

BYLAWS AMENDMENTS AT SPECIAL MEETINGS-- QUESTIONING THE EXISTENCE OF A "SECRET EXCEPTION"

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Introduction

Parliamentary folklore has it that there is a secret exception in **Robert's Rules of Order Newly Revised (1990)** on page 574, which deals with vote requirements for amending bylaws in the absence of a specific bylaw provision concerning amendments. (The more obscure the exception, the more likely it is to be considered a "secret exception" passed along as arcane knowledge at gatherings of parliamentary experts and largely ignored by ordinary members at ordinary meetings.) It is, unfortunately, all too common for the bylaws to contain no specific provision for their own amendment when an organization adopts its initial bylaws without parliamentary or legal advice.¹ The rule as stated in **RONR90** clearly allows a bylaw amendment to be passed by a majority of the entire membership ("MEM") vote without notice at a regular meeting. This is a useful alternative to the more common two-thirds vote with prior notice, particularly in small boards where a large percentage of the total membership is likely to attend most meetings.

The relevant language in **RONR90**, p. 574, states:

If the bylaws contain no provision for their amendment, they can be amended at any business meeting by a two-thirds vote provided that previous notice . . . has been given; or, without notice they can be amended at any regular meeting by a vote of a majority of the entire membership.

This wording is included for the first time in **RONR70** at p. 487 and has been carried forward without revisions into the 1981 and 1990 editions.

The Secret Exception Position

The text of **RONR90** p. 574 appears to state that at any business meeting (including special meetings), a two-thirds vote with notice may amend the bylaws. The MEM vote, however, is mentioned only in regard to a regular meeting. The text therefore appears by implication to prohibit amendment by a majority of the entire membership (as an alternative to a two-thirds vote), *even with notice*, at a special meeting. This is the "secret exception" passed along as parliamentary folklore: Bylaws can be amended at a special meeting only by a two-thirds vote and not by a majority of the membership, even if the meeting is properly noticed. This reading of the rule would seem to follow from two principles of interpretation stated in **RONR90** at p. 582: (1) "*A general statement or rule is always of less authority than a specific statement or rule and yields to it.*" (2) "*If the bylaws authorize certain things specifically, other things*

of the same class are thereby prohibited.” It is to be remembered, however, that these principles of interpretation “may be of assistance” only, **RONR90** p. 581. They are not absolutely binding.

The general statement of the rule of the vote required to amend bylaws in the absence of a specific bylaw provision is stated on **RONR90** Tinted Page 11: “(a) previous notice *and* two-thirds; or (b) majority of entire membership” (emphasis in original). The statement on **RONR90** page 574, however, is significantly more specific than the general rule stated on the Tinted Page, as it indicates the times at which the specific vote requirements apply. The rules as stated on **RONR90** p. 574 indicate that a two-thirds vote on bylaws amendments is appropriate at any business meeting (*i.e.*, both regular and special meetings), but only mention the alternate MEM vote requirement in the context of a regular meeting. According to the “secret exception” position, it would therefore seem that if the MEM vote requirement were applicable at special meetings, it should be mentioned here and, by lack of explicit mention, it is thereby implicitly prohibited.

The Roots of the “No Exception” Position

On the other hand, there is no statement in **RONR90** that explicitly prohibits using the alternative MEM vote requirement to amend bylaws at special meetings. The basic authority in support of this “no exception” position is Henry Robert’s **Parliamentary Law**.

If no provision is made in the bylaws for their amendment, they may be amended at any meeting by a vote of the majority of the entire membership without notice being given of the proposed amendment; or they may be amended at any regular meeting by a two-thirds vote, provided the amendment was submitted in writing at the previous regular meeting; or they may be amended at a special meeting by a two-thirds vote, provided the call for the meeting contained a copy of the proposed amendment with notice that it was to be offered (pp. 368-369).

On initial reading, this statement appears to contradict that of **RONR90** p 574, by saying that an MEM vote can amend the bylaws even at a special meeting, with or without notice. The two statements are, however, entirely consistent, as explained below.

The analysis of this question--whether an MEM vote is a permissible alternative at special meetings--therefore actually breaks down into a two-fold inquiry: (1) Can bylaws be amended by an MEM vote at a special meeting *with* notice? And (2) Can bylaws be amended by an MEM vote at a special meeting *without* notice? This article proposes that the correct answer to these questions under **RONR90** is contrary to the parliamentary folklore, which comes from a cursory reading of the text without the historical context. Instead, the answer

must be gleaned from reading **RONR90** together with **Parliamentary Law** in light of changes introduced gradually in subsequent editions of **Robert's Rules of Order Revised** and **Robert's Rules of Order Newly Revised**. This article argues that the correct interpretation of the rules relating to this issue is that : (1) Bylaws can be amended by an MEM vote at a special meeting *with* notice; but (2) Bylaws cannot be amended by an MEM vote at a special meeting *without* notice because no business may be raised at a special meeting unless it is mentioned in the call of the meeting. There are several reasons to think that this "no exception" position is a correct interpretation of **RONR**.

Rationales for the "No Exception" Position

I. **RONR90 and Parliamentary Law** are intended to be read together.

In the first place, **RONR90** does not explicitly prohibit an MEM voting requirement for bylaws amendment at special meetings. In that case, **RONR90** p. 16 states:

In matters on which an organization's adopted parliamentary authority is silent, provision found in other works on parliamentary law may be *persuasive*--that is, they may carry weight in the absence of overriding reasons for following a different course, but they are not binding on the body. (Emphasis in the original.)

Therefore, it is entirely appropriate to refer to **Parliamentary Law** in trying to resolve the issue at hand.

In the second place, both **RONR90** and **Parliamentary Law** were written to be entirely consistent. Henry M. Robert, III, one of the assistants in the writing of the 1970, 1981, and 1990 editions of **RONR**, in his Prefatory Note to the 1975 edition of **Parliamentary Law**, states that "The work remains in full accord with **Robert's Rules of Order Newly Revised (1970)**, the current edition of the standard manual which organizations should now adopt as their parliamentary authority." **Parliamentary Law**, p. iii. General Robert himself indicated:

[T]he author decided to make the "Rules of Order Revised" as perfectly adapted to the needs of societies, conventions, boards, city councils, etc., as he was capable of doing in so small a manual, and then to write another book [**Parliamentary Law**] to meet the wants of those desirous of becoming thoroughly familiar with parliamentary law. The two books are in complete harmony **Parliamentary Law**, p.v.

The current edition of **RONR** recognizes that General Robert considered **Parliamentary Law** to be "his definitive explanatory effort." **RONR90** p. xli.

The 1970 edition of **RONR**, the first to introduce the controversial language regarding alternative vote requirements for bylaws amendments quoted in the Introduction, acknowledges that "*Robert's Rules of Order Newly Revised* has been written to be in complete harmony with the preceding edition so that it can replace that edition with no disturbance of established practice in organizations that have used the preceding edition." **RONR70** xxii-xxiii. The preceding edition was the 1951 edition of **ROR**, which contains a statement for alternative voting requirements for bylaws amendments that is identical to that in the 1915 edition of **ROR**. The famous 1915 edition of **ROR** was drafted by General Robert himself and was by his own admission, as discussed above, "in complete harmony" with **Parliamentary Law**. Therefore, **Parliamentary Law** should be particularly persuasive on issues as to which **RONR90** is ambiguous, unclear, or silent.

As **RONR90** and **Parliamentary Law** are meant to complement each other, the following principle of interpretation should be applied in this case by analogy: "*When a provision of the bylaws is susceptible to two meanings, one of which conflicts with or renders absurd another bylaw provision, and the other meaning does not, the latter must be taken as the true meaning.*" **RONR90** p. 582. In other words, if the "secret exception" position of **RONR90** conflicts with the explicit language of **Parliamentary Law** (which it does) and the "no exception" position is consistent with **Parliamentary Law** (which it is), then the "no exception" position should prevail.

It should be noted that the rule as stated in **Parliamentary Law**, pp. 368-369 superficially appears to allow an MEM vote to amend bylaws *without notice* at any meeting, including a special meeting. The statement at pp. 368-369, however, must be read in conjunction with the rest of the book in light of the principle of interpretation: "*A general statement or rule is always of less authority than a specific statement or rule and yields to it.*" **RONR90** at p. 582. See **Parliamentary Law** p. 380. The Question and Answer Section of **Parliamentary Law**, pp. 523-524, deals with special meetings in greater depth and more specificity. In this discussion, General Robert indicates that no business can be done at a special meeting that is not included in the call of the meeting and, even if an item of business is adopted by a majority of the entire membership at a special meeting, it must later be ratified. "[QUES:] If a majority of the entire membership were present [at a special meeting], would that affect taking up something urgent that was not in the call? . . . [ANS:] It would insure the ratification of whatever action was taken." **Parliamentary Law** pp. 523-524. Because of the inconvenience of a special meeting, members who are not interested in the matter mentioned in the call of the meeting may fail to attend. A special meeting may still attract a majority of the membership. Without notice of an important issue such as a bylaw amendment, however, members opposed to the amendment (or with good suggestions for improvement to it) may well not come at all, let alone be prepared for debate. Member concerns prior to the meeting will have focused on the business mentioned in the call and not on

other possible business of the organization. Therefore, the bylaw amendment is not likely to receive full debate and an intelligent, informed decision at a special meeting called for another purpose.

On further examination, therefore, the requirement of previous notice for an MEM vote for bylaws amendments at special meetings arises not because of any inherent difficulty with that vote requirement at special meetings, but rather because of the limitation on *any* subject matter of a special meeting, which requires notice in the call of the special meeting, see **Parliamentary Law** pp. 523-524, **RONR90** p.570. ("It may be well to provide [in the bylaws] that no business shall be transacted except that mentioned in the call (that is, the notice) of the special meeting, although this rule would apply even if not expressly stated.") See **RONR90**, p. 92.³

In other words, it is not that the majority of the membership cannot amend the bylaws at a special meeting. It is that no business can be transacted at a special meeting unless it is included in the call of the meeting. Under **RONR90**, the notice of the subject matter in the call for a special meeting is thus conflated by the editors with the previous notice required to support a two-thirds vote for bylaws amendments, as the previous notice can be included in the call. An MEM vote requirement does not need previous notice, but the business of the bylaw amendment itself is invalid if it is not included in the call of the special meeting.

II. *Historic Evolution of Robert's Rules Explains RONR90's Omission of the Alternative MEM Vote Requirement at Special Meetings.*

The rule as stated in **ROR15**, p. 269, was:

[B]ylaws . . . that have been adopted and contain no rule for their amendment, may be amended at any regular business meeting by a vote of the majority of the entire membership; or, if the amendment was submitted in writing at the previous regular business meeting, then they may be amended by a two-thirds vote of those voting

This language was repeated unchanged in the 1943 and 1951 editions. This provision appears initially to be essentially the rule as stated in **RONR90** p. 574 in reverse order. Before seeing this a support for the "secret exception" position, however, the reader needs to remember that **ROR15** did not discuss special meetings at all. Notice and a two-thirds vote as a requirement for amending bylaws at a special meeting is not mentioned either.

The reason for the rewording in **RONR** is that its editors tried to be absolutely comprehensive (**RONR90** p. xli) incorporating most of **Parliamentary Law**, whereas **ROR** was more selective and contained only general rules for most societies, leaving specialized rules for **Parliamentary**

Law. Perhaps General Robert thought that special meetings would be largely covered by applicable bylaws provisions. The concept of special meetings was not introduced into **ROR** itself until the 1951 edition, where it is mentioned on the Inside Back Cover in a very cursory manner. There is no significant discussion of special meetings at all in **ROR15** or **ROR43**. The main text of **Parliamentary Law**, on the other hand, mentions special meetings in passing, pp. 358, 390, but contains a more extensive treatment of special meetings in the Question and Answer section on pages 421-422, 523-524. Thus, the text of **RONR90** p. 574 essentially restates the rule as stated in **ROR** but fails to take into account the introduction into **RONR** of the rules for special meetings when discussing the alternative MEM vote requirement for bylaws amendments. This omission should be treated as an oversight by the editors of **RONR**.

III. *Basic Principles of Parliamentary Law Support an MEM vote Requirement as an Alternative at Special Meetings.*

In interpreting the rules stated in **RONR90**, a reader should keep in mind that the rules are all derived from a balancing of the basic principles of parliamentary law, **RONR90** p. xlv. There does not appear to be any basic principle that would permit an action by a two-thirds vote with notice but prohibit it by an MEM vote with notice. In general, a two-thirds vote with notice can be considered the equivalent of an MEM vote even *without* notice, as, for example, in the motion to rescind or to discharge a committee. See **RONR90** pp. 300-301, 305. There are only two motions that may be passed only by a two-thirds vote with notice or a vote of the majority of entire membership: to amend special rules of order and to adopt special rules of order. See **RONR90** pp. 17, 385, Tinted pp. 7,11. At no point in the discussion of special rules of order does **RONR90** mention that an MEM vote would not be a permissible alternative vote requirement to adopt or amend special rules at a special meeting. In fact, on Tinted Page 11, **RONR90** indicates that in the absence of a specific provision in the bylaws, bylaws amendments have the same vote requirements as amendments to special rules of order. Thus, the basic principles of parliamentary law support allowing bylaws amendments at special meetings by an MEM vote.

IV. *Demeter Supports the "No Exception" Position.*

Of other parliamentary authorities that address the issue of alternative vote requirements for bylaws amendments, only **Demeter** explicitly discusses their application to special meetings.⁴ His position basically supports the "no exception" position as stated in **Parliamentary Law**.

If no method or notice for their amendment is specified in the bylaws, then they can be amended by a 2/3 vote at any regular or special meeting, provided notice of the proposed amendment was given at the

previous meeting or in the call for the meeting, or both. Or . . . They may be amended by a majority vote of the organization's total membership at any regular or special meeting without previous notice, and by a majority vote of the total registered voting delegates in conventions or annual meetings. **Demeter** p. 188.

Demeter's position in fact goes beyond that of **Parliamentary Law**, in that he explicitly authorizes a bylaws amendment at a special meeting by an MEM vote *without* previous notice. This distinction can be explained by **Demeter's** more permissive treatment of business that can come up at a special meeting. In contrast to **RONR90** p. 570, discussed above, **Demeter** permits any business to be raised at a special meeting unless the bylaws require differently:

If the bylaws do not require the business of a special meeting to be specified in the call, such meeting is but an extra regular meeting, and there is no difference between it and any other regular meeting; hence, it is treated as a quasi-regular meeting If the bylaws prescribe that "no business shall be transacted in a special meeting except that specified in the call," then no other business can properly be transacted therein. **Demeter** p. 13.

This minor difference between **Demeter** and **RONR** (whether an MEM vote *without* notice can amend bylaws at a special meeting) can be explained by their different treatment of special meetings and is not related to principles regarding minimum vote requirements. Therefore, **Demeter** should be considered additional persuasive authority for the position that an MEM vote *with* notice is a permissible alternative vote for bylaws amendments at special meetings under **RONR90**.

Conclusion

As discussed above, the "no exception" position is supported by General Robert's clear intent as stated in **Parliamentary Law**. The wording of **RONR90** p. 574 is understandable in light of the omission from **ROR** of any significant discussion of special meetings. Basic principles of parliamentary law support the equivalence of a two-thirds vote with notice and a vote of a majority of the entire membership vote without notice. Finally, **Demeter** supports the "no exception" position as well and other major authorities are silent on the issue.

Thus, in light of this discussion, the vote requirement for bylaws amendments at **RONR90** p. 574 might be clearer if it were restated as follows:

If the bylaws contain no provision for their amendment, they can be amended as follows: (1) at any regular business meeting by a two-thirds vote with previous notice or by a vote of a majority of the entire

membership without previous notice; and (2) at a special meeting by a two-thirds vote or a vote of a majority of the entire membership, provided that notice of the amendment is included in the call of the meeting."

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ENDNOTES

- ¹ For purposes of this discussion, it is assumed that the bylaws in question do not contain a provision for their own amendment.
- ² These principles of interpretation were first imported from **Parliamentary Law**, pp. 380-381, into **RONR** in the 19909 edition. They are equally applicable to interpretation of an adopted parliamentary authority and to bylaws. **RONR90** p. 581.
- ³ The parallel statement in **Parliamentary Law**, p. 523, is not quite as strong. It reads: "If the by-laws do not require the business [of a special meeting] to be specified, it is not absolutely necessary, but it is customary and advisable. All important questions to come up *should* be stated in the call . . ." (emphasis added). Over time, however, customary usage develops status equivalent to an adopted rule. See **Demeter**, p. 243: **Parliamentary Law**, p. 436; **RONR90**, p.3 ("A deliberative body that has not adopted any rules is commonly understood to hold itself bound by the rules and customs of the *general parliamentary law--or common parliamentary law . . .*").
- ⁴ Several other authorities seem to indicate that, unless there is a specific bylaw provision to the contrary (and sometimes even if there is), a simple majority may amend the bylaws. **Cushing** § 21, p. 28; **Hills** § 21.3, p. 644; **Reed** § 52, p. 50; **Sturgis** p. 198. None of these authorities discuss the vote requirements for bylaws amendments at special meetings.