

Parliamentary Procedure for Lawyers

Introduction to parliamentary procedure in meetings and beyond

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This presentation is does not constitute, nor does it contain legal advice. Should you require legal advice, please consult an attorney. Special thanks to Minneapolis attorney, Brian Melendez, who provided invaluable material for this CLE.

What is Parliamentary Procedure?

What are we talking about

- General parliamentary procedure (Roberts?)

- Public parliamentary law

 - Constitutions

 - Statutes (e.g. business associations acts in various states)

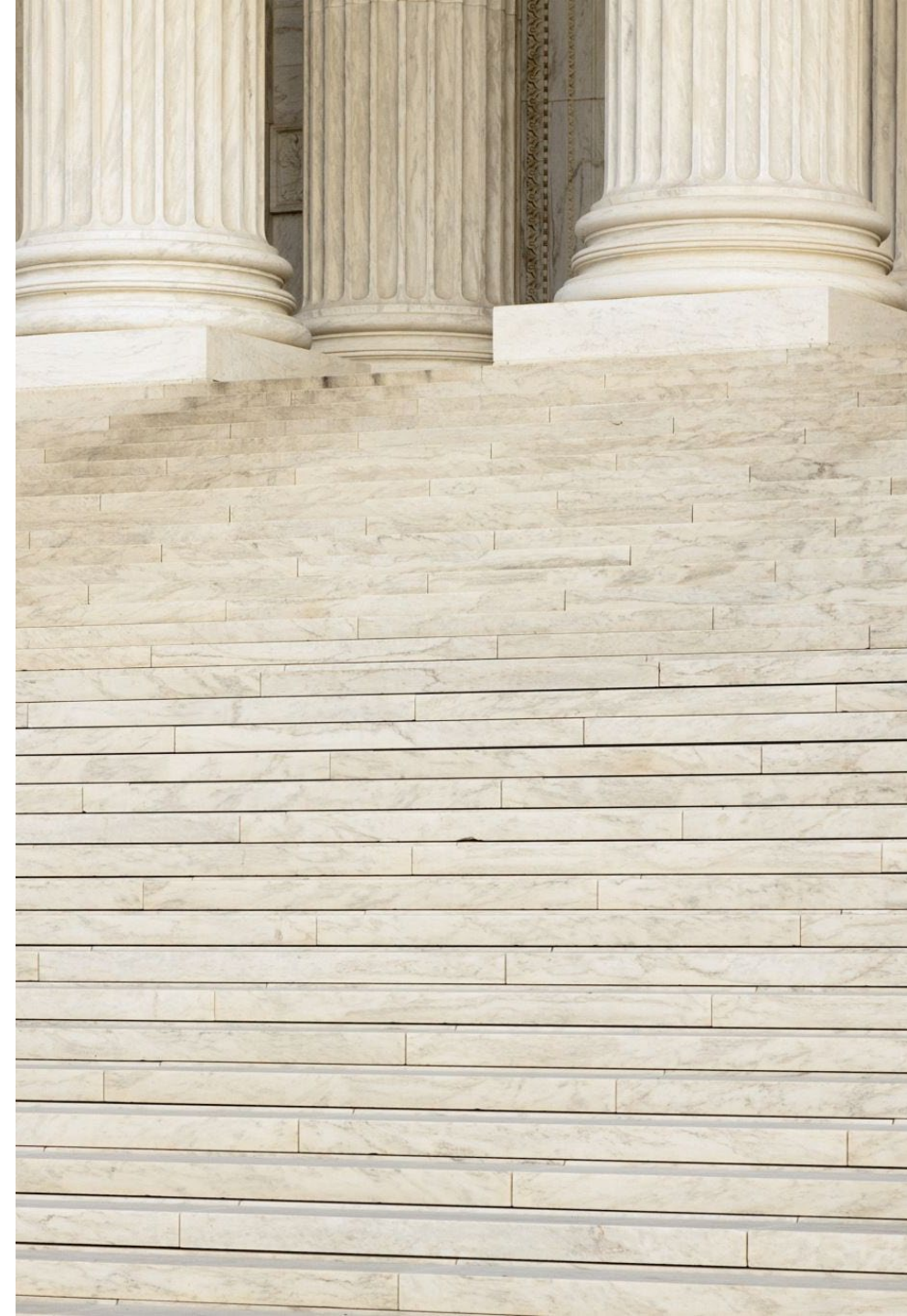
- Private parliamentary law

 - Documents adopted by organizations governing their own operations.

- Manuals of authority (also Roberts?)

 - Jefferson's

 - "Roberts"



Parliamentary Law?

What is its status as law?

United States Constitution

Texas Constitution

Statutes



Parliamentary Law?

- **United States Constitution Article I, Section 7, Clause 2:**
 - "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law"

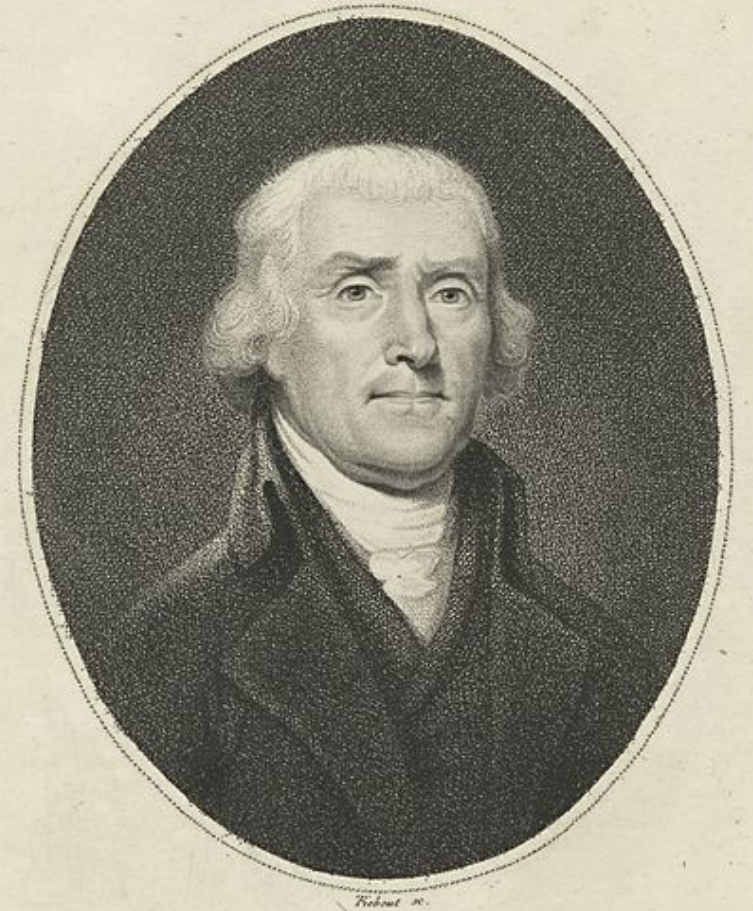
Parliamentary Law?

United States Constitution Article I, Section 3, Clause 4:

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

United States Constitution Article I, Section 5, Clause 2:

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a member.



Texas Parliamentary Law?

A Texas Tradition



Parliamentary Law?

- Texas Constitution Article III, Section 5(b):
 - *(b) When convened in regular Session, the first thirty days thereof shall be devoted to the introduction of bills and resolutions, acting upon emergency appropriations, passing upon the confirmation of the recess appointees of the Governor and such emergency matters as may be submitted by the Governor in special messages to the Legislature. During the succeeding thirty days of the regular session of the Legislature the various committees of each House shall hold hearings to consider all bills and resolutions and other matters then pending; and such emergency matters as may be submitted by the Governor. During the remainder of the session the Legislature shall act upon such bills and resolutions as may be then pending and upon such emergency matters as may be submitted by the Governor in special messages to the Legislature.*
- Texas Constitution Article III, Section 10:
 - *Two-thirds of each House shall constitute a quorum to do business.*
- Texas Constitution Article III, Section 30:
 - *No law shall be passed, except by bill, and no bill shall be so amended in its passage through either House, as to change its original purpose.*

Parliamentary Law?

Texas Government Code

Chapter 301. Legislative Organization

Sec. 301.002. Who May Organize.

(a) The following individuals only may organize the senate:

(1) senators who have not completed their terms of office; and

(2) individuals who have received certification of election to the senate.

(b) Only the individuals who have received certification of election to the house of representatives may organize the house of representatives.

Sec. 301.013. Selection of Committees

Sec. 301.015. Meetings of Standing Committees



Parliamentary Law?

- Public law applicable to private bodies
 - Business Organizations Code
 - Corporations
 - Nonprofits
 - LLCs
 - Cooperatives
 - Limited Partnerships
 - Texas Election Code has rules for Political Orgs
 - Property Code Chapters 201-215 govern property owners' associations in Texas (aka "homeowners' association" or an "HOA")

Parliamentary Law?

- Public Private “law”
 - Constitutions, charters, bylaws
 - Org’s Rules
 - Org’s precedent, custom and usage
- Parliamentary authorities
 - Robert’s Rules of Order (Robert’s Rules of Order Newly Revised [12th ed. 2020])
 - Others
 - Thomas Jefferson, *Manual of Parliamentary Practice* (1801)
 - George Demeter, *Demeter’s Manual of Parliamentary Law and Procedure* (1969)
 - Lewis Deschler, *Deschler’s Rules of Order* (1976)
 - Hugh Cannon, *Cannon’s Concise Guide to Rules of Order* (1995)
 - Ray E. Keesey, *Modern Parliamentary Procedure* (1994)
 - National Conference of State Legislatures, *Mason’s Manual of Legislative Procedure* (2020)
 - Alice Sturgis, *Standard Code of Parliamentary Procedure* (4th ed. 2001)

Federal law

- Constitution
- Statute

State law

- Constitution
- Statute

Organizational governing documents

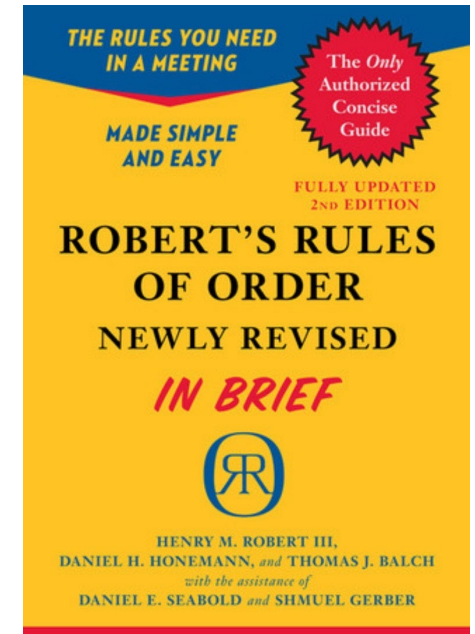
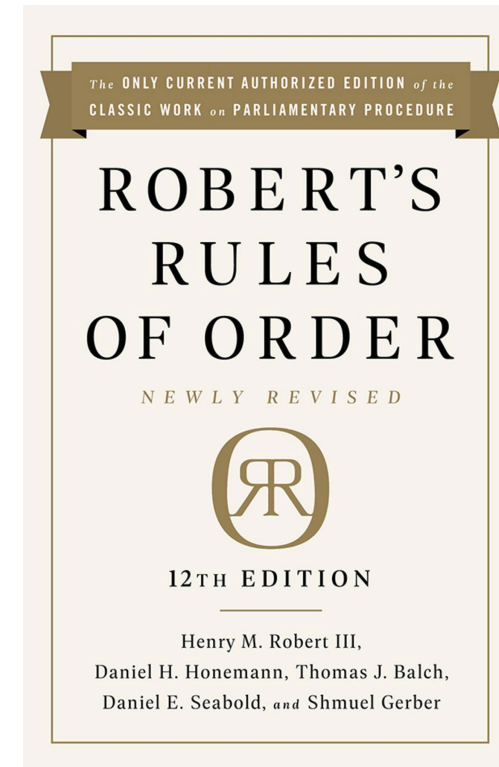
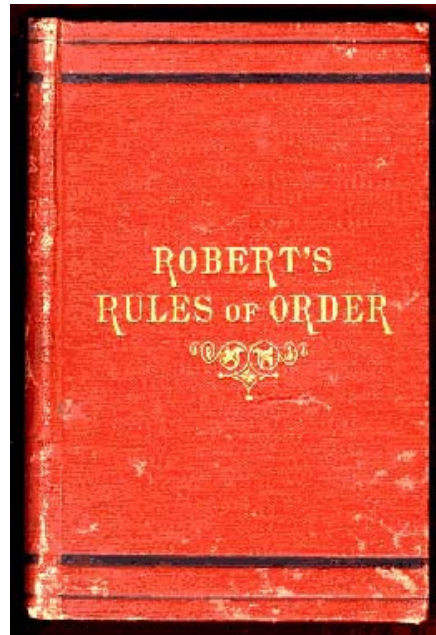
- Charter
- Articles of association / incorporation / organization
- Constitution
- Bylaws
- Special rules of order
- Precedent, custom, and usage
- Parliamentary authority

Majorities: "Each society decides for itself the meaning of its bylaws"

Parliamentary Law?

Parliamentary Law?

- “Robert’s Rules of Order...” What do we mean?



Roberts: Key Terms

Assembly: body that transacts business according to parliamentary law.

Meeting: the event of assembly's convening to transact business. Call to order to adjournment.

Member: someone with rights within the assembly (there are sometimes types [e.g. ex officio])

Motion: proposal that is made in a meeting in a form suitable for its consideration and action about which the meeting can take a particular action.

Amendment: secondary motion, body has right to act.

Committee: Subset of an assembly.

Motions

Motion: proposal that is made in a meeting, in a form suitable for its consideration and action, about which the meeting can take a particular action.

Main: substantive action

- Original main motion (related to substance)

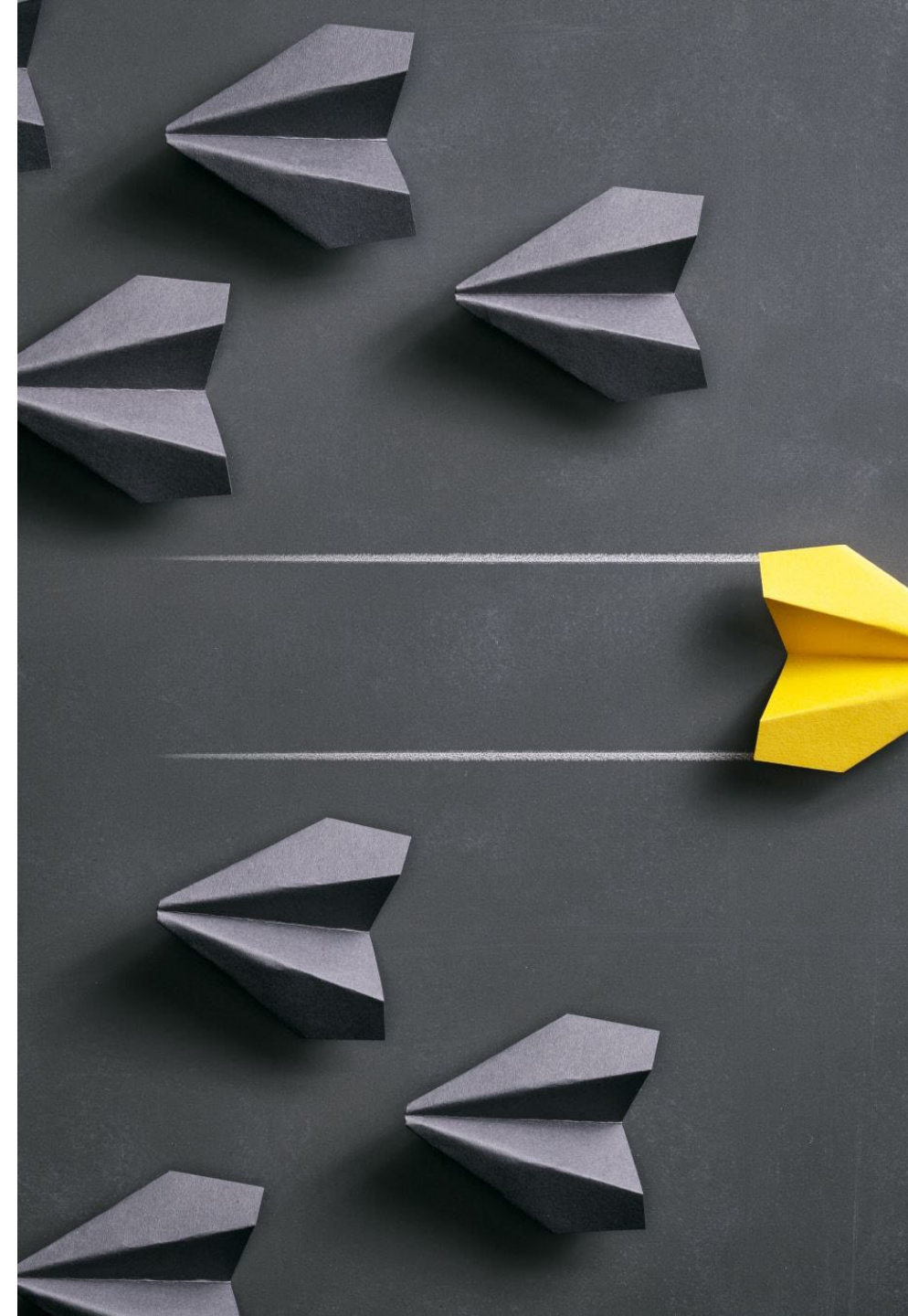
- Incidental main motion (related to procedure)

Secondary

- Incidental: motion related to procedure of the meeting

- Privileged: related to the organization, members or their rights

- Subsidiary: Effect the pending main motion (motion to amend)



Amendment

- An amendment is a secondary motion that changes another motion's wording
 - Forms of motion to amend:
 - Striking,
 - Inserting, or
 - Substituting (striking and inserting).
 - Further rules of form often apply to the content of amendments (e.g. germaneness).
 - “Friendly amendment”
 - “The term ‘friendly amendment’ is often used to describe an amendment offered by someone who is in sympathy with the purposes of the main motion, in the belief that the amendment will either improve the statement or effect of the main motion, presumably to the satisfaction of its maker, or will increase the chances of the main motion’s adoption. Regardless of whether or not the maker of the main motion ‘accepts’ the amendment, it must be opened to debate and voted on formally (unless adopted by unanimous consent) and is handled under the same rules as amendments generally.” *Robert § 12:91 at 150.*



Committee

- Subordinate group to which a deliberative assembly or other organization refers business for consideration, investigation, oversight, or action.
- “One of the outstanding characteristics of membership organizations the world over is the powerful role played by committees in setting policy and in carrying out their objectives. The Congress, state legislatures, business associations, and countless clubs and societies have traditionally conducted their work through committees of their members.” - *Deschler's Rules of Order § 103 at 189 (1976)*.

Parliamentary Key Concept: Voting

Simple majority: A majority of the members who vote, a quorum being present.

Supermajority: A fixed proportion greater than half, such as two-thirds.

Absolute majority: A majority of all those who are entitled to vote

Majority of all the members: A majority of all the actual members, disregarding vacancies

Majority of all the memberships: A majority of all the possible memberships, including vacancies. — Also termed majority of the fixed membership.

Plurality: The greatest number, regardless of whether it is a simple or an absolute majority



Parliamentary Key Concept: Voting

Simple majority: Not “half plus one”. Cannot calculate the number for a simple majority until you know who all is going to vote. Any abstention, PNV or just people just not paying attention don’t count.

Majority of all members qualified (if a member dies or is expelled, they do not count against)

Majority of all membership all the possible memberships (vacancies count against)

Supermajorities: Common in Texas legislative contexts. Unanimous to suspend notice, 4/5th suspend constitutional order, suspend.

Unanimous Consent

Motion	Rule
Add Bills to Local & Consent Calendar	6 § 13
Changing Member Vote Before Result	
Finally Announced	5 § 53
Ext. (1st) of Time, Author's Remarks on Loc. Bill	6 § 14
Ext. (2d) of Time, Member's Speech	5 § 28
Suspend Notice Requirement, Pending Motion to Suspend Regular Order	14 § 4
Withdraw Motion after Previous Question Ordered	7 § 6

Four-fifths of Members qualified

Motion	Rule
Suspend the Const. Order of Business	Const. III, § 5

Four-fifths of Members present and voting

Motion	Rule
Introduction of Bills & J.R.s After First 60 Days	8 § 8
Suspend the Three-Day Rule	8 § 15

Three-fourths of Members present

Motion	Rule
Special Order, Setting of More than One	6 § 2

Two-thirds of Members qualified

Motion	Rule
Const. Amendment, Adopt J.R. Proposing	9 § 1
Const. Amendment, Print Minority Report on	4 § 29
Complete a Quorum	5 § 1
Enact General or Special Law Granting Power of Eminent Domain	Const. I, § 17(c)
Immediate Effect for a Bill	Const. III, § 39; 8 § 19
Immediate Effect, Adopt Senate Amends.	13 § 4
Order Non-Local Bill not Printed	8 § 14

Two-thirds of Members present

Motion	Rule
Amendment on Third Reading, Adopt	11 § 5
Appropriate Rainy Day Fund at Any Time for Any Purpose	Const. III, § 49-g(m)
Postpone Local and Consent Bill to Another Calendar Day	6 § 14
Recommit a Bill for Second Time	7 § 20
Special Order, Postponing Consideration of	6 § 3
Special Order, Setting of a Single	6 § 2
Suspend the Rules (unless otherwise specified)	14 § 5

Two-thirds of Members present and voting

Motion	Rule
Adopt Calendar Rule, Bills other than Tax, Appropriations, Redistricting	6 § 16
Require Comm. to Report in 7 Days (1st 76 Days)	7 § 45
Re-referral to Another Committee (1st 76 Days)	7 § 46
Set Congratulatory & Memorial Calendar	6 § 11
Set Local & Consent Calendar	6 § 13
Vote Verification, Dispense with	5 § 55

Three-fifths of Members qualified

Motion	Rule
Limit Liability for Non-Economic Damages	Const. III, § 66(e)

Three-fifths of Members present

Motion	Rule
Appropriate Rainy Day Fund for Previous Purpose During Current Biennium	Const. III, § 49-g(k)
Appropriate Rainy Day Fund for Succeeding Biennium When Revenue Estimate Is Lower than the Revenue Estimate for Current Biennium	Const. III, § 49-g(l)

Unanimous Consent—Without Any Objections
Members Qualified—All Elected Members
Members Present—Sum of Yea, Nay, PNV
Members Present & Voting—Sum of Yea, Nay

MEMBERS PRESENT/ QUALIFIED	3/5ths REQUIRES	2/3ds REQUIRES	3/4ths REQUIRES	4/5ths REQUIRES
150	90	100	113	120
149	90	100	112	120
148	89	99	111	119
147	89	98	111	118
146	88	98	110	117
145	87	97	109	116
144	87	96	108	116
143	86	96	108	115
142	86	95	107	114
141	85	94	106	113
140	84	94	105	112
139	84	93	105	112
138	83	92	104	111
137	83	92	103	110
136	82	91	102	109
135	81	90	102	108
134	81	90	101	108
133	80	89	100	107
132	80	88	99	106
131	79	88	99	105
130	78	87	98	104
129	78	86	97	104
128	77	86	96	103
127	77	85	96	102
126	76	84	95	101
125	75	84	94	100
124	75	83	93	100
123	74	82	93	99
122	74	82	92	98
121	73	81	91	97
120	72	80	90	96
119	72	80	90	96
118	71	79	89	95
117	71	78	88	94
116	70	78	87	93
115	69	77	87	92
114	69	76	86	92
113	68	76	85	91
112	68	75	84	90
111	67	74	84	89
110	66	74	83	88
109	66	73	82	88
108	65	72	81	87
107	65	72	81	86
106	64	71	80	85
105	63	70	80	84
104	63	70	78	84
103	62	69	78	83
102	62	68	77	82
101	61	68	76	81
100	60	67	75	80



Roberts Rules/ Procedure Overview

- It is more intuitive than many believe.
- Six basic principles of parliamentary procedure.
 - Law, and the organization's governing documents, trump all other parliamentary rules
 - Action may only be taken at **valid** meeting
 - Almost all motions are debatable (exceptions intuitive)
 - Almost all motions are amendable (exceptions intuitive)
 - Most motions require simple majority
 - Debate proceeds decisions and all ideas have a fair hearing before a vote

Valid Meeting Requirements

- Call
- Notice
- Assembly
 - Typically acts by simple majority unless rules provide otherwise
- Quorum
 - Roberts default is simple majority of all the members
 - Many other ways
 - Action in a quorum's absence
 - (1) Fix the time to which to adjourn (set next meeting time)
 - (2) Adjourn
 - (3) Recess (still in same meeting)
 - (4) Take measures to obtain a quorum (Call of the House)

Nondebatable Motions

- 1. Adjourn
- 2. Recess (undebatable, but amendable)
- 3. Motions relating to debate
 - a) Previous question
 - b) Limit or extend the limits of debate
- 4. Point of order (but Appeal is debatable)
- 5. Withdraw, Modify
- 6. Suspend the rules

Unamendable Motions

1. Adjourn

2. Close debate (but limit or extend is amendable)

3. Point of order, Appeal

4. Withdraw, Modify

5. Suspend the rules

Supermajority

- Motions that take a supermajority: motions that interfere with rights or expectations.
- Parliamentary process protects rights of majority, minority, individual members, absentees, etc...
- Suspension interferes with those protections
 - Suspending to closing/limit interferes with right to debate
 - Suspending to extend the limitations on debate interferes with the right to resolve a matter and proceed to the next
 - Amending something previously adopted interferes with the rights of absentees so takes (1) 2/3rds vote, (2) majority plus notice or (3) a majority of all members.



Other Characteristics of Motions

- Rank
- Does it need a second?
- Can it be reconsidered?

How to Chair

Seek relevant information

Balance debate

Recognize consensus

Keep personal options to yourself

Follow and administer the rules impartially



Tips and Advice: Keep in Mind

- Minutes: A formal motion is normally unnecessary
- Reports
 - An informational report, such as a treasurer's report, "requires no action by the assembly"
 - An auditors' report does require adoption, since it "has the effect of relieving the treasurer of responsibility for the period covered by his report, except in case of fraud"
- Main Motions:
 - Voting down a main motion does not adopt the opposite result.
 - Out of order if adopting it leaves you in the same status quo as not adopting it.
 - A motion from a committee does not require a second
 - The chair can make and debate a motion in a small board or committee

Tips and Advice: Debate

“Pro–con” debate: Debate need alternate only “as far as possible”
debate need not alternate if no contrary speaker is seeking the floor

“Friendly” amendments: A “friendly amendment” cannot avoid a formal debate and vote if any member objects

The mover controls a motion only until the chair states the question, after which the motion belongs to the assembly and the mover cannot modify it without the assembly’s permission

Yielding time: “Rights in regard to debate are not transferable”

You can close debate without a motion if nobody is seeking the floor



Tips and Advice: More

Unwanted motions

Controlling recognition: “For what purpose does the member rise?”

Lay on the table: “It is not in order to move to lay a pending question on the table if there is evidently no other matter requiring immediate attention”

Postpone indefinitely: Debatable, simple majority

Objection to the consideration of a question: Undebatable, two-thirds vote

Reconsideration

Rewinds. The mover must have voted on the prevailing side. The making of the motion suspends “all action that depends on the result of the vote proposed to be reconsidered”

Point of information

A request for information can only be made in order to seek information, not to volunteer it: “it must always be put in the form of a question”

Tips and Advice: Structure of Meeting

- Planning an effective meeting
 - Coordinate leadership
 - Anticipate motions
 - Script an agenda
 - Minimize the preliminary business
 - Be effective with time
 - Manage the items for each meeting
 - Make it easy on the secretary
- Lead impartially
 - Tensions between impartiality and leadership
 - Demystify the rules
- Give/keep organization structure

Thank You

- *State Bar of Texas Women and the Law Section*
- *Brian Melendez* & the Minnesota State Bar*

Parliamentary Procedure for Lawyers

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