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*Proxy Voting and Polling in Senate Committee*

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**Abstract.** In an effort to operate efficiently despite the competing scheduling demands placed on its members, all Senate standing committees permit "proxy voting" in some instances and many of them permit certain questions to be "polled." Proxy voting is a practice whereby an absent Senator authorizes a second, present, Senator to cast his or her vote in addition to their own during a committee markup meeting. When polling, a committee or subcommittee asks its members to approve questions relating to legislation or internal committee business without formally meeting. Under Senate rules and precedents, committees have significant freedom to regulate their use of proxies and polls. Proxy votes may not be used, however, to constitute the quorum necessary to successfully order a committee report. In addition, Senators must be informed about and affirmatively request to vote by proxy on the motion to report. With respect to polling, Senate rules do not permit committees to order a measure or matter reported to the Senate by poll.

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## CRS Report for Congress

# Proxy Voting and Polling in Senate Committee

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## Summary

In an effort to operate efficiently despite the competing scheduling demands placed on its members, all Senate standing committees permit “proxy voting” in some instances and many of them permit certain questions to be “polled.” Proxy voting is a practice whereby an absent Senator authorizes a second, present, Senator to cast his or her vote in addition to their own during a committee markup meeting. When polling, a committee or subcommittee asks its members to approve questions relating to legislation or internal committee business without formally meeting. Under Senate rules and precedents, committees have significant freedom to regulate their use of proxies and polls. Proxy votes may not be used, however, to constitute the quorum necessary to successfully order a committee report. In addition, Senators must be informed about and affirmatively request to vote by proxy on the motion to report. With respect to polling, Senate rules do not permit committees to order a measure or matter reported to the Senate by poll.

## Proxy Voting

Proxy voting is a practice by which an absent Senator authorizes a second, present, Senator to cast his or her vote, in addition to their own, during a committee markup meeting.<sup>1</sup> The standing rules of the Senate give each Senate committee the discretion to permit or ban proxy voting by its members. In the 110<sup>th</sup> Congress (2007-2008), every Senate standing committee, and all but one Senate select or special committee, has adopted rules permitting proxy voting in at least some circumstances.<sup>2</sup> Some, but not all, Senate committees require proxy votes to be authorized in writing, often by letter (**Figure**

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<sup>1</sup> Voting by proxy is not permitted on the Senate floor. The House of Representative bans proxy voting both in its committees and on the floor.

<sup>2</sup> The Senate Special Committee on Aging has not adopted a proxy voting rule. It does not have legislative jurisdiction, and thus may have less need for the practice.

1) or proxy voting form. Other panels permit proxy votes to be authorized not only in writing, but also orally or by “personal instruction.”

Although Senate rules give committees wide latitude in structuring the use of proxies, the Senate places specific limits on the practice as it relates to the motion to report a measure or matter to the Senate. These limitations are established in the precedents of the Senate and by Senate Rule XXVI.<sup>3</sup> It is a fundamental principle of Senate parliamentary procedure that a “reporting quorum” — a numerical majority of the members of a committee — must be *physically present* when the committee votes to order a measure or matter reported to the parent chamber. Under paragraph 7(a)(1) of Rule XXVI, should less than a numerical majority be present for this vote, the measure or matter would not be considered properly before the Senate, and a point of order might be raised against its consideration.<sup>4</sup> As such, under chamber precedents, proxies may not be used to constitute such a reporting quorum.<sup>5</sup>

If a quorum is physically present and proxies are used on the motion to report, they cannot make the difference in *successfully* ordering a measure or matter reported to the Senate. If, with a reporting quorum present, a majority of committee members present vote to order a measure reported, proxy votes to the contrary could prevent reporting. If, however, a majority of the reporting quorum votes against ordering a measure or matter reported, proxies could not count towards a majority vote to successfully report the measure or matter.

Under Rule XXVI, if a committee permits proxy voting on the motion to report, a Senator must be informed of the matter he or she is being recorded on by proxy. In addition, a Senator must have actively requested to vote by proxy on that question; so-called blind or general proxies are not permitted on this question.

Within the limits of Rule XXVI, each individual Senate committee has tailored different types of proxy rules to meet the needs of its members. Some panels permit the use of proxies on all questions with few restrictions. Still other panels limit their use, or duration, or dictate the form or the manner in which the proxy must be executed or preserved in the committee’s official records.<sup>6</sup> Because of this variation, questions about a specific committee’s use of proxies might best be answered by examining the committee’s official rules of procedure or consulting with the committee’s chief clerk.<sup>7</sup>

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<sup>3</sup> The language of Senate Rule XXVI relating to proxy voting incorporates the provisions of Section 106(a) of the Legislative Reorganization Act of 1970 (P.L. 91-510. 84 Stat. 1140).

<sup>4</sup> U.S. Congress, Senate, *Riddick’s Senate Procedure*, S.Doc. 101-28, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1992), p. 1198.

<sup>5</sup> *Ibid.*, p. 1192.

<sup>6</sup> For a summary of individual committee proxy rules, see CRS Report RL33972, *Senate Committee Rules in the 110<sup>th</sup> Congress: A Comparison of Key Provisions*, by Betsy Palmer.

<sup>7</sup> For a compilation of Senate committee rules, see U.S. Congress, Senate, *Authority and Rules of Senate Committees 2007-2008*, S.Doc. 110-10, 110<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 2007).

## Polling

Although the practice is not mentioned in the standing rules of the Senate, some committees also permit certain decisions to be made, or actions to be authorized, by a “poll” of committee members. Unlike proxy voting, “polling” takes place without a formal committee or subcommittee markup or business meeting. In a poll, each Senator on a committee or subcommittee is asked by the chairman (or a staff member designated by the chairman) to declare his or her position, or grant his or her consent to taking a particular action relating to legislation or internal committee business. Polls may be conducted by telephone or by asking Senators to return a written polling document (**Figure 2**), often within a specified period of time.

Most Senate committees that permit questions to be polled require all Senators to agree to decide the matter in question by poll, and some committees require polling results to be unanimous as well. To this extent, polling might be viewed as an indirect form of obtaining the unanimous consent of committee members. It might also be viewed as analogous to other institutional mechanisms by which Senators indirectly grant their consent to actions, such as the “hotlining” of legislation for floor consideration or passage, or the “blue slip” procedure used in the consideration of some Presidential nominations.<sup>8</sup>

At certain points in its history, the Senate permitted committee reports to be authorized by poll, but that is no longer the case. Because (as has been noted) Rule XXVI requires a numerical majority of a committee to be physically present to authorize a report, it is not in order for a committee to order a measure or matter reported to the chamber by poll.<sup>9</sup> A common practice that avoids this prohibition, however, is for a committee to poll its members on whether they will consent to having the committee discharged from the further consideration of a bill or nomination by a unanimous consent request made on the Senate floor. Polls are also often used by Senate subcommittees to transmit bills or nominations to their full committee without a formal markup session. Some Senate committees also permit Members to be polled as a way of publicly recording their position on a question they were unable to vote on in person or by proxy.

In the 110<sup>th</sup> Congress, seven Senate standing, select, or special committees have adopted written rules authorizing polling under at least some circumstances: Agriculture, Nutrition, and Forestry; Budget; Health, Education, Labor, and Pensions; Homeland Security and Governmental Affairs; Judiciary; Finance; and Special Aging.<sup>10</sup>

Even if a committee has not adopted a formal committee rule regulating polls, however, it does not necessarily mean that the committee may not utilize the practice. For example, although the Senate Committee on Appropriations lacks a written committee rule

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<sup>8</sup> For more information, see CRS Report RL32013, *The History of the Blue Slip in the Senate Committee on the Judiciary, 1917-Present*, by Mitchel A. Sollenberger.

<sup>9</sup> *Riddick's Senate Procedure*, p. 410.

<sup>10</sup> U.S. Congress, Senate, *Authority and Rules of Senate Committees 2007-2008*, S.Doc. 110-10, 110<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 2007).

on polling, news reports indicate that its subcommittees have passed appropriations bills to the full committee by poll without a formal public markup.<sup>11</sup>

## Proxies, Polling, and the Senate “Clean-Up” Rule

Paragraph 7(a)(3) of Senate Rule XXVI contains provisions that, under certain circumstances, might bear on proxy votes or polls conducted by a Senate committee or subcommittee. Under this rule — which is sometimes colloquially called the “clean-up rule” — should a panel violate Senate procedures during its consideration of a measure or matter, these missteps will not be the subject of a floor point of order so long as the committee has properly conducted the vote to report. Paragraph 7 (a)(3) states:

Action by any committee in reporting any measure or matter in accordance with the requirements of this subparagraph shall constitute the ratification by the committee of all action theretofore taken by the committee with respect to that measure or matter, including votes taken upon the measure or matter or any amendment thereto, and no point of order shall lie with respect to that measure or matter.

The Senate included this provision in its rule book “to prevent the obstruction of legislation on the Senate floor, based upon the internal operations of a committee, by making the record vote of a committee on reporting a measure ... the final test of the legality of such action.”<sup>12</sup>

In short, a properly conducted vote to order a measure or matter reported to the Senate “cleans up,” or absolves, any potentially defective committee procedures that may have occurred, including those related to a proxy vote or committee poll taken earlier.

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<sup>11</sup> Emily Pierce, “Use of Appropriations ‘Polling’ Troubles Critics,” *Roll Call*, September 20, 2004, p. 1; Chuck Conlon, “There are Markups, Then There’s ‘Polling’,” *CQ Today Online News*, July 16, 2008.

<sup>12</sup> U.S. Congress, Senate Committee on Government Operations, *Report to Accompany S. 844*, S.Rept. 91-202, 91<sup>st</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1969), p. 3.

**Figure 1. Form of Senate Committee Proxy Voting Letter**

July 29, 2008

Dear Chairman Lieberman:

Anticipating that I will be unable to attend portions of today's business meeting, I hereby authorize you to cast my vote by proxy at the said meeting as specified below:

Thank you for your assistance.

Sincerely,

United States Senator

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**Source:** Reproduced by CRS with the permission of the Committee on Homeland Security and Governmental Affairs.

**Notes:** This is the form of letter Senators on the Committee on Homeland Security and Governmental Affairs use to authorize votes by proxy. Other panels may permit or dictate different forms.

