

Conference Committee and Related Procedures: An Introduction

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ABSTRACT

This report briefly discusses the procedures by which the House of Representatives and the Senate reach legislative agreement. After discussing the constitutional requirements for bicameral agreement, the report begins with the process of reaching agreement through an exchange of amendments and messages between the houses. The report then focuses on conference committees, including the decision to go to conference, the process of appointing and instructing conferees, the rules governing the conduct of conference committees and the content of conference reports, and, finally, the procedures by which the House and Senate act on conference reports and amendments in disagreement.

This report will be revised as necessary to reflect significant changes in relevant House and Senate rules, precedents, and practices.

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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 in one of two ways: 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 house's amendments to a bill; thus, there can be House amendments to Senate amendments to House amendments to a Senate bill. If either house 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 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. Sometimes conference reports are accompanied by amendments that remain in disagreement. 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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Conference Committee and Related Procedures: An Introduction

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 author's interpretation of the rules and published precedents of the two houses and his analysis of the application of these rules and precedents in recent practice. 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 *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, CRS Report 98-696, updated periodically.

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 usually create a conference committee for this purpose. However, a conference may not be necessary if they can reach an agreement through 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 ("messed") 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.) 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. The Senate usually decides to consider them by unanimous consent; if necessary, however, the Senate can vote for a non-debatable motion to take them up. Motions to dispose of the House amendments—such as motions to concur or to concur with amendments—are debatable and, therefore, subject to filibusters. In practice, however, the Senate rarely debates House amendments for very long. Either all the interested Senators agree to accept or amend the House amendments or they agree to go to conference instead.

The procedural situation in the House is somewhat more complicated, although, like the Senate, the House often 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.¹

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. This is likely to happen on major bills and any others for which a conference committee is certain to be necessary. 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.

A House decision to disagree to the Senate's position or insist on its own position is also important for two other reasons.

First, once the House reaches the "stage of disagreement," later action on the Senate's amendments is privileged. Representatives then can make motions on the floor to recede and concur, with or without amendments (stated more fully, motions that the House recede from its disagreement to a Senate amendment and either concur therein or concur in the Senate amendment with an amendment).

Second, the precedence among motions changes when the House reaches the stage of disagreement. Before disagreement, House precedents give priority to motions that perfect the bill. For example, a Representative can move that the House concur in the Senate amendments with amendments before the House votes on a motion already made by another Representative that the House simply concur in the Senate amendments. After disagreement, however, House precedents give priority to motions that promote agreement between the houses. For example, a Representative can move that the House recede and concur in a Senate amendment before the House votes on a motion already offered that the House recede and concur with an amendment.

Representatives usually cannot make motions to concur, with or without amendments, before the House reaches the stage of disagreement. So the precedence

¹ There are several opportunities for extended debate and delay on the Senate floor in the process of sending, or trying to send, a bill to conference. See *Going to Conference in the Senate* (CRS Report No. RS20454).

among motions is most likely to be important after a conference committee has met and reported its recommendations.

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 can elect its conferees although it almost always decides, by unanimous consent, to authorize the Presiding Officer to appoint "the managers on the part of the Senate."

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 address a specific section or title. Representatives also may be 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 thirty 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. 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

twenty days after being appointed (or thirty-six hours after being appointed during the last six 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. Beyond this requirement, 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.

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 very frequently, 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.

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 (or 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.² Each chamber then debates and votes on the conference report in turn.

If a conference agreement exceeds the scope of the differences or deals with a matter that is not in disagreement, the entire conference report is subject to a point of order when the House or Senate considers it. However, members rarely make such points of order for at least three reasons: first, conferees generally are careful not to exceed their authority; second, the Senate interprets the authority of its conferees generously, especially when they develop a conference substitute; and third, conferees sometimes can protect their recommendations against points of order by reporting amendments in technical disagreement.

Amendments in Disagreement

If the conferees cannot agree at all, they can file a conference report in disagreement. By the same token, if they can resolve some, but not all, of the amendments in disagreement, they can file a partial conference report on the agreements they have reached, accompanied by one or more amendments that remain in disagreement. But when conferees negotiate over the version of a bill passed by one house and a complete substitute for it passed by the other, they can report only in full agreement or full disagreement. In this case, there is only one amendment in conference, and conferees cannot report in disagreement on part of an amendment.

Conferees also report individual amendments in disagreement, rather than as part of their conference report, when they wish to resolve the differences over those amendments with proposals that exceed the scope of their authority. In this case, they report the amendments in technical disagreement to protect the conference report itself against a point of order. Acting in turn, the House and Senate first vote to approve the partial conference report and then act on each amendment in technical disagreement and the conferees' recommendation for disposing of it.

In addition, conferees on general appropriations bills may report certain amendments in technical disagreement because of another restriction that the rules of the House place on their authority. House rules are stricter than Senate rules in prohibiting both unauthorized appropriations and changes in existing law ("legislation") as provisions of general appropriations bills. Because of this difference, clause 5 of House Rule XXII forbids House conferees from including either kind of Senate provision in an appropriations conference report without a House vote authorizing them to do so. However, amendments in disagreement are not part of conference reports, and so they are not subject to this requirement. When appropriations conferees accept a legislative provision or an unauthorized appropriation proposed by the Senate, therefore, they usually report that Senate amendment in technical disagreement. Otherwise, a Representative could make a point of order against the conference report as a whole. Conference reports on

² 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 *Sufficiency of Signatures on Conference Reports* (CRS Report No. RS20304).

general appropriations bills often are accompanied by many amendments in disagreement; in most cases, the disagreements are technical.

Until recently, appropriations conferees often reported partial conference reports that were accompanied by many amendments in technical disagreement. During the most recent Congresses, however, the more common practice has been for appropriations conferees to include all (or almost all) of their agreements in their conference reports. The House then adopts resolutions, reported by the House Rules Committee, that waive all points of order against the reports and against their consideration. If the House adopts such a waiver resolution, appropriations conferees can include unauthorized appropriations and legislative provisions in their report without the report being subject to points of order on the House floor.

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, and Senators then can debate it at length. If the Senate agrees by unanimous consent to limit the time for debate, the time is equally divided between the majority and minority parties.

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. If the report meets these requirements, it is considered as having been read. Otherwise, the report is to be read before debate begins. Instead, the House typically agrees by unanimous consent to have the joint explanatory statement read and then to dispense with the reading. These availability requirements do not apply during the last six days of a session.

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 conferees reach full agreement and 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. However, if the conferees file a partial report and one or more amendments in disagreement, the two houses must agree on a way to dispose of each of these amendments before the bill can become law. Congress cannot present part of a bill to the President.

In the case of a partial conference report accompanied by amendments in disagreement, the House or Senate first debates and votes on the report and then takes up the remaining amendments. After a clerk reads one of these amendments, the floor manager makes a motion to dispose of it—moving, for example, to recede and concur in the amendment, to recede and concur in the amendment with an amendment, or to insist on its disagreement to the amendment. At this point, another member may offer a preferential motion. If the floor manager moves to insist, for example, another member may move to recede and concur instead. (In the House, a Representative sometimes demands that this motion be divided; if the House then votes to recede, he or she now may offer a new preferential motion that the House concur with an amendment.) The House or Senate votes first on any preferential motion.

When the clerk reaches an amendment in technical disagreement, the floor manager frequently moves to recede and concur with an amendment. This amendment embodies the agreement that the conferees reached but could not include in their report because it exceeded the scope of the differences. Now the agreement can be proposed in the form of an amendment because the restrictions of "scope" apply to conference reports, not to amendments between the houses. Similarly, when the House clerk reports a Senate appropriations amendment in technical disagreement, the floor manager moves that the House recede and concur, with or without an amendment, and approve the agreement that Rule XXII prohibited the conferees from including in their report.

If the floor manager intends to move that his or her house take the same action—e.g., recede and concur—on a number of amendments, he may ask unanimous consent that they be considered together (en bloc). The Senate frequently acts on most or all amendments in disagreement en bloc. Otherwise, amendments in disagreement are considered one at a time.

After one house agrees to the partial report and disposes of all the amendments in disagreement, the other house takes similar action. If the House and Senate approve the report and dispose of all the amendments in the same way, the bill is ready to be enrolled. If not, the two houses can try to resolve their remaining disagreements through a further exchange of amendments or positions or by creating a new conference committee. But if the House and Senate do agree to a new conference committee, the conference may only consider whatever disagreements

remain; it may not re-open other issues because the House and Senate have resolved them.

Rejecting Non-germane Provisions

The House also has a special procedure in Rule XXII for dealing with non-germane Senate amendments that conferees sometimes include in their reports. This procedure protects the House from having to vote for or against a conference report that includes a Senate provision that the House did not and could not have considered because it would not have been germane to the bill as the House passed it.

Before the House begins to debate the report, a Representative can make a point of order that a particular provision of the report would not have been germane if it had been offered as an amendment to the bill in the House. If the Speaker sustains the point of order, the Representative then can move that the House reject the non-germane matter. The House votes on this motion after no more than forty minutes of debate. If the House defeats the motion, it then debates and votes on the conference report, including the non-germane matter. However, if the House votes to reject, it next votes on one of two motions, depending on the circumstances: to insist on the House amendment; or to recede and concur in the Senate amendment with an amendment consisting of the rest of the conference report, minus the non-germane provision. The Senate can then accept the House amendment or propose a new Senate amendment (again, depending on the circumstances), or it can request a new conference with the House. The same House rule includes a comparable procedure for dealing with non-germane matter in Senate amendments that the House considers after reaching the stage of disagreement—for instance, a Senate amendment reported from conference in disagreement.

