

Voting and Quorum Procedures in the Senate

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Summary

The Constitution states that "a Majority of each [House] shall constitute a quorum to do business. . . ." The Senate presumes that it is complying with this requirement and that a quorum always is present unless and until the absence of a quorum is suggested or demonstrated. This presumption allows the Senate to conduct its business on the floor with fewer than 51 Senators present until a Senator "suggests the absence of a quorum."

Except when the Senate has invoked cloture, the presiding officer may not count to determine if a quorum actually is present. When the absence of a quorum is suggested, therefore, the presiding officer directs the clerk to call the roll. The Senate cannot resume its business until a majority of Senators respond to the quorum call or unless, by unanimous consent, "further proceedings under the quorum call are dispensed with" before the last Senator's name has been called. If a quorum fails to respond, the Senate may adjourn or take steps necessary to secure the attendance of enough Senators to constitute a quorum. It usually takes the latter course by agreeing to a motion that instructs the sergeant at arms to request the attendance of absent Senators.

More often than not, however, quorum calls are unrelated to attendance on the floor. Senators "suggest the absence of a quorum" to suspend the Senate's formal floor proceedings temporarily. There are many purposes for such quorum calls. For example, they can be used to permit informal discussions that are intended to resolve a policy disagreement or procedural problem, or to allow a Senator to reach the floor in order to make a speech or begin consideration of a bill. When a quorum call is provoked for such a purpose, it usually is ended by unanimous consent before the call of the roll has been completed.

The Constitution also provides that "the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal." Any Senator who has been recognized may "ask for the yeas and nays" on whatever question the Senate is considering. If the yeas and nays are ordered by at least 11 Senators (one-fifth of the minimum quorum of 51), that determines how the vote will take place, not when it will occur. A Senator may offer an amendment and immediately ask for the yeas and nays, even if the vote is not expected to take place until hours or days later.

If the yeas and nays are not ordered, the Senate votes on questions by voice vote. Alternatively, if the presiding officer believes that the outcome is not in doubt, he or she may say that, "without objection, the amendment (or motion, etc.) is agreed to." If any Senator does object, a formal vote ensues.

Contents

Introduction	1
The Quorum Requirement and Quorum Calls	1
Routine Quorum Calls	2
Live Quorum Calls	4
Securing and Conducting Rollcall Votes	5
Voice and Division Votes	6
Ordering the Yeas and Nays	6
Conducting Rollcall Votes	8
Simple and Extraordinary Majorities	9

Voting and Quorum Procedures in the Senate

Introduction

The rules and practices of the Senate governing quorums and voting on the floor derive ultimately from two provisions of Article I of the Constitution. Regarding quorums, clause 1 of Section 5 states in part that "a Majority of each [House] shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide." Regarding voting, clause 3 of the same section provides in part that "the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal."

This report discusses how the Senate now interprets and implements these two constitutional provisions.¹ What follows focuses on the most important rules and the most common practices; it does not attempt to cover all the precedents the Senate has established or all the procedures that may be invoked.² This report also assumes a familiarity with some other aspects of the Senate's floor procedures.

The Quorum Requirement and Quorum Calls

The Constitution's quorum requirement seems to make it necessary for a simple majority of Senators, or a minimum of 51 if there are no vacancies in the body, to be present on the floor whenever the Senate conducts business. As any observer of the Senate soon notices, however, sometimes only a handful of Senators are present during floor debates. In fact, it is rather unusual for as many as 51 Senators to be present on the floor at the same time unless a rollcall vote is in progress. There appears to be an inconsistency, therefore, between a seemingly unambiguous constitutional requirement and the well-established and well-accepted practices of the Senate.

This apparent inconsistency is explained by a reasonable presumption the Senate makes. The Senate presumes that it is complying with the Constitution.

¹The corresponding House rules, precedents, and practices are discussed in *Voting and Quorum Procedures in the House of Representatives* (CRS Report 98-988).

²On quorums and quorum calls generally, see Rule VI and U.S. Congress. Senate. *Riddick's Senate Procedure*. 101st Congress, 2d Session. Senate Document No. 101-28. pp. 1038-1078. On voting procedures generally, see Rule XII and *Riddick's Senate Procedure*, pp. 1397-1436.

Therefore, it presumes that a quorum always is present unless and until the absence of a quorum is suggested or demonstrated:³

The Senate operates on the presumption that a quorum is present at all times, under all circumstances, unless the question to the contrary is raised, or the absence of a quorum is officially shown, or until a point of no quorum is made even though a voice vote is taken and announced in the meantime.

Under the Senate's standing rules, if no other Senator has the floor,⁴ any Senator (including a Senator who is presiding) may challenge this presumption at almost any time by "suggesting the absence of a quorum."⁵ The presiding officer usually may not respond to this statement by counting the number of Senators actually present. Only when the Senate has invoked Rule XXII and is operating under cloture does the presiding officer have the authority to count to determine the presence of a quorum. At all other times, when a Senator suggests the absence of a quorum, the presiding officer responds by directing the clerk to call the roll. Paragraph 3 of Rule VI requires that:

If, at any time during the daily sessions of the Senate, a question shall be raised by any Senator as to the presence of a quorum, the presiding officer shall forthwith direct the Secretary to call the roll and shall announce the result, and these proceedings shall be without debate.

A quorum call formally begins when the clerk calls the first name. Once the quorum call has begun, the Senate may not resume the conduct of business (1) until a majority of Senators respond to this call or (2) unless the Senate agrees by unanimous consent, before the clerk finishes calling the roll, to "dispense with further proceedings under the quorum call." While the quorum call is in progress, no debate or motion is in order, nor may the Senate act on any unanimous consent request except a request to dispense with the call.

Routine Quorum Calls

Quorum calls in the Senate usually are not intended to secure the presence of Senators on the floor. Instead, quorum calls have become a very useful and perhaps essential device by which the Senate can suspend its formal proceedings temporarily. During the course of any daily session, Senators often "suggest the absence of a quorum." Later, but before the clerk has completed the alphabetical call of the roll, the Senate agrees to a unanimous consent request to call off the quorum call. A quorum call may last for only moments or it may continue for an hour or more; the

³*Riddick's Senate Procedure*, pp. 1041-1042.

⁴"One Senator cannot take another off the floor to suggest the absence of a quorum, nor can a Senator who has the floor be interrupted by another against his consent for a quorum call. A quorum call is not in order when the Senator holding the floor declines to yield for that purpose." *Riddick's Senate Procedure*, p. 1055.

⁵For more on when a Senator may suggest the absence of a quorum, see *Riddick's Senate Procedure*, pp. 1062-1065.

clerk calls the names of Senators very slowly because it would not serve the Senate's purposes for the call of the roll to be completed.

There are many reasons why Senators initiate quorum calls. For example, if a Senator completes a statement and notices that no one else is on the floor and seeking recognition, the Senator typically suggests the absence of a quorum. When another Senator then does appear and wishes to speak, he or she first asks unanimous consent to dispense with the quorum call that is in progress. Alternatively, a quorum call may take place while the Senate awaits the arrival of a Senator who is expected on the floor--for example, to manage a bill, offer an amendment, or make a speech. When that Senator arrives, the Senate dispenses with the quorum call by unanimous consent and proceeds with its business as planned.

Quorum calls also create a valuable opportunity for informal discussions and negotiations among Senators. The Senate's rules, and especially the opportunities they create for filibusters, provide powerful incentives for Senators to seek the widest possible agreement on the Senate's schedule as well as its policy decisions. Under most circumstances, any Senator can conduct a filibuster against any measure or amendment or even against the motion that the Senate begin floor consideration of a particular bill or resolution. This situation encourages Senators to seek the most generally acceptable solutions to procedural problems and policy disagreements. Furthermore, in seeking these solutions, it often is more convenient for Senators to engage in the necessary discussions and negotiations in an informal manner, rather than under the rules of formal Senate debate. Quorum calls allow for such informal consultations, which may take place either on or off the Senate floor.

When the Senate finds itself confronted with a procedural problem or policy disagreement, a Senator often will respond by suggesting the absence of a quorum in the hope that the matter can be resolved through informal conversations. When the conversations end, the Senate agrees to a unanimous consent request to terminate the quorum call; the Senate's formal proceedings then resume. If the discussions were successful, a Senator may make a motion or unanimous consent request that embodies whatever decision was reached during the quorum call. If the discussions were inconclusive, a Senator may report on the progress that was made and then again suggest the absence of a quorum so that the negotiations can resume.

Because of quorum calls, the Senate's floor proceedings often have an unpredictable, "stop-and-go" character. Its debates frequently are punctuated by quorum calls. On occasion, the Senate even may spend much of the day in quorum calls. This does not mean, however, that Senators are not considering legislation while the quorum calls are in progress. It is quite likely that many Senators are discussing the bill at issue or the procedures for considering it. However, they are doing so informally (and off the public record), whether on or off the Senate floor. In fact, it sometimes seems that the more contentious the issue the Senate is considering, the more time is consumed by quorum calls.

Because most quorum calls are intended to suspend the Senate's floor proceedings, the clerk calls the names of Senators slowly and Senators feel under no obligation to come to the floor to record their presence. So long as the Senate agrees by unanimous consent to dispense with the quorum call before the last Senator's

name is called, the Senate can resume its business because the absence of a quorum has not actually been demonstrated. The presumption that a majority of Senators is present remains in force unless and until the call of the roll is completed and less than a majority of Senators have responded. Only then is it demonstrated that the Senator was correct when he or she "suggested" the absence of a quorum.

There are two circumstances under which a Senator may not be able to initiate a quorum call when no one else has control of the floor. First, when the Senate is operating under cloture, a Senator may suggest the absence of a quorum but the presiding officer is empowered to respond by counting to determine whether or not a quorum actually is present. Only if he or she finds that a quorum is not present does the presiding officer direct the clerk to call the roll. Also under cloture, the presiding officer may decline to entertain quorum calls on the ground that they are suggested for dilatory purposes. However, this is an authority that is likely to be exercised only under unusual circumstances.

Second, when the Senate is operating under a "time agreement" – a unanimous consent agreement that limits and allocates control of the time for debating the pending question--only a Senator who controls some of the time for debate may suggest the absence of a quorum. The time consumed by the quorum call is charged to the Senator who suggested the absence of a quorum (unless the Senate agrees otherwise by unanimous consent). For this reason, the Senate's precedents indicate that a Senator must control at least 10 minutes of remaining time in order to initiate a quorum call; this requirement evidently is intended to reflect some reckoning of how long a quorum call is expected to last.⁶

Live Quorum Calls

The alternative to the kind of routine quorum calls discussed above is a "live" quorum call in which Senators actually are requested to come to the floor and record their presence.

There are three circumstances under which live quorum calls are most likely to occur. First, the Senate's rules provide for live quorum calls in two situations: under Rule XXII, immediately preceding any cloture vote; and under Rule XII, before the Senate acts on a unanimous consent request to set a date for voting on whether to pass a bill or joint resolution. Second, the majority leader occasionally suggests the absence of a quorum and announces that there is to be a live quorum call because he wishes to bring Senators to the floor for some reason. And third, should the clerk complete calling the roll for a routine quorum call without a majority of Senators having responded to their names, a live quorum call may ensue.

⁶"But, it has been equally well established by the precedents that any Senator has a right to call for a quorum before a vote begins even if that Senator controlled no time, or even if there was an order that a vote occur at a time certain. However, certain unanimous consent agreements have been interpreted to preclude quorum calls." *Riddick's Senate Procedure*, p. 1038. For more on initiating quorum calls under time agreements and charging the time they consume, see *ibid.*, pp. 1066-1071.

In the case of a live quorum call, the clerk calls Senators' names more quickly. At the end of the call, the Senate resumes its business if a majority of Senators have responded. However, if the clerk finishes calling the roll and the presiding officer announces that a majority of Senators have failed to respond, the Senate cannot resume its business, including debate, nor can it dispense with the quorum call by unanimous consent, because the absence of a quorum has been established.

In that event, the Senate usually has only two options: to adjourn or to take steps necessary to establish a quorum.⁷ The usual recourse is for the majority leader to make a motion directing the sergeant at arms to request the attendance of absent Senators.⁸ A rollcall vote is ordered on this motion and, almost invariably, a majority of Senators do come to the floor to vote on the motion; in the process, they demonstrate the presence of a quorum. "Then no further action on the quorum call is necessary, a quorum having been established."⁹

In unusual circumstances, the Senate can, by motion, direct its sergeant at arms to compel the attendance of absent Senators or even to arrest absentees in order to establish a quorum.¹⁰ In modern practice, however, it rarely is necessary for the Senate to resort to such motions.

Generally, once a quorum is established as a result of a rollcall vote or a live quorum call, the Senate must transact some business before another quorum call is in order.¹¹ However, if the Senate dispenses with a quorum call by unanimous consent before it is completed, a Senator again may suggest the absence of a quorum without business having intervened.

Securing and Conducting Rollcall Votes

There are three ways in which the Senate can conduct votes on the floor: by voice vote, by division vote, or by rollcall vote. In practice, contested questions usually are decided by rollcall votes; many uncontested questions are decided "without objection" and without the formality of even a voice vote.

Voice and Division Votes

⁷Under paragraph 4 of Rule VI, the Senate also may consider and agree to a motion "to recess pursuant to a previous order entered by unanimous consent."

⁸"[I]t is the practice in the Senate for the presiding officer to direct the clerk to call the names of the absent Senators prior to the adoption of an order directing the sergeant at arms to request, and, when necessary, to compel their attendance, but such practice is based on custom, and not on the requirement of any rule." *Riddick's Senate Procedure*, p. 216.

⁹*Riddick's Senate Procedure*, p. 223.

¹⁰Under the constitutional authority quoted at the beginning of this report, a quorum need not vote on any motion to secure the attendance of absent Senators. For more on securing the attendance of absent Senators, see *Riddick's Senate Procedure*, pp. 214-224.

¹¹For a discussion of what does and does not constitute business for this purpose, see *Riddick's Senate Procedure*, pp. 1042-1046.

Unless a rollcall vote has been ordered in advance, any question first is to be put to a voice vote. The presiding officer asks those in favor to respond "Aye," and then those opposed to respond "No." He or she then announces the result. When the presiding officer does so, any Senator may request either a division vote or a rollcall vote. In the case of a division vote, those in favor stand and are counted, followed by those opposed. The presiding officer then announces which side prevailed but does not announce the number of Senators voting for or against. Division votes are relatively unusual in current Senate practice and are not formally authorized by the Senate's rules:¹²

There is no authority in the rules of the Senate for the method of voting by a division; the method is intended to advise the presiding officer whether or not the majority of the Senators present favor or oppose a given question; and the judgment of the Chair may be questioned by a resort to a rollcall.

The only reason for a division of the Senate is to satisfy the mind of the Chair as to whether a motion is carried or lost. Therefore, the Chair may request a division vote....

A voice or division vote is considered valid, no matter how many or how few Senators participated, unless a Senator takes the initiative to challenge the vote, before the result is announced, for violating the constitutional requirement that a quorum must be present for the Senate to do business:¹³

Until a point of no quorum has been raised, the Senate operates on the assumption that a quorum is present, and even if only a few Senators are present, a measure may be passed or a nomination agreed to.... Voice votes may be taken on the passage of a bill and if no question of a quorum is raised, that action is final, even though a majority of the Senators did not participate; the Senate operates on the absolute assumption that a quorum is always present until a point of no quorum is made.

Ordering the Yeas and Nays

Although a Senator may ask for a rollcall vote on a question after a voice or division vote has been conducted (but before the final result has been announced), rollcall votes usually are ordered in advance. At any time that a bill, amendment, motion, or other matter actually is the pending question before the Senate, a Senator who has the floor may "ask for the yeas and nays" on it.¹⁴ As noted at the beginning of this report, the Constitution provides for the yeas and nays (a rollcall vote) to be ordered at the request of one-fifth of those present. Because of the other constitutional requirement--that a quorum must be present to conduct business--the

¹²*Riddick's Senate Procedure*, p. 1404.

¹³*Riddick's Senate Procedure*, p. 1038.

¹⁴However, "[t]he yeas and nays may be ordered on the question of the final passage of a bill while an amendment thereto is under consideration." *Riddick's Senate Procedure*, p. 1419. A Senator loses the floor when he or she asks for the yeas and nays.

Senate assumes that those present constitute a quorum and so requires that the request for a rollcall vote must be supported by at least one-fifth of the smallest possible quorum.¹⁵

Consequently, at least eleven Senators – one-fifth of the minimal quorum of 51 Senators – must raise their hands to support a request for a rollcall vote. If there is sufficient support, the Senate thereby determines that the question then pending before the Senate will be decided by a rollcall vote whenever the time for voting arrives. Ordering the yeas and nays on a question does not bring about an immediate vote, nor does it have any effect at all on when the vote will occur. It only controls how the vote will be conducted when it does occur.¹⁶ It is not at all unusual, for example, for a Senator to offer an amendment and then immediately ask for the yeas and nays on that amendment even before the debate on it has commenced.¹⁷ The actual vote may not take place until hours or even days later, or it may not take place at all if, for example, the Senate votes instead to lay the amendment on the table (and thereby kill it).

In principle, the support of more than 11 Senators sometimes may be required to order a roll call. If a previous rollcall vote had taken place "recently,"¹⁸ there is precedent for assuming that all the Senators who participated in that vote remained on the floor, so 1/5 of that number may be required to order the subsequent roll call. However, this precedent is rarely invoked. If the required 11 Senators fail to support a request for a rollcall vote, any Senator may renew the request (as often as necessary) at any time before the question is put to a vote. If a Senator is insistent on having a rollcall vote on some motion, amendment, or measure, the Senate usually will support his or her request.

Conducting Rollcall Votes

If a roll call has been ordered, when the time to vote arrives, the presiding officer states that "the yeas and nays have been ordered and the clerk will call the roll." The clerk proceeds to do so and the vote is deemed to have begun only after a Senator actually votes when his or her name is called. At that time, a system of

¹⁵In the absence of a quorum, however, one-fifth of the Senators present may demand the yeas and nays on any of the few motions that are in order, such as the motion to adjourn.

¹⁶Ordering the yeas and nays on an amendment does not preclude a Senator from moving to table the amendment. The yeas and nays have to be ordered separately on the tabling motion.

¹⁷Before the Senate orders the yeas and nays on an amendment, the Senator who offered it may modify or withdraw it as a matter of right. After the yeas and nays have been ordered, the Senator loses the right to modify or withdraw the amendment but gains the right to offer an amendment to his or her own amendment.

¹⁸"[T]he Chair makes his calculations of one-fifth of those present on the basis of the number who voted at the last rollcall, if that occurred recently." *Riddick's Senate Procedure*, p. 1418. For example, "[a] demand for the yeas and nays immediately following a call of the Senate is seconded by one-fifth of those answering such call, or immediately following a yeas and nays vote, seconded by one-fifth of those voting." *Ibid.*, p. 1417.

bells and lights is activated throughout the Senate wing of the Capitol building and the Senate office buildings to inform Senators that they have 15 minutes in which to come to the floor and vote. The bells ring again as a reminder when half of this time has expired. The 15-minute period for voting is set by a unanimous consent agreement, normally on the first day each Congress meets.

During a rollcall vote, the clerk calls the names of all Senators in alphabetical order, and then reads the names of those voting in the affirmative followed by those voting in the negative. Thereafter, when another Senator wishes to vote, he or she comes to the well (the open area between the rostrum and Senators' desks); the clerk calls the Senator's name and then repeats the Senator's vote. Senators coming to the well frequently consult tally sheets kept at the tables manned by Republican and Democratic floor staff in order to observe how their colleagues are voting.¹⁹

Every Senator is expected to vote on each roll call unless, under paragraph 3 of Rule XII, "he believes that his voting on such a matter would be a conflict of interest." If a Senator declines to vote for any other reason, paragraph 2 of the same rule prescribes a procedure for the Senator to explain his or her reason and for the Senate to decide if that reason is sufficient; however, this procedure is very rarely invoked. For a rollcall vote to be constitutionally valid, a majority of Senators must vote, answer "Present," or announce that they have live pairs and refrain from voting for that reason.²⁰ If less than a majority is present on a rollcall vote, a quorum call usually ensues. Once a quorum is established, a new vote takes place on the question before the Senate (in other words, the question is put *de novo*).²¹

The presiding officer may announce the result of the vote at any time after the 15-minute period and after inquiring whether there are other Senators in the chamber wishing to vote. Alternatively, any Senator may demand the "regular order," which would be to announce the result of the vote. However, with the guidance of the majority leader, the time for voting often is extended long enough to allow as many Senators as possible to reach the floor and vote. On occasion, votes have been left open well beyond the prescribed 15-minute period in order to accommodate Senators who are hurrying to Capitol Hill from other locations.

¹⁹Technically, Senators are required to vote from their desks but this requirement rarely is enforced. On occasion, when a vote of special constitutional importance, such as a vote to convict in an impeachment trial, is about to begin, the majority leader will ask all Senators to come to the floor before the vote begins and then to vote from their desks, each Senator rising and responding when his or her name is called. See *Riddick's Senate Procedure*, pp. 1403-1404.

²⁰"When less than a quorum votes, but the addition of names of Senators present and paired and announcing votes made a quorum, the vote is valid." *Riddick's Senate Procedure*, p. 1431. On live pairs, see *ibid.*, pp. 968-970.

²¹"A yea and nay vote by less than quorum is not valid unless a sufficient number is present and paired to make a quorum." *Riddick's Senate Procedure*, p. 1075. "Where less than a quorum votes, as disclosed by a yea and nay vote, the next business is for the presiding officer to direct a call of the roll to develop a quorum." *Ibid.*, p. 1064. Alternatively, the Senate may vote to adjourn.

A Senator may not have his or her vote recorded after the result of a rollcall vote has been announced. By unanimous consent, however, the Senate may permit a Senator who has voted to change or withdraw that vote. Paragraph 1 of Rule XII states in part that:

no Senator shall be permitted to vote after the decision shall have been announced by the presiding officer, but may for sufficient reasons, with unanimous consent, change or withdraw his vote. No motion to suspend this rule shall be in order, nor shall the presiding officer entertain any request to suspend it by unanimous consent.

If the yeas and nays are not ordered on the pending question, that usually indicates that there is no uncertainty among Senators about what the outcome will be. In that case, when the time comes to act, the presiding officer often states that, "without objection, the amendment is agreed to" (or the bill is passed, etc.). "This is merely an abbreviated way of putting the question on a voice vote, and does not imply that the proposition can be defeated by one objection. However, any Senator may object to putting the question in this manner,"²² in which case the question is decided by voice, division, or rollcall vote.

Immediately after the presiding officer announces the result of a vote, one Senator often makes a motion to reconsider, another makes a motion to table, and the presiding officer announces that, without objection, the motion to table is agreed to. The Senate's rules allow it one opportunity to reconsider most of the votes it takes. The motion to reconsider may be made by a Senator who voted on the prevailing side or a Senator who did not vote. When such a motion is made and the Senate then agrees to table (or kill) it, that consumes the one opportunity to reconsider and makes the result of the vote final. In most cases, a motion to reconsider is made and tabled routinely; in the case of a very close and seriously contested rollcall vote, however, there may be another roll call in connection with a reconsideration motion.²³

Simple and Extraordinary Majorities

All questions are to be decided on the Senate floor by simple majority vote unless some constitutional provision or Senate rule or precedent provides otherwise. A simple majority vote is defined as at least one-half-plus-one of the Senators voting, provided that a quorum is present.

The Constitution requires a two-thirds vote of the Senate for various purposes:

- to expel a Senator
- to override a presidential veto
- to propose a constitutional amendment
- to convict upon impeachment
- to give the Senate's advice and consent to ratification of a treaty
- to determine that a president remains disabled
- to remove political disabilities (now obsolete).

²²*Riddick's Senate Procedure*, p. 1397.

²³See Rule XIII and *Riddick's Senate Procedure*, pp. 1124-1149, for more on reconsideration.

The Senate's precedents require the support of two-thirds of those voting, a quorum being present, to suspend the rules or to postpone indefinitely the consideration of a treaty. To invoke cloture (under Rule XXII), a vote of three-fifths of the Senators duly chosen and sworn usually is required; however, on a measure or motion to amend the Senate rules, cloture requires a vote of two-thirds of the Senators present and voting. Also under cloture, the 30 hours available for post-cloture consideration may be extended by a vote of three-fifths of all Senators duly chosen and sworn.²⁴

Finally, the Senate currently requires a vote of three-fifths of all Senators duly chosen and sworn to set aside various procedures and prohibitions of the congressional budget process, either by agreeing to motions waiving them or by overturning rulings of the Chair on appeal. These budget process requirements are itemized and discussed in *Points of Order in the Congressional Budget Process* (CRS Report 97-865).

²⁴In what is practically an obsolete provision, Rule X also provides for the Senate to create a special order of business by a two-thirds vote.