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Invoking Cloture in the Senate

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Cloture is the only procedure by which the Senate can vote to set an end to a debate without also rejecting the bill, amendment, conference report, motion, or other matter it has been debating. A Senator can make a nondebatable motion to table an amendment, and if a majority of the Senate votes for that motion, the effect is to reject the amendment. Thus, the motion to table cannot be used to conclude a debate when Senators still wish to speak and to enable the Senate to vote *for* the proposal it is considering. Only the cloture provisions of Rule XXII achieve this purpose.

There are several stages to the process of invoking cloture.

- First, at least 16 Senators sign a cloture motion (also called a cloture petition) that states: "We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon [the matter in question]."
- To present a cloture motion, a Senator may interrupt another Senator who is speaking. When the motion is presented, the clerk reads it.
- The cloture motion then lies over until the second calendar day on which the Senate is in session. For example, if the motion is filed on Monday, it lies over until Wednesday, assuming the Senate is in session daily. If the motion is filed on Friday, it lies over until Tuesday unless the Senate was in session on Saturday or Sunday.
- The Senate votes on the cloture motion one hour after it convenes on the second calendar day after the cloture motion was filed and after a quorum call has established the presence of a quorum. The time for the cloture vote may be changed by unanimous consent, and the required quorum call is routinely waived.
- The presiding officer presents the cloture motion to the Senate for a rollcall vote at the time required by Rule XXII, even if the Senate had been considering other business between the time the cloture motion was filed and the time for voting on the motion arrives.
- The majority required to invoke cloture for most business is three-fifths of the Senators duly chosen and sworn, or 60 votes if there are no vacancies in the Senate's membership. However, invoking cloture on a measure or motion to amend the Senate's standing rules requires the votes of two-thirds of the Senators present and voting, or 67 votes if all 100 Senators vote. Additionally, under a November 21, 2013, precedent established by the Senate, invoking cloture on presidential nominations to positions other than the Supreme Court of the United States requires a vote of a majority of Senators present and voting, or 51 votes if all 100 Senators vote.[1]

Senators who wish to offer amendments to a bill or amendment on which cloture has been invoked must submit their amendments in writing before the cloture vote takes place. First-degree amendments (which propose to change the text of a bill or a committee amendment in the nature of a substitute) must be submitted in writing to the journal clerk when the Senate is in session but no later than 1:00 p.m. on the day after the cloture motion is filed. Second-degree amendments

[1] *Congressional Record*, daily edition, vol. 159, November 21, 2013, p. S8418.

(which propose to amend first-degree amendments) must be submitted at least an hour before the Senate votes on cloture.

Cloture may be invoked only on a matter that is pending before the Senate or on the unfinished business. It is not in order, except by unanimous consent, to invoke cloture on a bill before the Senate has agreed to consider it. On the other hand, there is no limit on the number of times that the Senate can vote on motions to invoke cloture on a bill, amendment, or other matter it is considering.

Although not explicitly provided for in Senate rules, it has become common practice for the majority leader to make a motion to proceed to consider a measure, immediately file cloture on that motion, and then withdraw the motion to proceed. This allows the Senate to conduct other floor business while the cloture petition is "running" in the background. At the time appointed by Rule XXII, the cloture petition on the motion to proceed is automatically laid before the Senate for a vote.[2]

If an amendment has been offered to a bill, the Senate may invoke cloture either on the bill or on the amendment. Sometimes Senators prefer to invoke cloture on an amendment instead of a bill because after the Senate invokes cloture, it may consider only amendments that are *germane*. This germaneness requirement applies to amendments that are pending at the time that cloture is invoked as well as to amendments that Senators offer after the Senate has voted for cloture. Thus, if the Senate invokes cloture on a bill, the presiding officer immediately rules on whether any pending amendment is germane. If the amendment is not germane, it falls and is ineligible for further consideration.

If the Senators who wish to expedite passage of a bill also support a pending non-germane amendment to the bill, they cannot invoke cloture on the bill without also killing the amendment they favor. This is often the case with amendments in the nature of a substitute, which, because they propose to replace the entire text of a measure being considered, and may be hundreds of pages in length, often contain at least some non-germane provisions. The alternative is to ask the Senate to invoke cloture on the amendment, not on the bill. Doing so protects the amendment from becoming subject to the germaneness requirement. After the Senate agrees to the amendment, however, it may be necessary for the Senate to invoke cloture a second time—this time on the bill as amended.

Should a cloture motion be defeated, the majority leader may enter a motion to reconsider the cloture vote. This allows the majority leader to call up the motion at a subsequent time when he feels he has the votes and thereby obtain an immediate second vote on cloture.[3]

On January 24, 2013, the Senate amended Senate Rule XXII to establish an additional, optional process of invoking cloture on a motion to proceed that differs in some respects from the procedures described above.[4] Under this process, if a cloture motion filed on a motion to proceed to consider a measure or matter is signed by both floor leaders, seven additional Senators not

[2] See Electronic Senate Precedent (ESP) Database, PRL19900427-004. *Congressional Record*, daily edition, vol. 136, April 27, 1990, p. S5200.

[3] For additional information, see Senate Rule XXII and *Riddick's Senate Procedure*, pp. 282-334, available online at http://www.gpoaccess.gov/riddick/282-334.pdf.

[4] See S.Res. 16.

affiliated with the majority party, and seven additional Senators not affiliated with the minority party, it will be eligible for a vote on the next session day (as opposed to the second day of session, as would otherwise be the case). If cloture is invoked, the vote will immediately be put on the motion to proceed without the usual 30 hours of post-cloture consideration.[5]

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[5] For more information, see CRS Report R42996, *Changes to Senate Procedures at the Start of the 113th Congress Affecting the Operation of Cloture (S.Res. 15 and S.Res. 16)*, by Elizabeth Rybicki.