

Rules for a Simulated Convention for Proposing Amendments

Introduction

If you are a participant in the Convention of States Simulated Convention, you are part of history in the making.

Conventions among the states (and before 1776 the colonies) used to be very frequent: In the two centuries before the Civil War, they were held an average of every 5-6 years. For this reason, citizens knew how they worked. Convention rules were passed down from one convention to the next, gradually being refined and improved over time.

Since the Civil War, however, there has been only one convention of states (a seven-state gathering in 1922). As a result, most people have become unaware of what was once common knowledge. (That is why you hear claims that there has been only one interstate convention and/or that it “ran away.”) Modern Americans need to recapture our convention heritage. That is one reason for this simulation.

In 2015 the Convention of States project (CoS) issued a discussion draft of model rules for a convention addressing an agenda defined by the CoS legislative application. The provisional CoS Model Rules are available at http://www.conventionofstates.com/proposed_rules. These rules were not created out of thin air: They are updated versions of actual rules employed successfully by prior interstate conventions.

The rules for this simulation are, in turn, based on the CoS Model Convention Rules. Because this is only a two-day simulation, the provisions are necessarily streamlined to save time.

The rules are supplemented by footnotes providing background information. Additional material is in the Article V Treatise entitled *State Initiation of Constitutional Amendments: A Guide for Lawyers and Legislative Drafters* (4th ed. 2016). It was written by constitutional scholar Robert G. Natelson, and is commonly known as, and cited below, as the “COMPENDIUM.” It is available online at conventionofstates.com/compendium.

Simulated Convention Rules

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.¹

Rule 2. The administrator of this simulated convention is Citizens for Self-Governance, an association with its principal office at 106 East Street, Suite 900, Austin, TX 78701.

Rule 3. Officers

(1) The officers of the convention shall consist of a president and vice president, who shall be elected from among the commissioners; and a secretary, sergeant-at-arms, and parliamentarian, who shall be designated by the administrator from among persons not commissioners.² Election for president shall be by a majority of states. The person who receives the second-highest vote total in the tally in which the winning candidate for president receives a majority shall become vice president.³ The convention officers shall discharge duties usually to such officers pursuant to *Mason's Manual* and parliamentary common law, subject to alternation by the convention. All officers shall be on oath to carry out their obligations faithfully and in accordance with lawful authority.

(2) The temporary convention president shall be appointed from among the

¹Seventy of the 99 state legislative chambers currently use *Mason's Manual* as their source of default rules. Additional rules for selecting this source are explained in COMPENDIUM, §3.14.4.

The parliamentary common law is the American common law of organizational procedures built up over several centuries. It has that name because it was derived originally from procedures in the British Parliament.

²The CoS Model Convention Rules provide for all these officers to be elected. They also provide for an assistant parliamentarian. The version above reflects the time constraints of a two-day simulation.

³ In an actual convention the president and vice-president would be elected separately by majority votes of the states. This rule was adapted to save time.

commissioners from the state that was the first to adopt the CoS form application—that is to say, Georgia. 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 vice-president. He or she shall be ineligible to be the permanent president or permanent vice-president.

- (3) In addition to such other duties as shall be prescribed by the convention or by the presiding officer, the secretary shall prepare and provide to each commissioner at the opening of beginning of business on each day a calendar or agenda of business scheduled for that day.

Rule 4. The sergeant-at-arms is empowered, under direction of the presiding officer 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.

Rule 5. The members of this convention are the delegations from each of the several states. All votes shall be taken by states, with each state having one vote. In roll call votes, states shall declare their votes in alphabetical order.⁴

Rule 6. 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.⁵ 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 delegation. Each state delegation's vote shall be determined in accordance with a plurality vote of that

⁴The 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.

⁵This 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.

delegation.⁶

Rule 7. Before the opening of business each day every commissioner shall sign a sheet provided by the secretary indicating that commissioner's attendance and the state he or she is representing. 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 recess for the day.⁷

Rule 8. The order of business shall be as follows:⁸

- (1) call to order,
- (2) announcement by secretary of whether a quorum is present,
- (3) invocation,
- (4) pledge of allegiance,
- (5) consideration of the minutes of the previous day,
- (6) reports of committees,
- (7) unfinished business,
- (8) new business,
- (9) announcement of committee meetings, and

⁶ In the CoS Model Convention Rules, the commissioning state determines how each delegation casts its vote. Because there are no commissioning states for the simulation, this rule designates a procedure. The required vote is a plurality rather than a majority so as to disregard absences and abstentions.

⁷This rule is based on the rules of the 1861 Washington Convention. COMPENDIUM §3.14.3. The term "day to day" from the original rules has been deleted, since this is only a two-day simulation. The word "recess" to describe an adjournment from day-to-day is used in *Mason's Manual*.

⁸This 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, and simplified for the simulation. The pledge of allegiance has been added in this version.

(10) recess for the day (adjournment).⁹

Rule 9. Every commissioner rising to speak shall address the presiding officer; 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.¹⁰

Rule 10. Of two commissioners rising to speak at the same time, the presiding officer shall name the one who shall first be heard.

Rule 11. 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.

Rule 12. No commissioner shall, without leave of the convention, speak more than five minutes at any one time.¹¹

Rule 13. A motion made and seconded shall be repeated; and if written, as it shall be when any commissioner shall so require, shall be projected on a common screen. No motion, other than a procedural motion, shall be in order unless within the scope of the subject matter of the form application of the Citizens for Self-Governance Convention of States project.

Rule 14. A motion may be withdrawn at any time before the vote upon it shall have

⁹The word “recess” to describe an adjournment from day-to-day is used in *Mason’s Manual*.

¹⁰This 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.

¹¹Added to reflect modern conditions, COMPENDIUM §3.14.5, but shortened from 10 minutes in the CoS Model Convention Rules.

been declared.¹²

Rule 15. 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.¹³

Rule 16. 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.¹⁴

Rule 17. A commissioner may be called to order by another commissioner, as well as by the presiding officer, and may be allowed to explain any conduct or expressions supposed to be reprehensible.¹⁵

Rule 18. All questions of order shall be decided by the presiding officer, subject to appeal to the convention, but without debate.¹⁶

¹²Based on the Washington Convention rules.

¹³Based on the Washington Convention rules.

¹⁴Based on a rule of the Washington Convention. The language has been updated.

The CoS Model Convention Rules include a provision that “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.” There is another provision that “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.” Those are omitted here as impractical in a two-day simulation.

¹⁵COMPENDIUM §3.14.5.

¹⁶A 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 19. Upon a question to recess for the day, which may be made at any time, if it be seconded, the question shall be put without debate.¹⁷

Rule 20. No commissioner shall be absent from the convention, so as to interrupt the representation of his or her state, without leave.¹⁸

Rule 21. Committees—generally applicable provisions

- (1) The administrator shall perform the normal functions of committees on rules, credentials, and administration.¹⁹ The standing committees in this simulated convention are (a) fiscal restraints, (b) federal legislative and executive jurisdiction, and (c) term limits/federal judicial jurisdiction.²⁰ The membership of these committees shall be selected by the method designated in Rule 22.
- (2) The convention may create ad hoc committees. Their members shall be appointed by the presiding officer at the time, unless the convention shall prescribe another method. Each committee may create subcommittees for issues germane to the committee's assigned task.
- (3) Committees and subcommittees shall not sit while the convention shall be sitting, without leave of the convention.²¹

¹⁷Based on a rule of the Washington Convention. COMPENDIUM §3.14.5.

¹⁸Based on a rule of the Washington Convention, with updated language. COMPENDIUM §3.14.5.

¹⁹ The CoS Model Convention Rules provide for convention-elected committees to serve these purposes.

²⁰ The subjects mentioned in this rule are those contained in the CoS legislative application. In the CoS Model Convention Rules, one committee has responsibility for all issues of federal jurisdiction. For this simulation, federal judicial jurisdiction has been moved to the term limits committee.

²¹Based on a rule of the Washington Convention and modern legislative practice. COMPENDIUM §3.14.5.

Rule 22. Committees on fiscal restraints, federal legislative and executive jurisdiction, and term limits/federal judicial jurisdiction.²²

- (1) The fiscal restraints committee, federal legislative and executive jurisdiction committee, and the term limits/judicial jurisdiction committee each has exclusive responsibility for developing proposals within the corresponding subject matter of the CoS form application.
- (2) Each of these three committees shall consist of one commissioner from each state delegation, selected as determined by such delegation; provided however, that no person shall serve on more than one of these 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 expedited hearing. Approval shall be by a simple majority of committee members present and voting.
- (4) Each of these three committees shall be entitled to present not more than three proposed amendments for debate and 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.

²² This rule is a simplified version of the comparable provision in the CoS Model Convention Rules.