate would occur, followed by a vote on final passage.⁶

In a sense, then, the expedited procedures in the BRAC statute establish a default set of ground rules for consideration of a disapproval resolution; these provisions can be tailored by Members to meet specific situations or for their convenience. **Table 1** lists all joint resolutions of disapproval introduced in Congress relating to prior BRAC rounds and their disposition.

⁵ *Journal of the House of Representatives*, 101st Cong., 1st sess., Mar. 21, 1989, p. 173.

⁶ *Journal of the House of Representatives*, 101st Cong., 1st sess., Apr. 11, 1989, p. 218.

**Table 1. Resolutions of Disapproval Introduced
Under the Terms of Defense Base Realignment
and Closure Commission Statutes**

Measure	Date/ Congress Introduced	Sponsor	Committee Consideration	Floor Consideration	Final Disposition
H.J.Res. 165	03/01/89 101 st Cong.	Rep. George E. Brown, Jr. (D-CA)	Reported adversely 03/14/89 H.Rept. 101-7	Considered by unanimous consent 04/12/89 & 04/18/89 ^a	Rejected, 43- 381. 04/18/89 (Roll call #32)
S.J.Res. 80	03/15/89 101 st Cong.	Sen. John McCain (R-AZ)	—	—	—
S.J.Res. 175	07/10/91 102 nd Cong.	Sen. Arlen Specter (R-PA)	Reported unfavorably 07/25/91 S.Rept. 102-123	—	Indefinitely postponed by unanimous consent 02/03/92 ^b
H.J.Res. 298	07/11/91 102 nd Cong.	Rep. Olympia J. Snowe (R-ME)	Marked up by subcommittee and forwarded to full committee 07/23/91	—	—
H.J.Res. 308	07/18/91 102 nd Cong.	Rep. Thomas M. Foglietta (D-PA)	Reported adversely 07/25/91 H.Rept. 102-163	Considered by motion 07/30/91 ^c	Rejected, 60- 364 07/30/91 (Roll call #232)
S.J.Res. 114	07/20/93 103 rd Cong.	Sen. Dianne Feinstein (D-CA)	Ordered to be reported unfavorably 07/30/93 S.Rept. 103-118	Considered by unanimous consent 09/20/93 ^d	Rejected, 12-83 09/20/93 (Roll call #271)
H.J.Res. 101	07/13/95 104 th Cong.	Rep. Vic Fazio (D- CA)	—	—	—
H.J.Res. 102	07/18/95 104 th Cong.	Rep. Frank Tejeda (R-TX)	Reported adversely 08/01/95 H.Rept. 104-220	Considered by unanimous consent 09/08/95 ^e	Rejected, 75- 343 09/08/95 (Roll call #647)

Notes: The 1988 base closure round was considered under the terms of P.L. 100-526. The 1991, 1993 and 1995 rounds were considered under the terms of P.L. 101-510, as amended.

a. *Congressional Record*, vol. 135, Apr. 12 & 18, 1989, pp. 6293-6319, 6845-6871.

b. *Congressional Record*, vol. 138, Feb. 3, 1992, p. 1215.

c. *Congressional Record*, vol. 137, Jul. 30, 1991, pp. 20333-20367.

d. *Congressional Record*, vol. 139, Sept. 20, 1993, pp. 21677-21694, 21717.

e. *Congressional Record*, vol. 141, Sept. 8, 1995, pp. 24129-24149.