

## HOUSE AND SENATE RULE DIFFERENCES

### INTRODUCTION

This memorandum reviews major differences between House and Senate rules in effect during the 2009 legislative session. The rules compared are those rules adopted by the Senate and House on December 3, 2008. These rules were published in the 2009 *Rules and Committees Book*.

The following types of suspensions or "amendments" are not considered as permanent amendments of the rules for purposes of this memorandum:

1. Suspension to avoid a legislative requirement, e.g., 2009 House Journal (HJ) page 868 (considering item on consent calendar on same day placed on calendar), 2009 HJ page 1552 (authorizing majority leader to make substitutions on House conference committees as needed through the 70<sup>th</sup> legislative day), 2009 Senate Journal (SJ) page 101 (replacing one member of the Education Committee for one week), and 2009 SJ page 1456 (authorizing the majority leader to replace members of conference committees on Friday, April 24, and Saturday, April 25).
2. Suspension to avoid a legislative deadline, e.g., 2009 HJ page 149 and 2009 SJ page 75 (introducing bills under executive agency introduction privilege); and 2009 HJ pages 473, 491, 561, and 978, and 2009 SJ page 770 (delaying required rereferral of certain bills to the Appropriations Committee).
3. Suspension to extend a legislative deadline, e.g., 2009 HJ page 813 (extending crossover from the 40<sup>th</sup> legislative day to the 42<sup>nd</sup> legislative day), 2009 HJ page 843 (extending crossover from the 42<sup>nd</sup> legislative day to the 43<sup>rd</sup> legislative day), 2009 HJ page 1062 (extending reporting out requirement to the 56<sup>th</sup> legislative day), 2009 HJ page 1107 (extending reporting out requirement to the 57<sup>th</sup> legislative day), 2009 HJ page 1183 (extending reporting out requirement to the 62<sup>nd</sup> legislative day), 2009 HJ page 1371 (extending reporting out requirement to the 64<sup>th</sup> legislative day), 2009 HJ page 1461 (extending reporting out requirement to the 67<sup>th</sup> legislative day), and 2009 HJ page 1515 (extending reporting out requirement to the 72<sup>nd</sup> legislative day).
4. Suspension to change a legislative deadline, e.g., 2009 HJ page 776 (suspending "thirty-seventh legislative day" to "fortieth legislative day").
5. Amendment to change a legislative deadline, e.g., 2009 SJ page 508 (replacing

"thirty-second legislative day" with "thirty-third legislative day"), 2009 SJ page 950 (replacing "fifty-fifth legislative day" with "fifty-eighth legislative day"), and 2009 SJ page 1028 (replacing "fifty-eighth legislative day" with "fifty-ninth legislative day").

There are a number of differences between the rules, particularly with respect to terminology unique to the chambers, such as references to the Chief Clerk of the House and the Secretary of the Senate and special provisions with respect to the Lieutenant Governor as presiding officer of the Senate, e.g., voting (Senate Rules 323 and 340), and the membership of the Committee on Committees (House and Senate Rules 501). There are also differences by nature of the number of members in each house, e.g., the number of members required to cause a call of the house (House and Senate Rules 303), the number of members on committees (House and Senate Rules 501), and the number of members required for a minority report (House and Senate Rules 602). There are also similar provisions, which are numbered differently, in each chamber, e.g., the Committee of the Whole (House Rules 328 and 701 through 704 compared to Senate Rule 511), and provisions unique to one chamber, e.g., consideration of executive nominations by the Senate (Senate Rules 501(6) and 701). In addition, there are a number of minor grammatical differences between the rules. This memorandum concentrates on other more substantive matters in which the House and Senate rules differ.

Attached as an [appendix](#) to this memorandum is a side-by-side table of the House and Senate rules, with differences underscored.

### NO SMOKING AREAS - SMOKING IN CHAMBER

House and Senate Rules 105 provide that no person may smoke in the chamber. House Rule 105 also provides that no person may smoke in House committee rooms. Both rules define "smoke" as carrying a lighted cigarette, lighted cigar, or lighted pipe, but the definition in House Rule 105 also includes the carrying of "any other lighted smoking equipment." (In 1991 Joint Rule 804 provided that except for the legislative study room on the first floor during a legislative session, no other space in the State Capitol which is used by the Legislative Assembly, including the chambers, committee rooms, halls, passageways, and restrooms, may be designated as a smoking area. Both houses adopted different versions of this rule during the 1993 legislative session; thus, the joint rule was never adopted by the 1993 Legislative Assembly nor has a joint rule on this subject been adopted by the 1995 through 2009 Legislative Assemblies. As a

result of 2005 amendments to North Dakota Century Code Sections 23-12-09 and 23-12-10, smoking is prohibited in the State Capitol, but the rules have not been changed to reflect the breadth of this prohibition.)

### **DUTIES OF PRESIDING OFFICER**

House Rule 201 has subsections providing for the Speaker to appoint House committees, except as provided by House Rule 501 (which provides for a House Committee on Committees), and to sign vouchers for payment of money out of the appropriation for the Legislative Assembly while the Legislative Assembly is in session. Senate Rule 201 does not provide such duties for the President of the Senate (under Senate Rule 501 the Senate Committee on Committees appoints committees, and under Senate Rule 202 the President Pro Tempore signs vouchers while the Legislative Assembly is in session).

### **ABSENCE OF PRESIDING OFFICER**

House Rule 202 provides that the Speaker may leave the chair and appoint a member to preside, but not for longer than one day, except by leave of the House. Senate Rule 202 provides that in the absence of the President of the Senate, or during refusal of the President to act, the President Pro Tempore is to exercise all rights and prerogatives of the President. In addition, while the Legislative Assembly is in session, the President Pro Tempore is to sign vouchers for payment of money out of the appropriation for the Legislative Assembly while the Legislative Assembly is in session (this responsibility is given to the Speaker under House Rule 201).

### **DUTIES OF SERGEANT-AT-ARMS - LEGISLATIVE GUESTS**

House and Senate Rules 205(3) provide that, during the period commencing 60 minutes before the house convenes and ending when the house recesses for that calendar day, the Sergeant-at-Arms is to clear the floor of the chamber in front of the railing of all persons, except legislators, legislative employees, legislative guests, and properly identified representatives of the media. House Rule 205(3) also requires legislative guests to have passes, also provides an exception for former members of the Legislative Assembly who have passes, provides the period to clear the floor also includes 12:00 noon to 1:00 p.m. on any legislative day, and provides that the Sergeant-at-Arms is to clear a designated area of the balcony of all persons, except legislative guests who have passes, during the daily session.

### **EMPLOYEE POSITIONS**

House Rule 206 provides for three assistant Appropriations Committee clerks. Senate Rule 206 provides for one assistant Appropriations Committee clerk.

### **ORDER OF BUSINESS**

House and Senate Rules 301 provide the first order of business is prayer by the chaplain. House Rule 301(1) also includes the Pledge of Allegiance.

### **VOTES REQUIRED FOR CERTAIN QUESTIONS**

House Rule 318(2), which lists the questions that require a majority vote of the members-elect of the House, includes adoption of a clincher motion, as provided in House Rule 348. (The 1989-90 interim Legislative Management Committee recommended that a clincher motion be approved by a majority of the members-elect. Although the House and Senate adopted the recommended amendment to House and Senate Rules 318(2) and 348, the Senate on January 8, 1991, amended Senate Rules 318(2) and 348 to eliminate the requirement of a majority vote of the members-elect.)

House and Senate Rules 318(4)(g) provide that reconsideration after the next legislative day requires a two-thirds vote of the members-elect. Senate Rule 318(4)(g) also refers to reconsideration after a previous motion to reconsider as provided in Senate Rule 347. [The 1995-96 interim Legislative Management Committee reviewed the procedure for moving for reconsideration of a question and recommended that Senate and House Rules 347 parallel one another, with the effect of adopting the House procedure (after one motion to reconsider, a subsequent motion to reconsider may be made on the next day and requires only a majority vote) rather than the Senate procedure (after one motion to reconsider, a subsequent motion to reconsider requires a two-thirds vote). The recommendation was adopted during the 1996 organizational session, and thus the portion of Senate Rule 347 which provided for a two-thirds vote of the members-elect for reconsideration after a previous motion to reconsider was deleted.]

House Rule 318(5) lists four questions that require unanimous consent of the members of the House. Senate Rule 318(5) lists the only question requiring unanimous consent of the members of the Senate-- Senate Rule 331, which concerns withdrawing a measure after referral to committee.

### **VOTE BY MEMBERS**

House and Senate Rules 321 provide that every member who is present is to vote unless excused, and provision is made for disclosure of a personal or private interest in any measure. Senate Rule 321 further provides that if a member has not voted before the key is closed, the member shall vote before the vote is announced.

### **SUSPENSION OF RULES**

House and Senate Rules 324 provide that no standing rule or order of the respective houses may be reconsidered or suspended except by a majority

vote of the members present. House Rule 324 further provides that no motion to suspend the rules and pass a bill may be entertained except by unanimous consent, unless the bill has first been printed and considered by a committee, nor may any standing rule or order requiring unanimous consent be reconsidered or suspended without unanimous consent.

### **REFERRAL TO COMMITTEE**

House and Senate Rules 328 require bills and concurrent resolutions to be referred to committee. Senate Rule 328 specifically includes resolutions for constitutional amendments within the term "concurrent resolution." House Rule 328 also allows referral to the Committee of the Whole.

### **REFERRALS TO APPROPRIATIONS COMMITTEES**

House and Senate Rules 329(1) provide for referral or rereferral of all bills carrying an appropriation of \$5,000 or more to the respective Appropriations Committees. Senate Rule 329(1) further provides for original referral of measures proposing a change in the audit or fiscal procedures of a state agency or institution to the Appropriations Committee.

### **WITHDRAWAL OF MEASURES**

House and Senate Rules 331 provide that after referral to a committee, a measure may not be withdrawn without unanimous consent of the respective house. House Rule 331 also provides that after placement on the calendar after receipt of a committee report, a measure may not be withdrawn.

### **AMEND OR REFER FROM THE FLOOR OR ON SECOND READING**

House Rule 333 requires unanimous consent to amend a bill or resolution on second reading, except for amendments to titles, or to make a floor amendment on the sixth order of business. House Rule 333 also provides that no amendment of a measure reported from conference committee may be made on second reading. Senate Rule 333 provides that any amendment other than amendment of a measure reported from conference committee may be received on second reading, but upon request of a member a floor amendment must be submitted in writing and distributed to each member.

### **ENGROSSMENT**

House and Senate Rules 335 provide for engrossment of bills amended in committee. Senate Rule 335 further provides for engrossment of bills amended by floor amendment.

### **SETTING TIME CERTAIN FOR FLOOR DEBATE**

House Rule 336 provides that the committee chairman, after consultation with and approval of the Speaker of the House, may request the majority leader to set a time certain for floor debate on amendments, a bill, or a resolution, and the majority leader may set an exact time when the issue will be debated. Senate Rule 336 provides that the committee chairman, after consultation with and approval of the President of the Senate and the majority and minority leaders, may set a time certain for floor debate on amendments, a bill, or a resolution and is to request the presiding officer to set an exact time when the issue will be debated.

### **RIGHT TO CHANGE VOTE**

House and Senate Rules 341 allow a member to change the member's vote before the presiding officer has announced that the vote is closed. Senate Rule 341 further provides that a member may change the member's vote for purposes of reconsideration after the vote is closed but before it is announced. If the vote is changed for purposes of reconsideration, that announcement is to be printed in the journal with corrected totals of ayes and nays.

### **CLINCHER MOTION**

House and Senate Rules 348 provide that a clincher motion has the effect of preventing reconsideration except upon a two-thirds vote of the members-elect. House Rule 348 requires a clincher motion to be carried by a majority vote of the members-elect. Senate Rule 348 does not refer to a majority vote of the members-elect requirement, and thus the motion is carried by a majority vote of the members present under Senate Rule 318(1)(m). (The 1989-90 interim Legislative Management Committee recommended that a clincher motion be approved by a majority of the members-elect. Although the House and Senate adopted the recommended amendment to House and Senate Rules 318(2) and 348, the Senate on January 8, 1991, amended Senate Rules 318(2) and 348 to eliminate the reference to a majority vote of the members-elect.)

### **RETURN OF MEASURE WITH AMENDMENT**

House and Senate Rules 350 provide the procedure to be followed upon the return of a measure that was amended by the other house. Senate Rule 350 requires the chairman to recommend, by motion on the floor, whether to concur in the amendments. House Rule 350 is silent on whether a motion is to be the method of making the recommendation. House Rule 350 additionally provides that without objection a motion to accept recommendations to not concur and to appoint conference committees must be voted on in a single vote.

## **INTRODUCTION OF GUESTS**

House and Senate Rules 360 provide that the introduction of guests is limited to those individuals called on to address the respective house. House Rule 360 further provides for the introduction of former members of the Legislative Assembly, while Senate Rule 360 further provides for the introduction of individuals of statewide, national, or international prominence and others in the discretion of the President. House Rule 360 further provides that no person may be admitted to the floor of the House except state officers, justices and judges of the Supreme Court and district courts, present and former members of Congress, present and former members of the Legislative Assembly, present officers and officials, all employees of both houses, reporters for newspapers, and any other person granted admission by the Speaker.

## **DETERMINATION OF SENIORITY SEATING IN HOUSE CHAMBER**

House Rule 362 provides a procedure for determining seniority for purposes of selecting seats in the House chamber. The Senate does not have a comparable rule.

## **PREFILING OF BILLS**

House and Senate Rules 401(3) provide for the introduction of bills and resolutions after the organizational session adjourns and before the convening of the regular session by prefiling the measure with the Legislative Council office. House Rule 401(3) provides for the Legislative Council to number the measure and identify the sponsoring committee as assigned by the Speaker. Senate Rule 401(3) provides for the Legislative Council office to number the measure and identify the sponsoring committee as assigned by the majority leader of the Senate.

## **INTRODUCTION OF BILLS**

House Rule 402(1) provides that no member other than the majority and minority leaders may introduce more than five bills after the fourth legislative day, and no bill may be introduced after the ninth legislative day except upon approval of the Delayed Bills Committee or upon two-thirds vote of the House. Senate Rule 402(1) provides that no member other than the majority and minority leaders may introduce more than three bills after the 9<sup>th</sup> legislative day, and no bill may be introduced after the 14<sup>th</sup> legislative day except upon approval of the Delayed Bills Committee or upon two-thirds vote of the Senate.

House Rule 402(2) limits members with respect to submitting bills mandating health insurance coverage of services or payment for specified providers for consideration by the Employee Benefits Programs Committee. Senate Rule 402 does not have such a limitation.

## **STANDING COMMITTEES**

House and Senate Rules 501 provide for standing committees in the respective houses and the subject matter to be considered by the respective committees.

House Rule 501(2) provides for appointment of three divisions of the Appropriations Committee. Senate Rule 501 does not contain a comparable provision.

House Rule 501(6) provides for appointment of a Constitutional Revision Committee. Senate Rule 501 does not contain a comparable provision. Senate Rule 501(6) refers to appointment of a select committee to consider an executive nomination when received.

## **COMMITTEE PROCEDURES**

House and Senate Rules 507 provide that a majority of a committee constitutes a quorum. Senate Rule 507 further provides that 50 percent of the membership of a committee with an even number of members constitutes a quorum.

## **RECALLING BILL FROM COMMITTEE**

House and Senate Rules 509 provide that the chairman of a committee must report a measure back to the house when ordered by a majority of the members present. Senate Rule 509 requires the motion to be made by the majority leader or the chairman of the committee.

## **COMMITTEE REPORTS**

House and Senate Rules 601(1) provide that the report of a committee must provide for one or more of the following recommendations: do pass, do not pass, be amended, be rereferred to another committee, or be placed on the calendar without recommendation. House Rule 601(1) further provides that when a committee fails to adopt any of the recommendations due to the lack of a majority, the chairman is to report the bill to the floor with whatever minority reports individual committee members may request. House and Senate Rules 601(3) concern placement of committee reports for amendment on the calendar. House Rule 601(3) further provides that on the sixth order of business the Speaker is to announce that without objection the proposed amendments are deemed approved, but if any member objects to a proposed amendment being approved with other proposed amendments, that amendment must be voted on as a separate item.

## **CONFERENCE COMMITTEE REPORTS**

House and Senate Rules 605 provide that the provisions of other rules do not prohibit the reading of a conference committee report and adoption or rejection of any recommended amendments, nor the placing of any bill or resolution affected by the conference committee report on the calendar for final action on the same day the conference committee report is received. House Rule 605 further provides

that if the conference committee report is to adopt recommended amendments, adoption of the report is adoption of the amendments, and if the conference committee report is to reject recommended amendments, adoption of the report is rejection of the amendments.

ATTACH:1