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Senate Floor Procedure: A Summary

Updated January 12, 2001

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Summary

The floor procedures of the Senate reflect a complex interplay among constitutional requirements, standing rules, formally established precedents, recognized customs and conventions, and practices that can be adapted and applied in different ways, from day to day and from one bill to the next. In particular, the Senate frequently sets aside its standing rules and conducts business under the terms of unanimous consent agreements that organize and expedite its work. Among the Senate's most noteworthy floor procedures are those that create opportunities for extended debate and delay, giving rise to the possibility of filibusters, and the right of Senators to offer non-germane amendments to most of the bills the Senate considers. These two characteristics of the Senate's rules affect other aspects of Senate practice, as the Senate deals with the potential uncertainties attributable to non-germane amendments and the implications of actual and threatened filibusters. The result is a unique system of procedure that often makes it difficult to anticipate what matters the Senate will consider on the floor, and when and how the Senate will transact its legislative and executive business.

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Senate Floor Procedure: A Summary

Introduction

The proceedings on the Senate floor are shaped by a set of standing rules that have evolved over the course of more than two centuries. These rules establish the basic procedures by which the Senate can decide what matters of legislative and executive business to consider, and how each motion, bill, resolution, treaty, or nomination is to be debated, sometimes amended, and ultimately approved or disapproved. With very few exceptions, the Senate is free to adopt whatever rules it chooses, as it exercises its constitutional authority under Article I, Section 5, to “determine the Rules of its Proceedings.” Furthermore, because the Senate considers itself to be a “continuing body,” its Rule V provides that its rules “shall continue from one Congress to the next” until the Senate votes to amend them.

No body of formal rules, however, can be complete and detailed enough to provide for every contingency that may arise. The Senate decides for itself how its rules are to be interpreted and applied in particular situations, reaching these decisions either by majority vote of its members (or by a larger majority in some cases) or by accepting a ruling made by its presiding officer. The chair also may reply to Senators’ parliamentary inquiries; these responses have somewhat less precedential weight. The precedents that the Senate establishes in these ways complement and supplement the standing rules, and thereafter govern the Senate’s deliberations. By creating new precedents as the need arises, the Senate has been able to adapt its procedures to changing circumstances while preserving the underlying principles that are inherent in its rules.

These principles emphasize the rights and prerogatives of individual Senators, in order to ensure that there is ample opportunity for debate and deliberation before the Senate reaches policy decisions. While providing that the majority should prevail when the time for decision ultimately arrives, the Senate has traditionally protected the right of any minority group of Senators to argue its position at length and to attempt to persuade the majority before a vote takes place. In this way, the Senate’s rules and precedents recognize that the principle of majority rule, if applied automatically and mechanically, may not produce sound and lasting policies. The Senate has insisted throughout its history that critical national policy decisions should take account of the intensity of Senators’ opinions and preferences, as they reflect the differing and sometimes conflicting needs and interests of such a large, diverse nation.

As a result, the Senate’s formal procedures encourage Senators to conduct their business through a more informal process of consensus and accommodation, whenever that is possible. A strict adherence to the rules themselves can create the danger of deadlocks developing that cannot be resolved promptly by simple majority vote. To avoid this danger, the Senate frequently expedites the conduct of its

business by waiving the requirements of its standing rules in favor of alternative arrangements that are better suited to each particular issue or choice it confronts. Many of these arrangements, which Senators impose on themselves only by unanimous consent, have become well-established practices that are now integral elements of daily Senate activity. Understanding what happens on the Senate floor, therefore, requires more than a knowledge of the standing rules themselves; it also requires an appreciation of these unanimous consent agreements and the precedents governing them.

The precedents and practices that surround the Senate's standing rules and many of its unanimous consent arrangements have been compiled and explained in *Riddick's Senate Procedure* (Senate Document No. 101-28), named in honor of Floyd M. Riddick, for many years the parliamentarian of the Senate, who recognized the need for all Senators to have access to a detailed exposition of Senate procedures. Since the first edition was published in 1958, this one-volume compilation of Senate precedents and practices has been recognized as the essential and authoritative source of information on Senate consideration of its legislative and executive business. This report attempts to summarize in narrative form many of the most important procedures that Dr. Riddick and his successors as parliamentarian have discussed in this seminal contribution to the contemporary work, as well as the history, of the Senate.

This report only addresses selected aspects of the Senate's procedures. It cannot cover every detail and nuance of these procedures, and it also includes many generalizations to which there are exceptions. Much of importance is omitted for the sake of brevity. The full richness and complexity of the rules, precedents, and practices of the Senate can only be appreciated from a study of *Riddick's Senate Procedure* itself, and from a close observation of the Senate at work. Also, this report does not discuss the many and complex special procedures and requirements that comprise the congressional budget process.

The equal division of the Senate between Democrats and Republicans when the 107th Congress convened in January 2001 created a very unusual—almost unprecedented—situation. In response, on January 5, 2001, the Senate agreed to S.Res. 8, adjusting the Senate's organization and procedures during the 107th Congress. References to pertinent provisions of this resolution appear in italics.

Debate and Recognition

The aspect of Senate rules that has the greatest impact, direct and indirect, on how the Senate functions is the right of its members to debate. Paragraph 1(a) of Rule XIX states in part that “no Senator shall speak more than twice upon any one question in debate on the same legislative day without leave of the Senate, which shall be determined without debate;” and each bill or resolution, each amendment, and each debatable motion is a separate “question.” Senators usually do not insist that their colleagues adhere to this rule. But even when the two-speech restriction is enforced, it does not limit how many Senators may make two speeches or how long any speech

may be. Under most circumstances, therefore, Senators enjoy the right of virtually unlimited debate.

Once the presiding officer, addressed as “Mr. President,” has recognized a Senator, the Senate’s standing rules permit that Senator to speak, and thereby hold the floor, for as long as the Senator chooses. The Senator does lose the floor if he attempts to yield to a colleague or, for example, if he makes a motion or proposes an amendment. In general, however, so long as a Senator remains standing and continues to speak, and yields to other Senators only for questions, the Senator may not be deprived of the floor. Once that Senator yields the floor, other Senators have a right to be recognized before the Senate votes on the question that is being debated. If no Senator is speaking or seeking recognition to speak, the presiding officer automatically puts the pending question to a vote. But the presiding officer may not do so as long as any Senator wishes to speak.

Moreover, Senate rules usually do not require that a Senator’s speech be germane (or relevant) to the issue the Senate is considering. Paragraph 1(b) of Rule XIX, commonly known as the “Pastore rule” (after then Senator John Pastore of Rhode Island), requires that debate be germane only during the first three hours after the Senate resumes consideration of business from the previous day or takes up new business. At all other times, each Senator is free to speak on whatever subjects he chooses. In practice, though, Senators usually do not interrupt the flow of debate on a bill by speaking on unrelated matters, in part out of courtesy to their colleagues and in part because there are other opportunities to do so each day (during “periods for transacting routine morning business” or at other times when there is a lull in the transaction of business).

The right to speak at length under Rule XIX is critically important because it enables determined minorities within the Senate, and even individual Senators, to delay final action on matters that a majority of Senators support. There is no motion by which a simple majority of the Senate can cut off debate and bring the Senate to the point of voting for whatever motion, amendment, or measure it has been debating. The motion to order the previous question, for example, which is used frequently in the House of Representatives, is not permitted under Senate rules.

The one motion that Senators often make to stop debate, especially debate on amendments, is the motion to table. Any Senator who has been recognized may move to lay on the table the pending amendment (or motion or bill). This motion is not debatable and is decided by a simple majority vote. If the Senate votes to table an amendment, consideration of that amendment is ended because the amendment has been rejected. To table an amendment, or any other matter, is to dispose of it adversely. If the motion to table fails, however, debate may resume.

In other words, the motion to table can be used to dispose of an amendment, motion, or other question that the Senate is debating, but only if the Senate is prepared to reject that proposition. The effect of the motion is negative; it cannot be used to stop debate and bring the Senate to an immediate affirmative vote. Tabling motions also are used as test votes; if the motion to table an amendment fails on a rollcall vote, the Senate often accepts the amendment itself shortly thereafter, and by a voice vote. However, any Senator who adamantly opposes the amendment may

resume the debate and, exercising his rights under Rule XIX, continue it as long as he chooses.

A Senator may exercise the right to debate only if she or he has the floor, having been recognized by the presiding officer. However, the presiding officer generally cannot preclude a Senator from debating at length simply by declining to recognize him. Paragraph 1(a) of Rule XIX also states that “the Presiding Officer shall recognize the Senator who shall first address him.” If no Senator has the floor, any Senator seeking recognition has a right to be recognized. The presiding officer may not withhold recognition because he does not support what that Senator intends to say or do. Only when two Senators seek recognition at the same time must the presiding officer exercise some discretion; and even under these circumstances, such discretion is limited in a most important respect.

Although the standing rules give all Senators an equal right to be recognized, there is a long-established precedent under which the majority leader, and then the minority leader, enjoy the right to preferential recognition when either leader and another Senator seek recognition at the same time. *S.Res. 8 reiterates the importance of both points for the 107th Congress: “in keeping with the present Senate precedents, a motion to proceed to any Legislative or Executive Calendar item shall continue to be considered the prerogative of the Majority Leader, although the Senate Rules do not prohibit the right of the Democratic Leader, or any other Senator, to move to proceed to any item.”* Also by custom, the majority and minority floor managers of the bill the Senate is considering (the managers usually being the chairman and ranking minority member of the committee or sometimes the subcommittee that had considered the bill) may be recognized in preference to other Senators. These prerogatives are essential to the party leaders if they are to fulfill their responsibilities for arranging the Senate’s schedule and its order of business; they are equally useful to the committee leaders if they are to play the pivotal role in legislative policy debates that the Senate expects of them.

Filibusters and Cloture

Filibusters are possible because of two characteristics of the Senate’s standing rules: first, the lack of time limits on the right of individual Senators to debate; and second, the lack of any motion by which a majority of Senators can bring the Senate to a vote on approving a debatable motion, amendment, or measure. Any Senator who opposes a debatable proposition that the Senate is considering has the right to prolong the debate unless the Senate has decided otherwise by unanimous consent or by invoking cloture. Filibusters also are precluded in the relatively few instances in which the Senate is operating under the terms of a law, such as the Congressional Budget and Impoundment Control Act of 1974, that limits the time for debating certain bills or resolutions, such as reconciliation bills and budget resolutions.

In addition to the right to debate, there are other devices that Senators can use to prolong the process of floor consideration and to delay the vote on a question they oppose. For example, Senators usually can offer amendments to the matter under consideration, and then insist that each amendment be read in full before they begin

to debate it. They also may offer various other motions—such as motions to postpone or recommit—and then ask for a rollcall vote to dispose of each amendment or motion. And a Senator who has the floor may suggest the absence of a quorum; unless the Senate agrees by unanimous consent to dispense with further proceedings under the quorum call, the Senate cannot resume its business until a majority of Senators arrive on the floor and are recorded as present.

Filibustering by debating at length or delaying the Senate by using other devices has been criticized on the ground that it prevents a majority of the Senate from working its will, and so it undermines the fundamental principle of majority rule that should control legislative decision-making. On the other hand, defenders of the right to filibuster argue that extended debates give Senators (and their constituents) time to evaluate the implications and likely consequences of the legislation they are considering, and that controversial policy decisions should not be made in haste by slim majorities. This debate has recurred at times throughout this century, and it may be renewed whenever most Senators believe that a minority is obstructing achievement of their legislative goals. But the right of virtually unlimited debate has always been a fundamental and protected characteristic of the Senate's rules. Changing the debate rules to eliminate the possibility of filibusters would profoundly alter the nature of the Senate and the individual rights and powers of its members.

The standing rules include only one formal procedure (other than a tabling motion) for ending a filibuster or for bringing the Senate to a direct vote on any debatable question when there are Senators still wishing to speak. This procedure involves invoking cloture in accordance with the provisions of paragraph 2 of Rule XXII. However, cloture may not be imposed by a simple majority of Senators, and it does not bring a debate to an immediate end.

The cloture procedure begins with the filing of a cloture motion signed by at least sixteen Senators. Presenting this motion to the Senate is a privileged matter, and a Senator may file it even when another Senator has the floor. The motion may propose to bring debate to a close on an amendment, a bill or resolution, a debatable motion, or any other debatable question. However, a cloture motion can only be filed on a matter that the Senate actually is considering; for example, a Senator cannot present a cloture motion to end debate on a bill until after the Senate has begun to consider it. *S. Res. 8 provides that, during the 107th Congress, "in no case shall it be in order for any cloture motion to be made on an amendable item during the first 12 hours of Senate debate. . . ."*

The Senate does not vote on the cloture motion until two days later—for example, if the motion is presented on Tuesday, the vote occurs on Thursday—after the conclusion of a quorum call that is to begin one hour after the Senate convenes. (The Senate may agree by unanimous consent to waive this quorum call and to have the vote occur at some other time.) The cloture vote occurs at that time, even if the Senate is not then considering the question on which cloture is proposed but is debating another matter instead. Since Senators do not necessarily file cloture motions on matters as soon as the Senate begins to consider them, there can be considerable debate, and opportunity for amendment, before a cloture vote occurs.

Invoking cloture normally requires the support of three-fifths of the Senators duly chosen and sworn—60 votes if there are no vacancies in the Senate’s membership. However, if cloture is filed on a proposal to amend the Senate’s standing rules, the required majority is two-thirds of the Senators present and voting (a quorum being present)—a maximum of 67 votes if all 100 Senators participate in the vote. There may be votes on two or more cloture motions concerning the same bill or amendment; these votes sometimes occur on successive days, in the hope that some Senators who oppose the first cloture motion will eventually agree that imposing cloture is necessary if the Senate is to be able to complete its business in a timely manner.

The effect of cloture is not to end the debate immediately, but only to assure that it will not continue indefinitely. Even after the Senate invokes cloture, Rule XXII allows a maximum of 30 hours for further consideration of the question on which cloture has been voted. This ceiling may be raised only by another three-fifths vote of all Senators. During this 30-hour period, each Senator may speak for an hour, to the extent that time permits, and each Senator is guaranteed an opportunity to speak for 10 minutes even if the 30 hours have expired. The time consumed by activity other than debate—for example, conducting votes and quorum calls—is not charged to any Senator’s hour, but it is charged to the total of 30 hours. At the end of the 30 hours, a vote does occur—debate is no longer unlimited—but even 30 hours is a long time for the Senate to devote to any one question, especially when the end of a session or some other deadline draws near. Thus, cloture does restrict Senators’ rights to debate, but the time available for post-cloture consideration remains rather generous. Once the Senate does invoke cloture on a question, that question remains the business before the Senate until it is decided (unless, of course, it is set aside by unanimous consent).

Invoking cloture does more than limit the right to debate; it also affects the amendments and other motions that Senators can propose.

First, the Senate’s standing rules generally do not require that amendments be germane to the measure or amendment they would amend. Under cloture, however, all amendments must be germane, even committee amendments and amendments that have been offered but not yet voted on when the cloture vote occurs. Moreover, the standards for germaneness are stricter than a standard of relevancy. In general, an amendment to a bill is germane (1) if it proposes to strike out something from the bill, (2) if it proposes to change a number or date in the bill, (3) if it narrows the scope of the bill or the authority it grants, or (4) if it expresses the sense of Congress or the Senate on a matter within the jurisdiction of the committee that reported the bill. The Senate is strongly inclined to support its presiding officer when he rules that an amendment proposed under cloture is not germane. Invoking cloture, therefore, can preclude consideration of alternative approaches to the same issue or problem that the bill or amendment addresses.

Second, the only germane amendments that are in order under cloture are amendments that Senators submitted in writing before the cloture vote. Amendments that would change the text of a bill (by adding, deleting, or changing provisions) are known as first-degree amendments, and must be submitted by 1:00 p.m. on the day after the cloture motion is presented. Senators can then examine each first-degree amendment that may be offered and decide if they wish to amend it when it is

proposed. Amendments to first-degree amendments, known as second-degree amendments, must be submitted at least one hour before the cloture vote begins. When amendments are submitted to meet the requirements of Rule XXII, they are printed in the *Congressional Record*. If a large number of amendments concerning the same bill are printed, it often is an indication that cloture may be proposed and invoked on the bill. Amendments that have been available in printed form for not less than 24 hours need not be read when they are offered under cloture.

Third, the presiding officer of the Senate has considerable authority under cloture to rule amendments and motions out of order—powers that the presiding officer does not normally possess. For example, the cloture rule prohibits dilatory motions and amendments, and the chair may rule that a motion or amendment is dilatory without a Senator first making a point of order to that effect. The presiding officer also may rule that amendments are not germane or not in order for other reasons, again without a point of order first having been made. On more than one occasion, the presiding officer also has taken the initiative to rule quorum calls out of order as dilatory. Except in extreme circumstances, any of these rulings may be submitted to the Senate and decided by majority vote if a Senator appeals from the ruling of the chair. However, the Senate is inclined to support a strict interpretation of the rules and precedents that apply under cloture.

Principle and Pragmatism

The ever-present possibility of extended debate, the difficulty of invoking cloture, and the time available for post-cloture consideration all combine to create the danger of procedural delay leading to legislative inaction. If each Senator took full advantage of his or her rights under the standing rules every time the Senator was in the minority on an impending vote, the Senate would confront stalemate. Senators would not be able to achieve their individual legislative goals, and the Senate as an institution could not meet its constitutional responsibilities in an orderly and timely way. By their nature, legislative bodies usually are not efficient organizations; the unique rules of the Senate, however, create special problems for responsive decision-making, especially in an era of rapidly emerging and changing policy demands.

The Senate has been most reluctant to make changes in its standing rules that would undermine the principles that the value of deliberation must not be sacrificed to the pressures for decision and that the rights of the minority must be protected against the sheer numerical weight of the majority. Yet all Senators recognize that their use of their powers under the Senate's rules must be tempered by the pragmatic necessity for the Senate to act. This sense of pragmatism is manifested both in the self-restraint exercised by Senators individually and in their willingness to accept a variety of customs and practices that moderate the effects of the standing rules. For example, the majority leader enjoys a right to preferential recognition only because his colleagues have been prepared to forego insisting on the equal right to recognition they enjoy under Rule XIX.

Reliance on Unanimous Consent

The Senate usually finds that it can conduct its business more smoothly and efficiently if it sets aside many of its rules by mutual agreement in favor of other arrangements that are more expeditious and better suited to the particular situation it confronts. Some requirements and prohibitions of the rules can be waived by a simple majority vote; others can be waived by a three-fifths vote of all Senators, as provided by certain rules or provisions of rulemaking statutes (laws that include provisions affecting the internal operations of the Senate), such as the Congressional Budget Act and the Budget Enforcement Act. The Senate's rules also include a rarely used procedure for suspending a rule by a two-thirds vote. Most often, however, the Senate waives enforcement of its standing rules by unanimous consent.

The Senate relies on unanimous consent agreements in many ways every day. Many of them are relatively routine and predictable—for example, to waive the reading of an amendment or to dispense with further proceedings under a quorum call. Other unanimous consent requests are limited in effect. One Senator may ask unanimous consent to lay aside the pending amendment temporarily in order to offer a different amendment at that time. Another Senator may ask unanimous consent to yield to a colleague for a statement without losing the right to the floor. A third may ask unanimous consent to insert material in the *Record* to accompany a floor statement that Senator has made. When the chair advises a Senator that what he or she proposes to do is not in order, the Senator often responds by asking unanimous consent to be permitted to do it anyway.

All that it takes to block a unanimous consent request is for one Senator to object. More often than not, however, there is no objection. Many such requests are intended to expedite the business of the Senate in ways that do not put anyone at a disadvantage. Other unanimous consent requests may not be as neutral in their effect, but Senators often refrain from objecting anyway because they expect to make similar requests themselves in the future. Just as Senators exercise self-restraint in using the rules, they often do not insist that the rules be enforced when others propose to set them aside. It is in each Senator's interests to accommodate colleagues in the expectation that they will return the same courtesy and cooperation.

It would be virtually impossible to compile a catalogue of all the unanimous consent requests that Senators have made or could make. There are very few prohibitions or requirements in the standing rules that the Senate cannot set aside by unanimous consent. Almost any statement about the Senate's floor procedures carries with it an implicit caveat: except by unanimous consent. In some cases, the standing rules of the Senate even take account of unanimous consent arrangements. For instance, paragraph 4 of Rule XII requires that there must be a quorum call before the Senate may act on a unanimous consent request to set a date for voting on final passage of a bill or joint resolution. But this requirement itself may be waived—by unanimous consent.

Two of the ways in which the Senate depends on unanimous consent arrangements deserve special attention because they are critical to its legislative procedures, affecting what bills the Senate considers and how it considers them.

The Decision to Consider

The Senate may decide to consider any bill or resolution that is on its legislative “Calendar of Business” under the heading of “General Orders.” By determining which measure to take from the calendar and bring to the floor for debate, amendment, and passage, the Senate establishes its immediate legislative agenda. The procedure for doing so is simple. Any Senator who has been recognized may move that the Senate proceed to the consideration of a bill or resolution that is on the calendar; this motion is decided by simple majority vote. However, the normal practice of the Senate is quite different in two respects.

While every Senator has the right to make the motion to consider (or the motion to proceed, as it is usually called), in practice only one Senator does so—the majority leader, or another Senator acting at his behest or with his consent. In this respect, Senators relinquish one of their rights under the standing rules in the interests of predictability and order. Without such an understanding, it would be difficult for the Senate to approach its legislative workload in an orderly way, and it would be equally difficult for Senators as individuals to anticipate and prepare for floor consideration of legislation in which they are particularly interested. During consideration of one bill, any Senator could propose that the Senate proceed to the consideration of a different bill instead. Senators could not predict the Senate’s schedule nor plan their own schedules with any confidence. By refraining from exercising one of their important powers under the standing rules, Senators gain a measure of predictability which also serves the needs of the Senate as an institution.

As noted above, to guide the Senate during the 107th Congress, S.Res. 8 reiterated both the equal right of all Senators under the Senate’s rules to make motions to proceed and the well-established practice of treating these motions as the prerogative of the majority leader and his designees. The resolution restated these established elements of Senate procedure in the context of urging that both party leaders “seek to attain an equal balance of the interests of the two parties when scheduling and debating legislative and executive business generally....”

The responsibility for scheduling legislation for floor consideration rests primarily on the majority leader. However, he may not impose his preferences on the Senate; he may only propose a bill for floor debate because any motion to proceed can be rejected by a simple majority of his colleagues. Moreover, this motion usually is debatable, and so is subject to a filibuster. The result is two possible filibusters on each bill: one on the motion to proceed to its consideration, and then extended debate on the bill itself. Senators cannot invoke cloture on the bill until they have first decided to consider it, and this can require invoking cloture on the motion to proceed.

In practice, therefore, the Senate usually decides to take up bills by agreeing to unanimous consent requests to consider them. If there is objection when the majority leader makes such a request, he then may make a motion to consider the bill. But any Senator who objects to the request is implicitly reserving the right to debate the motion at length. This may be an acceptable risk or cost if the bill is a particularly important one. However, the majority leader has an institutional responsibility to use the limited time available for floor sessions with as much efficiency as circumstances

and the nature of the Senate permit. If there are two bills he wishes the Senate to consider, only one of which can be called up by unanimous consent, he is likely to give preference to that bill—especially as adjournment dates approach and time becomes even more precious. Under these circumstances, Senators can use their right of extended debate (or merely the threat to exercise it) to discourage the Senate from considering a bill they oppose, and perhaps even to delay action on it indefinitely.

A unanimous consent agreement affecting the legislative schedule can be limited to a single bill, or it can establish the order in which a series of bills will be considered. For example, on June 28, 1996, the Senate entered into the following agreement:

Ordered, That the Majority Leader, after notification of the Democratic Leader, may proceed to the consideration of each of the following three bills; that they be considered in the following order, with no intervening business in order between the three bills; and that no amendments or motions be in order to these bills: . . .

To delay or prevent floor consideration of a bill, Senators do not always have to actually exercise their right to debate. Instead, the very threat or prospect of extended debate on a bill, or the motion to consider it, may be sufficient to achieve the same result. It would be impractical for a Senator to remain on the floor at all times to object to a unanimous consent request to consider a bill that Senator strongly opposes. But often it is not even necessary for a Senator to be present on the floor at all in order to delay consideration of a bill. The Senator may place a “hold” on the bill (or other matter) by requesting her or his party leader to protect the Senator’s interests: by asking the majority leader to refrain from making any unanimous consent request to consider that bill, or by asking the minority leader to object on the Senator’s behalf to any such request that the majority leader may make.

In this way, the Senator keeps the bill off the floor without having to be there in person to exercise the right to object. This practice is not recognized by Senate rules or precedents, but even the majority leader generally attempts to honor such requests from party colleagues when this can be done without jeopardizing what the majority leader considers to be essential legislation. The alternatives are to risk a filibuster led by a member of the majority leader’s own party or, at a minimum, to disappoint a colleague whose cooperation the majority leader will need again and again in the future.

Thus, Senators’ powers under the standing rules are so great that the Senate prefers to set those rules aside as it makes essential decisions about its legislative program. Most Senators refrain from making motions to consider, and thereby delegate the responsibility for scheduling to the majority leader. But the majority leader in turn recognizes that scheduling decisions are subject not only to majority vote, but also to each Senator’s exercise of the right to engage in extended debate.

Complex Unanimous Consent Agreements

Not only does the Senate rely on unanimous consent agreements to call up bills (and other matters), it also considers many individual bills under the terms of complex unanimous consent agreements affecting how Senators may debate and amend each bill. The effect of these agreements often is to preclude filibusters by limiting the time available for debating the bill, amendments to it, and other debatable questions that may arise during its consideration. For this reason, such agreements are frequently referred to as “time agreements.” But they may have other important effects as well. For example, they frequently require that all amendments to the bill be germane or relevant, and they may even preclude amendments to the bill except for those specifically identified in the agreement. In short, these unanimous consent agreements often constitute a set of procedural ground rules for considering a particular bill that are very different from those that would apply if the Senate were to consider that bill under its standing rules.

Such unanimous consent arrangements have been used so frequently and they have become so important to the Senate that a body of precedents has developed to govern how unanimous consent agreements are to be interpreted and applied in various situations. However, there is no requirement that unanimous consent agreements take a certain form or include certain provisions; the virtue of such agreements is that each one can be designed to suit the circumstances surrounding an individual bill. Some agreements are limited in their scope and effect; others are more inclusive, controlling the entire process of debate and amendment and even specifying the time at which the vote on final passage shall occur. Whether a particular agreement is comprehensive and exhaustive or only establishes a flexible framework depends on the preferences of the majority leader and the willingness of all other Senators to agree to its provisions.

The most inclusive time agreements often have been in a form similar to the following agreement:

Ordered, That when the Senate proceeds to the consideration of S. 1651 (Order No. 636), the Veterans’ Dioxin and Radiation Exposure Compensation Standards Act, debate on any amendment in the first degree shall be limited to 1 hour, to be equally divided and controlled by the mover of such and the manager of the bill, and debate on any amendment in the second degree, debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided*, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or the minority leader’s designee: *Provided further*, That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of final passage of the said bill, debate shall be limited to 4 hours, to be equally divided and controlled by the Majority Leader and the Minority Leader, or their designees: *Provided*, That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

This agreement set aside all Senate rules that were inconsistent with its provisions, especially the right of each Senator to speak at length. Debate on the bill itself (on “the question of final passage”) was limited to four hours, and to one hour or less on each amendment, motion, appeal, or point of order. Moreover, each period of time for debate was divided between the control of two Senators. In each case, they were the only ones with a right to speak; another Senator could participate in the debate only if one of the Senators controlling time chose to yield some of that time to him. In addition to limiting the opportunity to debate each amendment, the agreement also imposed an important restriction on what amendments Senators could offer, by requiring that all amendments to this bill had to be germane.

There is a fundamental difference between the Senate operating under an agreement such as this and the Senate operating under its standing rules. The standing rules permit virtually unlimited debate; the agreement severely limits time for debate and the right of Senators to speak. The standing rules usually permit Senators to offer amendments on any subject; the agreement permits only germane amendments. From time to time, the Senate even has been willing to accept unanimous consent agreements that prohibit all floor amendments to a bill, except perhaps for whatever amendments had been approved by the committee that reported the bill. Notice, for example, that the agreement quoted above precluded all amendments and motions during consideration of each of the three bills the agreement made in order.

It is precisely because time agreements differ so fundamentally from the standing rules that the Senate has never been willing to impose such an agreement on its members if even one of them objects. Time agreements, like all other unanimous consent agreements, require the explicit or implicit concurrence of every Senator. Any Senator may object when the agreement is proposed on the floor, and thereby preserve all the rights and powers he enjoys under the standing rules.

Not all bills are the subject of successful time agreement negotiations before they are called up on the floor. If the leaders of the committee that reported a bill expect few amendments and relatively little controversy on the floor, they may consider a unanimous consent agreement unnecessary. In other cases, the majority leader may conclude that a bill is so important and timely that he must call it up even if he has been unsuccessful in attempting to negotiate a time agreement that all Senators will accept. In the contemporary Senate, in fact, it has become increasingly difficult to arrange such comprehensive agreements on bills before the Senate begins to debate them.

When the Senate does consider a major bill without having agreed in advance to any limitations on debate and amendments, the party and committee leaders may attempt to reach such agreements after consideration has begun. Senators who initially insist on preserving their right to filibuster may be willing to accept time limitations after several days of debating a bill, during which it may have been amended to their satisfaction. Other Senators may have no objection to a germaneness (or relevancy) requirement once the Senate has acted on their own non-germane amendments. If Senators have offered many amendments to a bill, and many more amendments are anticipated, the party leaders and the floor managers may canvas their colleagues to identify the additional amendments that Senators are

thinking of proposing, and the majority leader then may propound an agreement that only those amendments be in order. Such a unanimous consent agreement may list only a few amendments or it may include dozens of additional amendments that Senators may offer to the bill.

Unanimous consent agreements that are reached during the consideration of a bill also may list the order in which a series of amendments shall be offered, and may even specify a day and time for voting on final passage of the bill. These agreements lend some order to what might otherwise be a very unpredictable process. They assist individual Senators in anticipating the floor schedule and making their own plans accordingly. If the Senate agrees to consider a series of amendments in a certain order, Senators can begin to gauge when each will be able to propose an amendment. Otherwise, a Senator might have to remain on the floor without knowing exactly when she could be recognized to offer an amendment. By the same token, these agreements give the bill's floor managers an assurance that the amendment process will not continue indefinitely, and preclude the possibility of Senators drafting new amendments as others are being debated. Establishing a time certain for the vote on final passage also encourages Senators to come to the floor and offer their amendments, instead of waiting until the last minute.

If Senators will not accept a comprehensive unanimous consent agreement, the majority leader may propose agreements that are even more limited in scope. For example, such agreements sometimes limit the time for debate on a single amendment, specify the next amendment to be considered, or postpone a series of rollcall votes on amendments until a certain hour that is most convenient for Senators. Any such agreements tend to arrange and expedite floor action in ways that benefit all Senators, but each Senator retains the right to object to any agreement that the majority leader or the bill's floor manager proposes.

In light of the impact such voluntary agreements have on Senators' procedural rights, it is not surprising that comprehensive or even partial unanimous consent agreements can be difficult to negotiate. The primary responsibility for promoting the negotiations rests with the majority leader, in cooperation with the minority leader and the floor managers of the bill. They must consult with the Senators who are known to be interested in the bill; but since it is impractical for the party and committee leaders to consult with every Senator about every bill, individual Senators take the initiative to advise the leaders of their interest in specific bills on the calendar.

Negotiations to produce the kinds of unanimous consent agreements discussed in this section involve an attempt to find an acceptable balance between the interests of the majority leader and the majority floor manager in expediting floor action on a bill, and the interests of the minority and those of individual Senators in protecting their rights and promoting their own legislative goals. The majority leader may urge colleagues to accept stringent debate limitations and a germaneness or relevancy requirement on amendments; however, any Senator may insist that the agreement accommodate his interests—for example, by permitting him to offer a non-germane amendment and allowing him additional time for debating it. Senators prefer to cooperate with the party and committee leaders whenever doing so would not put them at an unacceptable disadvantage, but Senators cannot be compelled to waive their rights under Senate rules. If even one Senator is dissatisfied with the terms of

whatever agreement the majority leader ultimately propounds on the floor, that Senator may object until the agreement is modified satisfactorily, or the Senator may insist that the bill be considered under the standing rules, if it is considered at all.

The Daily Order of Business

The rights each Senator enjoys under the standing rules, and the extent to which the Senate sets aside these rules and relies instead on unanimous consent agreements, combine to make it difficult to predict with confidence what will occur on the Senate floor each day. Nonetheless, some generalizations can be made about what happens at the beginning and end of a more or less “typical” day the Senate is in session.

One of the first actions the Senate takes at the beginning of a new Congress is to agree to a resolution that fixes the hour at which the Senate is to meet each day it is in session. However, the majority leader often asks unanimous consent that the Senate meet at a different time when it convenes on the following day or on the next day of session. Making such scheduling arrangements is an accepted prerogative and responsibility of the majority leader.

When the President pro tempore (or another Senator acting in this capacity) calls the Senate to order, the Chaplain delivers the opening prayer. The majority leader and the minority leader are then recognized for 10 minutes each—a period sometimes known as “leader time”—pursuant to a standing unanimous consent agreement. The leaders use this time to comment on current issues, to discuss the legislative schedule, and perhaps even to transact routine business by unanimous consent.

What occurs thereafter depends on whether the Senate is meeting at the start of a new “legislative day.” A legislative day begins when the Senate convenes after an adjournment and continues until the next time the Senate adjourns. If the Senate were to adjourn at the end of each day, the legislative day would always coincide with the calendar day. But if the Senate recesses at the end of a calendar day, as it generally does, it continues in the same legislative day when it next meets. Thus, the same legislative day may extend over two or more calendar days; in some cases, the same legislative day has continued for months. The standing rules (Rules VII and VIII) prescribe what is to happen at the beginning of each new legislative day, and it is largely to circumvent these requirements that the Senate usually recesses instead. Even when the Senate does adjourn, it often agrees by unanimous consent to waive most or all of the requirements for the following legislative day.

Under Rule VII, the first two hours of session on each new legislative day are known as the Morning Hour (even if the Senate convenes in the afternoon). The first of these two hours, or as much of it as may be required, is to be devoted to transacting “morning business”, when the presiding officer presents to the Senate any presidential messages, executive communications, and messages from the House that the Senate has received. This is also when Senators may present petitions and memorials, file committee reports, introduce bills and joint resolutions, and submit concurrent and Senate resolutions. No debate is permitted during the conduct of morning business, except by unanimous consent. After morning business, Rule VIII

provides for a call of the calendar, a rarely-invoked procedure under which each bill on the Calendar of Business may be taken up in order and debated under strict time limitations, but only if no Senator objects.

A primary purpose of these rules is to set aside a regular and predictable period at the beginning of each day for the Senate to transact routine business. The Senate then can turn its attention to other business without interruption. In practice, however, the Senate prefers to have the flexibility to begin considering scheduled legislation whenever it chooses to do so, and to avoid the Morning Hour requirements by recessing instead of adjourning.

When the Senate convenes after a recess, the majority leader often arranges by unanimous consent for there to be a period of time for transacting routine morning business after the two leaders have used their time or reserved it for use later in the day. As part of this unanimous consent agreement, Senators are authorized to speak briefly during this period on subjects that may be unrelated to whatever legislation is before the Senate. The majority leader also may arrange for periods for transacting routine morning business at other convenient times during the course of the day. Although by standing order the Senate authorizes its members to present bills and resolutions and to file reports at the desk at any time the Senate is in session, not just during morning business, there should be some period for morning business each day if the measures and reports are to be received and recorded in accordance with the standing rules. In practice, Senators use these periods for making brief statements. At other times when there is a lull in the proceedings, a Senator may ask unanimous consent to speak for some period of time “as if in morning business.”

When the Senate convenes after having recessed, and usually after “leader time” and a period for transacting routine morning business, the Senate returns to the consideration of the pending business. The pending business generally is the matter the Senate was considering at the time it recessed. On a new legislative day, however, and after morning business or the first hour of the Morning Hour, the majority leader may make a non-debatable motion that the Senate proceed to consider any bill on the legislative Calendar of Business. If the majority leader takes advantage of this opportunity, he avoids the possibility of extended debate on the motion. At the conclusion of the Morning Hour, however, the Senate resumes consideration of the unfinished business, if any; a bill that is considered but not passed during the Morning Hour is returned to the calendar. Generally, the unfinished business is the matter the Senate was considering at the time it adjourned.

At the end of the Morning Hour, or after a period for transacting routine morning business, the Senate usually resumes consideration of whatever it had been debating when it adjourned or recessed—that is, the unfinished or pending business. At any time, however, the Senate may turn to other legislative business, or go into executive session to consider a treaty or nomination (discussed at the end of this report), either by motion or unanimous consent. As already noted, the majority leader is responsible for such scheduling decisions, although he consults closely with the minority leader and with the Senators who are particularly interested in each measure or matter. These decisions are made by unanimous consent whenever possible; when unanimous consent cannot be obtained, the majority leader usually can count on the

Senators of his party to support the motions to proceed that he may be obliged to make.

It is often possible for the Senate not only to consider but also to pass a bill by unanimous consent, with few if any amendments and with virtually no discussion. Often at the end of a day's session, the majority leader asks the minority leader if certain bills and resolutions, usually identified by their legislative calendar order numbers, have been "cleared" by the members of his party—that is, if all interested Senators have agreed that the measures should be passed and that no live debate is necessary. If a series of measures have been "cleared," the majority leader calls them up in order, or en bloc by unanimous consent, and proposes any amendments on which the interested Senators may have agreed in advance. Each measure is called up and passed in a matter of minutes or less; there usually is no debate, although Senators may have statements inserted in the *Congressional Record*.

Toward the end of each day's session, the majority leader typically makes certain arrangements, by unanimous consent, for the following day. For example, he proposes the time at which the Senate will meet, and often provides for a period for transacting routine morning business during which Senators may speak briefly. He may then comment on the anticipated legislative program for the next day before he moves that the Senate recess or adjourn.

Procedures Under Rule XIV

When there is a Morning Hour, Senators also may invoke another procedure affecting bills and resolutions in accordance with the provisions of Rule XIV. The effect of this procedure is to bypass the Senate's system of standing committees. The committees play an essential part in developing and refining almost all of the major measures that reach the Senate floor, and Rule XXV lists the basic jurisdiction of each standing committee. However, Rule XIV, which deals with the referral of bills and resolutions to committee (among other matters), provides a procedure by which a Senator can introduce a bill, or submit a resolution, and then have it placed directly on the Senate's legislative Calendar of Business, without first having been referred to one or more committees.

The procedure that applies to Senate and concurrent resolutions differs from the procedure that applies to joint resolutions and bills. In either case, once a measure is placed directly on the calendar under Rule XIV, that bill or resolution enjoys the same status as if it had been referred to committee and then had been the subject of extended hearings and markup meetings as well as a formal vote to order it reported back to the Senate. In effect, therefore, bills and resolutions are referred to committee in the Senate by unanimous consent.

When a Senator submits a simple or concurrent resolution by presenting it at the desk when the Senate is in session, the resolution is considered as having been read (implicitly by unanimous consent) and is referred to the committee with legislative jurisdiction over the subject. Alternately, however, the Senator may seek recognition from the floor, send the resolution to the desk, and ask unanimous consent for its

immediate consideration. The resolution is then read. If a Senator objects to considering the resolution at that time, the presiding officer announces that the resolution is to “go over, under the Rule.” The “Rule” at issue is paragraph 6 of Rule XIV:

All other [meaning simple and concurrent] resolutions shall lie over one day for consideration, if not referred, unless by unanimous consent the Senate shall otherwise direct. When objection is heard to the immediate consideration of a resolution or motion when it is submitted, it shall be placed on the Calendar under the heading of “Resolutions and Motions over, under the Rule,” to be laid before the Senate on the next legislative day when there is no further morning business but before the close of morning business and before the termination of the morning hour.

When the resolution is laid before the Senate on the next legislative day, it may be debated until the end of the Morning Hour. If the Senate has not voted on it by that time, the resolution is returned to the calendar unless the Senate agrees, by debatable motion, to continue with its consideration. But even during consideration of the resolution during the Morning Hour, the Senate may agree, by unanimous consent or motion, to turn to other matters instead. Thus, a Senator can attempt to use this procedure to bring an issue to the Senate floor for debate, but there is no requirement for the Senate to vote on the resolution, and this procedure may not be used to promote action on bills and joint resolutions that could ultimately become law.

Rule XIV provides a different procedure for placing bills and joint resolutions directly on the calendar without first having been considered in committee. But this procedure does not assure that the bill or joint resolution will come before the Senate for debate and a vote.

Paragraphs 2, 3, and 4 of Rule XIV require that a bill (or joint resolution) be read three times (by title) before there may be a vote on passing it, and that these readings must occur on different legislative days. Moreover, the bill may not be referred to committee until after its second reading. (The third reading comes just before the vote on final passage, after the bill has been debated and amended on the floor.) When a Senator introduces a bill routinely, it is considered as having been read twice (again, with the implicit unanimous consent of the Senate) and referred to committee by the Parliamentarian, acting on behalf of the presiding officer. The same routine procedures normally occur when the Senate receives a bill from the House. On rare occasions, the Senate has debated referral questions and decided them by majority vote.

Instead, a Senator may introduce a bill from the floor and ask unanimous consent for its immediate consideration, or he may ask for the immediate consideration of a House bill when the Senate receives it. The bill normally is then read for the first time (although, under paragraph 1 of Rule XIV, any Senator may object, in which case the introduction of the bill is postponed for one calendar day). If a Senator objects to a second reading on the same legislative day, the bill cannot yet be referred to committee, so it is held at the desk until the beginning of the next legislative day when it receives its second reading. At that point, if any Senator, including the Senator who

introduced the bill, objects to further proceedings on the bill—which would be referral to committee—the bill is placed directly on the calendar.

By this means, a Senator can introduce a bill and have it placed directly on the calendar, and do so as a matter of right; she may invoke the same procedure with respect to a House bill the Senate has received. Unanimous consent is not required. The process can take time, depending on how many days elapse between legislative days, and there is no guarantee that the bill will reach the floor for consideration. Furthermore, Senators do not invoke Rule XIV for this purpose very often. All Senators appreciate the importance of committee deliberations and no Senator wishes to undermine the powers of her committees or the committee system generally. But when a Senator is convinced that the committee to which a bill would be referred is not prepared to act on it, this recourse is available.

A Senator may use the same procedure in case one of the standing committees fails to act on a bill he has introduced. The Senate's rules do not include a specific procedure by which its members can vote to take a bill away from a committee and either place it on the legislative calendar or bring it directly to the floor for consideration. This situation can present a problem in the case of a House bill that has been referred to a Senate committee. But a Senator whose own bill is languishing in committee may introduce an identical bill (with precisely the same text but a different bill number) and have it placed directly on the calendar. For this reason, Senate committees cannot necessarily determine the fate of a measure by failing to act on it.

Committee Referrals and Reports

Even though these procedures under Rule XIV are available, most bills and resolutions come to the Senate floor only after having been considered and reported by one or more of the Senate's standing committees.

In most cases, a measure is referred, under paragraph 1 of Rule XVII, to “the committee which has jurisdiction over the subject matter which predominates in such proposed legislation.” However, the Senate may refer a bill to more than one committee if each has jurisdiction over part or all of it. The bill may be referred concurrently to two or more committees when it is introduced; alternatively it may be divided among the committees, with each committee having authority over the part of the bill within its jurisdiction. Finally, the Senate may arrange for a bill to be referred sequentially: it is referred to one committee and then, if that committee reports it, to a second committee. The second committee usually is given a limited period of time to consider the bill; if the committee fails to act, it usually is automatically discharged from further consideration of the bill, which is placed on the legislative calendar. The Senate arranges multiple referrals by unanimous consent, though paragraph 3(a) of Rule XVII permits the majority and minority leaders, acting jointly, to make a motion providing for a multiple referral. The two floor leaders have not yet found it necessary or desirable to make such a motion.

The Senate's committees enjoy great latitude in deciding what bills they will consider and when. However, Senate rules and practices do affect how a committee

returns a bill to the full Senate, after considering it and ordering it reported, usually with the recommendation that it should pass.

The committee normally prepares a written report to accompany the bill, although Senate rules do not require that there be a report. In addition to presenting the text of whatever amendments to the bill the committee proposes, the report usually includes a discussion of the policy issue, the state of current law, and the reasons for new legislation. It normally contains both a general and a section-by-section analysis of the committee's recommendations, and often includes a discussion of the committee's deliberations as well as a summary of its hearings and the information the committee received by other means. The report is completed by the committee staff after the committee has decided to report the bill favorably. Thus, the report is more reflective of the committee's position than a detached evaluation of the bill's advantages and disadvantages.

In addition, Rule XXVI includes a number of requirements that generally govern what must be included in the report when the committee chooses to prepare one. For example, the report is to contain:

1. a tabulation of rollcall votes taken by the committee on the bill and proposed amendments to it;
2. a five-year estimate of the bill's cost if it were enacted, prepared either by the committee or by the Congressional Budget Office;
3. a regulatory impact statement, discussing the prospective effect of the bill on the individuals and businesses that would be affected by its enactment, as well as the bill's probable impact on the economy, personal privacy, government paperwork, and private record-keeping;
4. a comparative print using various typographical devices to show how the bill would change the language of current law (known as the "Cordon rule" requirement); and
5. any supplemental, minority, or additional views of committee members, if the members announce their intention to prepare such statements when the committee orders the bill reported, and if the statements are filed with the committee clerk within the next three calendar days.

Collectively, these reporting practices and requirements are intended to provide Senators with important information about the background, provisions, and likely effects of the bill before they consider it on the floor. To ensure an opportunity for Senators and their staffs to review the report, paragraph 5 of Rule XVII requires that the report must have been available to Senators for at least two calendar days before the Senate may consider the bill. When a committee decides not to file a written report, the two-day layover requirement does not apply. But even in such cases, the committee chairman sometimes submits for printing in the *Record* much the same information that would normally be contained in a written committee report. In addition, paragraph 4(a) of Rule XVII requires that a bill reported from committee lie over one legislative day before being considered. This requirement applies even

if there is no written report accompanying the bill; however, it can be satisfied by a very brief adjournment during the course of a day's proceedings.

After a Senate committee has held hearings on a bill that was referred to it, it may vote at a business meeting to order the bill reported with an adverse recommendation or with no recommendation at all, but there usually is no reason for doing so. If the committee does not favor the bill, it has the option of simply declining to take any further action. On the other hand, if the committee does decide that some legislation should be enacted, it votes to order the bill reported, usually after a markup session at which its members debate and vote on possible amendments to the bill.

In providing for equal party representation on the Senate's committees during the 107th Congress (so long as the Senate remains equally divided between the two parties), S.Res. 8 anticipated the possibility of tie votes in committee on ordering a measure or nomination to be reported. The resolution provides that, in such a case, the majority leader or the minority leader may make a motion on the Senate floor to discharge the committee from further consideration of the measure or nomination. If the Senate agrees to this motion after no more than four hours of debate, the matter in question is placed on the Senate's Calendar of Business, if it is a bill or resolution, or on the Executive Calendar, if it is a nomination. This motion to discharge is not available if the committee simply fails to act on the measure or nomination. In that case, a Senator may introduce an identical bill or resolution and invoke Rule XIV to have it placed directly on the Calendar of Business. However, Rule XIV cannot be used to protect a nomination from dying because of committee inaction.

The committee may order a bill reported without amendment if it is satisfied with the provisions of the bill as it was introduced. When marking up major bills, however, a majority of the committee is almost certain to support one or more amendments. The purpose of the markup is to decide what amendments, if any, the committee wishes to recommend to the Senate. The committee does not actually amend the bill; only the Senate itself has that authority. Each committee amendment is subject to virtually the same process of consideration on the Senate floor as amendments that individual Senators decide to offer.

If the committee is not fully satisfied with any of the bills on the same subject that were referred to it, it has three options for reporting its recommendations to the Senate. First, it may report one of the bills with a series of discrete amendments, each proposing to change a different part of the bill in some way. Second, it may incorporate all its proposed changes in the bill into a single complete substitute amendment to replace everything after the enacting clause of the bill. The committee then reports the same bill that was introduced and referred to it, but with one amendment that would entirely replace the original text of the bill and that may constitute a wholly different approach to the subject. Third, Senate committees have the authority to write their own bills, so the committee may report an original bill instead of any of the bills referred to it. In other words, the committee may hold hearings on an issue, or on a number of bills dealing with that issue, and then mark up the draft of a new bill prepared by the committee staff at the chairman's instructions. When the committee orders an original bill reported, the bill normally carries the name

of the committee chairman as its sponsor and it is assigned a bill number when it is reported to the Senate.

Considering a Bill on the Floor

Floor consideration of a major bill normally begins with opening statements by the two floor managers (usually the chairman and ranking minority member of the committee or subcommittee that considered it), and perhaps by other Senators, especially members of the committee. This is a matter of custom and practice, and is neither required nor authorized by the standing rules. If the bill is being considered under a complex unanimous consent agreement limiting all time for debate in connection with the bill, the time for these statements comes from the time allocated to the two floor managers for debate on the question of final passage. In this case, other Senators may make opening statements only if one of the floor managers yields time to them for that purpose.

How the amending process then proceeds depends on how the committee reported the bill. If the committee reported an original bill, there are no committee amendments so individual Senators may immediately offer their own amendments. The same would be true for a measure that was referred to a committee and that the committee reported without amendment.

If the committee reported the bill with a series of discrete amendments, these amendments are automatically presented to the Senate in the order in which they would amend the bill. As the Senate considers each committee amendment, Senators usually may propose amendments to it and to the part of the bill that the committee amendment would strike out or replace. But Senators may not offer other amendments to the bill until the Senate has disposed of all the committee amendments or has agreed by unanimous consent to lay one or more of them aside temporarily. Alternatively, the Senate may approve a unanimous consent request made by the majority floor manager to agree en bloc to all the committee amendments and then to consider the bill as amended to be the text that Senators may amend.

Finally, if the committee reported the bill with a complete substitute, Senators may propose amendments to both the substitute and the original text of the bill; the Senate usually does not vote on the committee substitute, as it may have been amended, until the end of the amending process. When the Senate imposes a germaneness requirement on amendments by unanimous consent, committee amendments are considered germane *per se*.

Except for any discrete committee amendments to be considered, there is no order to the amending process on the Senate floor. Senators may offer amendments to any part of the bill (or the committee substitute) in any order; there is no requirement, for example, to consider amendments to the first section of the bill before amendments to the second section. The order in which amendments actually are offered depends on when Senators wish to call them up and when they are recognized to do so. If no Senator has the floor and no amendment is then pending, any Senator who seeks recognition has a right to be recognized and may offer an

amendment to the bill. And there usually is no requirement that the amendment be germane to the bill, unless all Senators have agreed to such a requirement by unanimous consent or unless the Senate has invoked cloture. Senators may submit amendments in advance for printing in the *Congressional Record*, but this is obligatory only under cloture.

When an amendment is offered, one of the Senate's clerks must read it in full unless the Senate agrees by unanimous consent to dispense with the reading, as it usually does. The Senator offering the amendment then must seek to be recognized again to begin the debate. If there is no unanimous consent agreement limiting the time for debate on that amendment, or on all amendments, the Senator may speak for as long as he wishes. When he concludes his remarks and yields the floor, another Senator may be recognized to speak. Debate on the amendment continues in this way until no Senator seeks recognition to speak further—in which case the presiding officer automatically puts the amendment to a vote—or until a Senator who has been recognized moves to table the amendment. As noted earlier, this motion is not debatable, and to table an amendment is to reject it; if the tabling motion is defeated, however, debate on the amendment may resume.

If there is no general time agreement, a Senator may seek recognition to offer an amendment or simply to speak on the bill itself or whatever amendment may be pending. But if there is such an agreement, a Senator may speak only if he controls time on the bill or the pending amendment, or if a Senator who does control time yields part of it to him. The effect of a time agreement on an amendment is to impose a ceiling on the length of debate; after the time expires or is yielded back by the Senators controlling it, the presiding officer puts the amendment to a vote. However, the agreement constitutes a floor on debate as well. No motion to table the amendment, or point of order against the amendment, or amendment to the amendment is in order so long as time remains for debate under the agreement. Senators are not as likely to move to table amendments when there is a time agreement because, under these conditions, the motion does not have the effect of cutting off debate.

During consideration of an amendment, the Senator who proposed it may either modify or withdraw the amendment as a matter of right unless the Senate has already taken some action on it. If the amendment has been amended, if the yeas and nays have been ordered on the amendment, or if the Senate has agreed to limit debate on that specific amendment, its sponsor may no longer modify or withdraw it except by unanimous consent. However, the sponsor of the amendment now may offer an amendment to it, something that Senator is otherwise prohibited from doing. Also, any Senator may demand that certain kinds of amendments be divided into two or more parts if the chair determines that each part of the amendment in question could stand as an independent proposition. Amendments to insert or to strike out are divisible; amendments to strike out and insert are not. When an amendment is divided, the Senate proceeds to consider each division in turn as if it were a separate amendment.

A Senator may make a point of order against an amendment at any time that the Senate is considering it, unless there is a time agreement governing debate on the amendment, in which case the point of order may not be made until debate has ended.

For example, the amendment may violate some provision of the congressional budget process, or, in the case of an amendment to a general appropriations bill, it may violate a provision of Rule XVI that governs such bills. At other times, a Senator may contend that an amendment is not germane, if the unanimous consent agreement governing consideration of the bill proscribes non-germane amendments.

Alternatively, an amendment may be subject to a point of order because it violates one of several general principles of the amending process that have developed under Senate precedents. For example, an amendment may not propose only to amend a part of the bill that has already been amended. It is also not in order to propose an amendment that would change the bill in two or more separate places. However, several amendments, usually closely related to each other, may be considered together (*en bloc*) by unanimous consent.

These and other restrictions on amendments are not self-enforcing, and Senators do not always make points of order that might lie against amendments their colleagues have offered. When a point of order is made, the presiding officer usually makes a ruling, after permitting as much debate on the question as he or she wishes; on the other hand, the presiding officer may choose to submit any point of order to the Senate, which debates and decides it by majority vote. In some cases, Senate rules and precedents require that points of order be submitted to the Senate—for example, points of order that amendments violate the Constitution or that amendments to general appropriations bills are not germane. When the chair does rule on a point of order, any Senator then may appeal the ruling and ask the Senate to vote whether to sustain the ruling of the chair. In this way, Senators retain collective and ultimate control over the application of their own rules and over the interpretation of constitutional provisions affecting the legislative process in the Senate.

The amending process may consume minutes or weeks, depending on the level of controversy surrounding the bill and the number of amendments that Senators offer to it. The process ends when Senators have no more amendments to propose or when the Senate agrees to a complete substitute for the text of the bill. (In the latter event, any further amendment to the bill could only propose to amend what has already been amended, and so would not be in order.) The Senate then votes routinely to order the bill read a third time and engrossed, a formal stage after which amendments may be proposed only by unanimous consent. The bill is read for the third time, again by title, before the Senate votes on final passage.

Precedence of Motions and Amendments

The first paragraph of Rule XXII lists the motions that Senators may make while a question is pending:

To adjourn

To adjourn to a day certain, or that when the Senate adjourn it shall be to a day certain

To take a recess

To proceed to the consideration of executive business

- To lay on the table
- To postpone indefinitely
- To postpone to a day certain
- To commit
- To amend.

The same rule also states that these motions “shall have precedence as they stand arranged; and the motions relating to adjournment, to take a recess, to proceed to the consideration of executive business, to lay on the table, shall be decided without debate.”

To say that one motion has precedence over another is to say that the motion may be made and voted on while the other motion is pending. For example, a Senator may move to table an amendment because the motion to lay on the table has precedence over the motion to amend. When a Senator does move to table, that motion is not debatable, so the presiding officer begins to put it to a vote. Before the Senate votes on the tabling motion, however, another Senator may move that the Senate adjourn, because the motion to adjourn has precedence over the motion to table. For the same reason, the Senate first votes on whether to adjourn, and then votes on the motion to table only if the motion to adjourn is defeated. All the other motions listed in Rule XXII have precedence over the motion to amend; thus, Senators may offer any of them while an amendment is pending, and the Senate votes on the motion or motions before it may vote on the amendment.

There also are relations of precedence among amendments; some amendments have precedence over others. For example, a second-degree amendment has precedence over a first-degree amendment. After a Senator proposes an amendment to a bill (known as a first-degree amendment), but before the Senate votes on it, another Senator may offer an amendment to that amendment (known as a second-degree amendment). The Senate then votes on the second-degree amendment before voting on the first-degree amendment, as it may have been amended. As a general rule, Senate rules and precedents prohibit amendments to second-degree amendments, which would be amendments in the third degree. When first- and second-degree amendments have been proposed, a motion to table has precedence over both. A vote to table a first-degree amendment also kills any second-degree amendment that has been offered to it.

Other relations of precedence among amendments are less obvious, and are based on several ways of distinguishing among amendments.

An amendment can take one of three possible forms. First, it may propose to insert new language without changing any language already present. Second, it may propose to strike out language without replacing it with different language. Or third, it may propose to both strike out and insert. These are the only logical possibilities. A special kind of amendment to strike out and insert is a complete substitute for the text of a bill or resolution—an amendment which proposes to replace everything after the measure’s enacting or resolving clause.

In some contexts, the Senate also distinguishes between substitute and perfecting amendments. When a Senator offers a complete substitute amendment—an

amendment to strike out and insert that would replace the entire text of the bill—when no other such amendment is already pending, that amendment is considered to be an original question for purposes of amendment. This means that the complete substitute amendment is amendable in two degrees. Also, when a Senator proposes an amendment to an amendment, it is considered to be a second-degree substitute amendment if it proposes to replace the entire text of the first-degree amendment. If, instead, it would leave part of the first-degree amendment unchanged, it is considered to be a second-degree perfecting amendment.

According to Senate precedents, the form of the first-degree amendment that a Senator offers determines what other amendments may be proposed before the Senate votes on that first-degree amendment. The second-degree amendments that are in order depend on whether the first such amendment to be offered proposes (1) to strike out, (2) to insert, or (3) to strike out and insert. Only some of the complicated precedents governing the amendment process can be summarized here, but these precedents are generally consistent with the following two propositions:

1. when a first-degree amendment to strike out and insert is offered, both the language proposed to be stricken and the language proposed to be inserted may be amended; and
2. the Senate votes on amendments to the language proposed to be stricken before voting on amendments to the language proposed to be inserted.

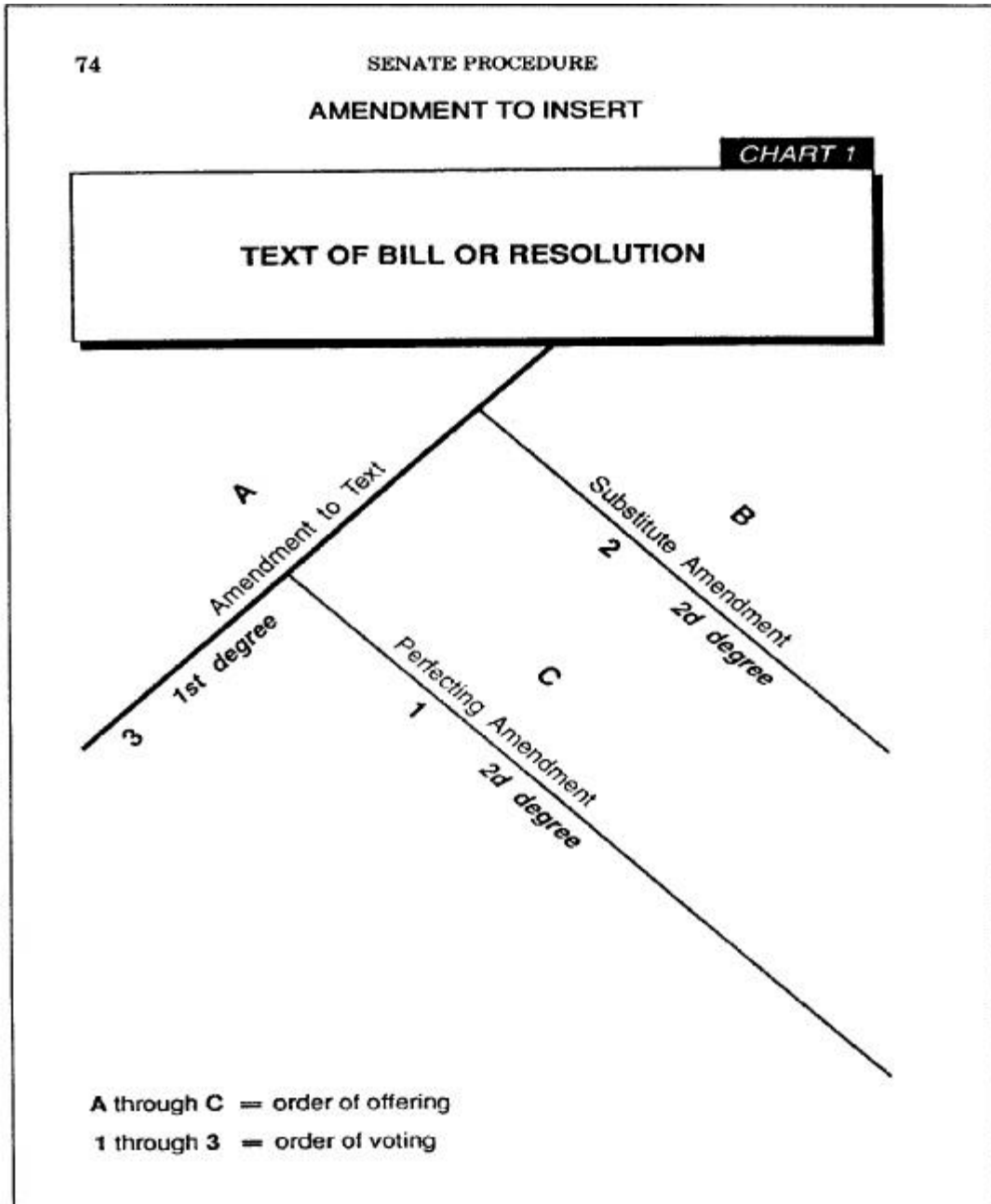
These propositions assist in understanding the complex amendment situations that can arise on the Senate floor, in which Senators may offer three or sometimes as many as seven or more amendments before the Senate votes on any one of them. The precedents on this subject have been codified into a series of four diagrams in *Riddick's Senate Procedure*, that depict the maximum number of amendments that Senators may offer before any votes must occur. These diagrams govern the amendment process on the Senate floor. Fortunately, the most complex and elaborate of these amending situations rarely occur.

In the case of a motion to insert, the amendment process is governed and limited by the following diagram reproduced from page 74 of *Riddick's Senate Procedure*.

As a first-degree amendment, the motion to insert (Amendment A in the diagram) is amendable in the second degree. If a Senator offers a second-degree perfecting amendment (Amendment C), no other amendments are in order until after the Senate votes on the perfecting amendment. But if the second-degree amendment is a substitute (Amendment B, proposing to strike out all of what the first-degree amendment would insert and to insert different language in its place), then another Senator may propose an amendment that would perfect the language proposed to be replaced by the substitute. This perfecting amendment is in order before the Senate votes on the second-degree substitute; and if both amendments are proposed, the Senate votes on the second-degree perfecting amendment before voting on the second-degree substitute.

In other words, a second-degree perfecting amendment has precedence over a second-degree substitute amendment. The perfecting amendment is in order while the

Figure 1. Amendment to Insert



substitute is pending, and the Senate acts first on the perfecting amendment. If the Senate rejects or tables the perfecting amendment, the first-degree amendment remains fully open to any other perfecting amendment. If the Senate agrees to one perfecting amendment, Senators may still offer other perfecting amendments that would change different parts of the first-degree amendment. But if the Senate ultimately agrees to the substitute for the amendment, that vote obviates the effect of any perfecting amendments previously adopted. The final vote then occurs on the first-degree amendment as amended either by the perfecting amendments or by the substitute.

In the case of a motion to strike out and insert, the diagram from page 84 of *Riddick's Senate Procedure* governs what other amendments Senators may offer.

The language that this amendment proposes to insert in the bill is amendable (by Amendments A and B in the diagram) in the same way and to the same extent as a motion to insert. In addition, the language the substitute proposes to strike out from the bill also is amendable in two degrees. The first-degree amendment to the language proposed to be stricken (Amendment C in the diagram) can only be a perfecting amendment, and may only deal with the part of the bill that the substitute would replace. This perfecting amendment may propose to insert, to strike out, or to strike out and insert. But whatever form it takes, it is only subject to one second-degree amendment at a time; if that second-degree amendment (Amendment D) is a substitute, in other words, a second-degree perfecting amendment is not in order unless and until the Senate rejects the substitute.

The Senate votes on any amendments to the text proposed to be stricken before voting on any amendments to the text proposed to be inserted; then it votes on the first-degree substitute itself. In other words, the Senate has an opportunity to perfect language in the bill before deciding to replace it.

When a Senator proposes a motion to strike out—an amendment to remove language from a bill without replacing it—the diagram on page 75 of *Riddick's Senate Procedure* applies.

A motion to strike out is not amendable. However, Senators can offer amendments in two degrees to change the language of the bill that the motion to strike out proposes to remove. The Senate first votes on any such amendments, which enables it to improve language in the bill before deciding whether or not to strike it out altogether.

A Senator may propose to replace everything that the motion to strike out would eliminate (Amendment A in the diagram). In this case, that substitute amendment is amendable in the same way and to the same extent as if no motion to strike out had been offered. The language the substitute would insert is amendable in the second degree, by either a substitute amendment (Amendment B) or a perfecting amendment (Amendment C), and both may be pending at the same time if the substitute is offered first. Also, Senators may propose amendments in two degrees (Amendments D and E) to the language the substitute would strike out. If the Senate ultimately votes for the substitute, there is no vote on the motion to strike out itself. That motion falls

Figure 2. Amendment to Strike and Insert
(Substitute for Section of a Bill)

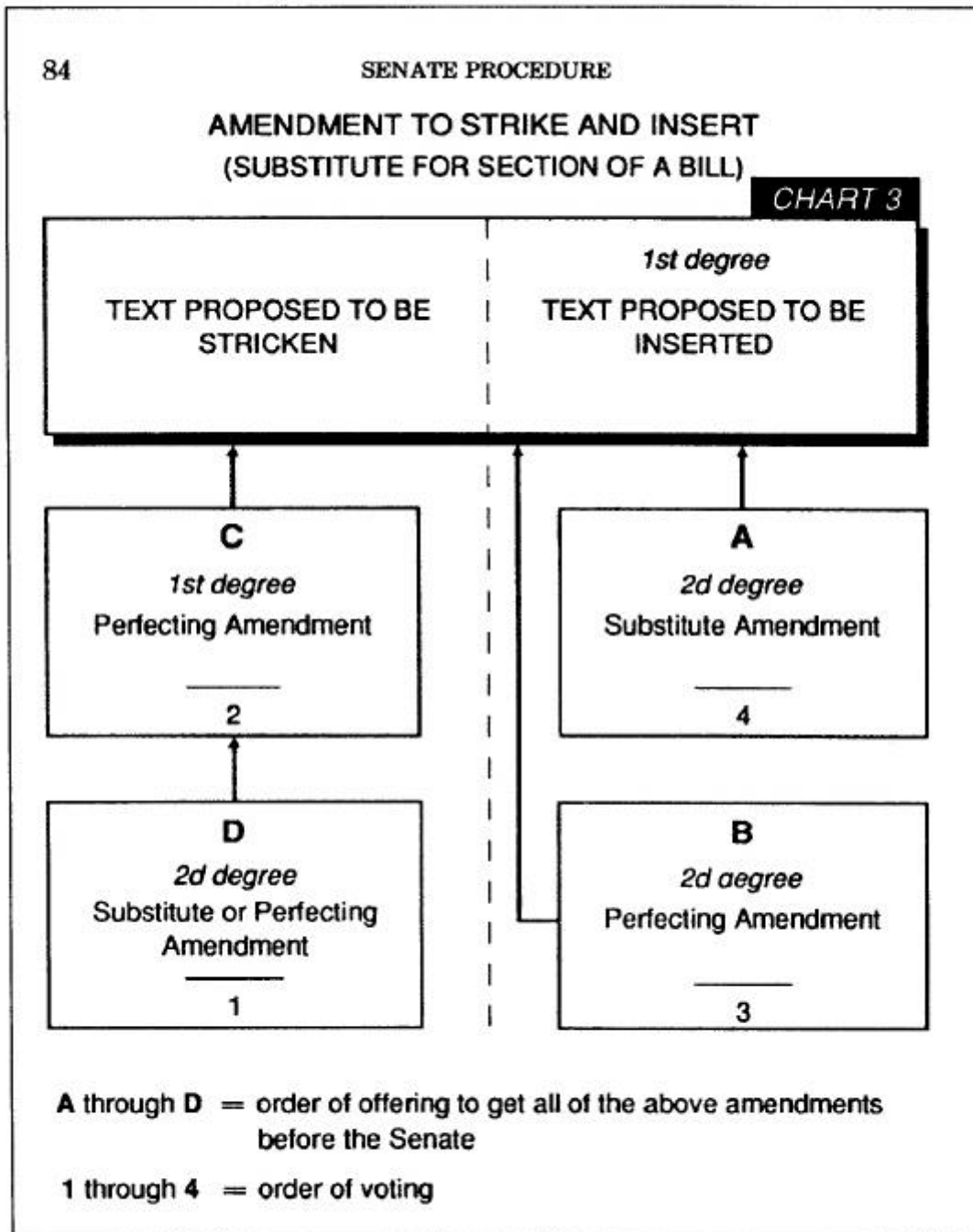
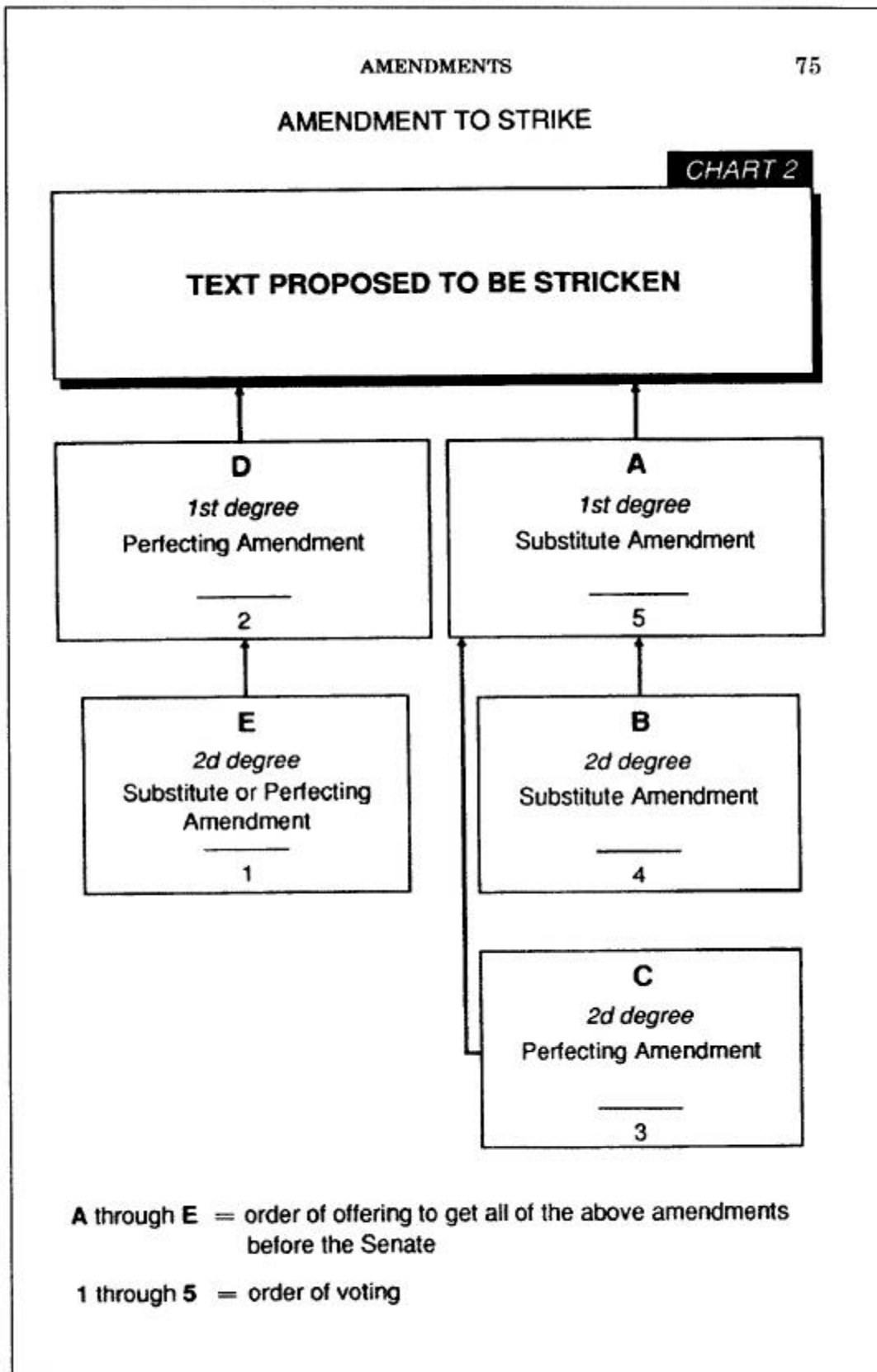


Figure 3. Amendment to Strike



automatically, because the Senate has replaced everything in the bill that the motion proposed to strike.

Alternatively, a Senator may propose to perfect the language proposed to be stricken (by offering Amendment D), but not to replace it entirely. This first-degree perfecting amendment may insert additional language, change part of the language the motion to strike out would eliminate, or even strike out a smaller part of the bill than the original motion to strike out. Except in the last case, the perfecting amendment itself may be amended in the second degree (Amendment E), but the Senate must dispose of each second-degree amendment before another one can be offered. Once the Senate has voted on amendments to perfect the language of the bill, it then votes on the original motion to strike out that language as it may now have been amended.

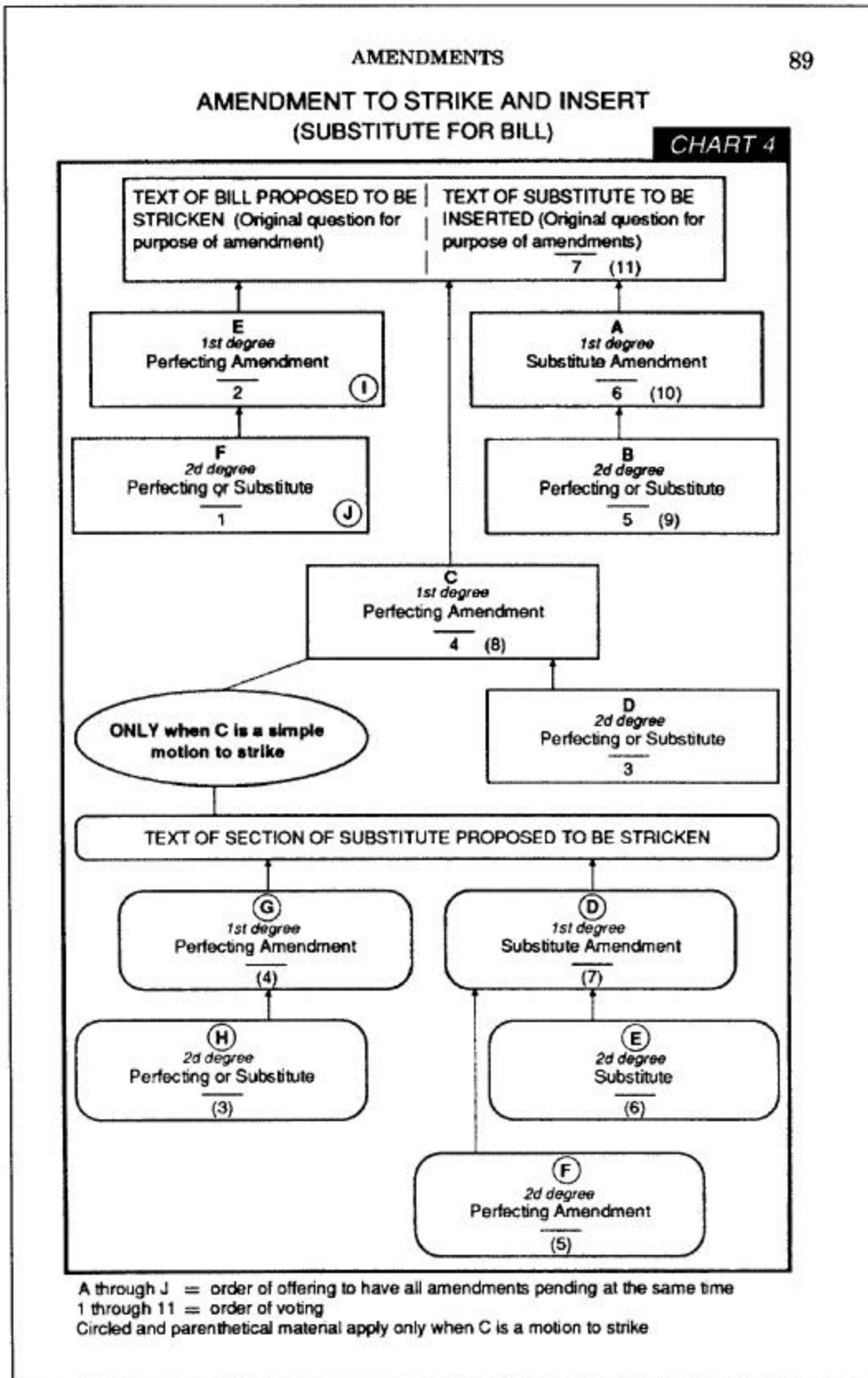
Finally, a different amendment situation may arise when the Senate is considering an amendment that is a complete substitute for the text of a bill or resolution. Such amendments usually are committee amendments, but Senators also may offer them from the floor. In either case, the diagram on page 89 of *Riddick's Senate Procedure* governs the other amendments that Senators then may propose.

A complete substitute permits the Senate to choose between two different versions of a bill—the original version of the bill as introduced, and the version that is proposed to be inserted in its place by the amendment—and both versions are amendable in two degrees. Under Senate precedents, the version proposed to be inserted is considered an original question for the purpose of amendment. This means that, even though the complete substitute is an amendment, Senators still may offer first- and second-degree amendments to it, just as they can propose amendments in two degrees to perfect the original text of the bill.

Consequently, the Senate has roughly equal opportunities to amend both versions before choosing between them by voting on the complete substitute. When this substitute is a committee amendment, it is before the Senate for action as soon as the bill is called up for consideration. But only at the very end of the amendment process does the Senate vote on the complete substitute, as it may have been amended. When the Senate agrees to such a substitute for the entire text of a measure, that ends the amendment process because any further amendment could only propose to amend something that already had been completely amended.

A Senator may offer either a perfecting amendment to, or a substitute amendment for, the text proposed to be inserted. If he proposes a substitute (Amendment A in the diagram), which would be still another version of the bill, another Senator may propose (Amendment C) to perfect the text the substitute would strike before the Senate votes on the substitute. Moreover, either or both of these first-degree amendments is itself amendable by a second-degree perfecting or substitute amendment (Amendments B and D); but under these circumstances, the Senate votes on each second-degree amendment before another may be offered. (If Amendment C takes the form of a motion to strike out, the text it proposes to strike is subject to Amendments D through H, just as in the case of a motion to strike out part of a bill; refer to the diagram reprinted from page 75 of *Riddick's Senate Procedure*.)

Figure 4. Amendment to Strike and Insert
(Substitute for Bill)



In addition, because amendments to the language proposed to be stricken have precedence over amendments to the language proposed to be inserted, Senators also may propose first and second-degree amendments to the original text of the bill (Amendments E and F). Thus, Senators may call up as many as six (or even eleven) amendments to the bill and the complete substitute for it before any votes must occur.

These diagrams display the maximum number of amendments that Senators may offer before the Senate must begin to vote, either by voting “up or down” on the amendments themselves or by voting on motions to table them. For all the “branches” of these “amendment trees” to be occupied at the same time, the amendments must be offered in the order indicated by the letters marked on each diagram. For example, if a Senator offers a second-degree perfecting amendment (Amendment C on the first diagram) to an amendment that would insert a new title in a bill (Amendment A), a second-degree substitute (Amendment B) for the proposed new title is not in order until after the Senate votes on the perfecting amendment. But once the substitute is offered and before the Senate votes on it, Senators also may offer second-degree perfecting amendments, so long as these amendments do not propose merely to change language in the proposed new title that already has been perfected. Only after the Senate votes on these perfecting amendments does it then vote on the substitute.

Whichever amendments Senators decide to offer, there is a specified order for voting on them. This order also reflects the relative precedence among the amendments and is indicated by the numbers marked on each diagram. To repeat the general rule: the Senate first votes on amendments to the language proposed to be stricken before it votes on amendments to the language proposed to be inserted. But after the Senate disposes of an amendment, a Senator usually may propose a different amendment on the same branch of the amendment tree. When a committee proposes a complete substitute for a bill, for instance, and a Senator then offers an amendment to perfect the bill’s original text, the Senate does not vote on the substitute, and no amendments to it are in order, until after the vote on that perfecting amendment and any other perfecting amendments that Senators are prepared to offer at that time. If the Senate ultimately agrees to the complete substitute, that completes the amending process. Once the Senate has amended a measure or an amendment in its entirety, no further amendments to that text are in order.

Voting and Quorum Procedures

There are three ways in which the Senate may vote on a motion, amendment, bill, or any other question presented to it for decision. First, questions that are not seriously contested usually are decided by voice vote, with those in favor first calling out, “Aye,” and then those opposed calling out, “No,” after which the chair announces which side prevailed. As a shortcut, the chair may state that a bill is passed or some other action is taken “without objection;” however, any Senator may object and require that a formal vote take place.

Second, if any Senator disagrees with the chair’s decision on a voice vote, or if the chair is in doubt about the outcome, either may demand a division vote. In that case, the Senators in support raise their hands to be counted, followed by those in

opposition. The chair announces which side prevailed without giving a count of the Senators voting each way. Division votes do not occur often.

The third form of vote is the “yea and nay” or rollcall vote. Article I of the Constitution provides that “the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.” The Constitution requires that those present must constitute a quorum, or a majority of all Senators. Since a Senate quorum is 51 Senators, at least 11 Senators are required to demand the yeas and nays on any question. In practice, when a Senator is adamant on having a rollcall vote on a question, a sufficient number of colleagues usually support the request. Moreover, the Constitution requires yea and nay votes on some questions (on overriding presidential vetoes), as do Senate rules on others (on invoking cloture).

A Senator may ask for the yeas and nays on a question after a voice or division vote has begun but before the result is announced. If there is to be a rollcall vote, however, the Senate usually orders the yeas and nays some time before the vote actually begins. A Senator may ask for the yeas and nays on a question whenever it is pending, but ordering the yeas and nays on that question does not stop the debate on it and bring the Senate to an immediate vote. Instead, ordering the yeas and nays means that whenever the vote occurs, it will be a rollcall vote.

Thus, a Senator may offer an amendment and immediately ask for the yeas and nays even before she begins to explain the amendment. Ordering the yeas and nays also has other consequences that can be important. Once the Senate has ordered the yeas and nays on a motion, amendment, or bill, it may only be withdrawn by unanimous consent. By the same token, a Senator may no longer modify her own amendment, except by unanimous consent, after the yeas and nays have been ordered on it.

At the beginning of each Congress, the Senate agrees by unanimous consent to limit the time for each rollcall vote to 15 minutes; however, the length of votes often has been extended to accommodate Senators who are on their way to the chamber. At other times, the Senate agrees by unanimous consent to postpone two or more rollcall votes, and to have one occur immediately after the other at some later and more convenient time. When a series of votes occurs in this way, the Senate may agree to limit the time for the second and each subsequent vote to five minutes, since no extra time is needed to enable Senators to come to the floor.

Immediately after the chair announces the result of any vote, a Senator who voted on the prevailing side normally moves to reconsider that vote. Senate Rule XIII permits one opportunity to reconsider each vote the Senate takes, so long as the motion to reconsider is made on the same day as the vote or on either of the next two days the Senate is in session. As soon as one Senator moves to reconsider, another Senator usually moves to lay that motion on the table, and the Senate agrees “without objection” to the motion to table. The effect of these routine proceedings is to use up the one opportunity to reconsider, and thereby make the result of the vote final. But from time to time, and especially after a very close rollcall vote on a bill or amendment, there also may be a rollcall vote on the motion to reconsider. If the

Senate votes to reconsider, there will be another rollcall vote on the bill or amendment, with the possibility that the result may be reversed.

A rollcall vote is not valid if fewer than 51 Senators vote because the Constitution requires the presence of a quorum in the Senate to do business. However, it is relatively unusual for a majority of Senators to be on the floor unless a rollcall vote is in progress or about to occur, and most voice votes are decided with far fewer than 51 Senators present. The Senate presumes that a quorum is present unless a call of the roll demonstrates that it is not.

Under the standing rules, a Senator who has been recognized generally may suggest the absence of a quorum, and the presiding officer immediately directs the clerk to call the roll. (Under a time agreement, however, a Senator may suggest the absence of a quorum only if he controls at least 10 minutes of the time for debate.) Except under cloture, the presiding officer may not count to determine the presence of a quorum, so it is only by calling the roll that the Senate can determine whether or not a quorum actually is present.

The Senate normally terminates quorum calls by unanimous consent before the clerk has finished calling the roll. But in the case of a “live” quorum call, in which the names of all Senators are called, the Senate cannot resume its business until a quorum responds. If a majority of Senators fails to appear and announce their presence, the only motions that the Senate may then consider are to adjourn (or recess pursuant to a previous order) or to direct its Sergeant at Arms to request or compel the attendance of the absentees. The Senators who are present usually order a rollcall vote on whichever motion the majority leader makes. When a majority of Senators participate in the vote, as they almost always do, that demonstrates the presence of a quorum, so the Senate can then resume its business.

The purpose of quorum calls on the Senate floor usually is not to determine whether a quorum is actually present or even to compel a majority of Senators to come to the chamber. Instead, Senators most often suggest the absence of a quorum in order to suspend Senate proceedings temporarily. If the Senate is about to begin consideration of a bill, for example, and one of the floor managers has not yet arrived on the floor, a colleague may suggest the absence of a quorum until he does appear. By the same token, a quorum call can be useful if the floor manager of a bill wants to speak informally with the Senator who has offered an amendment, or if the majority leader needs to speak with several Senators about a possible time agreement. Suggesting the absence of a quorum permits more informal discussion than is possible under the rules governing Senate debate. When the discussion is over, a Senator asks unanimous consent to dispense with further proceedings under the quorum call, and the Senate resumes its official proceedings. The quorum call may be called off in this way because it had not been completed and, therefore, the absence of a quorum had not yet been demonstrated.

Appropriations Procedures

Senate Rule XVI imposes several special restrictions and requirements on consideration of appropriations bills—the bills by which Congress provides funds for most operations of the federal government and thereby exercises its constitutional “power of the purse.” By and large, the purpose of these provisions is to prevent Senate action on appropriations bills from being complicated by proposals that do not deal with the question of funding levels. Rule XVI applies to Senate amendments to House appropriations bills, rather than to Senate appropriations bills. The House has traditionally insisted that the constitutional requirement for all bills “raising revenue” to originate in the House applies to both tax and appropriations bills—to bills affecting taxes and to bills affecting how tax receipts are spent. The Senate has never accepted this contention, but in practice has deferred to the insistence of the House.

Three provisions of Rule XVI are particularly important, and apply both to the floor amendments proposed by the Senate’s Appropriations Committee and to the amendments that individual Senators decide to offer. First, all amendments to an appropriations bill must be germane, a requirement that Senate rules do not impose during consideration of most other measures. Second, amendments should not constitute new or general legislation, legislation making changes in the laws governing how the appropriated funds may be spent. However, amendments to an appropriations bill may limit the purposes for which the funds appropriated in that bill may be used, so long as the limitation does not (1) impose a new duty or responsibility on an executive branch official or (2) make use of the funds contingent upon some other action or event.

Amendments that would constitute new or general legislation should more properly be proposed during consideration of authorization and re-authorization bills that establish federal agencies and programs and set the terms and conditions for their operation, as well as authorize the appropriations of funds for operating them. Third, therefore, Rule XVI prohibits amendments to increase appropriations or add new items of appropriations that have not been authorized by law or treaty or by a measure passed by the Senate during that session of Congress, unless the appropriation has been (1) formally requested by the President or (2) proposed either by the Senate’s Appropriations Committee or by the committee with jurisdiction over authorizing legislation for that agency or program.

A Senator may make a point of order against an amendment that violates any one of these prohibitions, or against the bill as a whole in the case of an Appropriations Committee amendment that would constitute new or general legislation. Rule XVI requires the Senate to decide, without debate, questions of the germaneness of amendments to appropriations bills; the presiding officer decides other points of order based on Rule XVI, subject to the right of any Senator to appeal and submit the question to the Senate for it to decide by majority vote.

A special problem arises when the Senate considers a House appropriations bill that already contains a provision constituting new or general legislation or a limitation on the availability of appropriations. The Senate must have the opportunity to amend such a House provision if it is to have the same ability as the House to determine the

final provisions of appropriations laws. Thus, under the precedents of the Senate, the prohibitions of Rule XVI against adding legislation on a subject to an appropriations bill do not apply when the House has already done so.

If a Senator makes a point of order that an amendment proposes new or general legislation, another Senator may raise the “defense of germaneness,” acknowledging that the amendment would constitute legislation but contending that it is germane to a legislative provision of the House bill. The Senate then votes on whether in fact the amendment is germane. If the Senate decides that it is, the amendment is in order even if it does propose legislation. On the other hand, if the amendment is not germane, it is prohibited by Rule XVI, whether or not it is not legislative in character. There have been instances in which the Senate has voted that a legislative amendment was germane, even when it was not, because a majority of the Senate wished to consider the amendment at that time.

Resolving Differences With the House

Even after the Senate passes a concurrent or joint resolution or a bill, the legislative process is not complete until any differences between the House and Senate versions of that measure have been resolved. Except for Senate resolutions, on which only the Senate acts, the two houses must pass the same measure in precisely the same form before it can take effect. This means that the Senate and House must first pass the same “vehicle”—for example, S. 1, H.J.Res. 1, or S.Con.Res. 1—before they can begin the formal process of trying to reach agreement on its text.

If the House passes a bill and sends (or “messages”) it to the Senate well before a Senate committee has reported a Senate bill on the same subject, the House bill is usually referred to that committee. (The House bill may not be referred if it is so noncontroversial that it can pass the Senate by unanimous consent without first being considered in committee.) Under these circumstances, the Senate committee is likely to report the House bill with one or more committee amendments. The Senate then debates, amends, and passes the House bill.

If, on the other hand, the Senate committee has already reported its bill (or is about to do so) when the Senate receives a House bill on that subject, the House bill usually is held at the desk by unanimous consent or it is placed directly on the calendar. Under these circumstances, the Senate normally debates and amends its own bill, but stops as soon as the bill is read a third time and ordered engrossed—the formal stage that ends the amending process and immediately precedes the vote on final passage. At that point, the Senate takes up the House bill by unanimous consent, strikes out all after its enacting clause and replaces the text of the House bill with the text of the Senate bill, as amended. Finally, the Senate votes on passing the House bill, now containing the Senate’s entire text as a single amendment. In one of these two ways, the Senate arranges to pass a House bill. The House has comparable procedures that it typically follows when the Senate passes its bill first.

Once the Senate and House have passed different versions of the same measure, they attempt to reach agreement on precisely what it should say. This can be a

complicated process with many possible twists and turns, but it is based on the principle that each house can amend the other house's version of the bill in the hope that the two bodies will be able to reach a mutually acceptable compromise. One way of doing this is through a formal process of amendments between the houses. Each house has one opportunity to amend the amendments of the other. For example, the Senate can amend the House amendments to a Senate bill, and then send those Senate amendments to the House for it to accept, reject, or amend with further House amendments. At any point during this process, however, or if it is unsuccessful, the Senate and House can agree to send their respective versions of a bill to a conference committee. This committee is composed of Senators and Representatives who are specially appointed for the purpose of considering all the differences between the Senate and House versions of a bill and agreeing on a conference report that recommends a package settlement of all those differences.

When the Senate amends and passes a House bill, it may simply send the bill back to the House if Senators believe that the House may accept the Senate's amendments. Instead, the Senate may immediately insist on its amendments and request a conference with the House. The House then has the options of agreeing to the Senate amendments, or proposing amendments to them, or disagreeing to the Senate amendments and either requesting a conference with the Senate or agreeing to the Senate's request for a conference. The same options are available in reverse, of course, when the House amends and passes a Senate bill. The Senate may agree to the House amendments, or propose amendments to the House amendments, or disagree to the House amendments and either request or agree to a conference (depending on whether the House has already requested one).

House amendments to Senate bills (or to Senate amendments) and other messages from the House—for instance, a message informing the Senate that the House has requested a conference—are privileged business on the Senate floor. A motion to consider House amendments, for example, is not debatable, and after the Senate completes action on them, it automatically returns to whatever business it had been considering. Once the Senate has agreed to consider House amendments, however, motions to dispose of those amendments are subject to extended debate under the Senate's standing rules. Various motions are in order and some have precedence over others. For example, a motion to amend a House amendment has precedence over a motion to agree to it, and both of these motions have precedence over a motion to request or agree to a conference. The Senators who are most interested in the bill usually decide in advance whether to agree to the House amendments, amend them, or go to conference, so there usually is little controversy on the floor over these decisions.

The Senate and House may agree to go to conference whenever they reach the stage of disagreement—each house either insisting on its own position or disagreeing to the position of the other. When a Senator offers a motion to go to conference, he or she also proposes that the presiding officer be authorized to appoint the Senate's conferees. The Senate may elect its conferees; in practice, however, the chair appoints a list of Senators that has been assembled by the chairman and ranking minority member of the committee that had originally considered the bill, perhaps after consultation with the majority and minority leaders.

A motion to instruct Senate or House conferees is in order after either house agrees to go to conference but before its conferees are named. However, Senators rarely offer motions to instruct and instructions to conferees are not binding; no point of order can be made against a conference report that is inconsistent with instructions that Senate or House conferees received.

There are rules governing conference meetings and voting procedures. First, there is no need for the Senate and House to appoint the same number of conferees, because all votes in conference take place within each house's delegation. The final conference report must be acceptable to a majority of the Senate conferees and also to a majority of the House conferees. Second, conference committee meetings are open to the public unless national security questions are involved. Otherwise, the Senate and House do not impose procedural rules or requirements on how the conferees negotiate and reach agreement.

Although the conferees may devise whatever procedures they wish, including the creation of informal subconferences to negotiate separate issues, there are important restrictions on what agreements the conferees may reach. They are appointed to resolve differences between the Senate and the House, so they are only to consider matters that are in disagreement. The conferees should not address matters on which the two houses already agree or matters that are not contained in either house's version of the bill. In resolving each matter that is in disagreement, they may accept either the Senate position or the House position or a compromise between them. But the conferees should not reach any agreements that exceed the "scope" of the differences between the Senate and House positions. A conference report that violates these restrictions in any respect is subject to a point of order on the Senate or House floor.

When the conferees consider a complete substitute of one house for a bill of the other—for example, a House amendment that replaces everything after the enacting clause of a Senate bill—the two houses must give their conferees somewhat more latitude because the Senate and House versions of the bill may take fundamentally different approaches to the same issue. In these cases, which occur frequently, the conferees may write their own conference substitute. A Senator cannot make a point of order against a conference report proposing such a substitute unless it contains matter that is completely irrelevant to the Senate and House versions of the bill. (The House does not give its conferees quite as much latitude under these circumstances.)

In general, the Senate has given its conferees more latitude than House conferees enjoy by limiting the basis on which Senators can make points of order against conference reports on the ground that the conferees made decisions that were beyond their authority. However, the authority of Senate conferees is not entirely unlimited, and both Senate and House conferees must remain mindful of the somewhat tighter restrictions on the content of conference reports that the House imposes. If conferees do violate their authority, as defined by the rules and precedents of either or both houses, their conference report is subject to a point of order on the floor. The House, however, has the option of waiving points of order against a conference report by agreeing to a special rule that its Rules Committee reports for that purpose.

When the conferees resolve all the disagreements before them, they prepare a conference report that contains their recommendations. It may propose, for instance, that the House recede from some of its amendments, that the Senate recede from its disagreement and accept other House amendments, and that the two houses agree to certain new Senate amendments to the remaining House amendments. A majority of the Senate conferees and a majority of the House conferees must agree to sign two copies of the conference report, one to be considered by the House and the other by the Senate. They also sign two copies of a joint explanatory statement that summarizes the original Senate and House positions on each amendment or issue in disagreement and discusses the conference committee's recommendation for resolving it.

The house that agreed to the request for a conference usually acts first on the conference report, though this is not required by Senate or House rules. Like House amendments and other messages, conference reports are privileged business on the Senate floor. When the Senate agrees to take up a conference report, it automatically considers whether to agree to the report. This question is fully debatable and, therefore, subject to a filibuster. However, neither the Senate nor the House may amend the conference report because the report is a proposed package settlement of a number of disagreements.

The first house to act on the report may vote for or against it, or it may recommit the report to the conference committee for revision. But when either the Senate or the House agrees to the report, the conference committee is disbanded, so the other house only has the options of accepting or rejecting it. If either house defeats the report, the Senate and House may agree to a new conference, or one house may propose a new position to the other in the form of an amendment between the houses. The bill dies at the end of the Congress if no agreement is reached. If both houses approve the conference report, on the other hand, it is enrolled for presentation to the President.

Very often, Senate and House conferees are confronted with an amendment in the nature of a substitute from one house that completely replaces the other house's version of the bill. Under these circumstances, there is only one amendment in conference, and the conferees may not report part of that amendment in agreement and part of it in disagreement. Sometimes, however, conferees have before them a bill from one house and a series of numbered amendments to it from the other. When the conferees can reach agreement on some of those amendments but not on others, they generally return to the Senate and House with a partial conference report on the matters they could resolve, and with one or more amendments that remain in disagreement. The two houses first vote on agreeing to the partial conference report, and then consider motions, usually made by the majority floor manager, to dispose of each amendment in disagreement (such as motions to recede from the amendment, to recede from disagreement to the amendment, or to recede and concur in the amendment with a further amendment). If the Senate and House cannot resolve the remaining disagreements through such motions, they may agree to a new conference to consider only those issues still in disagreement.

Conferees also report in partial disagreement when they have reached a compromise on an amendment, but that compromise exceeds their authority in some

respect. In such cases, they avoid a point of order against their report by returning to the Senate and the House with a partial conference report and an amendment that is characterized as being in technical disagreement. After each house agrees to the partial report and turns to the remaining amendment, the majority floor manager offers a motion to dispose of it by proposing the compromise the conferees had reached. This procedure is used because the limitations on the authority of conferees apply to conference reports, not to amendments between the houses. Again, however, conferees may not report part of a complete substitute in either true or technical disagreement. Furthermore, Congress may not present a bill to the President until the Senate and House have reached agreement on all its provisions.

Several special issues can arise in the process of resolving legislative disagreements between the two houses because of differences between their procedures. Notwithstanding its rules, the Senate can amend House appropriations bills by adding appropriations that have not yet been authorized by law as well as provisions that change existing law. These amendments would not be in order on the House floor. If the Senate adopts two or more such amendments and the House conferees decide to accept any of them, House rules require the conferees to report those Senate amendments in disagreement. In this way, the House can vote separately on each conference recommendation to accept a Senate proposal that is inconsistent with the House's rules. If, however, the Senate proposals are included in a single complete substitute amendment and the conferees want to accept even one of them, the conference report will be subject to a point of order on the House floor unless the House first votes for a resolution to waive the point of order.

Also, the Senate usually can amend a bill on the floor to include non-germane provisions; the House usually cannot. When the Senate and House go to conference, these non-germane Senate provisions are matters in disagreement which the conferees may include in their report, with or without modification. This situation could require the House to cast one vote on agreeing or disagreeing to a conference report that includes non-germane provisions it had not considered. For this reason, the rules of the House permit motions to reject non-germane provisions of conference reports. If the House agrees to such a motion, it then normally proposes that the two houses agree to the remainder of the conference agreement, often in the form of a House amendment to the Senate's bill or amendment. If the Senate is unwilling to agree, it may propose a new conference to renew negotiations over all the differences between the Senate and House versions of the bill.

Nominations and Treaties

The Senate and House must reach agreement on bills and joint resolutions before they can become law, but confirming nominations and advising and consenting to the ratification of treaties are the exclusive constitutional prerogatives of the Senate. Nominations and treaties constitute the Senate's executive business and are the subjects of special rules and procedures.

Each nomination is referred to the Senate committee with jurisdiction over the legislation creating and governing the agency or office in question. All treaties are

referred to the Committee on Foreign Relations, although other committees have occasionally held hearings on issues related to a treaty. At the time the Senate receives a treaty, the majority leader normally asks unanimous consent to “remove the injunction of secrecy,” so that the treaty and any accompanying documents can be printed for the use of the Senate.

When a Senate committee orders a nomination or treaty reported favorably, it is placed on the Executive Calendar (and given an order number on that calendar), not on the legislative Calendar of Business. Treaties usually are accompanied by committee reports; nominations usually are not, although the committee chairman often inserts information about the nominee in the *Congressional Record* during the confirmation debate. Committee actions on nominations and treaties are more conclusive than their actions on legislation. If a committee does not act on a bill, a Senator may introduce an identical bill and have it placed directly on the legislative calendar; there is no such option when a committee does not consider or report a nomination or treaty.

Neither the Senate nor its committees can amend a nomination—for example, by making confirmation conditional on some action or event. On the other hand, the Foreign Relations Committee may propose amendments to a treaty. When that committee reports a treaty, it also reports a resolution of ratification; if approved by the Senate, this resolution authorizes the President to proceed with ratification of the treaty. Ratification is an executive action; the role of the Senate is to decide whether to give its advice and consent to ratification.

The Senate considers its executive business in executive session. Under paragraph 1 of Rule XXII, a motion to proceed to the consideration of executive business is not debatable and has precedence over other motions except motions to recess and adjourn. If the Senate simply goes into executive session, by motion or unanimous consent, it takes up the first item on the Executive Calendar, whether it is a treaty or a nomination. A motion made in executive session to consider a different matter on the Executive Calendar is debatable. In practice, therefore, the majority leader moves, in legislative session, that the Senate go into executive session for the consideration of a specific item of business. Even in this form, the motion is not debatable, so it permits the Senate to take up any item on the Executive Calendar without delay. The Senate often transacts routine executive business, such as receiving executive reports, by acting “as in executive session” by unanimous consent. Similarly, once in executive session, the Senate may agree by unanimous consent to consider a legislative matter briefly “as in legislative session.”

Except by unanimous consent, the Senate may not consider a treaty or nomination on the same day it is received from the President or reported from committee. Once the Senate has taken up an item of executive business, the rules governing debate in executive session are the same as in legislative session. Consequently, nominations and treaties have been the subjects of filibusters. When the Senate considers a nomination, the question of confirmation is automatically pending: “Will the Senate advise and consent to this nomination?” After debate, the Senate decides this question by simple majority vote. Any nominations that the Senate has not yet confirmed lapse automatically when the Senate adjourns *sine die* at the end of the session or whenever the Senate adjourns or recesses for more than

30 days, unless the Senate decides otherwise by unanimous consent. The President may then re-submit the nominations when the Senate reconvenes.

The procedures for considering treaties on the Senate floor are somewhat more complicated. The Senate first acts on the text of the treaty; then it acts on the accompanying resolution of ratification. During consideration of the treaty, the Senate considers amendments that propose to change its text, just as the Senate considers amendments to the text of a bill or resolution in legislative session. However, the Senate only votes on amendments to a treaty; it does not ultimately vote on the treaty itself. Rule XXX states that, at the completion of this process, at least one day is to elapse before the Senate takes up the resolution of ratification, unless the Senate waives this requirement by unanimous consent.

If the Senate has agreed to any amendments to the text of the treaty, they are incorporated in this resolution. During floor consideration of the resolution, additional amendments to the treaty itself are no longer in order, but the Foreign Relations Committee and individual Senators can propose amendments to the resolution in the form of reservations, understandings, declarations, and other statements that may affect the interpretation and impact of the treaty without changing its actual wording. If the Senate agrees to any such statement, it is attached to the resolution, following any proposed amendments to the text of the treaty. The Senate is less likely to approve amendments to the text of a treaty than to attach reservations and other statements to the resolution of ratification. The former require that the treaty be re-negotiated; the latter usually do not.

After acting on reservations and other statements, the Senate finally votes on the resolution of ratification, which may contain both amendments proposed to the treaty and amendments to the resolution itself. The final vote on adopting the resolution of ratification requires a two-thirds majority for approval. Other votes in connection with the treaty—on amendments and reservations, for instance—require only a simple majority.

By agreeing to the resolution of ratification, the Senate gives its advice and consent to ratification of the treaty by the President. If the Senate has not acted on a treaty by the end of a Congress, the treaty remains on the calendar of the Foreign Relations Committee, or is returned to it if the committee had reported the treaty to the Senate. Under Rule XXX, consideration of the treaty “shall be resumed at the commencement of the next Congress as if no proceedings had previously been had thereon.”

Related Congressional Publications

The Senate publishes its standing rules periodically, both in a separate pamphlet and as part of a larger document. *Standing Rules of the Senate* (Senate Document 106-15) contains only the text of the rules. The *Senate Manual* (Senate Document 104-1) contains the text of the rules in addition to other materials such as provisions of general and permanent laws that affect the Senate. As discussed in the first section of this report, the Senate’s precedents are compiled and discussed in *Riddick’s Senate Procedure* (Senate Document 101-28).

Senators and staff are advised to consult with the Senate parliamentarian (ext. 46128) for authoritative explanations and interpretations of Senate procedures.

Related CRS Reports

CRS analysts also are available to discuss Senate procedures and their application to specific situations. In addition, CRS has prepared reports, updated periodically, on aspects of Senate organization and procedures, including:

The Amending Process in the Senate. Library of Congress, CRS Report 93-113 GOV.

Conference Committee and Related Procedures: An Introduction. Library of Congress, CRS Report 96-708 GOV.

Filibuster and Cloture in the Senate. Library of Congress, CRS Report RL30360.

Hearings in the U.S. Senate: Guide for Preparation and Procedure. Library of Congress, CRS Report RL30548.

How Measures are Brought to the Senate Floor: A Brief Introduction. Library of Congress, CRS Report RS20668.

The Legislative Process on the Senate Floor: An Introduction. Library of Congress, CRS Report 96-548 GOV.

The Motion to Proceed to Consider a Measure in the Senate. Library of Congress, CRS Report 93-854 GOV.

Parliamentary Reference Sources: Senate. Library of Congress, CRS Report RL30788. *The President Pro Tempore of the Senate: History and Authority of the Office.* Library of Congress, CRS Report 91-181 GOV.

Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses. Library of Congress, CRS Report 91-538 GOV.

Senate Rules Affecting Committee Activities. Library of Congress, CRS Report 98-311 GOV.

Senate Rules and Practices on Committee, Subcommittee, and Chairmanship Assignment Limitations as of November 4, 2000. Library of Congress, CRS Report 98-912 GOV.

The Senate's Byrd Rule Against Extraneous Matter in Reconciliation Measures. Library of Congress, CRS Report 95-362 GOV