



“Holds” in the Senate

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Summary

Holds are an informal device unique to the upper body. They permit a single Senator or any number of Senators to stop—sometimes temporarily, sometimes permanently—floor consideration of measures or matters that are available to be scheduled by the Senate. A hold, in brief, is a request by a Senator to his or her party leader to delay floor action on a measure or matter. It is up to the majority leader to decide whether, or for how long, he will honor a colleague's hold. Scheduling the business of the Senate is the fundamental prerogative of the majority leader, and it is done in consultation with the minority leader.

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Background

Relatively little is known about holds, and their exact origin appears lost in the mists of history. They probably evolved from the early traditions of comity, courtesy, reciprocity, and accommodation that characterized the Senate's work. Holds have received limited attention from scholars, journalists, or pundits, in part because there is hardly any public record of who places holds, how it is done (often by letter to the party leader), how many holds are placed on any bill, or how long they will be honored by the majority leadership. The list of Democratic and Republican Senators who have holds on various measures is kept by the respective leaders of each party.

Only Senators may use holds, but there have been instances when they have been invoked by legislative staff. House Members, lobbyists, or executive officials may request Senators to place holds on measures or matters that they prefer the Senate not take up. Originally used by Senators to ensure that they would be notified in advance about any time-limitation agreement or motion to proceed and consulted about certain bills and nominations that may be brought to the floor, holds have evolved to become a potent extra-parliamentary practice.

Potency of Holds

Holds are a potent blocking device because they are linked to the Senate's tradition of extended debate and unanimous consent agreements. Party leaders understand that to ignore holds could precipitate objections to unanimous consent requests and filibusters. Unlike filibusters, which may be partly educational in their purpose and which are televised nationally over C-SPAN, holds require no public utterance. Little surprise that holds are sometimes referred to as a "silent filibuster."

Holds are useful devices for gaining leverage and fostering negotiations. Senators, for example, may indicate that they have holds on measures or nominations to alert appropriate colleagues that they want to be consulted about a measure or nomination, signal displeasure with the administration, or retaliate in kind against lawmakers who have placed holds on their bills. In today's workload-packed and deadline-driven Senate, holds are often particularly effective at the end of a session when sponsors of measures may be more open to compromise with the lawmakers having holds on their bills. Holds, too, have the virtue of giving lawmakers additional time to study legislation, especially during the end-of-session rush to adjourn, and alerting party leaders to potential scheduling problems.

Types of Holds

Informally, there have been attempts by some analysts to classify holds. For example, there are so-called *informational* holds, where Senators wish to be informed or consulted before a measure or nomination is brought to the floor; *revolving* or *rotating* holds, where one Senator, and then another and so on, will place holds; *Mae West* holds, which suggest that the Senator(s) who employed the hold wants to bargain with the proponents of the legislation or nomination; *retaliatory*, or *tit-for-tat*, holds; and *choke* holds, where the objective is to kill the affected bill or

nomination. The use of *secret* or *anonymous* holds has triggered the most recent proposals for reform.

Calls for Change

Over the years, Senators and party leaders have suggested that changes need to be made in the use of holds, see CRS Report RL31685, *Proposals to Reform “Holds” in the Senate*, by Walter J. Oleszek. The objective of the proposals is not to eliminate the practice but to subject it to openness and accountability. For example, in 2006 the Senate adopted an amendment to an ethics and lobbying bill (S. 2349) requiring Senators who place holds on measures or matters to publish that fact in the *Congressional Record* within three days after they have provided written notice to a party leader. S. 2349 failed to be enacted into law. The next year the Senate adopted—for the first time ever—a formal and statutory policy limiting the ability of Senators to place anonymous holds with the enactment into law of S. 1, the Honest Leadership and Open Government Act (P.L. 110-81). The new holds policy is outlined in Section 512 of S. 1, and is titled “Notice of Objecting to Proceeding.” Section 512 lays out the exact steps for making a secret hold public, see CRS Report RL34255, *Senate Policy on “Holds”: Action in the 110th Congress*, by Walter J. Oleszek. The newness of Section 512 means that it remains a work in progress. Some time needs to pass before an assessment might be made of its impact and influence on senatorial decision-making and behavior.

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