BASIC TRAINING

PARLIAMENTARY PROCESS, FACTS, AND STRATEGIES

Resolving House-Senate Differences

In order for a bill or measure to be transmitted out of the legislative branch to the executive branch, it is necessary for both the House and the Senate to pass identical versions of that bill. Every aspect of the versions passed through each chamber must match—from the bill number to every word, period, and comma. If the bill versions passed in either body differ in any respect, the two houses are in what is called "disagreement" and further amendments are necessary to resolve these descepancies before the legislation can be transmitted to the President. The methods of transmission differ in the House and Senate, yet both have pressure points that can be used to slow down or stop a bill during this final stage.

GETTING TO "DISAGREEMENT"

Under the presentment clause of the Constitution, both the House and Senate must pass the exact same bill before it can be enrolled and presented to the President for signature or veto. It is not merely sufficient that both Houses pass similar (or even identical) measures; the same bill number must pass both Houses, one which agrees to the bill without further amendment.

When one House will not agree to an amendment passed by the other, the Houses are said to be in "**disagreement**," the formal stage necessary to begin resolving differences. This stage may occur after one House will not agree to the amendment of the other, or after multiple attempts at amendment.

CONFERENCE COMMITTEES AND REPORTS

The traditional method for reconciling differences between House and Senate measures is through a conference committee, which is comprised of "managers" appointed by each of the Houses to reconcile the provisions in disagreement. The conference process has several distinct stages: (1) sending the bill to conference, (2) the conference between the Houses, and (3) consideration of the conference report. Each of these stages have their own "pressure points" that can be brought to bear in the appropriate circumstances.

> ***It is not merely sufficient that both Houses pass similar measures; the same bill number must pass both Houses.***

Getting to conference. The first stage of the conference process is the "**hooking up**" of the House and Senate bills. Commonly, the practice is for each house to consider its own bill (an "S." or "H.R."), but engross its own measure into the companion legislation from the other body to establish the disagreement necessary for conference. In the House, this is often executed as part of a special rule, or done by unanimous consent. If the minority (or any member) denies unanimous consent, the majority is forced to use the Rules Committee or another process to put the two bills together.

After the bills are combined, a motion to go to conference is in order. Most often, requesting (or agreeing to the request for) conference is achieved by unanimous consent. The House Rules, however, provide a privileged motion from the Chair of the committee of jurisdiction, so long as all committees of jurisdiction have specifically authorized the motion. That motion is debatable for one hour, but is debated rarely.

After the House requests or agrees to a conference, the Speaker will appoint conferees. After the appointment of conferees, a **motion to instruct conferees** is in order. The motion to instruct is in order at three times: (1) when the House votes to go to conference, (2) after the

House-Senate Conferences *continued*

expiration of 20 calendar-days of being in conference without a conference report being filed, and (3) when a conference report is recommitted back to conference. A Member offering a motion to instruct after the 20 calendar-day period must provide one day's notice. The motion to instruct is debatable for one hour, equally divided between the proponent and an opponent. Motions to instruct are merely advisory in nature and are not binding on the conferees.

In Conference. The most important rule to remember about conferences is that there are no rules. Because conferences necessarily involve members from both chambers, neither chamber's rules restrict the coferees, meaning they are free to adopt their own rules. For instance, while specifically prohibited by House rules, proxy voting is permissible in conferences. The only requirements are (1) the conference report and joint statement of managers have the signatures of a majority of the conferees from each body on each section and (2) there be at least one public meeting of the conference. If there are not enough signatures, the conference report is not valid and a point of order lies against its filing. The requirement for a public meeting can be waived by the Rules Committee.

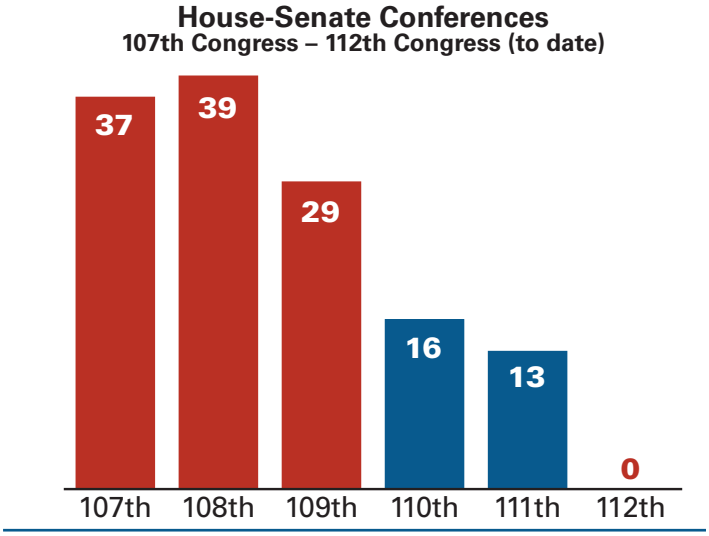

Figure 1. The use of House-Senate conferences has been steadily diminishing in the modern era. The figure shows the number of conferences from the 107th Congress through the 112th Congress to date.

The Democratic majority adopted a number of provisions governing conferences at the beginning of the 110th Congress, including (1) providing adequate meeting notice and opportunity for the attendance by all conferees, (2) requiring that all provisions be open to discussion at the public meeting, (3) providing a single place and time for all conferees to review the documents and affix their signatures, and (4) requiring that there be no material change to the text of the conference report after the managers sign. The first three of these requirements, however, are merely hortatory, while the last requirement can be waived by the Rules Committee. These provisions were retained in the rules after Republicans regained the majority in the 112th Congress.

Consideration of the Conference Report. Conference reports are privileged, and must be filed from the floor in the House. A conference report consists of two separate and distinct elements: (1) the **conference report** itself, which contains the legislative language of the conference agreement, and (2) the **joint statement of managers**, which explains the conference agreement much in the same way a committee report explains a bill reported from committee.

While conference reports are considered privileged, they are usually considered in the House pursuant to a special rule that (1) waives all points of order and (2) provides that the conference report is considered as read. This waiver means that points of order against violations of scope, germaneness, the Budget Act, the conduct of the conference, layover of text, and other applicable rules are all waived. The only points of order available (indirectly) are for violations of the earmarks and unfunded mandates rules because points of order of this nature apply to a rule even when all points of order are waived.

3 WAYS TO RESOLVE DIFFERENCES BETWEEN HOUSE & SENATE

1. Pass the same bill — By far the simplest mechanism to clear a bill for the President's signature is for one House to pass a bill originated by the other House without amendment. This method is usually reserved for non-controversial legislation and is only employed in cases where language has been "worked out" between the House and Senate in advance.

2. Hold a Conference — If either the House or Senate is not satisfied with the legislative product of the other body, they may amend the bill, insist on their amendment, and request a conference. If the other House

In cases where both the Majority and Minority floor managers (usually the chair and ranking minority member of the primary committee of jurisdiction) support the bill, but another member is opposed, the House rules provide for a **3-way division of debate**. In that case, the majority, minority, and member opposed each control 20 minutes.

A motion to recommit the conference report is available in the House so long as the Senate has not already acted on the conference report at the time the motion is offered. The motion to recommit may contain instructions to the House conferees, but may not direct them to agree to items that would exceed the scope of conference or otherwise violate the rules of the House.

In the Senate, a conference report is privileged, meaning that the motion to proceed to the conference report is not debatable, eliminating a potential cloture motion and the time required to achieve cloture under the Senate rules. Just as in the House, a conference report is not amendable without destroying the conference.

Amendments Between the Houses

While the use of House-Senate conferences have been the traditionally preferred method of resolving legislative differences, the use of **amendments between the Houses** has returned as an acceptable method for reaching the "end game" on legislation.

During the normal course of considering legislation, one House will propose a bill and the other, if the bill is unsatisfactory in its current form, will amend the bill. Normally, the originating House can either accept the amendment or disagree to the amendment.

In the past, when a chamber finds an amendment unacceptable, the most common course for the originating House is to disagree to the amendment and request a conference. Due to the difficulty in the Senate to appoint conferees (the motion is subject to filibuster) and certain procedural advantages to the majority in the House, both bodies have lately chosen to amend a bill until the House and Senate can agree to a final text.

The motion in both the House and Senate is the same: a motion to concur in the amendment of the other body, and, if additional amendments are desired, with a further amendment.

(continued on the next page)

Figure 2. The practice of resolving differences through "amendments by the Houses" is colloquially known as "ping-pong" because the measure is passed back and forth between the House and Senate until the amendment of one body is acceptable to the other.

agrees to the conference, a conference committee is established and that committee will report its recommendations to the House and Senate in the form of a conference report and joint statement of managers. The conference report is privileged in both Houses and is generally subject to only an up or down vote.

3. Amendments Between the Houses — Increasingly common due to procedural advantages in both the House and Senate, each House keeps amending the legislative product of the other until they reach a text that both Houses can agree to.

While amendments cannot be in the third degree, the House can overcome this through a rule from the Rules Committee.

THE MOTION TO INSTRUCT: USES & LIMITATIONS

The motion to instruct is a tool primarily used by the minority or another member opposed to the measure in conference to express a desired outcome for the negotiations between the House and Senate.

The motion to instruct is available to these discontent members at three points during the conference process: (1) when the House votes to go to conference, (2) after the expiration of 20 calendar-days of conference without a conference report being filed, and (3) when a measure is recommitted back to the conference committee.

A member offering a motion to recommit under the post-20 calendar-day rule must provide one day's notice before the motion must be considered. Once the 20 calendar-day period has expired, multiple motions to instruct may be offered.

There are two other significant limitations on a motion to instruct. First, they are not binding on the conferees. While considered an expression of the will of the House, the conferees are allowed to exercise their own independent judgement.

Second, the motion to instruct may not direct the conferees to do anything that would be outside of the scope of the conference. Scope is measured by the items committed to conference in disagreement. For instance, a motion to instruct that directs conferees to change a provision that is identical in the House bill and Senate amendment is not in order because that provision is not in disagreement; technically, it is not committed to conference.

While perhaps useful from a political perspective, motions to instruct have little actual legislative value.

Amendments *continued*

In the House, there really is only a single procedural advantage concerning this process, and it accrues to the majority. Because the measure under consideration is an amendment, rather than a bill or joint resolution, there is no motion to recommit available to the minority. If the majority wants to forestall all opportunities to amend a measure for political reasons, outside of making the Rules Committee convene in order to "turn off" the motion to recommit, this is the best option. As shown in Figure 3, this became a common procedure to allow the Democratic majority avoid politically difficult motions to recommit in the 110th and 111th Congresses.

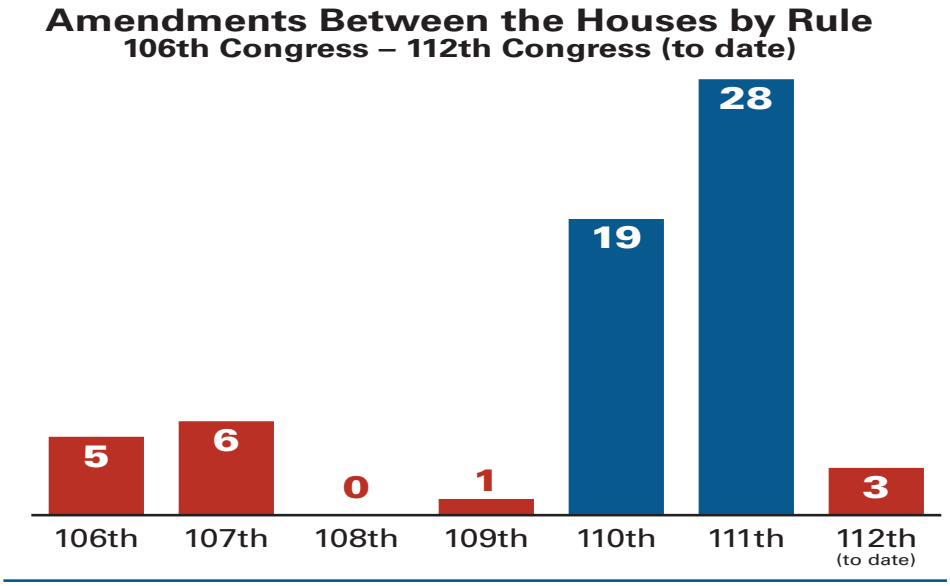

Figure 3. Amendments between the Houses considered pursuant to a Rule. In the 110th and 111th Congresses, the Democratic majority used amendments between the Houses as a means to avoid politically tricky motions to recommit.

In the Senate, there is a more important advantage. Because a House amendment is privileged under the Senate rules, there is no filibuster available for the motion to proceed, allowing the Senate Majority Leader to move to consideration of the House amendment with a simple majority vote. This eliminates an entire cloture process, and shortens the time required for consideration of the amended bill or joint resolution.

Amendments between the Houses may take any number of forms. It can be an amendment in the nature of a substitute, which replaces the entire text of a particular bill. It can also be a simple perfecting amendment, changing a single discrete part of the underlying bill.

Amendments between the Houses are also subject to both House's rules against amendments in the third degree. While each House gets an opportunity to act on the measure, as the amendment tree is filled, it becomes more difficult to add further amendments, although in the House the Rules Committee can overcome any impediment this could cause.

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Conference Committee and Related Procedures: An Introduction

Elizabeth Rybicki
Specialist on Congress and the Legislative Process

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CRS REPORT
Prepared for Members and
Committees of Congress

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 are generally free to conduct their negotiations as they choose, but under the formal rules they are expected 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.

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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.

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 bills 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 has already passed.

For example, after the House passes a bill, it frequently takes up a bill on the same subject that it has already 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. 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 could happen in the Senate. After considering its own bill, the Senate, by unanimous consent, could take up and pass the House bill after amending it with the text of the Senate-passed bill. Because this action would take unanimous consent in the Senate, however, the Senate might choose instead to begin consideration of the similar House bill. The floor manager could offer as the first amendment to the House bill a full-text substitute consisting of the text of the Senate bill.

This process is usually 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 that 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 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 that 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 may 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 can then 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, which 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. 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 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, typically 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 propose motions that preempt all other available

motions. This is 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 both further amendment to the House amendment and extended debate can be avoided. The Senate sometimes arranges to consider a House amendment by unanimous consent.

Like the Senate, the House 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 are usually 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 can usually 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. A motion that is privileged at this stage is a motion 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 act only if it has the "papers." The papers are comprised of 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 must each state 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 and proposes its own 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 sometimes 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, which 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 the Senate could immediately vote to approve the motion to authorize a conference. 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 frequently 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, or appoint conferees directly, through the motion to authorize a conference, discussed above. 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 chambers that the Speaker normally accepts and the presiding officer of the Senate always accepts. The party leaders may also 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 are often 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 address a specific section or title. Representatives may also be appointed as conferees for limited purposes when the Senate proposes a nongermane 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.

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.[1] 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 can also instruct its conferees if they do not report within 45 calendar days and 25 legislative days after being appointed (or 36 hours after being appointed during the last six days of a session).

[1] 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.

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 meetings, generally encouraging frequent meetings with open discussions, but these guidelines are often waived or in some cases are not procedurally enforceable.

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 negotiating forums, and the two chambers allow conferees to decide for themselves how best to conduct their negotiations. It is most common that a conference committee holds a single public meeting, sometimes for members to offer opening statements only.

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. Under a previous practice, when one house would pass a bill and the other would then pass it with a series of separate amendments—each making a change in a different provision of the bill—these amendments were usually numbered, and it was relatively easy for the conferees to determine the scope of the differences over each amendment. This is generally not true, however, under modern practice 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.[2] Under this rule, a Senator can raise a point of order against discretionary and mandatory spending provisions of a conference report if they constitute "new directed spending provisions," or what are sometimes called "air drops." Paragraph 8 defines a "new directed spending provision" as follows:

> 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.

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.[3] 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 takes up a conference report by unanimous consent, although a Senator can make a nondebatable 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 Publishing 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 consent or cloture or if the Senate is considering the report under 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

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

[3] 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.

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.[4]

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. Amendments to this motion are not in order, and debate is limited only if it had been limited on the conference report. 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. If the motion to waive garners the necessary support, the Senate is effectively agreeing to keep the matter that is potentially in violation of the rule in the conference report.

In the House, the conference report cannot be considered unless it has been available in the *Congressional Record* or on the House document repository website for 72 hours. Copies of the report and the statement must also 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

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

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 acts on 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.

Additional Resources

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 is also 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.*

Author Contact Information

Elizabeth Rybicki
Specialist on Congress and the Legislative Process
-redacted-@crs.loc.gov-....

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