

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The text is centered within the hourglass.

WikiLeaks Document Release

<http://wikileaks.org/wiki/CRS-RS20199>

February 2, 2009

Congressional Research Service

Report RS20199

Ordering a Rollcall Vote in the Senate

Betsy Palmer, Government and Finance Division

July 11, 2008

Abstract. Eleven Senators usually can require that the Senate conduct a rollcall vote (also called a vote by "the yeas and nays") to decide whatever question it is considering. The Senate can agree to order a rollcall vote on a question at any time that the Senate is debating that question. The time at which the yeas and nays are ordered does not determine or affect the time at which that vote will take place.

WikiLeaks



CRS Report for Congress

Ordering a Roll Call Vote in the Senate

Betsy Palmer

Analyst on the Congress and Legislative Process
Government and Finance Division

Any time the Senate is considering a question — whether that question is a bill, amendment, motion, conference report, or something else — a Senator who has the floor can “ask for the yeas and nays” or a roll call vote on that question. This is the constitutional right of any Senator, and no other lawmaker can object to the request. If such a request is supported by 10 other Senators (for a total of 11) this usually requires the Senate to conduct a roll call vote (also called a vote by “the yeas and nays”) to decide the question it is considering. The Senate can agree to order a roll call vote on a question at any time when it is debating that question. Ordering the yeas and nays, however, does not determine when that vote will take place. For more information on legislative process, see [<http://www.crs.gov/products/guides/guidehome.shtml>].¹

The authority for Senators to obtain roll call votes derives from Article I, Section 5, clause 3 of the Constitution, which states 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.” The Constitution also provides that “a majority of each [house] shall constitute a quorum to do business.” Therefore, “one fifth of those present” to order the yeas and nays must be one-fifth of at least 51 Senators (or at least 11 Senators), which is the minimal majority required to satisfy the constitutional quorum requirement. A smaller number of Senators cannot order a roll call vote, even by unanimous consent, because the Senate may not set aside any constitutional requirement governing its proceedings.

It requires unanimous consent to ask for a roll call vote on a question that is not formally before the Senate for consideration. If several first- and second-degree amendments have been offered, for example, then except by unanimous consent, it is in order to ask for a roll call vote only on the amendment that is the pending question — that is, the first amendment on which the Senate is to vote. A Senator, however, may ask for a roll call vote on final passage of a bill while an amendment to the bill is pending.

When a Senator asks for the yeas and nays, the presiding officer responds by asking, “Is there a sufficient second?” Senators who support the request for a roll call vote then raise their hands to be counted. The support of 11 Senators usually constitutes a sufficient

¹ This report was written by Stanley Bach, formerly a Senior Specialist in the Legislative Process at CRS. The listed author updated the report and is available to answer questions concerning its contents.

second, because the Senate presumes that a minimal quorum is present, unless and until a call of the roll documents that a quorum is not present. There is one circumstance in which the support of more than 11 Senators is required. Under the Senate's precedents, when the request for the yeas and nays occurs immediately following a live quorum call or another roll call vote, the number needed to second the request is one-fifth of however many Senators responded to the quorum call or participated in the roll call vote. This precedent rarely is invoked in practice.

The presiding officer counts the number of Senators who have raised their hands, and if that constitutes at least the required number, the presiding officer states: "There is a sufficient second. The yeas and nays are ordered." If there is not a sufficient second, perhaps because there are not enough Senators on the floor at that time, any Senator can again request a roll call vote on that question later during the debate on it. For example, the request for the yeas and nays can be renewed after a quorum call has intervened.

Ordering the yeas and nays on a question only establishes that whenever the time comes to vote on that question, the vote will take place by a call of the roll. A Senator who has offered an amendment, for example, may ask for the yeas and nays on it as soon as the amendment has been read, or at any time that there appears to be a sufficient number of Senators present to second the request. After the yeas and nays have been ordered on an amendment or on final passage of a bill, Senators may continue debating and proposing amendments to it. Ordering the yeas and nays on an amendment does not preclude a Senator from moving to table the amendment. Even if a roll call vote has been ordered on an amendment, the yeas and nays must be ordered separately on a motion to table that amendment.

A roll call vote may be requested on amendments for tactical reasons. Before the yeas and nays have been ordered on an amendment, the Senator who offered it has the right to modify it at will; neither unanimous consent nor a majority vote is required. However, that Senator cannot offer an amendment to his or her own amendment. Once the yeas and nays on the amendment have been ordered, the amendment's sponsor has lost the right to modify the amendment but has gained the right to propose an amendment to the amendment. Thus, if a Senator wants to offer a second-degree amendment to his or her own first-degree amendment, that Senator normally asks for the yeas and nays on the first-degree amendment.

If the yeas and nays on a question are not ordered but debate is finished, the presiding officer will put the question to a voice vote and then announce the outcome of that vote. In principle, a Senator can ask for the yeas and nays on a question after the voice vote has taken place but before the presiding officer has announced the final result of the vote. In practice, if Senators want to have a roll call vote on the question they are debating, the yeas and nays usually are typically ordered before the process of voting on that question begins.

Some questions must be decided by roll call votes. The Constitution requires that the vote on overriding a presidential veto "shall be determined by yeas and nays." Also, paragraph 2 of Standing Rule XXII, the Senate's cloture rule, requires that votes on invoking cloture be decided by call of the roll.