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“Fast Track” Legislative Procedures Governing Congressional Consideration of a Defense Base Closure and Realignment (BRAC) Commission Report

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Summary

In 1988, 1991, 1993, 1995, and 2005, an independent Defense Base Closure and Realignment (BRAC) Commission was authorized by law to recommend the disposal of unneeded defense facilities throughout the United States. The Department of Defense (DOD) formally asked Congress to provide it with statutory authority to conduct another round of base closures and realignments in 2015, but no new round was authorized.

Under the terms of the statutes that authorized these previous BRAC rounds, the BRAC Commission's recommendations automatically take effect unless, within a stated period after the recommendations are approved by the President and submitted to the House and Senate, a joint resolution of disapproval is enacted rejecting them in their entirety. Congressional consideration of this disapproval resolution was governed not by the standing rules of the House and Senate but by special expedited or "fast track" parliamentary procedures laid out in statute. This report describes these expedited parliamentary procedures and explains how they differ from the regular legislative processes of Congress. The report will be updated as needed.

Contents

BRAC Recommendations on “Fast Track”	1
Features of the BRAC Expedited Parliamentary Procedure.....	2
Introduction and Referral	2
Text of the Joint Resolution of Disapproval.....	2
Committee Action	2
Calling Up the Joint Resolution on the Floor.....	3
Floor Debate.....	3
Motions and Amendments.....	4
Voting	4
Automatic Legislative “Hookup”	4
Presidential Consideration and Subsequent Action.....	4
Either Chamber May Alter the Expedited Procedure	4

Tables

Table 1. Resolutions of Disapproval Introduced Under the Terms of the Defense Base Closure and Realignment Commission Statutes.....	6
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Contacts

Author Information.....	7
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BRAC Recommendations on "Fast Track"

In response to concern about the U.S. government's inability to close or consolidate unneeded military facilities, Congress in 1988, and again in 1990, enacted statutory provisions establishing a process intended to insulate base closings from the "political" considerations that are part of the regular lawmaking process. Pursuant to these provisions, in 1988, 1991, 1993, 1995, and 2005, an independent Defense Base Closure and Realignment (BRAC) Commission recommended the closure and realignment of more than 100 defense facilities throughout the United States. The Department of Defense (DOD) formally asked Congress to provide it with statutory authority to conduct another round of base closures and realignments in 2015, but no round was authorized.¹

Under the BRAC process, the final recommendations of a bipartisan commission are submitted to Congress and automatically take effect unless Congress passes and the President signs legislation disapproving the recommendations within a stated time period. To ensure that Congress can promptly act if it so chooses, the BRAC procedure includes special "fast track" or expedited legislative procedures laying out the terms for House and Senate consideration of legislation striking down the BRAC Commission's report. Such "fast track" procedures have governed congressional consideration of the five previous rounds of base closures and are included in the DOD's recent request to Congress for authority to pursue a 2015 BRAC round.

Under the parliamentary procedures laid out in the BRAC process, a package of suggested base closures and realignments is to be implemented by the Secretary of Defense unless Congress passes a joint resolution of disapproval rejecting the entire package within the 45-day² period beginning on the date of the President's submission of the package to Congress or the *sine die* adjournment of the session, whichever occurs earlier.

Congressional consideration of such a BRAC resolution of disapproval is governed not by the standing rules of the House and Senate but by special expedited parliamentary procedures laid out in the Defense Base Closure and Realignment Act of 1990, as amended (P.L. 101-510, 10 U.S.C. 2687 note). The procedures have the same force and effect as standing House and Senate rules and exempt the joint resolution of disapproval from many of the time-consuming steps and obstacles that apply to most measures Congress considers. For example, the procedure dictates when a joint resolution may be introduced, specifies its text, limits committee and floor consideration of the measure, prohibits amendments and other motions, and establishes an automatic "hook-up" of joint resolutions passed by both chambers.

This report outlines the "fast track" parliamentary procedures that have governed congressional consideration of the recommendations of the BRAC commission in prior rounds and have been included in the DOD's recent requests for authority to conduct a BRAC round.³

¹ See EC-1470, a communication from the Assistant Secretary of Defense (Legislative Affairs) transmitting a report of proposed legislation entitled National Defense Authorization Act for Fiscal Year 2014, *Congressional Record*, daily edition, vol. 159 (May 14, 2013), p. S3428.

² In counting the 45-day period, recesses and adjournments of more than three days (that is, taken pursuant to an adjournment resolution) by either chamber are not counted. This manner of counting is sometimes referred to as calculating using "days of continuous session."

³ If Congress accedes to the DOD's request to authorize a future BRAC round, the same fast track procedures that have governed prior BRAC rounds and have been requested again by the DOD could be used, or Congress might instead choose to establish different procedures governing consideration of a commission report.

Features of the BRAC Expedited Parliamentary Procedure⁴

This section describes the parliamentary procedures that have governed congressional consideration of recent BRAC Commission reports and were included in a legislative proposal DOD recently submitted to Congress requesting authority for a BRAC Commission round in 2015.

Introduction and Referral

Ordinarily, Members of the House and Senate may introduce legislation at any time that their chamber is in session during the two-year Congress. Under the BRAC procedure, however, a qualifying joint resolution of disapproval must be introduced within the 10-day period beginning on the date the President transmits a certified BRAC report to Congress. Such a joint disapproval resolution may be introduced by any Member in either chamber, and when it is, it is referred to the House or Senate Committee on Armed Services. There is no limit to the number of disapproval resolutions that can be introduced, and in prior rounds, multiple disapproval resolutions have been introduced, aimed at the same BRAC report.⁵

Text of the Joint Resolution of Disapproval

Provisions are included in the BRAC procedure specifying the text of the disapproval resolution. These are meant to make it clear exactly which legislation is eligible to be considered under the expedited procedures. The joint resolution of disapproval may not contain a preamble. The title of the measure is to read: "Joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission." The text of the joint resolution after the resolving clause is to read: "That Congress disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on _____," with the appropriate date filled in the blank.

Committee Action

With certain exceptions—for example, when time limits are placed on the sequential referral of a bill by the Speaker—Congress generally does not mandate that a committee act on a bill referred to it within a specified time frame or at all. The BRAC procedure, however, places deadlines on the Committees on Armed Services to act and creates a mechanism to take the resolution away from them if they do not. These expediting provisions are intended to make it impossible for a joint resolution of disapproval to be long delayed or blocked outright in committee.

As noted, upon introduction, a joint resolution of disapproval is referred to the House or Senate Committee on Armed Services. The committee may choose to report such a resolution but may not amend it.⁶ If the committee does not report a joint resolution of disapproval by the end of a

⁴ The Defense Base Closure and Realignment Act of 1990 is part A of title XXIX of P.L. 101-510; 10 U.S.C. 2687 note. Congressional disapproval procedures are located in §2908. The partial text of the fast track procedure is also contained in the *House Manual: U.S. Congress, House, Constitution, Jefferson's Manual, and Rules of the House of Representatives*, H.Doc. 113-181, 113th Cong., 2nd sess. (Washington: GPO, 2015), §1130(25A), pp. 1265-1269.

⁵ See **Table 1** for examples.

⁶ The BRAC statute does not explicitly bar amendments from being offered in committee markup; however, because

20-day period beginning on the date the President transmits the BRAC report to Congress, the panel is automatically discharged from its further consideration, and the measure is placed directly on the House's Union Calendar or the Senate's Calendar of Business, as appropriate.

Under the terms of the BRAC procedure, an Armed Services Committee must report just one resolution of disapproval; if multiple joint resolutions of disapproval are introduced by several Members and referred to committee, the panel must report only one resolution or a substitute for it within the 20-day time frame to forestall the automatic discharge of all of the others.

Calling Up the Joint Resolution on the Floor

On or after the third day following the day the House or Senate Armed Services Committee reports a joint resolution or is discharged from its consideration, any Member may move in chamber to proceed to the consideration of the joint resolution. The BRAC law stipulates, however, that a Member must first, on the preceding calendar day, have given notice of his or her intention to offer the motion to proceed.⁷ This notice can be avoided in the House of Representatives if the motion is being made at the direction of the committee of referral. The motion can be made even if the body has previously rejected an identical motion to the same effect. This provision serves as incentive for the chamber to get to a vote on the underlying joint resolution of disapproval; if a motion to proceed is defeated, supporters can simply re-offer it until it passes or force the chamber to expend time and energy disposing of repeated motions. Points of order against the resolution and its consideration are waived.

In the Senate, under most circumstances, a motion to proceed to the consideration of a measure is debatable. Under the BRAC procedure, however, the motion to proceed to the consideration of the joint resolution of disapproval is not debatable in either chamber, and it cannot be amended or postponed. Appeals of the decision of the chair relating to consideration of the joint resolution are decided without debate. If the motion is adopted, the chamber immediately considers the joint resolution without intervening motion, order, or other business. Once a chamber has chosen to take up the joint resolution by adopting the motion to proceed, consideration of the measure is, in a sense, "locked in." It remains the unfinished business of the chamber until disposed of. Other business cannot intervene, the joint resolution cannot be laid aside, and it must be disposed of before other business can be taken up.

Floor Debate

In the absence of a special rule dictating otherwise, the standing rules of the House of Representatives generally call for measures to be debated in the House under the one-hour rule. In the Senate, debate is usually unlimited except by unanimous consent, by the invocation of cloture, or by some other special procedure, such as the statutory rules governing the consideration of budgetary legislation. In keeping with its "fast track" nature, floor consideration of a BRAC joint

the text of the joint resolution is prescribed by law, any deviation from it would arguably destroy its privileged parliamentary status. In addition, as is discussed below, no amendment is permitted during floor consideration of a disapproval resolution, and this stricture presumably applies to committee-reported amendments as well as floor amendments.

⁷ On September 29, 2005, during the 2005 BRAC round, the House adopted H.Res. 469. Section 3 of the resolution altered this provision by barring rank and file House Members from making the motion to proceed to the consideration of a joint resolution disapproving the recommendations of the BRAC. H.Res. 469 stated, "A motion to proceed pursuant to section 2908 of the Defense Base Closure and Realignment Act of 1990 shall be in order only if offered by the Majority Leader or his designee." These new provisions applied only to the House during the 109th Congress. For a fuller discussion of either chamber's ability to change the terms of consideration specified in the base closure statute, see below.

resolution of disapproval is limited in both houses. Debate in a chamber on the joint resolution, and all debatable motions and appeals connected with it, is limited to not more than two hours, equally divided. A non-debatable motion to further limit debate is also in order.

Motions and Amendments

The BRAC procedure limits Members' ability to delay consideration of a joint resolution of disapproval by barring amendments and motions that would ordinarily be permissible under the House and Senate's standing rules. Amendments to the measure, a motion to postpone its consideration, or motions to proceed to the consideration of other business are not permitted. A motion to recommit the joint resolution to committee is not in order, nor is a motion to reconsider the vote by which the joint resolution is agreed to or disagreed to.

Voting

It is virtually impossible from a parliamentary standpoint to avoid a final vote on a joint disapproval resolution once a chamber has decided to take it up. At the conclusion of debate and after a single quorum call (if requested), without intervening motion, a chamber immediately votes on passage of the joint resolution of disapproval. Passage of the joint resolution is by simple majority in each chamber, although, in the likely event the disapproval resolution is subsequently vetoed by the President,⁸ a two-thirds vote in each chamber would then be required to override the veto.

Automatic Legislative "Hookup"

If, before voting upon a disapproval resolution, either chamber receives a joint resolution passed by the other chamber, that engrossed joint resolution is not referred to committee. Instead, the second chamber proceeds to consider its own joint resolution as laid out above up until the point of final disposition, when they will lay it aside, take up the joint resolution received from the first chamber, and vote on it. After the second chamber votes on the first chamber's joint resolution, it may no longer consider its own version. This provision is included to avoid the need to reconcile differences between the chambers' versions or expend time choosing whether ultimately to act upon the House or Senate joint resolution.

Presidential Consideration and Subsequent Action

For a joint resolution of disapproval to become law, it must be signed by the President or enacted over his veto. The BRAC procedure does not include expedited provisions governing House and Senate consideration of a joint disapproval resolution vetoed by the President. Such a veto message would be considered pursuant to the regular procedures of each house.

Either Chamber May Alter the Expedited Procedure

The fact that an expedited legislative procedure is contained in statute does not mean that another law must be enacted to alter it. Article I, Section 5, of the Constitution gives each chamber of

⁸ Note that Congress is, in effect, asking the President to enact a joint resolution terminating a list of recommendations that he or she recently approved. For this reason, some have argued that if a President is presented with a joint resolution of disapproval, he or she would in all likelihood veto it.

Congress the power to determine the rules of its proceedings; as a result, statutory expedited procedures such as those governing BRAC can (like all rules of the House or Senate) be set aside, altered, or amended by either chamber at any time. As several House Parliamentarians have observed, a chamber may “change or waive the rules governing its proceedings. This is so even with respect to rules enacted by statute.”⁹ These changes can be accomplished, for example, by the adoption of a special rule from the House Committee on Rules, by suspension of the rules, or by unanimous consent agreement.

Instances of this ability to “rewrite” expedited procedure statutes have occurred during consideration of base closure joint resolutions of disapproval. For example, in the 101st Congress, Representative George E. Brown Jr. introduced H.J.Res. 165, a joint resolution disapproving the recommendations of the 1988 Commission on Base Realignment and Closure. Under the terms of the 1988 BRAC statute, the House Committee on Armed Services had to report a joint disapproval resolution prior to March 15, 1989, or see it be automatically discharged of its further consideration. The statute further permitted any Member, at any time three days after this report or discharge, to make a motion to proceed to the immediate consideration of the resolution. The House, however, “rewrote” these statutory terms as they related to the consideration of H.J.Res. 165. On March 21, 1989, Representative Les Aspin asked unanimous consent that, notwithstanding the provisions of the BRAC law, it not be in order to move to proceed to the consideration of H.J.Res. 165 prior to April 18, 1989.¹⁰ Still later, on April 11, 1989, a second unanimous consent request laid aside not only the terms of the BRAC expedited procedure statute but those of Representative Aspin’s March 21 unanimous consent request as well.¹¹

As noted above, the House again agreed to lay aside certain provisions of the BRAC statute that governed its consideration of the 2005 round of closures. On September 29, 2005, the House adopted H.Res. 469, which stated that, despite the BRAC statute’s provision permitting any Member to make a motion to proceed to the consideration of a joint resolution of disapproval, that motion “shall be in order only if offered by the Majority Leader or his designee.”

The Senate has also overridden the BRAC fast-track procedure by unanimous consent. On September 15, 1993, the Senate agreed to a unanimous consent agreement governing the subsequent consideration of S.J.Res. 114, disapproving the recommendations of the 1993 BRAC Commission. This consent agreement limited debate on the disapproval resolution to one hour (instead of two as provided for in the statute) and permitted the Senate to consider separate legislation in the midst of its consideration of the joint disapproval resolution.¹²

In a sense, then, the expedited procedures in the BRAC statute establish a default set of parliamentary ground rules for consideration of a disapproval resolution; these provisions can be tailored by Members in either chamber to meet specific situations or for their convenience. **Table 1** lists all joint resolutions of disapproval introduced in Congress relating to prior BRAC rounds and their disposition.

⁹ William Holmes Brown, Charles W. Johnson, and John V. Sullivan, *House Practice, A Guide to the Rules, Precedents, and Procedures of the House* (Washington: GPO, 2011), ch. 50, §4, p. 840.

¹⁰ *Journal of the House of Representatives*, 101st Cong., 1st sess., March 21, 1989, p. 173.

¹¹ *Journal of the House of Representatives*, 101st Cong., 1st sess., April 11, 1989, p. 218.

¹² *Congressional Record*, daily edition, vol. 139 (September 15, 1993), pp. 21457-21458.

Table I. Resolutions of Disapproval Introduced Under the Terms of the Defense Base Closure and Realignment Commission Statutes

Measure	Date Introduced/Congress	Sponsor	Committee Consideration	Floor Consideration	Final Disposition
H.J.Res. 165	03/01/89 101 st Congress	Rep. George E. Brown Jr.	Reported adversely 03/14/89 H.Rept. 101-7	Considered by unanimous consent ^a 04/12/89 and 04/18/89	Rejected, 43-381 04/18/89 (Roll call #32)
S.J.Res. 80	03/15/89 101 st Congress	Sen. John McCain	—	—	—
S.J.Res. 175	07/10/91 102 nd Congress	Sen. Arlen Specter	Reported unfavorably 07/25/91 S.Rept. 102-123	—	Indefinitely postponed by unanimous consent 02/03/92 ^b
H.J.Res. 298	07/11/91 102 nd Congress	Rep. Olympia J. Snowe	Marked up by subcommittee and forwarded to full committee 07/23/91	—	—
H.J.Res. 308	07/18/91 102 nd Congress	Rep. Thomas M. Foglietta	Reported adversely 07/25/91 H.Rept. 102-163	Considered by motion 07/30/91 ^c	Rejected, 60-364 07/30/91 (Roll call #232)
S.J.Res. 114	07/20/93 103 rd Congress	Sen. Dianne Feinstein	Reported unfavorably 07/30/93 S.Rept. 103-118	Considered by unanimous consent 09/20/93 ^d	Rejected 12-83 09/20/93 (Roll call #271)
H.J.Res. 101	07/13/95 104 th Congress	Rep. Vic Fazio	—	—	—
H.J.Res. 102	07/18/95 104 th Congress	Rep. Frank Tejeda	Reported adversely 08/01/95 H.Rept. 104-220	Considered by motion 09/08/95 ^e	Rejected, 75-343 09/08/95 (Roll call #647)
H.J.Res. 64	09/20/05 109 th Congress	Rep. Harold E. Ford Jr.	—	—	—
H.J.Res. 65	09/20/05 109 th Congress	Rep. Ray LaHood	Reported adversely 09/29/05 H.Rept. 109-243	Considered by motion 10/27/05 ^f	Rejected, 85-324-1 10/27/05 (Roll call #548)

Source: Legislative Information System of the U.S. Congress (LIS).

Notes: The 1988 base closure round was considered under the terms of P.L. 100-526. The 1991, 1993, 1995, and 2005 rounds were considered under the terms of P.L. 101-510, as amended.

- a. *Congressional Record*, daily edition, vol. 135 (April 12 and 18, 1989), pp. 6293-6319, 6845-6871.
- b. *Congressional Record*, daily edition, vol. 138 (February 3, 1992), p. 1215.
- c. *Congressional Record*, daily edition, vol. 137 (July 30, 1991), pp. 20333-20367.
- d. *Congressional Record*, daily edition, vol. 139 (September 20, 1993), pp. 21677-21694, 21717.
- e. *Congressional Record*, daily edition, vol. 141 (September 8, 1995), pp. 24129-24149.
- f. *Congressional Record*, daily edition, vol. 151 (October 27, 2005), pp. 23979-24001.

Author Information

Christopher M. Davis
Analyst on Congress and the Legislative Process

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