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Enrollment of Legislation: Relevant Congressional Procedures

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Summary

An enrolled bill or resolution is the form of a measure finally agreed to by both chambers of Congress. Enrollment occurs in the chamber where the measure originated and is carried out by enrolling clerks under the supervision of the Clerk of the House of Representatives and Secretary of the Senate. Enrolled bills and joint resolutions are signed by the presiding officers of each chamber (or their designees) and are presented to the President by the House Clerk or Secretary of the Senate, depending on the chamber of origination.

In instances in which Congress determines that the enrolled measure does not reflect congressional intent, it can require that changes be made by adopting a concurrent resolution directing the House Clerk or Secretary of the Senate to do so. If the enrolled measure has already been presented to the President—but not yet enacted or vetoed—the concurrent resolution can request its return to allow specified corrections to be made.

If Congress wishes to alter an enacted measure, new legislation must be enacted to do so. In rare instances, the constitutionality of certain measures has been challenged based on allegations that the enrolled (and therefore, enacted) text did not accurately reflect congressional action. In considering these cases, the federal courts have typically relied on precedent to refuse review of the enrollment process (or other pre-enactment congressional procedures).

This report will be updated as circumstances warrant.

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Introduction

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If Congress wishes to alter an enacted measure, new legislation must be enacted to do so. In rare instances, the constitutionality of certain measures has been challenged based on allegations that the enrolled (and therefore, enacted) text did not accurately reflect congressional action. In considering these cases, the federal courts have typically relied on precedent to refuse review of the enrollment process (or other pre-enactment congressional procedures).

Definitions and Personnel

An enrolled bill or resolution is the form of a measure finally agreed to by both chambers, which is printed on parchment or paper.[1] Enrollment occurs in the chamber in which the measure originated. First, the Speaker of the House, and then the Senate's presiding officer,[2] must sign each enrolled bill to confirm that the text reflects that which was passed by the House and Senate, respectively.[3]

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[1] An *enrolled* measure should be distinguished from an *engrossed* measure; the latter is the version of a bill (or resolution) in the form passed by the chamber of origin or of the amendments adopted to it in the chamber acting second. Once prepared and authenticated (as evidenced by the signature of either the Clerk of the House or the Secretary of the Senate, as appropriate), the engrossed measure is messaged to the other chamber to await action there.

[2] In the absence of the President of the Senate (the Vice President of the United States), the President pro tempore is the presiding officer and executes the duties of that office (Senate Rule I, paragraph 1).

[3] Section 106 of Title 1 of the United States Code requires the signature of each chamber's presiding officer on each enrolled bill. Since 1981, the Speaker of the House is authorized to sign enrolled bills at any time, whether the House be in session or not (House Rule I, clause 4). A Speaker pro tempore elected by the House may also signed enrolled bills (Asher C. Hinds, *Hinds' Precedents of the House of Representatives of the United States*, (Washington: GPO, 1907-1908), II §1401), and the Speaker may designate a Member to act in only this capacity for a limited time, subject to House approval (House Rule I, clause 8(b)(2)). Senate Rule 1, paragraph 3, permits the signing of enrolled bills for a limited time by another Senator appointed (by the President pro tempore in open session or in writing) to act as Acting President pro tempore; the Senate may also by unanimous consent authorize a Senator other than the President pro tempore (or his designee) to sign enrolled bills during a specific time period. In addition, the rules allow the Senate to authorize, by unanimous consent, the presiding officer (or his or her designee) to perform these duties during recesses or adjournments. For example, see *Congressional Record* (daily edition), vol. 159, (January 3, 2013), p. S7, when the Senate grants, by unanimous consent, a request that the President of the Senate, the President pro tempore, and the Acting President pro tempore be authorized to sign enrolled measures when the Senate is in recess or adjournment during the 113th Congress.

Enrollment is carried out by House and Senate enrolling clerks, who are overseen by the Clerk of the House and the Secretary of the Senate, respectively.[4] These offices are responsible for enrolling the bill in accordance with congressional action. The signature of either the House Clerk or Secretary of the Senate is required on the reverse of the back page, to indicate in which chamber the measure originated.[5] Once it is signed by the Speaker of the House and then the President of the Senate—or their designees—an enrolled bill or joint resolution is presented to the President by the House Clerk or Secretary of the Senate, depending on the chamber in which the measure originated.[6] While the U.S. Constitution provides the President 10 days (excluding Sundays) to act on a measure once it has been presented to him, there is no explicit limit (in the Constitution or either chamber's rules) on the time that may be taken for the enrollment process.[7]

History of the Enrollment Process

The enrollment process dates to the first years of Congress, with procedures to ensure its integrity initially laid out in *Jefferson's Manual*:

> When a bill has passed both Houses of Congress, the House last acting on it notifies its passage to the other, and delivers the bill to the Joint Committee on Enrollment, who sees that it is truly enrolled in parchment. When the bill is enrolled it is not to be written in paragraphs, but solidly, and all of a piece, that the blanks between the paragraphs may not give room to forgery (*9 Grey*, 143). It is then put into the hands of the Clerk of the House of Representatives to have it signed by the Speaker. The Clerk then brings it by way of message to the Senate to be signed by their President. The Secretary of the Senate returns it to the Committee of Enrollment, who presents it to the President of the United States.[8]

From 1789 to 1876, the House and Senate had joint rules with similar requirements in relation to enrollment. In particular, these rules directed the House Clerk and Secretary of the Senate to enroll bills and mandated a review (and any corrections, if necessary) by a joint committee, which

[4] House Rule II, clause 2(d)(2), provides the House Clerk responsibility for overseeing the enrollment process in that chamber, and Senate Rule XIV, paragraph 5, gives the Secretary of the Senate express authority over the Senate's enrollment process.

[5] *House Practice: A Guide to the Rules, Precedents and Procedures of the House*, by Wm. Holmes Brown, Charles W. Johnson, and John V. Sullivan (Washington: GPO, 2011), p. 774; *How Our Laws are Made*, H.Doc. 108-93, revised and updated by Charles W. Johnson, (Washington: GPO, 2003), p. 50.

[6] Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure*, 101st Cong., 2nd sess., S. Doc. 101-28 (Washington: GPO, 1992), p. 830; *House Practice*, pp. 774, 777.

[7] House Rule II, clause 2 (d)(2), requires the House Clerk, after the presiding officers have signed a House-originated enrolled measure, to "forthwith present" it to the President. Similarly, Senate Rule XVI, paragraph 5, requires the Secretary of the Senate to "forthwith present" to the President any Senate-originated enrolled measure once it is signed by each chamber's presiding officer. In some instances, enrolled measures pending at the end of a congressional session have been sent to and approved by the President in the next session of the same Congress. In addition, at the beginning of the 98th Congress, measures enrolled in the 97th Congress were presented to and signed by the President; some measures passed and presented in the 112th Congress were signed by the President in the 113th (U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the States, One Hundred Thirteenth Congress*, H.Doc. 112-161, 112th Cong., 2nd sess., [compiled by] Thomas J. Wickham, Parliamentarian (Washington: GPO, 2013), §§577 and 111).

[8] *House Manual*, §573, 575.

would then report to the respective chambers.[9] The joint rules lapsed in 1876, but these practices were largely continued until the passage of the Legislative Reorganization Act of 1946.[10]

The 1946 Reorganization Act provided that responsibilities pertaining to enrollment were now to be delegated to the newly established Committee on House Administration, which retained these authorities until the beginning of the 107th Congress, when they were transferred to the House Clerk and laid out in House Rule II, clause 2(d)(2).[11] The Senate transferred authority over the enrollment process to the Secretary of the Senate in 1945 upon adoption of S.Res. 64 (79th Congress);[12] this responsibility is now incorporated in Senate Rule XIV, paragraph 5.

Changes in Enrollment

Enrollment of a measure must accurately reflect congressional action; virtually no changes may be made by the offices of the House Clerk or Secretary of the Senate without an order of the Congress to do so.[13] If, in enrollment of a measure, it becomes apparent that congressional action did not accurately reflect congressional intent on the measure—or if there was a clerical error that resulted in the two chambers agreeing to different text (or, if after printing, an error is discovered)[14]—both chambers must agree to a concurrent resolution that directs the appropriate official to re-enroll the bill with specified changes.[15] If the enrolled bill has been signed by the presiding officers, the resolution rescinds their signatures and the measure must be signed anew after the enrollment has been corrected.[16] If the measure has already been presented to the President, the concurrent resolution must also request the President to return the bill to the

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[9] IV *Hinds' Precedents*, §3430.

[10] 60 Stat. 826 (August 2, 1946). After the joint rules lapsed in 1876, House rules still referred to a Joint Committee on Enrolled Bills, and the Senate adopted "resolutions empowering the committees on Enrolled Bills, Printing, and Library to act in conjunction with the similar committees of the House" (IV *Hinds' Precedents,* §4416). In addition, Cannon notes that "while the rule provides for a joint committee, in practice each branch acts separately in the comparison of bills of its own House for enrollment and merely cooperates in the interchange of bills for signature" (U.S. Library of Congress, Congressional Research Service. *Engrossed and Enrolled Bills in the House of Representatives*, Archived CRS typed report, November 1, 1977, by Stanley I. Bach, pp. 8-9; Clarence Cannon, *Cannon's Precedents of the House of Representatives of the United States.* (Washington: GPO, 1935) VII §2099).

[11] *House Manual*, §724, p. 458.

[12] Lewis Deschler, *Deschler's Precedents of the United States House of Representatives*, (Washington: GPO, 1977), ch. 24 §14.4.

[13] House precedent states that "(t)he enrolling clerks should make no change, however unimportant, in the text of a bill to which the House has agreed" (III *Hinds' Precedents*, § 2598).

[14] The House Clerk or Secretary of the Senate can order the printing of a "star print" to correct Government Printing Office (GPO) printing errors in *engrossment*, but after both chambers have acted on a measure, a concurrent resolution is necessary to correct printing errors (*House Practice*, p. 773; V *Hinds' Precedents* §7319).

[15] Concurrent resolutions have been used to correct enrollments even when they involve only errors in spelling or the title. For example, in the 109th Congress, the adoption of H.Con.Res. 502 directed that the word "point" be changed to "pound" in the enrollment of H.R. 5682, and in the 108th Congress, the spelling of a House sponsor's name was corrected in the enrollment of S. 2238, pursuant to H.Con.Res. 458. Concurrent resolutions directing changes in enrollment may, however, also involve substantive changes (see *House Practice*, p. 775). In addition, on at least one occasion, Congress used a concurrent resolution to direct the House Clerk to "correct chapter, title, and section numbers" in the enrollment of any general appropriations bills enacted during the remainder of the 82nd Congress (*Deschler's Precedents*, Ch. 24 §14.5). In the most-recently completed Congress—the 112th—Congress agreed to eleven such concurrent resolutions directing changes in enrollment (according to a search of the Legislative Information System for all adopted concurrent resolutions with the word "enrollment" in the title).

[16] *Riddick's Senate Procedure*, pp. 824, 828-829. *House Practice*, p. 776.

chamber of origin.[17] The correction is made by the officer (House Clerk or Secretary of the Senate) of the chamber in which the measure originated, but the concurrent resolution directing that officer to make the specified changes can originate in either chamber.[18] In addition, a concurrent resolution for this purpose can be agreed to by one chamber even before the measure in question has passed either chamber.[19]

In the House, a concurrent resolution directing changes in enrollment is not privileged and, while typically considered by unanimous consent, may also be taken up according to the provisions of a special rule or under suspension of the rules.[20] In the Senate, a House concurrent resolution to make changes is privileged, though if the change is substantive, it has been held that unanimous consent is required for its consideration; a Senate concurrent resolution to make changes is privileged in the Senate only if the changes are technical in nature.[21] A Senate concurrent resolution making substantive changes would not be privileged and, if any Senator objected to its consideration, would need to be referred to committee or go over under the rule.[22] Senate precedents specify that concurrent resolutions used for correcting enrollment are subject to amendment, but not of a legislative or general nature, except by unanimous consent.[23]

A concurrent resolution directing changes in enrollment is often agreed to by unanimous consent in the House, but the House may agree to it by voice or recorded vote when it is considered under suspension of the rules or under the provisions of a special rule reported by the Rules Committee.[24] In the Senate, the concurrent resolution is typically agreed to by unanimous consent, and Senate practice dictates that if the changes are substantive, they may only be agreed to by unanimous consent.[25]

Issues Arising after Enactment

Once an enrolled bill becomes law, any changes—to correct either an error in enrollment or other alteration of the measure between congressional passage and enactment—must be made in a new enactment. In this case, Congress could pass new legislation for the purposes of making

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[17] *House Practice*, p. 776; *Riddick's Senate Procedure*, pp. 824, 446-447. While the measure is typically resubmitted to the President, further action could instead be postponed indefinitely. (See *Deschler's Precedents* Ch. 24 §16.5.)

[18] *House Practice*, p. 775. For example, in the 112th Congress, a Senate measure (S.Con.Res. 58) directed the House Clerk to correct a House measure (H.R. 4240). Similarly, in the 110th Congress, a House measure (H.Con.Res. 442) directed the Secretary of the Senate to correct a Senate measure (S. 3001).

[19] *House Practice,* p. 775. For an example in which the resolution was agreed to before the measure it corrected was, see S.Con.Res. 74 in the 109th Congress, which corrected the enrollment of H.R. 2863 (an emergency supplemental appropriations bill) before either chamber had agreed to the conference report.

[20] *House Practice*, p. 776. In the case of a concurrent resolution requesting return from the President of a measure not yet enacted or vetoed, the House has typically considered the resolution by unanimous consent (ibid).

[21] *Riddick's Senate Procedure*, p. 826.

[22] Ibid.

[23] *Riddick's Senate Procedure*, p. 825.

[24] *House Practice*, p. 776. In recent examples of the House agreeing to such a resolution by a recorded vote, the vote occurred on a so-called "self-executing" special rule, in which the recorded vote agreeing to the rule itself also had the effect of granting House approval to the concurrent resolution referenced therein.

[25] *Riddick's Senate Procedure*, p. 825. For an example of one such concurrent resolution agreed to in the Senate by a recorded vote, see S.Con.Res. 74 in the 109th Congress, which directed changes in enrollment to H.R. 2863.

"technical corrections" to a law that did not accurately reflect congressional action or intent due to clerical errors or other changes made during the enrollment process.

In some instances, it has been alleged that irregularities in enrollment resulted in the enactment of a measure not in the form agreed to by both chambers. If Congress does not address the problem with a subsequent new enactment, the constitutionality of the measure may be challenged in federal court. The disposition of these cases may hinge on a variety of factors (including, for example, whether or not the party challenging the law has standing to do so). When the courts have addressed such issues in the past, they have frequently relied on an 1892 Supreme Court ruling, announced in *Marshall Field & Co. v. Clark* (143 U.S. 649), called the enrolled bill rule. This rule provides that the courts do not "look behind" the enrollment process (i.e., examine other legislative documents and records) to determine if Congress properly enrolled the text of a measure as passed, so long as each chamber's presiding officer signed the enrolled bill, thereby attesting that it accurately reflected final congressional action. If a court were to rely on the enrolled bill rule in its refusal to review the pre-enactment process, it would presumably permit the law to stand. If, however, a court agreed that the constitutional requirements for enactment were not fulfilled, the court could invalidate the entire text or alternatively, strike down only the portion of the law that is alleged to have been incorrectly or improperly enrolled.

One recent instance was S. 1932 in the 109th Congress, the Deficit Reduction Act of 2005 (P.L. 109-171), for which the enacted text did not reflect the text agreed to by both chambers. In the final stages of consideration of S. 1932, the engrossment of a Senate amendment to the House amendment contained an inadvertent error that did not accurately reflect Senate action because the Senate had taken no action to alter the House amendment in this way. The House subsequently agreed to the Senate-engrossed text without correcting the error; thus, both chambers had agreed to identical text that did not reflect either chamber's intent. Before sending the measure to the President, the text that was agreed to (in error) was changed to reflect what each chamber apparently intended, although neither chamber adopted a concurrent resolution to authorize this change to the text in question.[26] Several parties challenged the constitutionality of the law on these grounds in federal court; no court has invalidated the law or any portion of it, and those decisions issued thus far have relied, at least in part, on the enrolled bill rule to reject the claims of unconstitutionality. In two cases in which appeals were filed, the United States Supreme Court denied the petition to review the circuit court's dismissal of the case.[27]

[26] After the President signed the legislation, the Senate by unanimous consent took up and agreed to S.Con.Res. 80 (109th), which specified that the enacted measure be "deemed the true enrollment of the bill reflecting the intent of the Congress," but the House did not consider the resolution.

[27] CRS Report RS22507, *Constitutionality of the Deficit Reduction Act of 2005: Litigation*, by Thomas J. Nicola, discusses the cases in more detail. Additional detail on the legislative history of the Deficit Reduction Act of 2005 is provided in CRS Report RL33132, *Budget Reconciliation Legislation in 2005-2006 Under the FY2006 Budget Resolution*, by Robert Keith.

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