Committee on Rules Legislative Process Program

Section 5 – *The Senate, the Executive Branch and Congressional Oversight*

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Senate Process and Procedures

Section 5, chapter 1 of 4

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U.S. HOUSE OF REPRESENTATIVES

Senate Process and Procedure

Section 5 chapter 1 of 4

Agenda

Introduction

Allowing the Senate to speak for itself regarding its process and procedures, this chapter is centered on a document titled "Senate Legislative Process" that can be found on the Senate's official website at: http://senate.gov/legislative/common/briefing/Senate_legislative_process.htm.[1] Five main sections outline the chamber's legislative process:

- **Origin and Legislative Framework of the Senate** *by Walter J. Oleszek, Senior Specialist in the Legislative Process, CRS Government and Finance Division*;
- **Committee Organization and Procedure** *by Thomas Carr*, *Analyst in American National Government, CRS Government and Finance Division*;
- **Senate Floor Procedure** *by Legislative Process Specialists, CRS Government and Finance Division*;
- **Resolving Differences with the House** *by Specialists in Legislative Procedure, CRS Government and Finance Division*; and
- **Enrollment and Presidential Action** *by Legislative Process Specialists, CRS Government and Finance Division*.

An Appendix is included in order to expand on specific topics of interest for this program (for example, the Filibuster, Cloture, and Holds) and to further highlight some of the major differences between the House and the Senate.

For further information on Senate Legislative Process, read "Enactment of a Law" by Robert B. Dove, Parliamentarian, United States Senate (Updated February 1997). This document can be accessed electronically at the following link:

http://thomas.loc.gov/home/enactment/enactlawtoc.html

[1] This information was originally compiled by the Congressional Research Service. Additional related fact sheets can be found on the CRS website at: http://www.crs.gov/products/guides/guidehome.shtml.

Senate Legislative Process

Overview: The Legislative Framework in the Senate

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Origin of the Senate: The Great Compromise

On July 16, 1787, the fifty-five Founding Fathers meeting in Philadelphia reached what is commonly called the "Great Compromise." The compromise emerged from the struggle between the large states and the small states over the apportionment of seats in the Congress. The Framers easily accepted by principle of bicameralism-a two-house national legislature-but disagreed strongly over how each chamber would be constituted. This was the most contentious issue at the Constitutional Convention and nearly led to its dissolution. The large states favored the "nationalist" principle of popularly-based representation, but the smaller states insisted on a "federal" principle ensuring representation by states. The smaller states feared that if representation was based on population, the larger states would quickly dominate the new Congress.

In the end, the Framers reached an agreement: House seats would be apportioned among the states based on population and Representatives would be directly elected by the people; the Senate would be composed of two Senators per state-regardless of size or population-indirectly elected by the state legislature. As James Madison wrote in Federalist No. 39, "The House of Representatives will derive its powers from the people of America....The Senate, on the other hand, will derive its powers from the States, as political and co-equal societies; and these will be represented on the principle of equality in the Senate." The principle of two Senators from each state was further guaranteed by Article V of the Constitution: "no State, without its Consent, shall be deprived of equal Suffrage in the Senate."

Decisions made at the Constitutional Convention about the Senate still shape its organization and operation today, and make it unique among national legislative institutions. William E. Gladstone, four-time British Prime Minister during the 19th century, said the United States Senate, is a "remarkable body, the most remarkable of all the inventions of modern politics." Plainly, the Framers did not want the Senate to be another House of Representatives, and the institutional uniqueness of the upper house flows directly from the decisions they made at the Constitutional Convention.

Several of those constitutional decisions led to important and enduring features of the Senate and its legislative process. These features include constituency, size, term of office, and special prerogatives.

Constituency

The one state - two Senator formula means that all Senators represent constituencies that are more heterogeneous than the districts represented by most House members. As a result, Senators must accommodate a larger range of interests and pressures in their representational roles. Further, because each Senator has an equal vote regardless of his or her state's population, the Senate remains a oddly apportioned institution: Senators from the twenty-six smallest states, who (according to the 2000 census) represent 17.8% of the nation's population, constitute a majority of the Senate—a reality which has aroused little public interest or concern.

The Framers, of course, could not have foreseen the country's population increases, migratory patterns, or huge disparities in state sizes. While Members from small and large states all have comparable committee and floor responsibilities, few are likely to deny that Senators from the more populous states, such as California, face a broader array of representational

pressures than lawmakers from the smaller states, such as Wyoming. An indirect effect of Senate apportionment, some scholars contend, is that contemporary floor leaders of either party are likely to come from smaller rather than larger states because they can better accommodate the additional leadership workload.

Size

The one state - two Senator formula also meant that from the outset the Senate's membership was relatively small compared to the House. When it first convened it March 1789, there were twenty-two Senators (North Carolina and Rhode Island soon entered the Union to increase the number to twenty-six). As new states entered the Union, the Senate's size expanded to the 100 that it is today.

The Senate's relatively small size has significantly shaped how it works. In the smaller and more intimate Senate, vigorous leadership has been the exception rather than the rule. The relative informality of Senate procedures testifies to the looser reins of leadership. Significantly, there is large deference to minority views and all Senators typically have ample opportunities to be heard on the issues of the day. Compared with the House's complex rules and voluminous precedents, the Senate's rules are brief and often set aside. Informal negotiations among Senators interested in a given measure are commonplace. Although too large for its members to draw their chairs around the fireplace on a chilly winter morning—as they did in the early years—the Senate today retains a clubby atmosphere that the House lacks.

Term of Office, Qualifications, and Selection

A key goal of the Framers was to create a Senate differently constituted from the House so it would be less subject to popular passions and impulses. "The use of the Senate," wrote James Madison in Notes of Debates in the Federal Convention of 1787, "is to consist in its proceedings with more coolness, with more system and with more wisdom, than the popular branch." An oft-quoted story about the "coolness" of the Senate involves George Washington and Thomas Jefferson, who was in France during the Constitutional Convention. Upon his return, Jefferson visited Washington and asked why the Convention delegates had created a Senate. "Why did you pour that coffee into your saucer?" asked Washington. "To cool it," said Jefferson. "Even so," responded Washington, "we pour legislation into the senatorial saucer to cool it."

To foster values such as deliberation, reflection, continuity, and stability in the Senate, the Framers made several important decisions. First, they set the senatorial term of office at six years even though the duration of a Congress is two years. The Senate, in brief, was to be a "continuing body" with one-third of its membership up for election at any one time. As Article I, section 3, states: "Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes." Second, to be a Senator, individuals had to meet different qualifications compared to service in the House of Representatives. To hold office, Senators have to be at least 30 years of age and nine years a citizen; House members are to be 25 years and seven years a citizen. Senators, in brief, were to be more seasoned and experienced than representatives. Finally, the indirect election of Senators by state legislatures would serve to check precipitous decisions which might emanate from the directly elected House and buttress the states' role as a counterweight to the national government.

Direct election of Senators came with the Seventeenth Amendment, ratified in 1913. A byproduct of the Progressive movement, it was designed to end corruption in state legislatures (involving the purchase of Senate seats), blunt the power of party machine bosses and corporations, prevent deadlocks in the election of Senators, and make Senators directly answerable to the people for their actions and decisions.

Special Prerogatives

Although the House and Senate share all lawmaking authority, including overriding presidential vetoes, the Framers assigned special prerogatives to the Senate. Under the

Constitution's "advice and consent" provisions (Article II, section 2), only the Senate considers the ratification of treaties (which requires a two-thirds vote) and presidential appointments for such positions as federal judgeships, ambassadorships, or Cabinet offices (all of which require a majority vote for approval). The Framers entrusted "advice and consent" duties exclusively to the Senate in part because they expected these matters to be handled in a thoughtful and responsible manner. The qualities they embedded in a continuing body—stability, experience, and a longer perspective—were valuable in handling issues involving national security and international relations. The Senate's role in the appointments process, wrote Alexander Hamilton in Federalist No. 76, would serve as "an excellent check upon the spirit of favoritism in the President, and would tend greatly to preventing the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity."

The Constitution (Article I, section 3) also grants the Senate the "sole Power to try all Impeachments." The House possesses the constitutional authority to decide by majority vote whether to impeach (or indict) executive or judicial officials while the Senate, by a two-thirds vote, determines whether to convict and remove from office any impeached official. "Where else," wrote Alexander Hamilton in Federalist No. 65, "than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel confidence enough in its own situation, to preserve unawed and uninfluenced the necessary impartiality between an individual accused, and the representatives of the people, his accusers?" (Italics in original)

Understandably, the Senate's constitutional origins continue to shape its organization and operations. Three features in particular are noteworthy, because they contribute to making the Senate the unique institution that it is. They are extended debate, the lack of formal party leaders until the early 1900s, and the use of unanimous consent to conduct most of its business.

Extended Debate

All Senators have two traditional freedoms that, so far as is known, no other legislators worldwide possess. These two freedoms are unlimited debate and an unlimited opportunity to offer amendments, relevant or not, to legislation under consideration. The small size of the Senate permitted these traditional freedoms to emerge and flourish, subject to very few restrictions. Not until 1917 did the Senate adopt its first cloture rule (Rule XXII). Thus, from 1789 until 1917, there was no way for the Senate to terminate extended debates (called "filibusters" if employed for dilatory purposes) except by unanimous consent, compromise, or exhaustion.

Floor Leaders

Throughout the 19th century, many Senators were called "leaders" by their colleagues, commentators, scholars, or others. But no single Senator exercised central management of the legislative process in the manner of today's floor leader. As late as 1885, Woodrow Wilson could write in his classic study, Congressional Government, "No one is the Senator.... No one exercises the special trust of acknowledged leadership." (Italics in original) No doubt the small size of the early Senate and the tradition of viewing Members as "ambassadors" from sovereign states promoted an informal and personal style of senatorial leadership. Although the general scholarly consensus is that certain Senators began to function formally as party leaders in the early 1900s, the minutes of the respective party caucuses indicate that Democrats officially elected their "leader" in 1920; Republicans followed suit five years later. Floor leaders acquired procedural resources over time, such as their right of preferential recognition, that helped them to manage the Senate's work. However, their formal powers are limited and many floor leaders have said that their job is akin to "herding cats."

Unanimous Consent

From its beginning, the Senate has transacted much of its business by unanimous consent. The Senate's small size, few rules, and informality encouraged the rise of this practice. A single objection ("I object") blocks a unanimous consent request. Even several of the Senate's early rules incorporated unanimous consent provisions to speed the Senate's routine business.

Two types of unanimous consent are prevalent in today's Senate. Simple unanimous consent requests deal with noncontroversial matters, such as Senators asking unanimous consent to dispense with the reading of amendments. Complex unanimous consent agreements establish a tailor-made procedure for considering virtually any kind of business that the Senate takes up. They are commonly brokered by the parties' floor leaders and managers. Two fundamental objectives of these accords are to limit debate and to structure the amendment process. As two Senate parliamentarians wrote in the Senate's volume of precedents: "Whereas Senate Rules permit virtually unlimited debate, and very few restrictions on the right to offer amendments, these [unanimous consent] agreements usually limit debate and the right of Senators to offer amendments."

Summary

If the Founding Fathers visited the modern Senate, they would find that most of their fundamental principles continue to guide its legislative process. The direct election of Senators is probably the most significant constitutional change to their handiwork. On the other hand, the "changing Senate" might surprise some of the Framers. Senators, for example, typically attract large media attention, especially compared to most House members. One result is that the Senate has been an "incubator" for presidential contenders. The practice of "holds"[2] (requests by Senators to party leaders to delay floor consideration of legislation or nominations), which is nowhere recognized in Senate rules or precedents and about which little is known with respect to its origins, has become a prominent feature of today's Senate (*See "Senate Policy on 'Holds': Action in the 110th Congress" in the Appendix of this document for more information on Holds*). Despite these and many other developments, the Senate remains the preeminent legislative forum for protecting political minorities and debating and refining the great issues of the day.

[2] See "Senate Policy on 'Holds': Action in the 110th Congress" in the Appendix of this document for more information on Holds.

Committee Organization and Procedure

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Committees in the Senate have the power to conduct hearings and investigations, to draft bills and resolutions (and amendments to them), to report legislation to the Senate for its possible consideration, and to conduct oversight of the executive branch. Senate committees also have the power to originate legislation. Additionally, Senate committees consider treaties and nominations in the course of the Senate's exercise of its constitutional authority of "advice and consent."

Committee Organization

Committee Assignments. Committee assignments serve an important purpose in each Senator's pursuit of legislative, representational, and other goals. They are also important to party leaders who organize and shape the composition of the committees. Senate rules prescribe the size of each committee. Committee party ratios generally reflect party strength in the chamber. Adjustments to committee size and ratio often result from interparty negotiations before each Congress. Senate rules specify certain procedures for making committee assignments. The rules of the party conferences supplement the Senate rules, providing more specific criteria for making committee assignments.

Senate rules categorize standing and other committees for the purpose of distributing committee assignments to Senators. Essentially, each Senator is limited to service on two "A" committees, and on one "B" committee. Assignment to "C" committees is unrestricted. Party rules also restrict Senators' service on so-called "Super A" committees. Additionally, these service rules may be waived individually or collectively, as the Senate (and its parties) think necessary.

Jurisdiction and Referral. Committee jurisdiction is determined by Senate rules, supplemented by formal agreements among committees and precedents established by prior referrals. Senate Rule XXV identifies the policy topics handled by each standing committee. The formal responsibility for referral rests with the presiding officer of the Senate, but in practice the Senate parliamentarian advises on bill referrals. Measures are generally referred to a single committee based on "the subject matter which predominates." By unanimous consent, the Senate permits multiple referrals, either joint or sequential, for measures that cross jurisdictional boundaries. Multiple referral may also be accomplished by motion of the joint party leaders, although it appears that this motion has never been used.

Subcommittees. A subcommittee is a subunit of a committee established for the purpose of dividing and managing a committee's work. Unlike the House, the Senate places no direct limits on the number of subcommittees that a committee may create, and there are no requirements to create any subcommittees.

However, both Senate and Republican Conference rules limit the number of subcommittee assignments per Senator. Under Senate Rule XXV, a Senator may sit on no more than three subcommittees on each of his class "A" committee assignments, and on no more than two subcommittees on a class "B" committee. A Senate standing order also encourages Senate committees to adopt rules for equitable assignment of Senators to subcommittees. Several committees have adopted such provisions, which prohibit a Senator's assignment to a second subcommittee until all committee members have chosen one assignment in the order of their seniority. As with full committee assignment limits, subcommittee assignment limits can be waived.

Committee Rules. As agents of the Senate, committees must comply with all applicable Senate directives. Most of these requirements appear in Senate Rule XXVI. Each Senate committee must adopt (and publish in the Congressional Record), written rules to govern its proceedings "not inconsistent with the Rules of the Senate." These committee rules generally

dictate the procedures a committee follows in conducting its business. For example, committees must select a regular meeting day, which must be at least monthly, and determine appropriate quorums for various committee actions within the limits of Senate rules.

Committee Hearings

Committees use hearings to gather information for use in legislative, oversight and investigative activities, and to review the qualifications of presidential nominees. Regardless of the type of hearing, or whether a hearing is held in Washington or elsewhere, hearings share common aspects of planning and preparation. Senate standing committees and subcommittees are authorized to meet and to hold hearings when the Senate is in session, and when it has recessed or adjourned. To minimize conflicts with floor activities, a committee may not meet, without unanimous consent, on any day after the Senate has been in session for two hours, or after 2:00 p.m. when the Senate is in session.

Senate Rule XXVI requires each committee (except Appropriations and Budget) to give at least one week's notice of the date, place, and subject of a hearing; however, a committee may hold a hearing with less than one week's notice if it determines that there is "good cause." These notices appear in the Daily Digest section of the Congressional Record. While the Senate rule requires a one week public notice, a separate standing order of the Senate requires each Senate committee to notify the Daily Digest Office as soon as a hearing is scheduled [S.Res. 4, 95th Congress]. Hearings are generally open to the public, but can be closed by a committee roll-call vote in open session if the subject matter falls within specific categories enumerated in Senate rules.

Although a committee chair determines the agenda and selects witnesses, the minority typically works informally with the majority to invite witnesses representing its views. Senate rules allow the minority-party members of a committee (except Appropriations) to call witnesses of their choice on at least one day of a hearing. Witnesses before Senate committees generally must provide the committee with a copy of their written testimony at least one day before their oral testimony, with specifics set out in individual committee rules. It is common practice to request witnesses to limit their oral remarks to a brief summary of the written testimony.

A question-and-answer period generally follows a witness's testimony. Each committee determines the order in which Senators question witnesses. Although Senate rules do not restrict the length of time each Senator may question a witness, several committees have adopted such rules. Some committees also authorize committee staff to question witnesses.

Committee Markup

A markup is a meeting of the committee to debate and consider amendments to a measure under consideration. The markup determines whether the measure pending before a committee will be recommended to the full Senate, and whether it should be amended in any substantive way.

Procedures in markup for the most part reflect procedures used on the Senate floor, possibly modified by an individual committee's rules. The process begins when the chair of the committee schedules and sets the agenda for the markup. In leading a markup, the chair has broad discretion choosing the legislative vehicle and presenting it for consideration and amendment. The measure that is marked up may be one that was introduced in the Senate, or received from the House and referred to the committee. Alternatively the chair may choose to consider the text of a draft measure that has not been introduced, such as a subcommittee-reported version or a chairman's mark. In still other cases, the markup vehicle may be placed before the committee as an "amendment in the nature of a substitute" for the measure or text initially referred to it.

Reporting Legislation

When a committee concludes its markup, any committee member may move to order the measure reported to the Senate. A committee has several options for the form in which the a measure is ordered reported. It may be reported with no changes, with amendments to various sections adopted in markup, or with one amendment in the nature of a substitute. In addition, a Senate committee is authorized to report an original bill that embodies a text decided upon in markup.

Senate rules require the physical presence of a majority of the committee in order to report a measure. Absent Senators may vote by proxy on reporting a measure unless a committee has adopted a rule to the contrary, but such proxy votes may not effect the outcome of a vote to report a measure, and proxies may not be counted to determine a quorum.

Following a committee's vote to order a measure reported, it is the duty of the committee's chairman to report the measure promptly to the Senate. When a committee reports a measure, it generally prepares an accompanying written report that describes the purposes and provisions of the measure. If a report is submitted, Senate rules and statutes require the inclusion of such components as records of roll-call votes cast in committee, cost estimates, a statement of regulatory impact, and the specific changes the legislation would make to existing law. Committee members are also entitled to at least three days to prepare supplementary, minority, or additional views for inclusion in the report.

Committee Publications

Senate committees publish a variety of documents dealing with legislative issues, investigations, and internal committee matters. Print copies of these publications are generally available from the issuing committees or the Senate document room. Increasingly, committee publications are available in electronic format, either on the committee's web site or via GPO Access.

Hearings

Printed hearings contain the edited transcript of testimony, but they are often not published for months after a hearing. Hearing transcripts are usually available for inspection in committee offices and are often posted online.

Committee Reports on Measures

A committee report accompanying legislation, described above, provides an explanation of a measure, and the committee's actions in considering it.

Committee Calendars

Committee calendars are comprehensive records of a committee's actions, including committee rules, membership, brief legislative histories of measures referred to the committee, lists of hearings and markups held, and often a list of committee publications. Calendars are published at the end of each Congress.

Committee Prints

Finally, committees may also publish other information as "committee prints." A committee print might include committee rules or a report on a policy issue the committee wants to distribute widely, but in a form which is less formal than a committee report. A committee may also prepare a text which the Senate (by resolution) orders printed as a numbered Senate document.

Senate Floor Procedure

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Senate Proceedings and Senators' Rights

Senate floor proceedings are governed not only by the Senate's standing rules and precedents, but by various customary practices. Generally, these practices expedite business, but require unanimous consent.

Senate rules and practices emphasize full deliberation more than expeditious decision, and rights of individual Senators more than the powers of the majority. Senators can protect their rights by objecting to unanimous consent requests to waive rules. Compromise and accommodation tend to prevail; Senators most often insist on strict enforcement of rules in contentious situations.

Debate, Filibusters, and Cloture

The presiding officer of the Senate may not use the power to recognize Senators to control the flow of business. If no Senator holds the floor, any Senator seeking recognition has a right to be recognized, and then, usually, to speak for as long as he or she wishes (but only twice a day on the same question). Once recognized, a Senator can move to call up any measure or offer any amendment or motion that is in order. Senate rules do not permit a majority to end debate and vote on a pending question.

Generally, no debatable question can come to a vote if Senators still wish to speak. Senators who oppose a pending bill or other matter may speak against it at indefinite length, or delay action by offering numerous amendments and motions. A filibuster involves using such tactics in the hope of convincing the Senate to alter a measure or withdraw it from consideration. The only bills that cannot be filibustered are those few considered under provisions of law that limit time for debating them.

The only procedure Senate rules provide for overcoming filibusters is cloture, which cannot be voted until two days after it is proposed in a petition signed by 16 Senators. Cloture requires the support of three-fifths of Senators (normally 60), except on proposals to change the rules, when cloture requires two-thirds of Senators voting. If the Senate invokes cloture on a bill, amendment, or other matter, its further consideration is limited to 30 additional hours, including time consumed by votes and quorum calls, during which each Senator may speak for no more than one hour (See "Filibuster and Cloture" and "Cloture: Its Effect on Senate Proceedings" in the Appendix of this document for more information on these topics).

Scheduling Legislative Business

Senate business includes legislative business (bills and resolutions) and executive business (nominations and treaties). (The Senate also sits as a court to try impeachments, for which a special, separate set of rules applies.) When introduced or received from the House or the President, legislative or executive business is normally referred to the committee with appropriate jurisdiction. Business is placed on the legislative or executive calendar, and becomes available for floor consideration, if the committee reports it.

The Senate accords its majority leader prime responsibility for scheduling. He may carry out this responsibility by moving that the Senate proceed to consider a particular matter. By precedent, he and the minority leader are recognized preferentially, and by custom only he (or his designee) makes motions or requests affecting when the Senate will meet and what it will consider.

For executive business, this motion to proceed may be offered in a nondebatable form, but for legislative business it usually is debatable. Whenever possible, therefore, the majority leader instead calls up bills and resolutions by unanimous consent. If Senators object to unanimous consent to take up a measure, they are implicitly threatening to filibuster a motion to consider it. They may do so because they oppose that measure, or in the hope of influencing action on some other matter.

Senators can even place a "hold" on a measure or nomination, although this practice is not recognized in Senate rules. "Holds" are requests by Senators to their party's floor leader to object on their behalf to any request to consider a matter, at least until they have been consulted. The majority leader will usually not even request consent to consider a measure if there is a hold on it (*See "Senate Policy on 'Holds': Action in the 110th Congress" in the Appendix of this document for more information on Holds*).

Senate rules also permit a measure to be placed directly on the calendar when introduced or received from the House. This process permits Senators to bypass referral to a committee they believe unsympathetic. Alternatively, if a committee fails to report a measure, a new measure with exactly the same provisions may be introduced and placed directly on the calendar.

Finally, Senate rules do not require that amendments be germane or relevant, except to general appropriation bills, budget measures, and matters under cloture (and a few other bills, pursuant to statutes). Consequently, if a committee fails to report a measure, a Senator may offer its text as an amendment to any other measure under consideration, without regard to the scheduling preferences of the majority leader.

The Daily Order of Business

Each time the Senate convenes after an adjournment, a new legislative day begins. On each new legislative day, Senate rules provide for a "Morning Hour" during which routine "morning business" can occur, such as introducing bills and submitting committee reports. During this period, the Senate may also be able to take up bills on the calendar by nondebatable motions.

In practice, the Senate often recesses at the end of the day, rather than adjourning. Party leaders sometimes prefer a recess because it gives them greater flexibility in shaping the Senate's daily business. Since there is then no Morning Hour when the Senate next convenes, the majority leader usually obtains unanimous consent for "a period for routine morning business," such as bill introductions. Senators often make brief speeches during this period.

After the Morning Hour or the period for routine morning business, the Senate normally resumes consideration of the business previously before it. This business may be set aside, temporarily or indefinitely, in favor of other business through motions or unanimous consent requests by the majority leader. At any point in the day, noncontroversial business also may be conducted by unanimous consent.

Unanimous Consent Agreements

Senators' rights to debate and to offer nongermane amendments encourage the leaders to seek unanimous consent agreements that limit the exercise of these rights during consideration of a specified matter. If any Senator objects, the Senate cannot impose such an agreement, but once it is accepted, the Senate may later change its terms only by unanimous consent.

Unanimous consent agreements limiting the time for debate on a measure are frequently called "time agreements." Time agreements impose stated limits on debate of questions that may arise during consideration of a measure, and often on the legislation itself. These agreements place the time provided under the control of managers. Other Senators then may speak only if a manager yields them part of the time he or she controls.

Unanimous consent agreements also may require that amendments to a measure be germane, or, alternatively, relevant to it. Relevancy is a somewhat less restrictive standard than germaneness. An agreement may prohibit all amendments to a measure except those it specifically identifies.

Responsibility for negotiating time agreements falls primarily on the party floor leaders and the leaders of the reporting committee. Individual Senators advise the leaders of their preferences and intentions, and time agreements may include exceptions to their general provisions in order to satisfy these preferences.

The Senate begins consideration of most measures without first having reached a time agreement. For some measures, few amendments and little debate are expected, making an agreement unnecessary. For others, consideration may proceed while the floor leaders and managers try to arrange unanimous consent agreements for limited purposes. Before consideration of a controversial amendment, for example, leaders may propose to limit debate on it. If extended consideration occurs, the leaders often seek an overall agreement limiting debate on each remaining amendment, or setting a time for a vote on final passage.

The Amending Process

Floor consideration of a measure usually begins with opening statements by the floor managers, and often by other Senators. The managers usually are the chair and ranking minority member of the reporting committee or pertinent subcommittee.

The first amendments to be considered are those recommended by the reporting committee. If the committee has proposed many amendments, the manager often obtains unanimous consent that these amendments be adopted, but that all provisions of the measure as amended remain open to further amendment. After committee amendments are disposed of, amendments may be offered to any part of the measure in any order. If the committee recommends a substitute for the full text of the measure, the substitute normally remains open to amendment throughout its consideration.

The Senate may dispose of each amendment either by voting on it directly or by voting to table it. The motion to table cannot be debated; and, if the Senate agrees to it, the effect is the same as a vote to defeat the amendment. If the Senate defeats the motion, however, debate on the amendment may resume.

While an amendment is pending, Senators may propose amendments to it (called second-degree amendments) and to the part of the measure the amendment would change. The Senate votes on each of these amendments before it votes on the first-degree amendment (the amendment to the measure). Many additional complications exist. When a complete substitute for a measure is pending, for example, Senators can propose six or more first- and second-degree amendments to the substitute and the measure before any votes must occur.

If an amendment is considered under a time limitation, Senators may make no motions or points of order, or propose other amendments, until all the time for debating the amendment has been used or yielded back. Sometimes, however, the Senate unanimously consents to lay aside pending amendments temporarily in order to consider another amendment to the measure.

The amending process continues until the Senate orders the bill engrossed and read a third time, which precludes further amendment. Then the Senate votes on final passage.

Voting and Quorum Calls

The Constitution requires a majority of Senators to be present for the Senate to conduct business. If a Senator suggests the absence of a quorum, and a majority of Senators do not respond to their names, the Senate can only adjourn, recess, or attempt to secure the attendance of additional Senators. However, the purpose of a quorum call usually is to suspend floor activity

temporarily to accommodate individual Senators, discuss procedural or policy problems, or arrange subsequent proceedings. As a result, quorum calls usually are ended by unanimous consent before the clerk completes a call of the roll.

Article. I, sec. 5, paragraph 3 of the Constitution provides that one-fifth of those present (11 Senators, if no more than a quorum is present) can order the yeas and nays — also known as a rollcall vote or a recorded vote. If a Senator asks for the yeas and nays on a pending question, and the Senate orders them, it does not mean that a vote will occur immediately. Instead, ordering the yeas and nays means that whenever the vote does occur, it will be by roll call and will be recorded in the Journal. Otherwise, votes usually are taken by voice vote.

Resolving Differences with the House

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A bill cannot become a law of the land until it has been approved in identical form by both houses of Congress. Once the Senate amends and agrees to a bill that the House already has passed—or the House amends and passes a Senate bill—the two houses may begin to resolve their legislative differences by way of a conference committee or through an exchange of amendments between the houses.

Conference Committees

If the Senate does not accept the House's position (or the House does not agree to the Senate's position), one of the chambers may propose creation of a conference committee to negotiate and resolve the matters in disagreement between the two chambers. Typically, the Senate gets to conference with the House by adopting this standard motion: "Mr. President, I move that the Senate insist on its amendments (or "disagree to the House amendments" to the Senate-passed measure), request a conference with the House on the disagreeing votes thereon, and that the Chair be authorized to appoint conferees." This triple motion rolled into one–to insist (or disagree), request, and appoint–is commonly agreed to by unanimous consent. The presiding officer formally appoints the Senate's conferees. (The Speaker names the House conferees.) Conferees are traditionally drawn from the committee of jurisdiction, but conferees representing other Senate interests may also be appointed.

There are no formal rules that outline how conference meetings are to be organized. Routinely, the principals from each chamber or their respective staffs conduct pre-conference meetings so as to expedite the bargaining process when the conference formally convenes. Informal practice also determines who will be the overall conference chair (each chamber has its own leader in conference). Rotation of the chairmanship between the chambers is usually the practice when matched pairs of panels (the tax or appropriations panels, for example) convene in conference regularly. For standing committees that seldom meet in conference, the choice of who will chair the conference is generally resolved by the conference leaders from each chamber. The decision on when and where to meet and for how long are a few prerogatives of the chair, who consults on these matters with his or her counterpart from the other body.

Once the two chambers go to conference, the respective House and Senate conferees bargain and negotiate to resolve the matters in bicameral disagreement. Resolution is embodied in a conference report, signed by a majority of Senate conferees and House conferees. The conference report must be agreed to by both chambers before it is cleared for presidential consideration. In the Senate, conference reports are usually brought up by unanimous consent at a time agreed to by the party leaders and floor managers. Because conference reports are privileged, if any Senator objects to the unanimous consent request, a nondebatable motion can be made to take up the conference report. Approval of the conference report itself is subject to extended debate, but conference reports are not open to amendment.

Almost all of the most important measures are sent to conference, but these are only a minority of the bills that the two houses pass each year.

Exchange of Amendments between the Houses

Differences between versions of most noncontroversial bills and some major bills that must be passed quickly are reconciled through the exchange of amendments between the houses. The two chambers may send measures back and forth, amending each other's amendments until they agree to identical language on all provisions of the legislation. Generally, the provisions of an amendment between the houses are the subject of informal negotiations, so extended exchanges of amendments are rare. But there is also a parliamentary limit on the number of times a measure may shuttle between the chambers. In general, each chamber has

only two opportunities to amend the amendments of the other body because both chambers prohibit third-degree amendments. In rare instances, however, the two chambers waive or disregard the parliamentary limit and exchange amendments more than twice. The current record is nine exchanges.

At any stage of this process a chamber may accept the position of the other body, insist on its most recent position, request a conference to resolve the remaining differences, or refuse to take further action and allow the measure to die.

The Senate normally takes action on an amendment of the House only when there is an expectation that the amendment may be disposed of readily, typically by unanimous consent. In the absence of such an expectation, the Senate will generally proceed to conference in order to negotiate a resolution to any serious disagreements within the Senate or with the House rather than attempt to resolve them on the floor.

Enrollment

The Senate and House must resolve all their disagreements concerning a bill or joint resolution before it can be "enrolled" and presented to the President for his approval or veto. When the measure has finally been approved by both houses, all the original papers are transmitted to the enrolling clerk of the originating chamber.

Enrollment and Presidential Action

Legislative Process Specialists
Government and Finance Division
Updated February 15, 2002

Enrollment and Presentation

After the Senate and House resolve all their disagreements concerning a bill or joint resolution, all the original papers are transmitted to the enrolling clerk of the originating chamber, who has the measure printed on parchment, certified by the chief officer of the originating chamber, and signed by the Speaker of the House and by either the Vice President (who is the President of the Senate) or the authorized presiding officer of the Senate. The enrolled bill then goes to the President for his approval or veto.

Measures are not always presented immediately to the President. A variety of factors can produce delays. When the President has been out of the country for long periods of time, for example, the White House and congressional leaders have agreed that enrolled measures will be presented to the President upon his return; at other times, measures have been sent to the

President overseas. In other instances, congressional leaders present measures so as to give time for organizing public signing ceremonies or so the signing to take place on a particular day. In still other instances, depending on whether the President is expected to sign or veto a measure, congressional leaders time the presentation to avoid or to bring political pressure to bear on the President.

Presidential Action

Pursuant to Article 1, section 7 of the Constitution, "Every Bill, which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; . . . ." If the President approves and signs the measure within 10 days, it becomes law. The 10-day period begins on midnight of the day the President receives the measure, and Sundays are not counted. Thus, if the President were to receive an enrolled measure on Thursday, February 14th, the first day of the 10-day period would be Friday, February 15th; the last day would be Tuesday, February 26th.

If the President objects to a measure, he may veto it by returning it to its chamber of origin together with a statement of his objections, again within the same 10-day period. Unless both chambers subsequently vote by a 2/3 majority to override the veto, the measure does not become law.

If the President does not act on a measure—approving or vetoing it—within 10 days, the fate of the measure depends on whether Congress is in session. If Congress is in session, the bill becomes law without the President's approval. If Congress is not in session, the measure does not become law. Presidential inaction when Congress is not in session is known as a pocket veto. Congress has interpreted the use of the pocket veto to be limited to the final, so-called sine die adjournment of the originating chamber. The President's pocket veto authority is not definitively decided.

Appendix

Filibuster and Cloture

Excerpt from CRS Report: 96-548[3]
Updated December 8, 2006.

The Legislative Process on the Senate Floor: an introduction (pages 3-4)
Valerie Heitshusen
Analyst in American National Government
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The dearth of debate limitations in Senate rules creates the possibility of filibusters. Individual Senators or minority groups of Senators who adamantly oppose a bill or amendment may speak against it at great length, in the hope of changing their colleagues' minds, winning support for amendments that meet their objections, or convincing the Senate to withdraw the bill or amendment from further consideration on the floor. Opposing Senators also can delay final floor action by offering numerous amendments and motions, insisting that amendments be read in full, demanding roll call votes on amendments and motions, and by using a variety of other devices.

The only formal procedure that Senate rules provide for breaking filibusters is to invoke cloture under the provisions of paragraph 2 of Rule XXII. Under the rules however, cloture cannot be voted until two days after it is proposed, and a simple majority of the Senate is insufficient to invoke cloture.

Cloture requires the support of three-fifths of the Senators duly chosen and sworn, or a minimum of 60 votes (unless the matter being considered changes the standing rules, in which case cloture requires a vote of two-thirds of the Senators present and voting). For this reason alone, cloture can be difficult to invoke and almost always requires some bipartisan support. In addition, some Senators are reluctant to vote for cloture, even if they support the legislation being jeopardized by the filibuster, precisely because the right of extended debate is such an integral element of Senate history and procedure.

Even if the Senate does invoke cloture on a bill (or anything else), the result is not an immediate vote on passing the bill. The cloture rule permits a maximum of thirty additional hours for considering the bill, during which each Senator may speak for one hour. The time consumed by rollcall votes and quorum calls is deducted from the thirty hour total; as a result, each Senator does not have an opportunity to speak for a full hour, although he or she is guaranteed at least ten minutes for debate. Thus, cloture does not stop debate immediately; it only ensures that debate cannot continue indefinitely. Even the thirty hours allowed under cloture is quite a long time for the Senate to devote to any one bill, especially since Senators may not be willing to invoke cloture until the bill already has been debated at considerable length.

[3] http://www.congress.gov/erp/rl/html/96-548.html

Cloture: Its Effect on Senate Proceedings

CRS Report: 98-780[4]
Updated December 21, 2006

Walter J. Oleszek
Government and Finance Division

Long known for its emphasis on lengthy deliberation, the Senate in most circumstances allows its Members to debate issues for as long as they want. Further, the Senate has few ways either to limit the duration of debates or to bring filibusters (extended "talkathons") to an end. For instance, a Senator may offer a non-debatable motion to table (or kill) an amendment or he or she might ask unanimous consent to restrict debate on pending matters. The Senate has one formal rule — Rule XXII — for imposing limits on the further consideration of an issue. Called the cloture rule (for closure of debate), Rule XXII became part of the Senate's rulebook in 1917 and has been amended several times since.

Under its current formulation, Rule XXII requires a cloture petition (signed by 16 Senators) to be presented to the Senate. Two days later, and one hour after the Senate convenes, the presiding officer is required to order a live quorum call and, after its completion, to put this question to the membership: "Is it the sense of the Senate that debate shall be brought to a close?" If three-fifths of the entire Senate membership (60 of 100) votes in the affirmative, cloture is invoked and the Senate is subject to post-cloture procedures that will eventually end the debate and bring the clotured question (a bill, amendment, or motion, for example) to a vote. (To end debate on a measure or motion to amend Senate rules requires approval by two-thirds of the Senators present and voting.)

If cloture is invoked under the terms of Rule XXII, then Senate floor activity is thereafter subject to a variety of conditions and constraints. Several of the main post-cloture features include:

30-Hour Time Cap

Thirty hours of further consideration is permitted on the clotured question with time used for such things as roll-call votes or quorum calls charged against the 30-hour cap. As Senate precedents state, "the time used for roll call votes, quorum calls, reading of amendments, points of order and inquiries to and responses by the Chair, and the like, is charged against the 30 hours. Therefore, it is quite possible that the total debate by Senators could be far less than 30 hours." The 30-hour period may be extended if three-fifths of all Senators duly chosen and sworn agree to the increase.

One-Hour of Debate Per Senator

Under cloture, each Senator is entitled to an hour of debate on a "first come, first served" basis. Senators may yield all or portions of their one hour to a floor manager or a party leader but neither may be yielded more than two additional hours. "Any Senator may yield back to the Chair some or all of his 1 hour for debate under cloture," say the precedents, "but such yielding would not reduce the total time available for consideration of the clotured matter."

Pre-Filing of Amendments

Only amendments that have been filed before the cloture vote may be considered once cloture is invoked. First-degree amendments must be filed by 1:00 p.m. on the day after the filing of the cloture petition; second-degree amendments may be filed until at least one hour prior to the start of the cloture vote. As Rule XXII explains:

[4] http://www.congress.gov/erp/rs/html/98-780.html

Except by unanimous consent, no amendment shall be proposed after the vote to bring the debate to a close, unless it had been submitted in writing to the Journal Clerk by 1 o'clock p.m. on the day following the filing of the cloture motion if an amendment in the first degree, and unless it had been so submitted at least one hour prior to the beginning of the cloture vote if an amendment in the second degree.

Role of the Presiding Officer

Under cloture, the presiding officer has authority that he or she does not have during regular Senate proceedings. For example, on his or her initiative, the presiding officer may rule out-of-order dilatory motions or amendments, including quorum calls. The chair also has the authority to count to determine the presence of a quorum. During regular Senate sessions, the chair is obligated under Senate Rule VI, if a Senator suggests the absence of a quorum, to "forthwith direct the Secretary to call the roll...."

No Nongermane Amendments

The Senate does not have a general rule of germaneness for amendments. However, once cloture is invoked, all amendments (and debate) are to be germane to the clotured proposal. Senate precedents state that "the Chair may take the initiative and rule amendments out of order as not being germane without a point of order being made, and when obviously non-germane the Chair may rule the amendment out of order even before it has been read or stated by the clerk." Senate precedents add that under cloture "one of the tests of germaneness is whether the amendment limits or restricts the provisions contained in the bill. If it is clearly restrictive it would be held germane."

Points of Order and Appeals Not Debatable

Rule XXII states that points of order, "including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate." Senate precedents make plain that the chair occasionally has held appeals to be dilatory, but precedents also underscore that "the right to appeal is a basic right of each Senator and would be held dilatory only in the most extraordinary circumstances." Worth noting is that on one occasion, in 1977, "the Chair denied a Senator the right to make a point of order."

The Unfinished Business

The invocation of cloture on a measure or matter means, as stated in Rule XXII, that it "shall be the unfinished business to the exclusion of all other business until disposed of." Senate precedents buttress this point by adding that the "adoption of a cloture motion on a measure prohibits the consideration of any other business except that which is transacted by unanimous consent."

Senate Policy on "Holds": Action in the 110th Congress

CRS Report: RL34255[5]
November 20, 2007

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Contents

Summary

When the Honest Leadership and Open Government Act (S. 1, 110th Congress) was signed into law on September 14, 2007, Section 512 of that statute specifically addressed the issue of secret "holds." Holds are a longstanding custom of the Senate that enabled Members to provide notice to their party leader of their intent to object on the floor to taking up or passing a measure or matter. Their potency as a blocking, delaying, or bargaining device is linked to Senators' ability to conduct filibusters or object to unanimous consent agreements or requests. The new holds process outlined in Section 512 is designed to constrain the frequency of anonymous holds and promote more openness and transparency with respect to their use. Ultimately, it is up to the majority leader of the Senate — who sets the chamber's agenda after consulting various people — to decide whether, or for how long, he will honor a colleague's hold.

This report will be updated if circumstances warrant a revision.

Introduction

On September 14, 2007, President George W. Bush signed into law the Honest Leadership and Open Government Act (S. 1, 110th Congress). The bill addressed a wide variety of topics such as ethics, campaign finance, and lobbying. S. 1 also made a number of procedural revisions affecting the Senate, one which is the focus of this report. Section 512 of Title V of the new law (P.L. 110-81) specifically dealt with the issue of "holds." Holds are an informal custom of the Senate that, until enactment of S. 1, were mentioned neither in chamber rules or precedents nor in any statute. A hold, as one Senator explained, is "a notice by a Senator to his or her party leader of an intention to object to bringing a bill or nomination to the floor for consideration."[6]

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[5] http://www.congress.gov/erp/rl/html/RL34255.html

[6] *Congressional Record*, vol. 148, Apr. 17, 2002, p. S2850. Two other views of holds are provided by a former Senate Majority Leader and a Republican Senator As the majority leader stated: "In many instances, Senators put holds on a bill, not to prevent its coming up, but to alert the respective party floor staffs, that they want to be notified before the bill is called up. They may have amendments. They may want to be notified when it is coming up. So it is not always for the purpose of keeping a bill from coming up." See *Congressional Record*, vol. 133, Dec. 9, 1987, p. 34449. The GOP Senator said: A hold is "a notice that a Senator wishes to be on the floor when the matter which is the subject of his interest is considered so he might protect his rights." He added: Within reason, it means that "my leader, or the floor manager or whomever is responsible, is obligated by the traditions and customs of this body to call me up on the telephone and say, 'You better get over here if you want to be protected. If you are going to exercise your hold, that

Their potency as a blocking, delaying, or bargaining device is linked to Senators' ability to conduct filibusters or object to unanimous consent agreements or requests. To be sure, it is ultimately up to the majority leader of the Senate — who sets the chamber's agenda after consulting various people — to decide whether, or for how long, he will honor a colleague's hold. If the majority leader cannot get unanimous consent to bring up a measure or matter, then he can make a motion to call it up. That motion is subject to extended debate, but no Senator can, under the practices of the Senate, prevent the majority leader from making that motion.

The controversy that precipitated enactment of Section 512 involved secret or anonymous holds. Two Senators in particular worked for years to end the practice of lawmakers placing secret holds on measures or matters. Their goal was not to eliminate holds but to infuse the custom with transparency and accountability so Senators would know which of their colleagues had holds on various bills or nominations. Knowing which Senator(s) has a hold on a measure or matter enables senatorial advocates of those proposals to meet with the "holder" to discuss whether, or under what circumstances, the hold might be lifted.

In 2006, for example, these two proponents of ending secret holds succeeded in winning adoption of an amendment to an ethics, lobbying, and rules reform package (S. 2349) that would end the practice by establishing a new standing order of the Senate. Like Section 512 of S. 1, their amendment required the majority and minority leaders to recognize a hold — called a "notice of intent to object to proceeding" — only if it was provided in writing by a Member of their caucus. Moreover, noted a former party leader, "for the hold to be honored, the Senator objecting would have to publish his objection in the *Congressional Record* 3 days after the notice is provided to a leader."[7] One of the principal authors of the amendment provided this explanation of their proposal:

> **Our proposed standing order would provide that a simple form be filled out, much like we do when we add co-sponsors to a bill. Senators would have a full 3 session days from placing the hold to submit the form [to their respective party leader]. The hold would then be published in the CONGRESSIONAL RECORD and the Senate Calendar. It is just as simple as that.[8]**

Nothing in the author's amendment required the majority leader to honor a formal notice of intent to object to proceeding (or hold) or any other "message" by a Member that he or she intends to oppose any unanimous consent request to take up a measure or matter. S. 2349 required enactment into law before the new holds policy could take effect, but the 109th Congress adjourned before this could occur. With the passage of S. 1 in 2007, the Senate adopted — for the first time ever — a formal and statutory policy limiting the ability of Senators to place anonymous holds.

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means come over here and object or come over and debate the motion.' It happens thousands of times a year." See *Congressional Record*, vol. 132, Feb. 20, 1986, p. S1465.

[7] *Congressional Record*, vol. 152, Mar. 28, 2006, p. S2458.

[8] Ibid., Mar. 8, 2006, p. S1874. During a colloquy on the proposal, a Senator asked for a clarification of the amendment's intent with respect to what she called a "temporary hold." She stated: "Let me give you a specific example. Occasionally, bills will be discharged from their authorizing committees. These are not necessarily on the calendar. They are discharged from the committee, and the bill will be hotlined on both of our sides to see if there is any objection. Obviously, putting a temporary stay on the consideration of a discharged bill in order to allow a few hours for review or even a day for review is completely different from the practice of secretly killing a bill by putting an indefinite anonymous hold." In response, one of the main authors of the amendment agreed with the Senator, and remarked that "we make very clear that it is not our intention to bar those consults. We like to use the word 'consult,' which is a protected tool for a Senator as opposed to the question of a hold. I think perhaps another way to clarify it is a consult is sort of like a yellow light. You put up a little bit of caution — that we need a bit of time to take a look at it. A hold is a red light when you are not supposed to go forward. We don't want people to be able to exercise those holds in secret .... In fact, to ensure that we have this kind of [consult] procedure ... , we call for 3 days before an individual has to put in the CONGRESSIONAL RECORD that they have a hold on a matter." Ibid., p. S1874.

Limits on Secret Holds: The New Policy

The new holds policy in Section 512 is titled "Notice of Objecting to Proceeding." Its fundamental purpose is to promote more openness and transparency in the holds process. Section 512 is neither a Senate rules change nor a standing order of the Senate, except as to the establishment of "notice of intent" calendars by the Secretary of the Senate. Instead, Section 512 is directive to the majority and minority leaders of the Senate stating that before a hold is recognized by them, certain procedures must be observed by Senators. In effect, it is the responsibility of each Member to comply with the terms of the new policy. There is no enforcement device or method to ensure compliance, except the stipulation that party leaders shall not honor a "notice of intent" (or hold) if Senators do not follow the specified procedures. (The majority and minority leaders consult regularly about the Senate's agenda, and keep each other apprised of Members who have placed holds on measures or matters.) Section 512 states:

> (a) In general — The Majority Leaders and Minority Leaders of the Senate or their designees shall recognize a notice of intent of a Senator who is a member of their caucus to object to proceeding to a measure or matter only if the Senator —
> (1) following the objection to a unanimous consent to proceeding to, and, or passage of, a measure or matter on their behalf, submits the notice of intent in writing to the appropriate leader or their designee; and
> (2) not later than 6 session days after the submission under paragraph (1), submits for inclusion in the Congressional Record and in the applicable calendar section described in subsection (b) the following notice:
> 'I, Senator XXXX, intend to object to proceedings to XXXX, dated XXXX for the following reasons XXXX.'
> (b) Calendar —
> (1) IN GENERAL — The Secretary of the Senate shall establish for both the Senate Calendar of Business and the Senate Executive Calendar a separate section entitled 'Notice of Intent to Object to Proceeding'.
> (2) CONTENT — The section required by paragraph (1) shall include —
> (A) the name of each Senator filing a notice under subsection (a)(2);
> (B) the measure or matter covered by the calendar that the Senator objects to; and
> (C) the date the objection was filed.
> (3) NOTICE — A Senator who has notified their respective leader and who has withdrawn their objection within the 6 session day period is not required to submit a notification under subsection (a)(2).
> (c) Removal — A Senator may have an item with respect to the Senator removed from a calendar to which it was added under subsection (b) by submitting for inclusion in the Congressional Record the following notice:
> 'I, Senator XXXX, do not object to proceed to XXXX, dated XXXX.'

To summarize, the formal process to curb secret holds is triggered when certain steps are followed by a Senator. These steps apply in limited circumstances and could be bypassed in at least two ways: (1) if Senators, on their own initiative, publicly state that they have holds on measures or matters or, alternatively, they simply object on their own to a unanimous consent request to call up a measure or matter; or (2) they privately inform their party leader of their intent to block floor consideration of certain measures or matters, and the majority leader never requests that they come up. As a Senator stated, the "mere threat of a hold prevents unanimous consent requests [to take up measures or matters] from being made in the first place."[9] The principal features of Section 512 specify the exact steps for making a secret hold public.

- The process begins when any Senator states that he or she, on behalf of a colleague, is objecting to a unanimous consent request — commonly made by the majority leader or the majority floor manager — to proceed to or pass a measure or matter.

[9] *Congressional Record*, vol. 153, Sept. 19, 2007, p. S11743.

- That colleague must then submit a notice of intent (a hold) letter to the appropriate party leader (or their designee) specifying the reason(s) for his or her objection(s) to a certain measure or matter.

- Not later than six session days after submission of the "notice of intent" letter, the Senator placing the hold submits the notice to be printed in the *Congressional Record* and in a separate section of the appropriate calendar.

- The majority leader and the minority leader (or their respective designee) are then obliged to recognize a hold placed by a Member of their caucus. ("Recognition" does not mean that the majority leader — who schedules the Senate's business — must honor the hold.)

- A Senator may withdraw his or her hold prior to the expiration of the 6-session-day period. He or she is then under no obligation to have their hold letter printed in the *Congressional Record* and noted in the appropriate Senate calendar.

- To remove their hold from the appropriate Senate calendar, a Senator submits a notice for inclusion in the *Congressional Record* stating that he or she no longer objects to proceeding to a measure or matter.

Worth underscoring is that under the terms of Section 512, a Senator is required to disclose his or her hold only after another lawmaker formally objects on their behalf to a unanimous consent request to proceed to a measure or matter. If the Senator who is the "true" objector wants to continue with the Section 512 process, he or she must then submit a notice of intent leader to their party leader. Then the six-session-day clock begins to tick. (Just when the six-session-day period starts and ends may require specific parameters.) Until an objection is made on the floor of the Senate, a secret hold could exist for days, weeks, or months without any knowledge of that reality by the sponsors and advocates of bills or nominations.

It is also useful to note that a Senator who publicly objects on his or her own behalf to a unanimous consent request to proceed to or pass a measure need not follow the Section 512 process. The disclosure has occurred publicly and Members know who is the objector. Thus, the name of the objector would not be required to be published in the *Congressional Record* or the appropriate calendar of the Senate.

Several reasons account for the six-day lapse before Senators are obliged to transmit a notice of intent letter to their party leader. The six days gives Members time to study a measure or matter; receive feedback from affected state agencies, if any; or, if necessary, draft an amendment to a measure that addresses their specific concerns. For example, on bills that are "hotlined" — special telephone lines in Members' offices to inform them of the two party leaders' intent to pass legislation by unanimous consent unless lawmakers object within a certain time period — Senators might take exception to a bill's prompt consideration on the floor because they want several days to review the measure. The six days enable Senators to research and decide what their reaction to a measure should be without being criticized for delaying action on a bill or subjected to outside special interest pressure for having a hold on a group-backed bill when the end result might be senatorial approval of the legislation.

Furthermore, although Section 512's goal, as already noted, is to promote more openness in the holds process, Senators have numerous private ways to inform party leaders of their opposition to measures or matters. These types of private "messages" — personal letters, telephone calls, hallway chats, e-mails, and so on — could be characterized as the functional equivalent of secret holds. If the majority leader is out "running on the National Mall [and] another senator comes running by and shouts as he passes, 'I'm going to block that bill.' Is that a hold? Senators are always going to find a way to signal their concerns to the leadership," noted a legislative scholar.[10] A recent example occurred at the start of the 110th Congress when a

[10] Brian Friel, "Wrestling With Holds," *National Journal*, Jan. 13, 2007, p. 47.

Senator on February 5, 2007, sent a "Dear Colleague" letter to all Members. The letter's purpose was to communicate to all Senators "a list of principles I will use to evaluate new legislation in the 110th Congress. I also want to give you advance notice I intend to object to consideration of legislation that violates these common sense principles."[11]

The newness of Section 512 means that there is not yet much information or evidence of how the policy for limiting secret holds is to be implemented in practice. As one of the Senate's principal advocates for ending anonymous holds said shortly after S. 1 was signed into law, "I have to tell my colleagues that I don't know how [Section 512] is going to work."[12] A section-by-section analysis of S. 1 was inserted in the *Congressional Record* by the relevant committee chair to provide some legislative history regarding the procedures for constraining secret holds.[13] Time, experience, and ongoing parliamentary familiarity with the new procedures seem likely to answer various questions that surely will arise as to Section 512's practical application. Among several questions or issues about Section 512 that might require answers are the following, mentioned in no special order of priority.

Section 512: Selected Issues

Retroactive Application

Will the new statutory policy apply retroactively to holds placed on measures or matters prior to S. 1's enactment into law? A recent bill sets this question in bold relief. A measure to require Senators to file their campaign finance reports electronically has been the subject of a hold at least since March 2007, according to press accounts. As a journalist reported, "For months, liberal bloggers and activists have been agitating to unmask the mystery senator who has been blocking action, by means of a secret 'hold,' on a key campaign finance disclosure bill. Now they may finally get their wish [with enactment into law of S. 1]."[14]

When a unanimous consent request was made on September 24, 2007, to take up the bill (S. 223) requiring the electronic filing of campaign finance reports, a Senator objected. Yet it was not clear whether the Senator in fact had placed a secret hold on the bill.[15] (To be sure, the Senator might have previously and privately informed party leaders that he would object to calling up S. 223.) The Senator's staff denied that the Member had an anonymous hold on the bill, and GOP leadership aides stated that Republican objections to the bill did not "amount to a 'hold'."[16] On the other hand, one Senator stated that the Member who objected publicly "has made it plain that he is the one holding up the bill by insisting on offering an unrelated amendment" requiring outside organizations that file ethics complaints against Senators to list donors who have contributed $5,000 or more to the organization.[17] Another Senator, citing Section 512's immediate applicability to Senate proceedings, said in six legislative days "we must know who it is" who placed the hold on S. 223.[18] (Section 512 became effective when the President signed S. 1 into law.)

Three days later, on September 27, the same Senator who objected to bringing up S. 223 asked unanimous consent to call up that bill but with the stipulation that only his aforementioned amendment would be made in order for floor consideration. He observed that "there are anonymous outside groups who are filing ethics complaints" for political reasons and the Senate needs "to know that" and transparency is "the best way to find that out."[19] A Senator objected to that request on behalf of the chair of the reporting committee. Then, in a first for the Senate,

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[11] The letter is available from the author of this report.
[12] *Congressional Record*, vol. 153, Sept. 19, 2007, p. S11742.
[13] Ibid., Aug. 2, 2007, p. S10711.
[14] Eliza Newlin Carney, "No Hiding Place," *National Journal*, Sept. 22, 2007, Inside Washington.
[15] Emily Pierce, "Mystery Still Surrounds Filing Hold," *Roll Call*, Sept. 26, 2007, p. 1.
[16] Ibid., p. 17.
[17] *Congressional Record*, vol. 153, Sept. 24, 2007, p. S11998.
[18] Ibid., p. S11997.
[19] *Congressional Record*, vol. 153, Sept. 27, 2007, p. S12207.

Section 512 was formally invoked when the chair of the relevant committee of jurisdiction sent a letter to the majority leader. The letter stated in part:

> **As you know, under the provisions of the Honest Leadership and Open Government Act of 2007 (section 512 of P.L. 110-81), a Senator is required to submit a "Notice of Intent to Object" letter when another Senator objects to a unanimous consent request on his/her behalf. Please consider this letter as my notice of intent to object ... [to a colleague's] proposed [non-germane] amendment to S. 223, the Senate Campaign Disclosure Parity Act....**[20]

As required by Section 512, the letter identified the Senator placing the hold, the date the objection was filed, and the reason(s) for objecting to proceeding to a measure or matter. The Senator's letter was printed in a new "Notice of Intent" section of the *Congressional Record*. The October 3, 2007, *Calendar of Business* of the Senate did not include the required section entitled "Notice of Intent to Object to Proceeding." Recall that Section 512 calls upon the Secretary of the Senate to establish such a section in both the *Calendar of Business* and the *Executive Calendar*. Since enactment of Section 512, no Senator has come forward to state affirmatively and explicitly that he or she has a hold on S. 223.[21] Moreover, it is not clear if other Senators have indicated to their respective party leader that they would object to calling up the campaign bill.

Under the terms of Section 512, and this point is made in the above-cited letter, a Senator is required to disclose his or her hold only after another lawmaker — on behalf of a fellow colleague — objects to a unanimous consent request to proceed. Then the six-session-day clock begins to tick. (Just when the six-session-day period starts and ends may require additional clarification.) Until an objection is made, a secret hold could exist for days, weeks, or months without any knowledge of that reality by the sponsors and advocates of bills or nominations. To be sure, Senators can publicly announce their holds in whatever way or forum they prefer.[22] Some Senators have a policy of always publicly announcing their holds.

Scope of Coverage

Section 512 addresses measures or matters. Past practices regarding the placement of holds on measures or matters appear likely to continue in effect, but this issue might give rise to questions that require clarification. The Senate's tradition of holds has long been an informal practice, so there is relatively little detailed public information about this custom. For example, there is no official public Senate record of who places holds; how many holds are placed by Senators on different types of bills, nominations, or other matters; how long holds are honored by the majority leader; the differences among hold requests; the frequency of holds during different periods of a legislative session; or which Senators are more or less likely to place holds, such as majority or minority lawmakers, senior rather than junior Senators, or liberal versus conservative Members.

Available public materials on the custom appear to suggest that holds may be placed on various types of measures or matters — although there is no definitive list, so far as is known, of the various measures and matters that over time have been the subject of holds. Party records

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[20] *Congressional Record*, vol. 153, Oct. 2, 2007, p. S12419. This notice of intent letter was inserted in the *Congressional Record* by the majority leader. The next day the author of the letter also placed it in the *Congressional Record*, p. S12561.

[21] It might be worth noting that Section 512 specifically references holds placed by a Senator. It does not address the case of a group of Senators who object to proceeding to a measure or matter. If the willingness to block a measure or matter is the collective decision of an informal or formal group Members, there might be uncertainty as to which group member is expected to transmit a "notice of intent" letter to their party leader. In such a case, it seems likely that the relevant party leader would lodge an objection on behalf of a number of Members who oppose the legislation or nomination. The leader's objection on behalf of a group of Members would not appear to initiate the provisions of Section 512, which focus on "a Senator."

[22] See, for example, Tim Starks, "Senate Panel OKs Surveillance Bill," *CQ Today*, Oct. 19, 2007, p. 1.

are likely to be incomplete and lack important information. "Hold" letters may also be housed in the personal papers or archives of former party leaders.[23]

A Senator may remove a hold at any time, and Section 512 specifies the procedure for removing a public hold from the Senate's two calendars. The lifting of a hold by a Member does not prevent other Senators from putting holds on the same measure or nomination.

With Section 512's adoption, it is not certain whether some or all of the past practices on holds will still be observed. Whether these past practices are fully known is not clear because of, as mentioned, the traditional secrecy surrounding the practice. For example, extant public information on holds indicates that they have been placed on certain privileged business, such as conference reports.[24] In 2002, for instance, it was reported that a Senator had placed a secret hold on a Justice Department authorization conference report.[25] If Section 512 applies to conference reports, can holds also be placed on a related bicameral matter: amendments between the chambers, which are also privileged matters? Holds on privileged business seem less likely to be honored, or honored for any lengthy period, because the motion to take them up is non-debatable.

Unclear, too, is whether the new policy on holds would continue to apply to various non-privileged business, such as the selection of conferees. As former Senator William S. Cohen, R-Me., wrote, "I wanted to be appointed a conferee ... and [Armed Services] Chairman [John] Stennis was unlikely to add my name to the list if I made such a request. I put a 'hold' on the naming of conferees ... , which upset Chairman Stennis."[26] Secret holds have made it difficult at times for the Senate to agree to the usually routine motion to go to conference with the House to iron out bicameral disagreements on legislation: "Mr. President, I move that the Senate insist on its amendments [or disagree to the House amendments], request a conference with the House on the disagreeing votes thereon, and that the Chair be authorized to appoint conferees." Any Senator can object to this unanimous consent request, and the floor manager would then have to make three separate motions (insist or disagree, request, and authorize). Each motion is subject to a filibuster, noted a former Senate parliamentarian, and require "three separate cloture votes to close debate, and that takes a lot of time. It basically stops the whole process of going to conference."[27] In 2007, on a bill (S. 378) to improve court security, a proponent of the measure stated that "we are being blocked from going to conference" by an anonymous hold.[28]

Three Other Possible Issues

First, a topic that might require additional clarity is whether holds can still be applied to a class of related measures or matters. Recall that the language of Section 512 requires the following notice: "I, Senator XXXX, intend to object to proceedings to XXXX ...." Accordingly, would it still be possible for a Senator to place a hold on all judicial nominations or treaties pending on the Executive Calendar, or on all measures on the General Orders Calendar dealing with a specific topic reported by one of the standing committees? Or is it the intent of Section 512 to require Senators to disclose their reasons as to why they are objecting for each measure or matter?

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[23] See an unpublished paper by C. Lawrence Evans and Daniel Lipinski, "Holds, Legislation, and the Senate Parties," April 2005. This report analyzed almost 1,000 holds found in the personal papers of former Senate Majority Leader Howard Baker, TN. The author has a copy of the Evans-Lipinski paper and will make it available upon request.

[24] For a list of privileged measures or matters, see Floyd M. Riddick and Alan S. Frumin, *Senate Procedure: Precedents and Practices* (Washington: GPO, 1992), pp. 1034-1035.

[25] Jennifer A. Diouhy, "Justice Department Authorization Signals 'New Era of Oversight,' Tighter Control of FBI Security," *CQ Weekly*, Oct. 5, 2002, p. 2599.

[26] Sen. William S. Cohen, *Roll Call, One Year in the United States Senate* (New York: Simon and Schuster, 1981), p. 293.

[27] Carl Hulse and Robert Pear, "Feeling Left Out on Major Bills, Democrats Turn to Stalling Others," *New York Times*, May 3, 2004, p. A18.

[28] *Congressional Record*, vol. 153, Aug. 3, 2007, p. S10887.

Second, the majority leader, as noted earlier, is the "decider" when it comes to honoring holds. Often, the majority leader will honor holds, at least for a period of time, both as a courtesy to colleagues and as recognition that ignoring a hold could trigger time-consuming dilatory tactics in an institution that is typically workload packed and deadline -driven. On the other hand, if the majority leader places holds on his own behalf — on pending judicial nominations, for example — there are few, if any, effective ways to override the majority leader's decision. How, too, are Members to know if the majority leader has anonymous holds on measures or matters if he does not ask unanimous consent to call them up? Furthermore, if a Senator placing a hold is a member of the majority party, the majority leader might not even ask unanimous consent of the Senate to take up a measure or matter. The result: no public disclosure of which Senator has a hold on the bill. As a Senator said:

> **For instance, it is not clear to me what would happen if the minority leader asked unanimous consent to proceed to a bill and the majority leader objected on his own behalf to protect his prerogative to set the agenda but also having the effect of honoring the hold of another member of the majority leader's caucus. Or what if the majority leader asked unanimous consent to proceed to a bill and the minority leader objects but does not specify on whose behalf, even though a member of the minority party has a hold. Would the minority Senator with the hold then be required to disclose the hold? I don't know. It is not very clear.**[29]

Third, Section 512, as already mentioned, obligates Senators to specify their reasons for objecting to consideration of a measure or matter in a notice of intent (a hold) letter sent to their party's leader. Multiple reasons influence why Senators might place a hold on a bill or nomination. Sometimes a hold is employed to achieve purposes completely unrelated to action on the specific bill or nominee. Senators may place holds on bills or nominees they support because they want to gain bargaining "leverage" on an unrelated matter with the Administration, a colleague, a committee chair, or the other chamber. As one Senator told a colleague who asked why he had placed a hold on his bill:

> **I have no objection to your bill at all, Senator, but another Senator who chairs a committee has a hold on one of my bills, and, therefore, I looked up and down the list to see what bills were under his jurisdiction and I found yours. And so I put a hold on the bill reported out of committee.**[30]

A Senate party leader remarked that there have been times when holds have been applied to "every piece of a committee's legislation ... by an individual or group of senators, not because they wish to be involved in consideration of those bills, but as a means of achieving unrelated purposes or leverage."[31]

Senators might use a "retaliatory hold" against Members who are blocking floor consideration of their preferred legislation. Senators might be requested to place holds by House members, executive officials, or lobbyists. In specifying why they are placing holds per the instructions contained in Section 512, are Senators expected to have complete discretion as to how many reasons and how much detail they provide in their notice-of-intent letters? Or might the two party leaders expect a reasonable amount of pertinent information — either stated in the notice of intent letter or through other non-public ways — on which they can make or evaluate their scheduling decisions?

Concluding Observations

Section 512 is a work in progress. Some time needs to pass before a reasonable assessment can be made of its impact and influence on senatorial decision-making and behavior. Experience in implementing Section 512 will no doubt provide clarity and perspective as to how the new provision is working in practice and whether it is fulfilling its fundamental purpose: to

[29] Ibid., Sept. 17, 2007, p. S11743.
[30] *Congressional Record*, vol. 133, Dec. 9, 1987, p. 34449.
[31] Carroll J. Doherty, "Senate Caught in the Grip Of Its Own 'Holds' System," *Congressional Quarterly Weekly Report*, Aug. 15, 1998, p. 2242.

infuse greater transparency in the holds process. Like any new change, Section 512 might also have unforeseen consequences. For example, holds do not have to be made public for six Senate session days following an objection to proceeding to a measure or matter. One implication is that there might be a surge of secret holds during the final few days of a legislative session, "more than enough time to effectively kill a bill or nominee in complete secrecy," said a Senator.[32]

Senators might organize a "revolving" hold. Once an objection under Section 512 is made to a unanimous consent request, then one Member, then another, and so on might place a hold on a measure or matter but then remove it prior to the expiration of the six-session-day period. (Each lawmaker would still need to file a notice of intent letter with their party's leader.) Simply the possibility that one or more Senators appear willing to stall action on a measure or matter might dissuade the majority leader from even trying to proceed to a bill or nomination. Under this parliamentary scenario, none of the Senators who oppose a bill or nomination would have to publicly disclose that they had a hold on the measure or matter. (It is also unclear whether an individual Senator — prior to the end of the six-session-day period — could lift his or her hold and then reimpose it repeatedly following a colleague's objection on his or her behalf to a unanimous consent request made pursuant to the provisions of Section 512).

Section 512 also might promote greater use of public holds. Outside special interests, for example, might encourage Senators to use the new holds process to demonstrate their support for the group's agenda priorities. In the judgment of one congressional scholar, "We could easily imagine different interest groups seeking out senators to go public with objections and say, 'This is an opportunity for you to highlight an issue that's important to our constituency.'"[33] Senators, in short, may welcome the chance to admit and trumpet to the press, media, and their constituents that they have a hold on certain measures or matters. The hold, as political scientists would say, could be a form of position-taking and credit-claiming that might enhance Senators' re-election prospects.

On the other hand, Section 512 might produce a decline in the use of holds. "I assume people will think twice before it is publicly distributed that they are stopping legislation," remarked a former Senate parliamentarian.[34] A Senator did not see it this way, however. "If I don't agree with [a bill], why am I going to let it go?" he asked. The members think [Section 512] will intimidate people into not holding bills, but it doesn't bother me."[35] Needless to say, to make an assessment of whether public holds might increase or decline given the enactment of Section 512 is problematic because of its limited applicability. Senators have a wide array of techniques — which are akin to secret holds — to inform party leaders of their intent to block action on measures or matters. Senators, too, have always been able to make their holds public.

To conclude, over the years, various Senators and party leaders have tried different ways to infuse more accountability and uniformity in the use of holds and to make clear that they are not a veto on the majority leader's prerogative of proposing measures or matters for Senate consideration.[36] Party leaders understand that holds function as an "early warning system" by alerting them to potential problems in scheduling measures or matters. They also recognize that holds are less than sacrosanct as legislative circumstances change, such as the approach of deadlines or the need to enact "must pass" legislation. Still, it goes without saying that holds are a prominent feature of the contemporary Senate. Members realize their political and policy potential both as a form of "silent filibuster" and as a bargaining device. Holds influence the lawmaking and confirmation processes, and the statutory policy seems certain to shed additional light on this

[32] Ibid.
[33] Brian Friel, "Wrestling With Holds," *National Journal*, Jan. 13, 2007, p. 47.
[34] Stephanie Woodrow, "A Senate Without Secret Holds: How Different?" *Roll Call*, Mar. 30, 2006, p. 46.
[35] Hulse, "Senate May End Its Prized Secrecy In Blocking Bills," p. A13.
[36] See CRS Report RL31685(pdf), *Proposals to Reform 'Holds' in the Senate*, by Walter Oleszek.

heretofore largely behind-the-scenes custom. As a key proponent of ending secret holds said about Section 512, "It's a start."[37]

[37] Hulse, "Senate May End Its Prized Secrecy In Blocking Bills," p. A13.

Major Differences between the House and Senate

Prepared by Rules Committee Staff
January 5, 2008

Exclusive Powers

While there is tremendous overlap in the duties of the two houses of Congress, the Constitution does assign some powers exclusively to each body. Specifically, the House originates all revenue-raising legislation, has the sole power of impeachment, and decides the outcome of presidential elections in the case of an Electoral College deadlock. The Senate is charged with "Advice and Consent" regarding treaties and presidential nominations, tries federal officials who have been impeached by the House, and decides the outcome of vice presidential elections.

Exclusive Powers in the House

Power of the Purse:

Article I, Section 7 of the U.S. Constitution states:

> **All bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.**

This section of the Constitution provides that all legislation proposing to raise federal revenues, through taxes, tariffs, or other means, must originate in the House. The Senate is not permitted to initiate legislative measures that raise revenues.

Impeachment:

Article I, Section 2 of the U.S. Constitution states:

> **The House of Representatives… shall have the sole Power of Impeachment**

Under this power, the House is permitted to impeach the president, vice president, and civil officers of the United States for treason, bribery, or high crimes and misdemeanors. The House also may impeach federal justices and judges.

Elections:

The 12th Amendment (excerpt) - Choosing the President, Vice-President (Ratified 6/15/1804)

> **The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;**
>
> **The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; The person having the greatest Number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.**

In cases where no single presidential candidate has a majority of votes in the Electoral College, it is the responsibility of the House of Representatives to elect a president by voting. If the House does not elect a president by March 4, then the vice president is to act as president.

Exclusive Powers in the Senate

Advice and Consent:

Article II, Section 2 of the U.S. Constitution states:

> **He [the President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.**

One unique role of the Senate is that of Advice and Consent, which applies to both treaties and presidential nominations. If the president signs any international treaty, the Senate must approve (or ratify) the treaty by a majority vote before the treaty can be binding upon the United States. Furthermore, the president has the power to nominate candidates for many federal posts, ambassadorial seats, Supreme Court seats, and federal judgeships, but the Senate must approve (or confirm) the nominations by a majority vote.

Impeachment Trials:

Article II, Section 3 of the U.S. Constitution states:

> The Senate shall have the sole power to try all Impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall president: and no person shall be convicted without the concurrence of two thirds of the members present.
>
> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold any enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

While the House is empowered to impeach certain federal officers, the Senate is the only body that can try the impeachment. Impeachment essentially charges the individual with the offense, and the impeachment trial can result in the person's removal from office.

Elections:

The 12th Amendment (excerpt) - Choosing the President, Vice-President (Ratified 6/15/1804)

> **The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;**
>
> **The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; . . .**
>
> **The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.**

As discussed earlier, the president and vice president are elected by majority vote of the Electoral College. If no candidate for the Office of Vice President receives a majority vote, then the Senate is charged with electing the vice president from the two candidates receiving the highest number of Electoral College votes.

An Expiring Congress vs. a Continuous Body

The Senate often is referred to as a continuous body in contrast to the House, which is reconstituted at the beginning of each new Congress. The following testimony describes the Senate's continuous nature:

> **First, and most importantly, the Senate is a 'continuous body.' For good reason, the Senate has always viewed itself as a continuous body and has had a continuous practice not to reconstruct itself, like the House of Representatives, from scratch at the outset of every session. On three separate occasions, the Supreme Court has recognized the Senate as a distinctive political body in the constitutional scheme because it is continuous. As Professor Cynthia Farina has explained, the Senate is unique within our constitutional structure: '[S]taggered election [placing one-third of Senate seats at risk every two years] increases institutional stability by rendering the Senate an effectively continuous body in contrast to the House, which must fully reconstitute itself every two years.' Professor Vikram Amar agrees, as he has explained more than once, that 'while the [Supreme] Court historically may appear the most continuous body, the Senate is the only institution that cannot short of amendment 'turn over' at one time. The President does, the House conceivably could, and the Court effectively could as well, if the political branches "packed it" . . .' Thus, the unique structure of the Senate relieves it of any obligation, or necessity, to reconstitute itself anew in every congressional session. To the contrary, Rule V formalizes the Senate's longstanding, unswerving recognition of itself as a continuing body whose rules are already in effect at the outset of each session.**[38]

The best example of this continuous nature is the lack of need on the Senate's part to reconstitute its rules and committees every time an election occurs (every two years). While the House readopts its rules every Congress, the Senate Rule V provides that "the rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules." This means that, at the beginning of a new Congress, the Senate does not need to re-constitute the Committee on the Judiciary, re-establish the rules of decorum, etc.

The House, on the other hand, must rewrite its rules each Congress to re-constitute the standing committees, re-establish the rules of decorum and the order of business, and rewrite other House guidelines. Generally, however, the House does not redraft its rules every Congress; instead, it merely adopts the rules of the previous Congress with any desired modifications.

A Rules Committee

Special Rules vs. Complex Unanimous Consent Agreements

A major difference between the House and Senate is the nature by which legislation is considered on the floor. The Senate avails itself of agreements between its members to determine the substance and flow of debate, while the House empowers a committee to structure the debate.

The House has created a standing committee, the Committee on Rules, to determine the timing and flow of legislation on the House floor. The Rules Committee is charged with reporting special orders of business, also known as special rules, that govern how specific pieces of legislation will be debated on the floor. These rules typically set forth the total length of time that may be spent debating a bill, what text will be considered on the floor, and what, if any, amendments to the bill can be considered. If and when the House adopts a special rule by a

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[38] Hearing on Senate Rule XXII and Proposals to Amend this Rule Before the U.S. Senate Comm. on Rules and Admin., 108th Cong. (June 5, 2003) (statement of Michael J. Gerhardt, Arthur B. Hanson Professor of Law at William & Mary Law School), available at http://rules.senate.gov/hearings/2003/060503Gerhardt.htm.

majority vote, the provisions of the rule govern how the underlying legislation will be debated on the floor.

In contrast, the Senate has no such committee or office to structure debate. The members of the Senate agree by unanimous consent (meaning any one member can object) to a process of considering legislation. This includes not only the actual legislation being considered but also which, if any, amendments will be debated, for how long the debate will continue before votes are taken, and what other business might be taken up. In short, unanimous consent agreements are used to structure debate on the Senate floor.

Floor Debate

A byproduct of the difference in the House and Senate with regard to how legislation is scheduled on the floor is how debate actually occurs in both bodies. In the House, the Rules Committee and special rules set out strict timeframes and other guidelines for how bills and amendments will be debated. Each special rule will dictate the length of time a bill can be debated and will set forth which members will control that debate time. In addition, the report of the Rules Committee accompanying a special rule will specify which amendments can be debated and for how long each one can be debated. Members rarely are permitted to speak for longer than the time they are allotted in the rule, and debate time on bills and amendments very rarely extends beyond the time allotted in the rule.

In the Senate, the use of unanimous consent agreements and lack of structured rules permit for more free-flowing debate on measures. Senators might not be constricted to specific time constraints when they speak on legislation unless, perhaps, a unanimous consent agreement has limited debate time.