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Conference Committee and Related Procedures: An Introduction

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Summary

The House and Senate must pass the same bill or joint resolution in precisely the same form before it can be presented to the President. Once both houses have passed the same measure, they can resolve their differences over the text of that measure either through an exchange of amendments between the houses or through the creation of a conference committee.

The House and Senate each have an opportunity to amend the other chamber's amendments to a bill; thus, there can be House amendments to Senate amendments to House amendments to a Senate bill. If either chamber accepts the other's amendments, the legislative process is complete. Alternatively, each house may reach the stage of disagreement at any time by insisting on its own position or by disagreeing to the position of the other chamber. Having decided to disagree, they then typically agree to create a conference committee to propose a single negotiated settlement of all their differences.

Conference committees generally are free to conduct their negotiations as they choose, but they are to address only the matters on which the House and Senate have disagreed. Moreover, they are to propose settlements that represent compromises between the positions of the two houses. When they have completed their work, they submit a conference report and joint explanatory statement, and the House and Senate vote on accepting the report without amendments. Only after the two houses have reached complete agreement on all provisions of a bill can it be sent to the President for his approval or veto.

Contents

Introduction 1
Acting on the Same Bill 1
Amendments Between the Houses 2
Considering Amendments from the Other House 3
Going to Conference 3
Appointing and Instructing Conferees 4
Conference Rules and Reports 5
Floor Action on Conference Reports 7

Contacts

Author Contact Information 9
Acknowledgments 9

Introduction

This report is a brief summary of House and Senate procedures for reaching agreement on legislation. It discusses the provisions of House Rule XXII and Senate Rule XXVIII as well as other applicable rules, precedents, and practices. The report focuses on the most common and customary procedures. There are many exceptions, complications, and possibilities that are not addressed, and the House and Senate may modify or waive their procedures by unanimous consent or by other means.

The report is based upon the original author's interpretation of the rules and published precedents of the two houses and an analysis of the application of these rules and precedents in recent practice (see "Acknowledgements"). Readers may wish to study the provisions of House and Senate rules and examine the applicable precedents, especially in the sections on "Senate Bills," "Amendments Between the Houses," and "Conferences Between the Houses" in *House Practice: A Guide to the Rules, Precedents and Procedures of the House*; and the corresponding sections on "Amendments Between Houses" and "Conferences and Conference Reports" in *Riddick's Senate Procedure* (Senate Document No. 101-28). There also is more detailed information on this subject in CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, and CRS Report R41003, *Amendments Between the Houses: Procedural Options and Effects.*

Acting on the Same Bill

The House and Senate must pass the same bill or joint resolution and they must reach full and precise agreement on its text before it is submitted to the President for his approval or veto. The same requirements apply to a concurrent resolution and a joint resolution proposing a constitutional amendment, although neither receives presidential action.

At some stage of the legislative process, therefore, the House must pass a Senate bill or the Senate must pass a House bill. The simplest way of meeting this requirement is for one house to pass its own bill and send it to the "other body," which then considers and passes it, with or without amendments. Frequently, however, House and Senate committees each develop their own bill on the same subject. In these cases, one house often debates and amends the bill reported by its committee, but then amends and passes the corresponding bill that the other chamber already has passed.

For example, after the House passes a bill, it frequently takes up a bill on the same subject that it already has received from the Senate. The House then amends the Senate bill by striking out the text passed by the Senate (striking out all after the enacting clause) and replacing it with the text of the House bill it has just passed. The House then passes the amended Senate bill also. In this way, the House passes two bills with exactly the same text, but the Senate bill is the one likely to become law because both houses now have passed it, although with different provisions. Much the same thing happens in the Senate, except that the Senate does not actually pass its own bill before taking up the House bill. Instead, the Senate debates and amends the bill reported by its committee and, after third reading and engrossment (which ends the amending process), the Senate takes up and passes the House bill after amending it with the amended text of the Senate bill. Under these circumstances, the Senate never does pass its own bill even after considering it at length.

This process usually is routine but it can become more complicated. For instance, the Senate may pass one bill on several related matters before the House passes two bills of its own which address the same subjects. After the House passes its two bills, it may take up the one Senate bill and replace the text of that bill with the texts of both of its own bills. In other instances, the House and Senate may confront different political and procedural situations that make it convenient for them to include their versions of legislation on one subject as amendments to some third bill on an unrelated subject which serves as a convenient "vehicle." Such arrangements can be necessary because the House and Senate cannot begin the formal process of resolving their policy differences until these differences are embodied as amendments by one house to the version of the same bill as passed by the other.

Amendments Between the Houses

After one house passes a bill and the other then passes it with amendments, the House and Senate attempt to resolve the differences between their positions. When confronted with a major bill, the two houses have historically created a conference committee for this purpose. However, a conference may not be necessary if they can reach an agreement through informal negotiations and an exchange of amendments between the houses.

The amendments of one house to a bill from the other may be amended twice as the bill is sent ("messaged") back and forth between the House and Senate. Suppose, for example, that the Senate passes a House bill with amendments. The House can accept (concur in) the Senate amendments, in which case the differences are resolved. Alternatively, the House can amend the Senate amendments (concur in the Senate amendments with amendments). These House amendments are first degree amendments between the houses. The Senate then can accept (concur in) the House amendments to the Senate amendments, which would produce agreement. Or the Senate can concur in the House amendments to the Senate amendments with further Senate amendments, which are amendments in the second degree.

At this stage, the House can concur in the most recent Senate amendments, but it cannot propose new House amendments to them because they would be third degree amendments that are not permitted. (Of course, exactly the same process can occur in reverse if the House passes a Senate bill with amendments.) In both chambers, the prohibition on third degree amendments between the Houses can be waived. The House might do this by special rule, suspension of the rules, or unanimous consent. In the Senate, unanimous consent is necessary to agree to an amendment in the third degree, unless the House has already waived the rule, in which case further degrees of amendment are permitted in the Senate.

If the House and Senate adamantly defend their last amendments, they can send the bill back and forth several more times as each chamber first insists on and then adheres to its position. In the unlikely event that neither House retreats from its last position or is willing to discuss a compromise in conference, the bill ultimately dies. It cannot be shuttled back and forth indefinitely.

This process rarely results in stalemate because the two houses either reach agreement or they decide to submit their differences to a conference committee. However, an exchange of amendments sometimes takes the place of a conference. Once the two houses pass their versions of the same bill, the Members and staff of the House and Senate committees of jurisdiction often meet informally to compare the two versions and discuss a compromise. If they reach an

agreement that other concerned Representatives and Senators also accept, the House can, for example, concur in the Senate amendment with a House amendment that embodies the negotiated agreement. If the Senate then accepts (concurs in) this House amendment, the House and Senate have resolved their differences through the informal equivalent of a conference committee.

Considering Amendments from the Other House

House amendments to a Senate bill (or House amendments to Senate amendments to a House bill) are privileged for floor action by the Senate. This means there is no debate on whether to take up the House amendment. Instead, a Senator, most often the majority leader, requests that a House amendment be laid before the Senate. Motions to dispose of the House amendments—such as motions to concur or to concur with amendments—are debatable and, therefore, subject to filibusters. It is possible for the majority leader to move that the Senate concur in the House amendment, and then make all other available motions (often referred to as "filling the tree" on a motion to concur). If the majority leader can garner the necessary support to end debate on the motion to concur (60 Senators, assuming no vacancies), then by using this strategy both further amendment to the House amendment and extended debate can be avoided. The Senate also sometimes arranges to consider a House amendment by unanimous consent.

Like the Senate, the House also sometimes acts on Senate amendments by unanimous consent. Until the House officially disagrees to Senate amendments to a House bill (or Senate amendments to House amendments to a Senate bill), these amendments usually are not privileged for consideration on the House floor. No motion is in order to concur in the Senate amendments, with or without amendments. When there is little or no controversy, the House often accepts or amends the Senate amendments by unanimous consent. Otherwise, the House usually can do so only through a motion to suspend the rules or under a special rule recommended by the Rules Committee and adopted by the House. The one motion that a Representative can make is to disagree to the Senate amendments and go to conference, but this motion must be made at the direction of the committee that originally reported the bill to the House.

Both houses cannot consider the same bill at the same time because the House or Senate can only act if it has the "papers"—the official copy of the bill as passed by the house in which it originated, the official copies of amendments by either house, and the messages by which each house informs the other of the actions it has taken. After one house acts on a bill or amendments from the other, it returns all the papers with an accompanying message describing its action. Thus, the House and Senate always act in sequence as custody of the papers changes hands.

Going to Conference

Before a conference committee is created to resolve disagreements between the two houses, the House and Senate each must state its disagreement over a bill, either by disagreeing to the amendments of the "other body" or by insisting on its own amendments. So long as one house concurs in the amendments of the other with amendments, there is no formal disagreement. But at any point during an exchange of amendments between the House and Senate, either house can propose that they can go to conference instead.

The two houses usually decide in one of two ways to establish a conference committee. When the Senate passes a House bill with amendments, for example, it can immediately insist on its

amendments and request a conference with the House. The House almost always agrees to the conference although it need not do so—for example, it could simply agree to the Senate amendments instead. At other times, however, when the Senate passes a House bill with amendments, it may merely send back the bill and the amendments in the hope that the House will accept the Senate's amendments, making a conference unnecessary. If the House does not accept the amendments, it can disagree to them and request a conference. The Senate normally then insists on its amendments and agrees to the conference, after which it informs the House and returns the papers. Of course, the equivalent of either sequence of events may occur after the House passes a Senate bill with amendments.

Both chambers normally agree by unanimous consent to the necessary procedural steps to send a measure to conference. In the House, if there is an objection to the unanimous consent request, then a privileged motion can be made, at the direction of the committee(s) of jurisdiction, to disagree to the Senate amendment (or insist on the House amendment) and request (or agree to) a conference with the Senate.

If unanimous consent cannot be reached in the Senate, then a motion can be made to authorize a conference committee that is subject to debate under regular Senate rules. If a cloture motion to end debate is filed on this motion, however, it matures after just two hours of debate. If three-fifths of the Senate agrees to invoke cloture, then a simple majority could approve the motion to authorize a conference, and no further debate of the motion would be in order.

Appointing and Instructing Conferees

Each house usually appoints its conferees (also known as managers) immediately after deciding to go to conference. The Speaker appoints House conferees. The Senate almost always decides, by unanimous consent, to authorize the Presiding Officer to appoint "the managers on the part of the Senate." The Senate could also empower the Presiding Officer to appoint conferees through the motion to authorize a conference, discussed above.[1]

The chairman and ranking minority Member of the committee or subcommittee that reported the bill are almost always conferees. They also play a major part in deciding who else is appointed. The committee or subcommittee leaders usually prepare a list of conferees from their chamber that the Speaker normally accepts and the presiding officer of the Senate always accepts. The party leaders also may become involved in selecting conferees, especially if the bill is particularly important, if it was reported by two or more committees, or if amendments to the bill from the other house touch the jurisdiction of more than one committee.

Most conferees are Members of the committee that reported the bill. In the case of a bill that involves the jurisdiction of more than one committee, Members of each committee often are appointed as conferees with authority only to negotiate an agreement with respect to the subjects or provisions of the bill that fall within the jurisdiction of their committees. Thus, some Members may be designated as conferees for purposes of the entire bill while others are appointed only to

[1] Senate Rule XXVIII, paragraph 2 appears to allow the conferees to be directly appointed in the compound motion to authorize a conference. This provision of the rule was added at the start of the 113th Congress (2013-2014). Appointing conferees by motion has not been the practice of the Senate, and it is not clear that the new motion would normally be used for this purpose.

address a specific section or title. Representatives also may appointed as conferees for limited purposes when the Senate adds to a House bill a non-germane amendment that is within the jurisdiction of another House committee. In addition, the Speaker may appoint other Representatives who, for example, offered important floor amendments. The list of conferees generally reflects the party balance in each house.

The House and Senate do not have to appoint the same number of managers, and they frequently do not. House conferees vote as a delegation, as do Senate conferees, and a majority of each delegation must sign the conference report. Thus, three Representatives have the same voting power in conference as 30 Senators. Each house is likely to appoint a larger number of conferees when the bill involves the jurisdiction of more than one of its standing committees. Some conference committees have only a handful of Members from each chamber; at the other extreme, the conference on a reconciliation bill can have more than 250 Members.

A Representative or Senator may move to instruct the conferees from his or her chamber immediately after that house agrees to go to conference but just before the conferees are appointed.[2] For example, the House can instruct its managers to insist on the House position on a particular amendment, or the Senate can instruct its managers to recede to the House position on another amendment. However, instructions to conferees are never binding; no point of order lies against a conference report that is inconsistent with House or Senate instructions to its conferees. The House also can instruct its conferees if they do not report within 20 calendar days and 10 legislative days after being appointed (or 36 hours after being appointed during the last 6 days of a session).

Conference Rules and Reports

Conference committee meetings are open to the public unless the conferees vote to close them, and the House must vote to authorize its conferees to do so. Both chambers also have guidelines concerning conference discussions. According to House Rule XXII, managers "should endeavor to ensure" that meetings only occur if every House manager has been given notice and an opportunity to attend. The House rule also explicitly states that all matters in disagreement are open to discussion at a conference meeting. If a point of order is made and sustained on the House floor that conferees met in violation of clause 12 (or that they never met at all), the conference report is rejected and the House is considered to have requested a further conference with the Senate. Similarly, the Senate has agreed that conferees should hold "regular, formal meetings of all conferees that are open to the public," that conferees should be given "adequate notice" of such meetings, and that all conferees should be given an opportunity to "participate in full and complete debates" of the matters before the conference.[3]

Beyond these guidelines, there are virtually no House or Senate rules governing conference meetings. Conferees select their own chairman and usually work without formal rules on quorums, proxies, debate, amendments, and other procedural matters. Conferences are

[2] Under some circumstances, the motion to instruct conferees in the House is a prerogative of the minority party. See CRS Report 98-381, *Instructing House Conferees*, by Elizabeth Rybicki.

[3] The "Sense of the Senate on Conference Committee Protocols" was included in the Honest Leadership and Open Government Act of 2007 (P.L. 110-81, Section 515).

negotiating forums, and the two chambers allow conferees to decide for themselves how best to conduct their negotiations.

However, the House and Senate have important, and roughly the same, rules governing what decisions conferees can make. Conference committees are established to resolve disagreements between the House and Senate over their versions of the same bill. Therefore, the authority of conferees is limited to matters in disagreement. As a general rule, they may not change a provision on which both houses agree, nor may they add anything that is not in one version or the other. Furthermore, conferees are to reach agreements within the "scope" of the differences between the House and Senate positions. For example, if the House appropriates $10 million for some purpose and the Senate amends the bill by increasing the appropriation to $20 million, the conferees exceed their authority if they agree on a number that is less than $10 million or more than $20 million.

It is much harder to determine the scope of the differences when they are qualitative, not quantitative. Also, conferees have more latitude under some circumstances than under others. When one house passes a bill and the other then passes it with a series of separate amendments—each making a change in a different provision of the bill—these amendments usually are numbered, and it is relatively easy for the conferees to determine the scope of the differences over each amendment. This is generally not true, however, when the Senate passes a House bill (or the House passes a Senate bill) with an amendment in the nature of a substitute that totally replaces the text of the bill. In this situation, which arises nearly all of the time, there is only one amendment in conference—for example, a Senate substitute for the House version of a bill. The two versions of the bill can take very different approaches to the same subject, making it difficult for the conferees to isolate every point of agreement and disagreement and to identify the scope of each disagreement. Under these circumstances, the conferees may write their own conference substitute, so long as it is a germane modification of the House and Senate versions.

If a conference agreement exceeds the scope of the differences or deals with a matter that is not in disagreement, the conference report is subject to a point of order when the House or Senate considers it. The House, however, typically protects a conference report against points of order by adopting a resolution reported by the Rules Committee waiving the applicable rules. The Senate, meanwhile, interprets the authority of its conferees generously, especially when they develop a conference substitute. Furthermore, the Senate can waive its rule with a three-fifths vote of Senators duly chosen and sworn (60 Senators if there are no vacancies).

The authority of Senate conferees is further limited by Senate Rule XLIV, paragraph 8.[4] Under this rule, a Senator can raise a point of order against provisions of a conference report if they constitute "new directed spending provisions." Paragraph 8 defines a "new directed spending provision" as:

> ... any item that consists of a specific provision containing a specific level of funding for any specific account, specific program, specific project, or specific activity, when no specific funding was provided for such specific account, specific program, specific project, or specific activity in the measure originally committed to the conferees by either House.

[4] For more information, see CRS Report RS22733, *Senate Rules Restricting the Content of Conference Reports*, by Elizabeth Rybicki.

Paragraph 8 of Senate Rule XLIV applies only to provisions of conference reports that would provide for actual spending. In other words, it applies only to discretionary and mandatory spending provisions and not to authorizations of appropriations.[5] Discretionary spending is provided in appropriations acts, and generally funds many of the programs, agencies, and routine operations of the federal government. Mandatory spending, also referred to as direct spending, is provided in or controlled by authorizing law, and generally funds entitlement programs, such as Social Security and Medicare.[6] The Senate can waive these restrictions on the content of conference reports by a three-fifths vote of Senators duly chosen and sworn (60 Senators assuming no vacancies).

When the conferees reach full agreement, their staffs prepare a conference report that states how they propose to resolve each of the disagreements. Accompanying the report itself is a joint explanatory statement (also known as the statement of managers) which describes the various House and Senate positions and the conferees' recommendations in more detail. A majority of the House managers and a majority of the Senate managers must sign both the conference report and the joint explanatory statement.[7] House rules require that House conferees be given an opportunity to sign the conference agreement at a set time and place. At least one copy of the final conference agreement must be made available for review by House managers with the signature sheets. Each chamber then debates and votes on the conference report in turn.

Floor Action on Conference Reports

At the conclusion of a successful conference, the papers usually change hands. The conferees from the house that requested the conference bring the papers into conference and then turn them over to the conferees from the other house. Thus, the house that agreed to the conference normally acts first on the conference report. However, this is a practice that is not required by House or Senate rules.

The Senate usually considers a conference report by unanimous consent although, if necessary, a Senator can make a non-debatable motion to consider it. The report may be called up at any time after it is filed, but it is not in order to vote on the adoption of a conference report unless it has been available to Members and the general public for at least 48 hours before the vote. (This requirement can be waived by three-fifths of Senators duly chosen and sworn, or by joint agreement of the majority and minority leaders in the case of a significant disruption to Senate facilities or to the availability of the Internet.) Under Senate rules, a report is considered to be available to the general public if it is posted on a congressional website or on a website controlled by the Library of Congress or the Government Printing Office.

When considered on the Senate floor, a conference report is debatable under normal Senate procedures; it is subject to extended debate unless the time for debate is limited by unanimous

[5] For more information on the applicability of Paragraph 8 of Rule XLIV, see a letter from the majority leader inserted into the *Congressional Record* (*Congressional Record,* daily edition, vol. 153 [September 24, 2007], pp. S11993-S11994).

[6] For more information on discretionary and direct spending, see CRS Report RS20371, *Overview of the Authorization-Appropriations Process*, by Bill Heniff Jr.

[7] When one or both houses have appointed conferees for limited purposes, the House and Senate have different conventions for determining whether their conference report carries a sufficient number of signatures. See CRS Report RS21629, *Sufficiency of Signatures on Conference Reports*, by Richard S. Beth and Elizabeth Rybicki.

consent or cloture, or if the Senate is considering the report under an expedited procedures established by law (such as the procedures for considering budget resolutions and budget reconciliation measures under the Budget Act). Paragraph 8 of Senate Rule XXVIII states that, if time for debating a conference report is limited (presumably by unanimous consent), that time shall be equally divided between the majority and minority parties, not necessarily between proponents and opponents of the report.

A point of order may be made against a conference report at any time that it is pending on the Senate floor (or after all time for debate has expired or has been yielded back, if the report is considered under a time agreement). If a point of order is sustained against a conference report on the grounds that conferees exceeded their authority, either by violating the "scope" rule (Rule XXVIII) or the prohibition against "new directed spending provisions" (paragraph 8 of Rule XLIV), then there is a special procedure to strike out the offending portion(s) of the conference recommendation and continue consideration of the rest of the proposed compromise.[8]

Under the procedure, a Senator can make a point of order against one or more provisions of a conference report. If the point of order is not waived (see below), the presiding officer rules whether or not the provision is in violation of the rule. If a point of order is raised against more than one provision, the presiding officer may make separate decisions regarding each provision. After all points of order raised under this procedure are disposed of, the Senate proceeds to consider a motion to send to the House, in place of the original conference agreement, a proposal consisting of the text of the conference agreement minus the provisions that were ruled out of order and stricken.[9] Amendments to this motion are not in order. The motion is debatable "under the same debate limitation as the conference report."[10] In short, the terms for consideration of the motion to send to the House the proposal without the offending provisions are the same as those that would have applied to the conference report itself.

If the Senate agrees to the motion, the altered conference recommendation is returned to the House in the form of an amendment between the houses. The House then has an opportunity to act on the amendment under the regular House procedures for considering Senate amendments discussed in earlier sections of this report.

Senate rules also create a mechanism for waiving these restrictions on conference reports. Senators can move to waive points of order against one or several provisions, or they can make one motion to waive all possible points of order under either Rule XXVIII or Rule XLIV, paragraph 8. A motion to waive all points of order is not amendable, but a motion to waive points of order against specific provisions is. Time for debate on a motion to waive is limited to one hour and is divided equally between the majority leader and the minority leader, or their designees. If the motion to waive garners the necessary support, the Senate is effectively agreeing to keep the matter that is potentially in violation of either rule in the conference report.

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[8] For more information, see CRS Report RS22733, *Senate Rules Restricting the Content of Conference Reports*, by Elizabeth Rybicki.

[9] The form of the motion depends on what the House and Senate sent to conference. Very often, a House bill and a Senate amendment are sent to conference. The motion in that case would be for the Senate to recede from its amendment and concur in the House bill with a further Senate amendment consisting of the conference committee compromise without the "new matter" or "new directed spending provision." If a Senate bill and House amendment were sent to conference, the motion would be that the Senate recede from its disagreement to the House amendment and concur in the House amendment with a further amendment.

[10] Paragraph 5(b)(2) of Rule XXVIII; Paragraph 8(b)(2) of Rule XLIV.

The rules further require a three-fifths vote to sustain an appeal of the ruling of the chair and limit debate on an appeal to one hour, equally divided between the party leaders or their designees. The purpose of these requirements is to ensure that either method by which the Senate could choose to apply or interpret these rules, through a motion to waive or through an appeal of the ruling of the chair, requires a three-fifths vote of the Senate (usually 60 Senators). A simple majority cannot achieve the same outcome.

In the House, the conference report cannot be considered until three days after being filed, and then only if the report and the joint explanatory statement have been printed in the *Congressional Record* for the day it was filed. Copies of the report and the statement also must be available to Representatives for at least two hours before they consider it. These availability requirements are sometimes waived by a rule reported by the Rules Committee, and they do not apply during the last six days of a session. Typically, the House calls up a conference report under the terms of a special rule that protects the report against one or more points of order if the Rules Committee reports and the House adopts a resolution waiving the applicable rules.

The House debates a conference report under the one-hour rule, with control of the hour equally divided between the two parties. However, if both floor managers support the report, a Representative opposed to it may claim one-third of the time for debate. At the end of the first hour, the House normally votes to order the previous question, which precludes additional debate. If Representatives could make points of order against a report, sometimes the House first considers and agrees to a resolution, recommended by its Rules Committee, that protects the report by waiving the points of order.

Conference reports are not amendable. Each report is a compromise proposal for resolving a series of disagreements; the House prevails on some questions, the Senate on others. If the House and Senate were free to amend the report, they might never reach agreement. At the end of debate, therefore, each house votes on whether to agree to the report as a whole. However, the house that considers the report first also has the option of recommitting it to conference. But when one chamber agrees to the report, it automatically discharges its conferees. As a result, the other house cannot vote to recommit because the conference committee has been disbanded.

If the House and Senate agree to the conference report, the bill is enrolled (printed on parchment in its final form) and presented to the President for his approval or disapproval.

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