

## Convention for Proposing Amendments—Proposed Rules<sup>1</sup>

Rule 1. Questions not governed by these rules shall be governed by the latest published edition of *Mason’s Manual of Legislative Procedure*, except where the rule in that manual can be applied only to a state legislature rather than a convention; in which case the matter shall be determined by parliamentary common law.<sup>2</sup>

### Rule 2. Officers

(a) The officers of the convention shall consist of a president and vice president, who shall be elected from among the commissioners; and the following, who shall be elected from among persons not commissioners: secretary, sergeant-at-arms, parliamentarian, and assistant parliamentarian.<sup>3</sup> All officers shall be on oath to carry out their duties faithfully and in accordance with lawful authority.

(b) The temporary convention president shall be appointed from among the commissioners from the state that was the first to enact the application that led to the calling of this convention. The temporary president shall be selected by a majority vote of that state’s delegation. The temporary president’s sole duty shall be to preside over the election of the convention president and he or she shall be ineligible to be the permanent president.

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<sup>1</sup>The general reasons behind these rules are found in §3.14 of ROBERT G. NATELSON, STATE INITIATION OF CONSTITUTIONAL AMENDMENTS: A GUIDE FOR LAWYERS AND LEGISLATIVE DRAFTERS (2014) (popularly called the “Article V Compendium”—and hereinafter “COMPENDIUM”).

The specific rules derive from a variety of sources (including many prior conventions of states), but particularly from the rules adopted by the 1861 Washington Conference Convention, a general gathering of states that proposed a constitutional amendment. Those rules were, in turn, based on previous convention experience.

However, with one exception (election of certain committee members) the secrecy rules applying in earlier conventions have been dropped. Modern expectations are of transparency.

<sup>2</sup>For an explanation of the selection of *Mason’s Manual*, see COMPENDIUM, §3.14.4. The 1850 Nashville convention designated Jefferson’s rules for the U.S. Senate as a default source, but that seems more dated and less familiar to most state lawmakers than *Mason’s*.

<sup>3</sup>This is derived from the practice of previous interstate conventions. The recommendation that there be a parliamentarian is an innovation based on a recommendation by an experienced legislator. COMPENDIUM §3.14.3. Some conventions have appointed assistant secretaries, but it would seem better to allow the secretary to appoint assistants without their being convention officers.

Rule 3. The sergeant-at-arms is empowered, under direction of the president, to secure the good order of the house. Orders issued by the president to the sergeant-of-arms shall be appealable, as in the case of other rulings of the chair.<sup>4</sup>

Rule 4. The members of this convention are the committees (delegations) appointed by their respective states.<sup>5</sup> All votes shall be taken by states, with each state having one vote.<sup>6</sup> In roll call votes, states shall declare their votes in alphabetical order.<sup>7</sup>

Rule 5. Irrespective of how many commissioners a state includes within its delegation, no more than five commissioners from any one state shall be on the floor at the same time.<sup>8</sup> On every vote, the state's vote shall be announced by the chair of the state delegation or his or her designee. Every delegation shall canvass each commissioner on each vote in a manner to be prescribed by the commissioning state or, in default of a prescribed manner, by the delegation. Each state delegation's vote shall be determined in accordance with the rule prescribed by the commissioning state.

Rule 6. A quorum to do business shall consist of the commissioners empowered to cast the votes of more than half of the state delegations accredited to the convention, and all questions shall be decided by the greater number of delegations present; but in absence of a quorum a majority of delegations present may adjourn

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<sup>4</sup>This rule follows the parliamentary common law, see COMPENDIUM §3.14.1, but is placed here to answer questions frequently raised of how the convention will control internal demonstrations or disorder.

<sup>5</sup>This is a clarification of precedent and of sometimes-confusing earlier convention rules.

<sup>6</sup>This generally follows former practice. An earlier draft fixed the quorum at 26 state delegations, i.e., a majority of all states. It has been changed to a majority of delegations accredited to the convention in order to prevent states that refuse to attend from preventing a quorum and thereby blocking the work of the convention.

<sup>7</sup>The traditional order was for states to vote from northeast to southwest, but the current configuration of the country makes that difficult, and the alphabetical system is more familiar to modern Americans.

<sup>8</sup>This rule addresses the unfair and potentially unruly situation arising at the 1850 Nashville Convention, where Tennessee, although having only one vote, sent 100 commissioners, more than all other states combined. The Compendium recommends a maximum of five, which is justified by fact that this convention will include many more states than earlier conventions. The rules take account of the fact that some states may wish to appoint alternate commissioners.

from day to day.<sup>9</sup>

Rule 7. The order of business shall be as follows:<sup>10</sup>

- (1) call to order,
- (2) roll call,
- (3) invocation,
- (4) pledge of allegiance,
- (5) reading and approval by the clerk of the minutes of the previous day,
- (6) reports of standing committees,
- (7) reports of special or select committees,
- (8) special orders,
- (9) unfinished business,
- (10) introduction and first reading of proposals,
- (11) consideration of daily calendar,
- (12) announcement of committee meetings, and
- (13) recess for the day (adjournment).<sup>11</sup>

Rule 8. Every commissioner, rising to speak, shall address the president; and while he or she shall be speaking no one shall pass between them or read any written matter not immediately germane to the question under consideration.<sup>12</sup>

Rule 9. Of two commissioners rising to speak at the same time, the president shall

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<sup>9</sup>This is based, with the numbers adjusted for the larger number of states, on the rules of the 1861 Washington Convention. See COMPENDIUM §3.14.3.

<sup>10</sup>This is the order in *Mason's Manual*, as modified for the fact that this is a convention not a legislative body. COMPENDIUM §3.14.5. The pledge of allegiance has been added in this version.

<sup>11</sup>The word “recess” to describe an adjournment from day-to-day is used in *Mason's Manual*.

<sup>12</sup>This is based on the rules prevailing both at the 1787 Philadelphia Convention and the 1861 Washington Convention, although modified to take account of modern technology. COMPENDIUM § 3.14.5.

name the one who shall first be heard.<sup>13</sup>

Rule 10. A commissioner shall not speak more often than twice, without special leave upon the same question; and not a second time before every other who had been silent but shall choose to speak on the subject shall have been heard. [The commissioners from any one state committee shall not speak more often than ten times without special leave upon the same question; and not more than five times before every other who had been silent but shall choose to speak on the subject shall have been heard.]<sup>14</sup>

Rule 11. No commissioner shall, without leave of the convention, speak more than 10 minutes at any one time.<sup>15</sup>

Rule 12. A motion made and seconded shall be repeated; and if written, as it shall be when any member shall so require, shall be read aloud by the secretary or transmitted to each commissioner's pre-designated electronic device before it shall be debated.<sup>16</sup> No motion, other than a procedural motion, shall be in order unless within the scope of both the subject matter specified in the state applications on which Congress called the convention and of the subject matter specified in the convention call.<sup>17</sup>

Rule 13. A motion may be withdrawn at any time before the vote upon it shall have

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<sup>13</sup>COMPENDIUM §3.14.5.

<sup>14</sup>*Id.* The matter in brackets has been inserted for discussion.

<sup>15</sup>Added to reflect modern conditions. COMPENDIUM §3.14.5.

<sup>16</sup>Based on the Washington Convention rules, COMPENDIUM §3.14.5, but updated for modern conditions.

<sup>17</sup> This rule provides that a substantive motion is out of order unless within the scope of the subjects in the applications and call, whichever is narrower. Normally the subject matter of the applications and the call would be the same. In some cases, however, some of the 34 applications that trigger a convention on a particular subject might mention extraneous subjects. This language makes clear that the convention is to consider only subjects on which at least 34 applications agree, and which therefore are or should be reflected in the scope of the call. An earlier draft of these rules stated that substantive motions must be "germane" to the subject matter. This draft changes that language to a requirement that they be "within the scope of" the subject matter. This is because, as sometimes applied, the standard of "germaneness" may not be sufficiently strict to assure that the convention remains within its rightful authority. The germaneness test is retained in Rules 8 and 23.

been declared.<sup>18</sup>

Rule 14. When a debate shall arise upon a question, no motion, other than to amend the question, to commit it, or to postpone the debate, shall be received.<sup>19</sup>

Rule 15. A question that consists of one or more propositions shall, at the request of any commissioner, be divided and put separately as to each proposition.<sup>20</sup>

Rule 16. No substantive question or committee recommendation shall be decided the day on which it is introduced or first debated, if any five states request that the decision be postponed to another day.<sup>21</sup>

Rule 17. A motion to reconsider a matter that has been determined by a majority may be made, with leave unanimously given, on the same day on which the vote passed; but otherwise not without one day's previous notice; in which last case, if the convention agree to the reconsideration, the convention or, by the convention's leave, the president shall assign a future day for the purpose.<sup>22</sup>

Rule 18. A commissioner may be called to order by another commissioner, as well as by the president, and may be allowed to explain his or her conduct or any expressions supposed to be reprehensible.<sup>23</sup>

Rule 19. All questions of order shall be decided by the president, subject to appeal to the convention, but without debate.<sup>24</sup>

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<sup>18</sup>Based on the Washington Convention rules. *Id.*

<sup>19</sup>Based on the Washington Convention rules. *Id.*

<sup>20</sup>Based on a rule of the Washington Convention. *Id.* The language has been updated.

<sup>21</sup>This is loosely based on the 1774 New York City convention usually known as the First Continental Congress, but represents a compromise between the need for speed and a rule that mandated delay at the request of any delegation. *Id.*

<sup>22</sup>Based on a rule of the 1787 Philadelphia Convention, with language updated.

<sup>23</sup>COMPENDIUM §3.14.5.

<sup>24</sup>A proposed rule of the Washington Convention would have dispensed with the right of appeal, but the delegates rejected that provision. Compendium §3.14.5.

Rule 20. Upon a question to recess for the day,<sup>25</sup> which may be made at any time, if it be seconded, the question shall be put without debate.<sup>26</sup>

[Rule 21. When the convention shall recess, every commissioner shall stand in his or her place until the president pass.]<sup>27</sup>

Rule 22. No commissioner shall be absent from the convention, so as to interrupt the representation of his or her state, without leave.<sup>28</sup>

Rule 23. Committees—generally applicable provisions

(1) The standing committees shall include rules, credentials, administration, fiscal restraints, federal jurisdiction, and term limits.<sup>29</sup> The convention may create ad hoc committees.

(2) The membership of the rules, credentials, and administration committees shall be elected by a plurality vote of the states, voting by secret ballot. The membership of ad hoc committees shall be appointed by the president, unless the convention shall prescribe another method.<sup>30</sup> The membership of the fiscal restraints, federal jurisdiction, and term limits committees shall be selected by the method designated in Rule 24.

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<sup>25</sup>The word “recess” to describe an adjournment from day-to-day is used in *Mason’s Manual*.

<sup>26</sup>Based on a rule of the Washington Convention. See COMPENDIUM §3.14.5.

<sup>27</sup>This optional rule is based on rules of the Washington and 1787 Philadelphia Conventions. *Id.* The rule reflects the high prestige of the presiding officers of those conventions, General George Washington and former President John Tyler. Other conventions have not adopted this rule, and whether any particular convention adopts it may depend on the identity of its own presiding officer.

<sup>28</sup>Based on a rule of the Washington Convention, with updated language. COMPENDIUM §3.14.5.

<sup>29</sup> The requirement for standing committees on fiscal restraints, federal jurisdiction, and term limits is based on the three-subject model application of Citizens for Self-Governance’s “Convention of States” movement.

<sup>30</sup>Both plurality elections of committees and presidential appointment were used in prior conventions. Here, elections are reserved for the three most important committees. The convention is free to prescribe election at any time for other committees.

Earlier convention rules refer to “ballot.” The word “secret” is added because modern Americans may not be aware that the term “ballot” traditionally implies secrecy. Although most of the secrecy rules applied in older conventions have been dropped here, secrecy may be necessary in this case to ensure an impartial choice and to minimize hard feelings among commissioners.

- (3) Each committee may by majority vote create subcommittees for issues germane to the committee's assigned task.
- (4) Committees and subcommittees shall not sit while the convention shall be or ought to be sitting, without leave of the convention.<sup>31</sup>

Rule 24. Fiscal restraints, federal jurisdiction, and term limits committees.<sup>32</sup>

- (1) The fiscal restraints committee, federal jurisdiction committee, and term limits committee each has [exclusive]<sup>33</sup> responsibility for developing proposals within the corresponding subject matter of the state applications for the convention.
- (2) Each of these three committees shall consist of one member from each state delegation, selected as determined by such delegation; provided however, that no person shall serve on more than one of those three committees.
- (3) Any proposal approved by a subcommittee of any of these three committees shall be referred to its committee chairman, who shall schedule it for hearing within five days of its referral from the subcommittee. The committee shall vote on any proposal endorsed by at least five committee members within 24 hours after the hearing (weekends and holidays excluded). Approval shall be by a simple majority of committee members present and voting.
- (4) Every proposal reported from the fiscal restraints, federal jurisdiction, or term limits committee shall be scheduled for debate and a vote on the floor of the convention; the presiding officer of the convention shall have no authority to refuse to schedule debate or a vote on any such proposal, and no formal rule shall be required to schedule any such proposal for debate or a vote. No motion to adjourn sine die shall be in order so long as any such proposal remains without a convention vote to pass, reject, or table.

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<sup>31</sup>Based on a rule of the Washington Convention and modern legislative practice. COMPENDIUM §3.14.5.

<sup>32</sup> This Rule was developed for a convention convened pursuant to the three-subject "Convention of States" application. It sets forth a procedure for proposals within those three subjects, and prevents presiding officers from refusing to permit debate or votes on credible proposals within those three areas.

<sup>33</sup> Inclusion of the term *exclusive* would prevent the convention from creating committees to "wire around" the three standing committees mentioned in this section. There are obvious advantages and disadvantages to both including and omitting the term "exclusive."