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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. The rule permits either (1) the committee of referral to be discharged from the measure itself; or (2) the Committee on Rules to be discharged from a special rule for considering the measure. Layover periods required by the rule permit the Committee on Rules to preempt a discharge attempt, and recover control of the floor agenda, by securing adoption of an alternative special rule for considering the measure. This report will be updated to reflect developments in the rules or practice.

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.¹ 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 in the simultaneous absence

¹ 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.

of cooperation from the committee of jurisdiction, the majority party leadership, and the Committee on Rules.² 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 Committee on Rules.

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 Committee on Rules 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.³ Seldom is a petition filed this soon; Members 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. Discharge apparently may be sought on any other measure pending before a committee 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. 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.⁴ This listing identifies petitions by measure number, but not by subject. 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, and for those that do, the process usually takes some months.

² House Rules do, however, 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 privilege of the House, and certain resolutions of approval and disapproval regulated by statutory "fast track" procedures.

³ A new legislative day starts each time the House meets after adjourning.

⁴ Until 1993, signatures to discharge petitions were never publicly disclosed except when the total of 218 was reached. See Subcommittee on Rules of the House, *Discharge Petition Disclosure* (cited in references at conclusion).

The motion to discharge may then be offered on the floor, but (1) only at the beginning of a day's session that falls at least 7 legislative days after the motion is entered, (2) only on a "discharge day" (the second or fourth Monday of each month), and (3) not during the last 6 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 it has not been reported, 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 discharge action on any measure on the same subject is precluded for that 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 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 a few have ever become law.

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 is historically the more common. The committee of referral, however, may nullify a discharge attempt of this kind by reporting the measure, for once it 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, 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. In the past, committees sometimes even reported adversely on measures on which discharge was sought, which made floor consideration still more difficult to achieve.

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 Committee of the Whole; the proper motion is therefore that the House resolve into 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”: the measure is read by section for amendment, and any germane amendment is in order to each section. Under these conditions, this first method of discharge offers no possibility of limiting or structuring the amendment process, or, conversely, of providing any waivers that prospective amendments might need. In these circumstances, also, the time for general debate on the measure can be limited and placed under the control of managers only 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 the “one-hour rule,” which permits the Member calling the measure up 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 is then normally recognized, offers an amendment, and at the end of his or her hour 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. 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 any non-germane amendments, or provide for consideration of more than one measure. If the Committee on Rules has not reported this resolution after 7 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 must have remained in committee for at least 30 legislative days, or been reported.

If the petition obtains the requisite 218 signatures, the motion in order on a discharge day is to discharge the Committee on Rules from the resolution. If that motion is adopted, the House then considers the resolution under the one-hour rule, just as with any other special rule. If the resolution itself is then also agreed to, its own terms bring the desired measure out of committee and to the floor, just as with an “extraction rule” that the Committee on Rules 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 Committee on Rules normally does. A special rule for such purposes normally includes provisions such as (1) that the House resolve into Committee of the Whole automatically or by motion, rather than at the Speaker’s discretion; and (2) that

consideration continue on subsequent days until a final vote. These provisions guard against the possibility that a leadership hostile to the measure will be able to recover control of the floor agenda by turning to other business before the House completes action on the desired measure.

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 flexible enough to accommodate unforeseen circumstances, such as permitting amendments to be offered that may remedy newly recognized problems or attract desired support.

This second approach to discharge also prevents the committee of jurisdiction from nullifying the discharge effort by reporting the measure and declining to find a way 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, that action raises no obstacle to discharge action on the special rule.

House Rules also protect against the possibility that the Committee on Rules 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 7 legislative days, House Rule XIII, clause 6(d), requires the Speaker to recognize any member of the committee for that purpose, once the member 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 Committee on Rules. 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.

Discharge on Special Rules for Reported Measures

When Members seek to discharge the Committee on Rules from a special rule for considering an unreported measure, the actual obstacle to action is presumably not the Committee on Rules, but rather the committee to which the measure is referred. By contrast, if the Committee on Rules 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 in the period, ending in 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 by supporters of campaign finance legislation in the 107th Congress. In such cases, the reporting committee might even support the attempt to discharge the Committee on Rules.

Recovery of Agenda Control through the Committee on Rules

Although the Committee on Rules 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. Usually 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 a discharge motion can be brought to the floor. If the House has adopted this resolution, the measure has then been considered 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 its consideration by the House, 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 107th Congress, however, the Committee on Rules 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 but nominal.

Almost all measures that have reached the floor in recent years as a result of discharge efforts have done so by this means, rather than pursuant to the discharge procedure itself. This course of action, however, does not leave discharge proponents without recourse. If they dislike the terms for consideration that the Committee on Rules proposes, they can attempt to defeat the committee's special rule, thereby retaining the capacity to call up their discharge motion on the next discharge day. On some recent occasions, the prospect of such action has led to a negotiated agreement on the terms of consideration.

For Further Reference

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

CRS Report 97-856. *Discharge Rule in the House: Recent Use in Historical Context*, by Richard S. Beth.