

## Chapter 57

### Veto Procedure

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#### Research References

U.S. Const. art. I § 7  
4 Hinds §§ 3520-3552  
7 Cannon §§ 1094-1115  
Deschler Ch 24 §§ 17-23  
*Manual* §§ 104, 107-109, 112-114, 1130(6B)

#### § 1. In General; Veto Messages

##### Generally

The authority for the President to disapprove, or veto, a bill is spelled out in article I, section 7 of the Constitution. The same clause addresses the process by which Congress can override a veto and enact a measure into law.

The President has a 10-day period in which to approve or disapprove a bill. The President can sign the bill into law or return it to the House of its origination with a veto message detailing why the President chooses not to sign. If the President fails to give approval by signing the bill during that period, the bill will become law automatically, without a signature. However, in very limited circumstances the President may, by withholding a signature, effect a “pocket veto.” If before the end of a 10-day signing period the Congress adjourns *sine die* and thereby prevents the return of the bill, the bill does not become law if the President has taken no action regarding it. At this stage, the bill can become a law only if the President signs it. Deschler Ch 24 § 17. For a discussion of pocket vetoes, see § 7, *infra*.

The 10-day period given the President under the Constitution in which to approve or reject a bill begins on the day after the bill is presented to the President. The day on which the bill is presented to the President is not counted in the computation, and Sundays also are excluded. Deschler Ch 24 § 17.1.

Under the usual practice, bills are considered to have been “presented to the President” when they are delivered to the White House. However, bills delivered to the White House while the President was abroad have been held by the White House, under arrangements agreed to with the presenting House, for presentation to the President upon return to the United States. *Manual* § 105.

When the President exercises the veto authority, the enrollment is returned with a sealed message setting forth the objections. An enrolled measure returned to the Clerk of the House or the Secretary of the Senate during a recess with a “memorandum of disapproval” setting forth the objections of the President has been treated by both Houses as a return veto. 114-1, Apr. 30, 2015, p\_\_\_\_; *Manual* §§ 107, 113.

## § 2. House Action on Vetoed Bills

The Speaker lays a veto message before the House on the day it is received. Deschler Ch 24 § 20.1. It is then read and entered in the Journal. *Manual* § 108. The Speaker announces:

The objections of the President will be spread at large upon the Journal and the message and bill will be printed as a House document.

When the message is laid before the House, the question on passage is considered as pending. No motion from the floor to reconsider the bill is necessary. 7 Cannon §§ 1097-1099. If the House does not wish to proceed immediately to reconsider the bill, the motions to lay on the table, to postpone consideration to a day certain, or to refer to committee are available. See § 4, *infra*. The House also may agree, by unanimous consent, to postpone consideration of a veto message to another day. 101-2, Jan. 23, 1990, p 5; 105-1, Nov. 13, 1997, p 26564; 111-2, Jan. 12, 2010, p 7. Under clause 4 of rule XVI, and under the precedents, the motion for the previous question takes precedence over a motion to postpone or to refer when a question is under debate. However, where the Speaker has laid before the House a veto message from the President but has not yet stated the question to be on overriding the veto, that question is not “under debate” and the motion for the previous question does not take precedence. *Manual* § 108. If the House wishes to proceed to the consideration of the message and address

the question of passing the bill over the President's veto, it can defeat any preferential motion that is offered and proceed to the main question.

If no preferential motion is offered, the Chair then states the question as follows:

The pending question is whether the House will, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding.

### § 3. — Consideration as Privileged

The consideration of a veto message from the President is a matter of high privilege and may interrupt consideration of a pending matter (such as a conference report) if the previous question has not been ordered on that matter. 95-2, Oct. 5, 1978, p 33704. Although its consideration may be postponed to a day certain, it remains highly privileged and becomes the unfinished business on that day. Deschler Ch 24 §§ 22.1, 22.2. A vetoed bill may be laid on the table. However, because it is still highly privileged, a motion to take it from the table is in order at any time. *Manual* § 108; 4 Hinds § 3550; 5 Hinds § 5439; 7 Cannon § 1105. If a veto message is referred to committee, a motion to discharge the committee from further consideration of the message also is highly privileged. 4 Hinds § 3532.

A vetoed bill received in the House from the Senate is considered as if received directly from the President and supersedes the regular order of business. *Manual* § 107; 4 Hinds § 3537; 7 Cannon § 1109. The privilege accorded vetoed bills does not extend to a bill reported in lieu of a vetoed bill. 4 Hinds § 3531; 7 Cannon § 1103.

Although highly privileged, the consideration of a vetoed bill yields to:

- Unfinished business from the preceding day with the previous question ordered. 8 Cannon § 2693.
- Certain matters being considered as questions privileged under the Constitution, such as contested elections or impeachment. 5 Hinds § 6642; 3 Hinds § 2053.
- A motion to adjourn. 4 Hinds § 3523.

### § 4. — Motions in Order

#### Generally

The mandate under article I, section 7 of the Constitution, that the House “shall . . . proceed to reconsider” a vetoed bill, means that the House considers it under the rules of the House, with the ordinary motions under the House rules available. *Manual* § 108. The motions to lay the bill on the table, to postpone to a day certain, and to refer take precedence in

the order named over the question of reconsideration of passage, the objections of the President to the contrary notwithstanding, until the previous question is ordered. A Member may not move the previous question on the question of reconsideration where the Chair has not yet stated the question to be pending on overriding the veto. *Manual* § 108; see also 7 Cannon § 1105; § 2, *supra*.

### **Postponement**

Although the House often takes immediate action on a veto message from the President, the consideration of the message may be postponed to a day certain by unanimous consent, motion, or special order of business. 4 Hinds §§ 3542-3547; Deschler Ch 24 § 21.9; 114-2, Jan. 7, 2016, p \_\_\_\_\_. Such a postponement is not in violation of the constitutional requirement that the House “shall . . . proceed to reconsider” a vetoed bill. *Manual* § 108. The postponement has been for as long as eight months and into the next session of the same Congress. 99-1, Dec. 17, 1985, p 37477. The motion to postpone further consideration of a veto message is debatable for one hour. *Manual* § 108.

When consideration of a veto message is postponed to a day certain, it becomes unfinished business on that day, and its consideration does not require a motion from the floor. Deschler Ch 24 § 22.1. At that time, the veto message may be voted on, tabled, referred to committee, or again postponed as the House determines. *Manual* § 108.

### **Referral to Committee**

A veto message from the President may be referred to a committee by unanimous consent or by motion. 4 Hinds § 3550; Deschler Ch 24 § 21.5. Such a referral is in order in the House even on a bill that the Senate has already passed over the President’s veto. 94-2, Jan. 26, 1976, p 874.

A motion to refer a veto message to committee takes precedence over the question of reconsideration. 7 Cannon § 1100. However, although the ordinary motion to refer may be applied to a vetoed bill, the motion is not in order pending the demand for the previous question or after it is ordered on the constitutional question of reconsideration. 7 Cannon § 1102.

### **Discharge of Committee**

A motion to discharge a committee from the consideration of a vetoed bill is privileged. 4 Hinds § 3532. Under the modern practice, such motion is debatable under the hour rule. *Manual* § 108. The motion is renewable every legislative day, notwithstanding the tabling of a prior motion. 100-2,

Aug. 10, 1988, p 21589. If a motion to discharge is agreed to, the veto message is pending as unfinished business. *Manual* § 108.

### **Amendability**

A vetoed bill is not amendable in the House, nor in a committee following referral. 4 Hinds § 3551.

### **§ 5. — Debate**

Debate on the question of overriding the President's veto of a bill is under the hour rule. Deschler Ch 24 § 22.7. The previous question may be moved by the manager at any time during the debate. Deschler Ch 24 § 22.9. The Chair normally recognizes the chair of the committee or subcommittee that managed the bill to control the debate on the veto message.

### **§ 6. — Voting; Disposition of Bill**

Under article I, section 7 of the Constitution, a vetoed bill becomes law when it is reconsidered and passed by the requisite two-thirds vote in each House. The two-thirds vote required to pass the bill is two-thirds of the Members voting, a quorum being present, and not two-thirds of the total membership of the House. 4 Hinds §§ 3537, 3538; 7 Cannon § 1111. Article I, section 7, further requires that the vote on passage of a bill over the President's veto must be by the yeas and nays. Deschler Ch 24 § 22.10.

The motion to reconsider is not in order on the vote on the question of overriding a veto. 5 Hinds § 5644; 8 Cannon § 2778.

When a vetoed House bill is reconsidered and passed in the House, the House sends the bill and veto message to the Senate and informs that body that it passed by the constitutional two-thirds vote. When the House fails to pass a bill over the President's veto, the bill and veto message are referred to committee, and the Senate is informed of the action of the House. Deschler Ch 24 § 23. For an instance where the Senate tabled a veto message on a Senate measure and did not notify the House thereof, see 114-1, May 5, 2015, p\_\_\_\_.

### **§ 7. Pocket Vetoes**

#### **Generally; Use After Final Adjournment**

Under the Constitution, if the President neither signs nor returns a bill within 10 days (Sundays excepted), it becomes law as if it had been signed, unless Congress by its adjournment “prevents its return.” U.S. Const. art. I, § 7. The President is said to “pocket veto” a bill where no action is taken on the bill during the 10-day period and where the Congress adjourns *sine*

*die* before the expiration of that time in such a manner as to prevent the return of the bill to the originating House. *Manual* § 112; Deschler Ch 24 § 18; *The Pocket Veto Case*, 279 U.S. 655, 680 (1929) (dicta).

A constitutional debate still lingers with respect to the conditions under which the President may exercise the pocket veto authority during other types of adjournment of a Congress. The executive and legislative branches have sometimes held different perspectives with respect to the conditions surrounding an adjournment and their impact on the return of a bill disapproved by the President.

#### **During Intersession Adjournments**

The Supreme Court has held that the President's return of a bill to the originating House was prevented when the Congress adjourned its first session *sine die* fewer than 10 days after presenting the bill to the President for approval. Because neither House was in session to receive the bill, the President was prevented from returning it, and a pocket veto was upheld. *The Pocket Veto Case*, 279 U.S. 655 (1929). A more recent appellate court decision held that the return of a bill during an adjournment between sessions was not prevented within the meaning of the Constitution where the originating House had appointed an agent for the receipt of Presidential veto messages. The decision further stated that the validity of a pocket veto is governed not by the type or length of adjournment but by whether the conditions of the adjournment impede the actual return of the bill. *Barnes v. Kline*, 759 F.2d 21 (D.C. Cir. 1985), *vacated as moot*, *Burke v. Barnes*, 479 U.S. 361 (1987). As part of the concurrent resolution providing for the *sine die* adjournment of the first session, the Congress has affirmed its position that an intersession adjournment does not prevent the return of a bill where the Clerk and the Secretary of the Senate are authorized to receive messages during the adjournment. *Manual* § 113. Under clause 2(h) of rule II, the Clerk is authorized to receive messages from the President at any time that the House is not in session. *Manual* § 652. On certain occasions, when the second session of a Congress convenes, the House has asserted its right to reconsider a bill returned with a Presidential "memorandum of disapproval" received during the *sine die* adjournment that follows the first session. *Manual* § 113.

#### **During Intrasection Adjournments**

An adjournment of Congress during a session does not prevent the President from returning a bill disapproved of, as long as appropriate arrangements are made by the originating House for the receipt of Presidential messages during the adjournment. Thus, it has been held that a Senate bill

cannot be pocket vetoed by the President during an “intrasession” adjournment of Congress for more than three days to a day certain, where the Secretary of the Senate has been authorized to receive Presidential messages during such adjournment. *Kennedy v. Sampson*, 511 F.2d 430 (D.C. Cir. 1974); see also *Kennedy v. Jones*, 412 F. Supp. 353 (D.D.C. 1976). The Supreme Court has held that the adjournment of the House of origin for a period not exceeding three days while the other House of the Congress remained in session, does not prevent the return of a vetoed bill to the House of origin. *Wright v. United States*, 302 U.S. 583 (1938).

In one instance the House and Senate reconsidered and passed a bill that was ostensibly pocket vetoed during an intrasession adjournment. The Administrator of General Services at the Archives (now Archivist), upon receiving instructions from the Department of Justice, declined to promulgate the bill as public law on the day it was received. The question as to the efficacy of the congressional action in passing the bill over the President’s veto was mooted when the House and Senate passed an identical bill that was signed into law. *Manual* § 113.

#### “Protective Return”

Presidents have, on occasion, asserted the ability to employ what is known as a “protective return” veto, whereby a bill is not signed, but returned to Congress with a “memorandum of disapproval,” asserting pocket veto authority. In such instances, both Houses have regarded the President’s actual return of the measure without a signature as a return veto and proceeded to reconsider the measure over the President’s objections. *Manual* § 113.

For a joint letter from Speaker Foley and Minority Leader Michel to the President, and a response thereto by Attorney General Thornburg, on the use of pocket veto authority during an intrasession adjournment, see 101-2, Jan. 23, 1990, p 3. For joint letters from Speakers and Minority Leaders reiterating their predecessors’ concerns in this area, see 106-2, Sept. 19, 2000, p 18594; 106-2, Nov. 13, 2000, pp 26022, 26023; 110-2, Oct. 2, 2008, pp 23874, 23875; 111-2, May 26, 2010, pp 9473, 9474. For discussions of the constitutionality of intersession or intrasession pocket vetoes, see Kennedy, “Congress, The President, and The Pocket Veto,” 63 Va. L. Rev. 355 (1977), Spitzer, “The ‘Protective Return’ Pocket Veto: President Aggrandizement of Constitutional Power” 31 Presidential Studies Quarterly 720 (2001), and Hearing, Subcommittee on Legislative Process, Committee on Rules, on H.R. 849, 101st Congress.

**§ 8. Line Item Veto Authority**

The Line Item Veto Act (2 USC §§ 691-691f) took effect on January 1, 1997, and was ruled unconstitutional by the Supreme Court in 1998. The Act gave the President the authority to cancel discrete dollar amounts of discretionary budget authority, new direct spending, and limited tax benefits contained in Acts sent for approval. Cancellations were effective unless disapproved by law. Such disapprovals could be enacted under the congressional review procedures set forth in the Act. The President has exercised this cancellation authority on a couple of occasions. See H. Doc. 105-147, H. Doc. 105-115, and H. Doc. 105-116. In *Clinton v. City of New York*, 524 U.S. 417 (1998), the Supreme Court held that the cancellation authority of the Line Item Veto Act violated the presentment clause of article I, section 7 of the Constitution. Although the congressional review procedures remain in the law, the Court decision makes it unlikely that they will be invoked. See *Manual* § 1130(6B).