

# Chapter 21

## Division of the Question for Voting

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#### **Research References**

- 5 Hinds §§ 6106-6162
- 8 Cannon §§ 3163-3176
- Deschler-Brown Ch 30 §§ 42-52
- Manual* §§ 480-482, 919-921

## A. Generally

### § 1. In General; Form

Under clause 5 of rule XVI, a question that consists of two or more separable substantive propositions is subject to a division of the question, if demanded, so as to obtain a separate vote on each proposition. Deschler-Brown Ch 30 § 42. The procedure is applicable in the Committee of the Whole as well as in the House. See, *e.g.*, Deschler-Brown Ch 29 § 42.12.

The rule prohibits its application to special orders of business from the Committee on Rules, to propositions electing Members to standing or joint committees, and to a motion to strike and insert. *Manual* § 919. The entire rule may be suspended by the adoption of a resolution from the Committee on Rules. 7 Cannon § 775.

### § 2. Tests of Divisibility

To be divided for a vote, a question must consist of at least two separate and distinct propositions both grammatically and substantively, so that if one proposition is rejected, a separate proposition logically will remain. *Manual* § 921; 8 Cannon § 3165; Deschler-Brown Ch 30 §§ 42.1, 42.3. In passing on a demand for division, the Chair considers only the severability of the propositions and not the merits of the question presented. 5 Hinds § 6122.

The requirement that there must be at least two substantive propositions in order to justify division is strictly enforced. 5 Hinds §§ 6108-6113. If either proposition, standing alone, is not a distinct substantive proposition, the question is not divisible, even though each portion is grammatically complete. 7 Cannon §§ 3165, 3167. However, in dividing a question into separate propositions, some restructuring of the language used is permissible. *Manual* § 921; 5 Hinds §§ 6114-6118.

### § 3. Demanding a Division

A request for a division of the question does not require unanimous consent, and no motion is made. Deschler-Brown Ch 30 § 42.4. The Member seeking a division rises and addresses the Chair:

MEMBER: M\_\_\_. Speaker, I demand a division of the question.

SPEAKER: The gentle\_\_\_\_\_ will indicate the proposition(s) on which a separate vote is desired. . . .

SPEAKER: The gentle\_\_\_\_\_ requests a division, and that portion of the proposition will be divided for a separate vote.

[Or]

OPPONENT: M\_\_\_. Speaker, I make the point of order that the question is not susceptible of division, and that the portions indicated by the gentle \_\_\_\_\_ do not constitute separate substantive propositions.

A demand for a division of a question is in order even after the previous question has been ordered. 5 Hinds §§ 5468, 6149; 8 Cannon § 3173. Under clause 5 of rule XVI, the demand for a division is in order before the question is put to the House for a vote. Deschler-Brown Ch 30 § 42.4. The question may not be divided after it has been put or after the yeas and nays have been ordered. 5 Hinds §§ 6160-6162. The demand is likewise untimely if the question is one against which a point of order has been raised and is pending. 8 Cannon § 3432.

A demand for a division of the question may be withdrawn. However, withdrawal is permitted only by unanimous consent once the Chair has put the question on the first portion to be voted on. *Manual* § 921; Deschler-Brown Ch 30 § 42.11. A demand having been made by one Member, another Member may demand a further division, if the proposition is susceptible to such further division. 111-2, May 28, 2010, p \_\_\_\_.

## B. Division of Particular Propositions

### § 4. In General

#### Generally; Distinction Between Bills and Resolutions

Whether a division of the question may be demanded depends on the nature of the pending matter and on whether it meets the tests of divisibility imposed by rule XVI. § 2, *supra*. Certain House resolutions—whether simple or concurrent—are subject to the demand. § 5, *infra*. However, bills and joint resolutions are not divisible. A separate vote may not be demanded on various provisions set forth in such a measure or on its preamble. 5 Hinds §§ 6144-6147; 8 Cannon § 3172. When the previous question has been ordered on adoption of a measure containing a series of simple resolutions, they may be divided. 5 Hinds § 6149.

The question of engrossment and third reading of a bill under clause 8 of rule XVI is not subject to a demand for a division of the question. *Manual* § 943. Certain amendments, such as a compound motion to strike (§ 10, *infra*), may be divided. However, most other motions are not divisible. A motion for the previous question on a proposition and an amendment thereto is not divisible. *Manual* § 996; Deschler-Brown Ch 30 § 46.1. Division of the question is possible on a motion that a Member-elect's creden-

tials be referred to committee and that such individual be sworn. 5 Hinds § 6117.

### **Appeals**

There may be a division of the question on an appeal from a decision of the Speaker if the decision involves two or more separate and distinct questions. 5 Hinds § 6157.

### **§ 5. Simple or Concurrent Resolutions**

A simple or concurrent resolution may be subject to a demand for a division of the question if it satisfies the test of divisibility imposed by rule XVI. § 2, *supra*. Thus, a concurrent resolution on the budget is subject to a demand for a division of the question if the resolution grammatically and substantively relates to different fiscal years or includes a separate, hortatory section having its own grammatical and substantive meaning. *Manual* § 921; Deschler-Brown Ch 30 § 42.5. An impeachment resolution has been divided for a separate vote on each article. *Manual* § 921; 6 Cannon § 545.

To be subject to a demand for a division of the question, a resolution must present two or more separate and distinct substantive propositions. It has been held that a resolution (1) censuring a Member and (2) adopting the committee report recommending such censure on the basis of the committee's findings is not divisible because these questions are substantively equivalent. Deschler-Brown Ch 30 § 42.2. An adjournment resolution that also authorizes the receipt of veto messages from the President during the adjournment is not subject to a division of the question, as the receipt authority would be nonsensical standing alone. *Manual* § 921.

It is not in order to demand a division of the question on matters that are merely incorporated by reference in the pending resolution. For example, when a resolution to adopt a series of rules, referred to but not made a part of the resolution, is before the House, it is not in order to demand a separate vote on each rule. 5 Hinds § 6159.

### **§ 6. — Resolutions Naming Two or More Individuals**

Under clause 5 of rule XVI, a resolution electing Members to standing or joint committees is not divisible. However, other types of resolutions relating to two or more named individuals may be divided for the purpose of voting. Deschler-Brown Ch 30 § 49. For example, a resolution confirming the nomination of certain individuals to executive branch offices is subject to a division of the question so as to obtain a separate vote on each nominee. Deschler-Brown Ch 30 § 49.2. A resolution with two resolve clauses

separately certifying the contemptuous conduct of two individuals is divisible. *Manual* § 921. Similarly, a resolution with one resolve clause certifying contemptuous conduct of several individuals may be divisible. *Manual* § 299; but see Deschler-Brown Ch 30 § 49.1.

A resolution relating to two or more named individuals may be divided even though that may require a grammatical reconstruction of the text. 5 Hinds § 6121. A word that is a mere formality, such as “resolved,” is sometimes supplied by interpretation of the Chair. 5 Hinds §§ 6114-6118.

### § 7. — Special Orders of Business

Under clause 5 of rule XVI, resolutions reported from the Committee on Rules providing a special order of business are not divisible. However, other types of special orders of business from that committee are subject to a demand for a division where the resolution contains separate and distinct substantive propositions. For example, a resolution reported from that committee establishing two or more select committees is subject to a demand for a division of the question. *Manual* § 921.

### § 8. Amendments

#### Generally

Clause 5 of rule XVI permits a division of the question on an amendment on the demand of any Member where the amendment is properly divisible into two or more substantive propositions. A division is in order on an amendment if the amendment contains propositions so distinct in substance that, one being taken away, a substantive proposition remains. *Manual* § 921; Deschler-Brown Ch 30 § 42.13. Thus, an amendment offered to an appropriation bill providing that no part of the appropriation may be paid to named individuals may be divided for a separate vote on each name. Deschler-Brown Ch 30 § 49.4. An amendment in the form of a motion to strike and insert is not divisible. See § 11, *infra*.

#### Amendments in Committee of the Whole

The rule permitting a division of the question is applicable to an amendment (other than a motion to strike and insert) consisting of two or more substantive propositions under consideration in the Committee of the Whole. Deschler-Brown Ch 30 § 43. A request for a division of the question on such an amendment may be made at any time before the Chair puts the question thereon. 5 Hinds § 6162. An amendment reported to the House from the Committee of the Whole as a discrete amendment is not subject

to a division of the question in the House. 4 Hinds §§ 4883-4892; see generally COMMITTEES OF THE WHOLE.

### **Perfecting Amendments; Substitute Amendments**

An amendment adding language to the pending text is divisible if the language to be added contains two or more distinct propositions. 5 Hinds §§ 6129, 6133. However, an amendment in the nature of a substitute is not subject to a demand for a division of the question. 5 Hinds § 6127; 8 Canon § 3168. The division of a motion to strike and insert is precluded by House rule. § 11, *infra*.

A division of the question may be demanded on an amendment either before amendments are adopted thereto, or on the amendment as amended (assuming that perfecting amendments or an adopted substitute do not destroy the divisibility of the amendment as amended). *Manual* § 921.

A negative vote on a motion to strike a portion of a pending amendment does not prevent a demand for a division of that portion of the amendment if it is a separate proposition and therefore properly severable. Deschler-Brown Ch 30 § 43.1.

### **§ 9. — En Bloc Amendments**

Consideration of several amendments en bloc by unanimous consent or otherwise does not prevent a division of the question from being demanded so as to obtain a separate vote on one of the amendments. Deschler-Brown Ch 30 §§ 43.4-43.6. In fact, a Member may be permitted to offer several amendments en bloc and then demand a division of the question for a separate vote on each one. Deschler-Brown Ch 30 § 43.4. However, amendments en bloc proposing only to transfer appropriations among objects in a general appropriation bill (without increasing the levels of budget authority or outlays in the bill), when considered en bloc pursuant to clause 2(f) of rule XXI, are not subject to a demand for division of the question in the House or in the Committee of the Whole.

### **§ 10. Motions to Strike**

A motion to strike various separate provisions of a pending proposition may be divided for purposes of voting. 8 Canon § 3166. Thus, an amendment proposing to strike two or more sections of a pending amendment may be divided in order to obtain separate votes on the proposal to strike each section. *Manual* § 921. However, an amendment proposing to strike a provision in a bill—and to redesignate subsequent paragraphs accordingly—is not subject to a demand for a division because it contains only one substantive

proposition. 93-2, Dec. 10, 1974, p 38746. A motion to strike is not grammatically divisible. However, where there is pending a motion to strike a pending provision, a perfecting amendment to the underlying text may be offered to strike a lesser portion of the provision; and the perfecting amendment is voted on first. Deschler Ch 27 §§ 17.26, 24.13.

### § 11. Motions to Strike and Insert

Although a motion to insert may be divisible (§ 8, *supra*), the division of a motion to strike and insert is precluded by clause 5(c) of rule XVI. *Manual* § 920. The indivisibility of a motion to strike and insert under clause 5(c) operates not only between each branch of the motion (*i.e.* the striking branch and the inserting branch) but also within each branch. 8 Cannon § 3169; see also 5 Hinds § 6124. An amendment comprising two discrete instructions to strike and insert may be divided. *Manual* § 921. 105-2, June 4, 1998, pp 11063, 11064, 11071-75.

A simple motion to strike may not be offered as a substitute for a motion to strike certain words and insert others, as that would have the effect of dividing the motion to strike and insert. *Manual* § 920.

### § 12. Motions to Suspend the Rules

A question being considered pursuant to a motion to suspend the rules may not be divided for a vote. 5 Hinds §§ 6141-6143; 8 Cannon § 3171. Although a proposition may be subject to a division of the question under rule XVI, it cannot be divided if rule XVI is suspended. 5 Hinds § 6143; see generally SUSPENSION OF RULES.

### § 13. Motions to Recommit; Motions to Instruct Conferees

A motion to recommit with instructions is not subject to a demand for a division of the question. It is not in order to demand a separate vote even where the motion includes separate branches of instructions to the reporting committee. *Manual* § 921; 5 Hinds §§ 6134-6137; 8 Cannon § 3170. However, an amendment reported forthwith pursuant to instructions contained in a successful motion to recommit may be divided on the question of its adoption if composed of substantively and grammatically distinct propositions. *Manual* § 921.

Instructions in a motion to recommit a conference report may not be divided. Deschler-Brown Ch 30 § 45.2. Likewise, an initial motion to instruct conferees may not be divided, as only one such motion is permitted. 8 Cannon § 3236. However, a division has been permitted on a motion to instruct under clause 7(c) of rule XXII (which permits multiple motions to

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instruct after the conferees have failed to report for 20 calendar days and 10 legislative days), provided separate substantive propositions are presented. *Manual* § 921.

### § 14. Motions to Table

Because a motion to lay on the table is a summary motion, its only purpose being to defeat the pending proposition, it has been held that the motion to table is not subject to a demand for a division of the question. 5 Hinds § 6140. A division of the question is not in order even if the motion is applicable to two or more separate and distinct propositions, such as a series of resolutions. 5 Hinds § 6138. A motion to table a resolution and pending amendments is likewise indivisible. 5 Hinds §§ 6139, 6140.

### § 15. Senate Amendments

#### Generally; Motions to Concur

On the question of agreeing or disagreeing to a Senate amendment, it is not in order to demand a division so as to vote separately on different portions of the amendment. 5 Hinds §§ 6151, 6156. The amendment must be voted on as a whole. 8 Cannon § 3175. However, when two or more Senate amendments are considered en bloc in the House, a separate vote may be had on each amendment. 8 Cannon §§ 2383, 2400, 3191. A special order of business may create a division of the question on concurring in a Senate amendment. See SPECIAL ORDERS OF BUSINESS. After the stage of disagreement, clause 10 of rule XXII permits separate votes on rejecting non-germane portions of Senate amendments. See GERMANENESS OF AMENDMENTS.

#### Motions to Concur with an Amendment

A House amendment proposed in a motion to concur in a Senate amendment with an amendment is divisible if the proposed House amendment is in divisible form. *Manual* § 921. However, such a motion may not be divided between concurring and amending. 8 Cannon § 3176.

A proposed House amendment to a Senate amendment is not divisible if the House amendment is in the form of a motion to strike and insert, as such motions are specifically indivisible under House rule. Deschler-Brown Ch 30 § 48; § 11, *supra*.

#### Motions to Recede and Concur

A division may be demanded on a motion to recede from disagreement and concur in a Senate amendment. 5 Hinds § 6209; 8 Cannon §§ 3197-



3199. The question having been divided and the House having receded, a motion to amend takes precedence over the motion to concur (5 Hinds §§ 6209-6211; 8 Cannon § 3198), even after the previous question has been ordered on both motions (*Manual* § 525).

### C. Consideration of Divided Propositions

#### § 16. In General

##### Amendment and Debate; Putting the Question

Where a division of the question has been demanded on separable portions of a proposition subject to amendment, amendments to the separable portions remain in order. However, once the Chair has put the question on the first portion, no further amendments to that portion are in order. 94-2, Sept. 9, 1976, p 29538-40. After a vote has been taken on the first portion, the second is open to debate and amendment unless the previous question is ordered. *Manual* § 921.

Where a division of the question is demanded on a separable portion of an amendment, the Chair puts the question first on the remaining portion of the amendment, and that portion on which a division is demanded may remain open for further debate and amendment. *Manual* § 482. If a division of the question is demanded on more than one portion of an amendment, the Chair may put the question first on the unaffected portions of the amendment (if any), then (after further debate) on the first part on which a division is requested, and then (after further debate) on the subsequent divisible portions. *Manual* § 921. Where neither portion of a divided question remains open to further debate or amendment, the question may be put first on the portion identified by the demand for division and then on the remainder. *Manual* § 921.

Where the question on adopting an amendment is divided by special order of business (rather than on demand from the floor), the Chair may put the question on each divided portion of the amendment in the order in which it appears. *Manual* § 921.

##### Voting

A question having been divided for a vote, the vote may be taken by one of the voting methods authorized by the House rules, such as voice vote, division vote, or record vote. See VOTING. The motion to reconsider applies separately to each portion of the divided question and continues to be available even after disposition of a motion to reconsider only one portion of the divided question. However, frequently the motion to reconsider

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each portion is laid on the table en bloc by unanimous consent. 5 Hinds § 5609; 105-2, Dec. 19, 1998, pp 28110-12.