

Chapter 51

Senate Bills; Amendments Between the Houses

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I. Disposition of Senate Bills on the Speaker's Table

§ 1. In General

The House and Senate must agree on every detail of a bill before it can be enrolled and presented to the President. U.S. Const. art. 1, § 7. The inability of the two Houses to agree on even the slightest amendment to a bill causes the loss of the bill. 5 Hinds § 6233.

Senate bills and joint resolutions messaged from the Senate to the House go to the Speaker's table for disposition pursuant to rule XIV clause 2. Under this rule, Senate bills may be referred by the Speaker to the appropriate standing committees in the same manner as public bills introduced by the Members. *Manual* §§ 873, 874; see §§ 5, 6, *infra*. However, Senate bills and resolutions that are “substantially the same” as House measures favorably reported, and not required to be considered in the Committee of the Whole, may be disposed of in the House by motion authorized by the reporting committee. Rule XIV clause 2; see § 2, *infra*. Senate bills that do not satisfy the conditions specified by that rule may be called up under unanimous-consent, suspension of the rules, or special rule, but not by motion. 95–2, Feb. 23, 1978, p 4480; §§ 3, 4, *infra*. Simple resolutions of the Senate that do not require House action are not referred. 7 Cannon § 1048.

§ 2. By Motion

Generally

Under rule XIV clause 2, a Senate bill or resolution received in the House after a House measure “substantially the same” has been reported favorably and placed on the House Calendar or Private Calendar is privileged. It may be called up from the Speaker’s table for consideration on motion directed by all reporting committees having initial jurisdiction of the House bill. *Manual* § 873; 4 Hinds §§ 3097, 3101, 3102; 6 Cannon §§ 727, 734. The fact that a House bill substantially the same as the Senate bill has already passed the House and gone to the Senate does not detract from the privilege of the Senate bill under the rule. 6 Cannon § 734. Under the modern practice, this rule is rarely used because few measures qualify (most bills and joint resolutions reported in the House are referred to the Union Calendar).

The motion to call up the Senate bill is not subject to the question of consideration but is subject to a point of order if the conditions specified by the rule are not satisfied. 8 Cannon § 2443. The prerequisites of the rule are:

- The Senate bill must be substantially the same as the House bill. 4 Hinds §§ 3098, 3099, 3107–3111; 6 Cannon § 737.
- The Senate bill must not require consideration in the Committee of the Whole, and, if private, must not involve an appropriation. 4 Hinds §§ 3101; 3102.
- The Senate bill must come to the House after the House bill is placed on the calendar. 4 Hinds § 3096; 6 Cannon § 738.
- The House bill must be on the House Calendar or Private Calendar (not the Union Calendar). 4 Hinds §§ 3089, 3097.
- Under rule XIV clause 2, all reporting committees having initial jurisdiction of the House measure must authorize the calling up of the Senate bill from the Speaker’s table. *Manual* § 873.

In determining whether the House bill is substantially the same as the Senate bill, amendments recommended by the House committee must be considered. 6 Cannon §§ 734, 736. Although a committee must authorize the calling up of the Senate bill, the actual motion need not be offered by a member of the committee. 4 Hinds § 3100; 6 Hinds § 739. The authority of a committee to call up a bill must be given at a formal meeting of the committee. 8 Cannon §§ 2211, 2212.

Although the rule has been interpreted to apply to private Senate bills that do not involve an appropriation (4 Hinds § 3102), in modern practice Senate private bills on the Speaker’s table are considered by unanimous con-

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sent during the call of the Private Calendar, whether they are substantially the same as a House-passed private bill or not.

Form

The Member authorized by the committee to call up the Senate bill rises and addresses the Chair:

MEMBER: Mr. Speaker, by direction of the Committee on _____, I call from the Speaker's table Senate bill S. ____, a bill of similar tenor, H.R. ____, having been reported and placed on the House Calendar.

SPEAKER: The gentleman calls from the Speaker's table the bill S. ____, which the Clerk will report.

Floor Consideration

Senate bills called up under this procedure are considered under the general rules of the House, the Member in charge being recognized for one hour. 6 Cannon § 738. The procedure is as follows:

- The bill is read in full.
- The Member in charge uses or allots the hour to which he is entitled.
- If the previous question is not moved at the expiration of the first hour, another Member may be recognized for an hour.

§ 3. By Unanimous Consent

A Senate measure may be taken from the Speaker's table and called up for consideration in the House by unanimous consent. Deschler-Brown Ch 32 §§ 3.4, 4.4, 4.5. Consideration in the House by unanimous consent is permitted even where the Senate measure ordinarily would require consideration in the Committee of the Whole. Deschler-Brown Ch 32 § 3.7.

A unanimous-consent request to consider a Senate bill on the Speaker's table may provide for its consideration in the House under the hour rule. It also may include a provision that a specified amendment be considered as pending. 97-2, Oct. 1, 1982, pp 27362, 27365-68.

The House also may agree to a unanimous-consent request to take a Senate bill from the Speaker's table and to strike all after the enacting clause and insert in lieu thereof certain text. Deschler-Brown Ch 32 § 3.4. For the Speaker's guidelines for recognition of a unanimous-consent request to consider a Senate measure on the Speaker's table, see *Manual* § 956 and RECOGNITION.

§ 4. By Special Rule

The House may adopt a resolution reported from the Committee on Rules that provides for consideration in the House of a Senate bill on the

Speaker's table, even if the measure otherwise would require consideration in the Committee of the Whole. Deschler-Brown Ch 32 § 3.5.

The Committee on Rules may report a special rule permitting consideration in the House of a Senate measure from the Speaker's table and preclude all intervening motions except, in the case of a bill or joint resolution, the motion to recommit as protected by rule XIII clause 6(c). Deschler Ch 21 § 27; see SPECIAL ORDERS OF BUSINESS.

In one instance, where the Senate had passed a bill dealing with two subjects and the House then passed separate bills on each subject, the House by a special rule amended the Senate bill with the combined texts of the House-passed bills. 93-2, Aug. 21, 1974, p 29653.

§ 5. Referral to Committee

Under rule XIV clause 2(b), the Speaker, in his discretion, may refer Senate bills to committees in the same manner as public bills originating in the House (as described in rule XII clause 2) unless the Senate bills qualify for consideration under rule XIV clause 2(d). *Manual* §§ 873, 874; 6 Cannon § 727; § 2, *supra*. Simple resolutions from the Senate that do not require any action by the House are not referred. 7 Cannon § 1048. For a discussion of referral of House bills with Senate amendments, see § 7, *infra*.

§ 6. — Speaker's Discretion

It is the practice to refer promptly bills messaged from the Senate. Nevertheless, rule XIV clause 2(b) is merely discretionary and not mandatory. *Manual* § 873; 4 Hinds § 3111. Furthermore, the length of time such bills may remain on the Speaker's table before being referred is within the Speaker's discretion. 6 Cannon § 727. Under the modern practice, the Speaker may hold a Senate bill at the table when a comparable House bill has been reported or ordered reported by a House committee or when the Senate measure violates a House rule (such as the rule against commemorations, rule XII clause 5) or the Constitution (such as the origination clause, article 1, section 7). For a discussion of referral of House bills with Senate amendments, see § 7, *infra*.

II. Senate Amendments

A. Before the Stage of Disagreement

§ 7. In General; Referral to Committee

Referrals by the Speaker

Senate amendments to House bills messaged from the Senate normally remain at the Speaker's table to be disposed of by unanimous consent, by special rule, or by motion. However, before consideration of any motions to dispose of Senate amendments, the Speaker has the authority under rule XIV clause 2 to refer such amendments to the appropriate committees and to impose any conditions permitted by rule XII clause 2, such as a time limitation for committee consideration. *Manual* §§ 528a, 873. For example, the Speaker may refer only a portion of the Senate amendment to the standing committee with subject matter jurisdiction, without referring the remainder of the Senate amendment to the committee with jurisdiction over the original House bill. Deschler-Brown Ch 32 § 5.29.

The Speaker may hold at the desk or refer Senate amendments that remain undisposed of after House action. For example, the Chair indicated that should a resolution providing for concurring in Senate amendments to a House bill be rejected, the bill and amendments would remain on the Speaker's table for further action by the House. Deschler-Brown Ch 32 § 5.45. Likewise, if objection is made to a unanimous-consent request to disagree to the amendments and agree to a conference, the Speaker is not required to send the bill and amendments directly to the committee having jurisdiction thereof. He may hold the bill on the table until the Committee on Rules has an opportunity to act or until the House takes other action. Deschler-Brown Ch 32 § 5.5.

Referrals By Motion

A motion to refer a Senate amendment that is under debate may be offered pursuant to rule XVI clause 4. *Manual* § 916. That motion takes precedence over the motions to agree, disagree, or amend. *Manual* § 528b; 5 Hinds §§ 6172–6174. Pursuant to rule XIX clause 2, the motion to refer is in order even after the previous question has been ordered on a motion to concur in the Senate amendment. However, a motion to commit under clause 2 does not apply to a motion to dispose of a Senate amendment after the stage of disagreement where the motion to commit is used to displace a pending preferential motion. *Manual* § 1002.

Referrals By Special Rule

A Senate amendment may be referred to a standing committee pursuant to the terms of a special rule from the Committee on Rules. Deschler-Brown Ch 32 § 5.33.

§ 8. Consideration in the House

Under rule XXII clause 2, House bills with Senate amendments that do not require consideration in the Committee of the Whole may be disposed of as the House may determine by privileged motion. *Manual* § 1071. This rule is applied to Senate amendments to House amendments as well as to Senate amendments to House bills. Deschler-Brown Ch 32 § 6.1. This rule is rarely used because few measures qualify (most Senate amendments require consideration in the Committee of the Whole because they raise revenue or they directly or indirectly make appropriations of money or property). *Manual* § 528a.

§ 9. Consideration in Committee of the Whole

House bills with Senate amendments that require consideration in the Committee of the Whole may not be called up in the House as privileged for immediate consideration before the stage of disagreement. *Manual* § 528a; 6 Cannon § 731. The only exception is a motion to ask or agree to a conference under rule XXII clause 1. 4 Hinds §§ 3149, 3150; 8 Cannon §§ 3185, 3194. Reaching the stage of disagreement, see § 16, *infra*.

Under rule XXII clause 3, an amendment of the Senate to a House bill is subject to the point of order that it first must be considered in the Committee of the Whole if, originating in the House, it would be subject to that point of order. *Manual* §§ 1072–1074. The point of order permitted by this rule applies only before the stage of disagreement has been reached on the Senate amendment. It is too late to raise a point of order that Senate amendments should have been considered in Committee of the Whole after the House has disagreed thereto and the amendments have been reported from conference. *Manual* § 1073.

Because of these restrictions against immediate consideration of Senate amendments in the House, it was at one time common practice to refer such amendments to the appropriate standing committee. 6 Cannon § 731. After committee consideration, they were taken up in the Committee of the Whole. 4 Hinds §§ 3108, 3109. Under the modern practice, most Senate amendments are disposed of by a special order reported from the Committee on Rules, by unanimous consent, or under suspension of the rules. §§ 11–13, *infra*.

§ 10. Consideration by Order of the House

If the House agrees to a request to take up a Senate amendment before the stage of disagreement, and if the request specifies the disposition sought (to concur, to amend, or to disagree), only that action is in order. Such a special request does not place the Senate amendment before the House for any alternative disposition. If, on the other hand, a Senate amendment is placed before the House by unanimous consent or a special rule merely “for consideration,” various motions are in order in the following order of priority: to concur with an amendment, to concur, or to disagree. A motion to concur with an amendment can itself be amended, if the motion for the previous question is rejected, to propose another amendment. Similarly, where the House has adopted a special rule providing for the consideration in the House of a motion to concur in Senate amendments that otherwise require consideration in the Committee of the Whole, only the motion to concur, made in order by the special rule, is in order. Other motions to dispose of the Senate amendments may not be offered as privileged pending, or even after rejection, of that motion. The rejection of such a motion does not result in disagreement to that amendment or permit disposition of that amendment by other motions (the stage of disagreement not having been reached). Deschler-Brown Ch 32 § 5.34.

§ 11. — By Special Rule**Generally**

Resolutions from the Committee on Rules may be used to authorize the consideration in the House of a motion to dispose of a Senate amendment before the stage of disagreement that would otherwise require consideration in the Committee of the Whole. Such rules often authorize the chairman of a designated committee to offer a specified motion to dispose of the Senate amendments, waive all points of order against the motion, provide that the Senate amendments and the motion be considered as read, divide control of an hour of debate on the motion, and order the previous question to adoption without intervening motion or demand for division of the question. At this stage, the special order need not protect the motion to recommit because the bill is not at the stage of initial passage and thus rule XIII clause 6(c)

does not apply. *Manual* § 859. Illustrative rules from the Committee on Rules have provided for:

- Consideration of a single motion offered by the chairman of a designated committee to concur in sundry Senate amendments. 107–2, H. Res. 444, June 18, 2002, p ____.
- Consideration of a single motion offered by the chairman of a designated committee to concur in a Senate amendment with an amendment printed in the report of the Committee on Rules accompanying the rule. 107–2, H. Res. 390, Apr. 18, 2002, p ____.
- Consideration of a single motion offered by the chairman of a designated committee to concur in each of the sundry Senate amendments with respective amendment printed in the report of the Committee on Rules accompanying the rule. 107–2, H. Res. 347, Feb. 14, 2002, p ____.
- Consideration of any motion offered by the Majority Leader to dispose of any Senate amendments. 105–1, H. Res. 262, Nov. 10, 1995, p 32112.
- A motion to concur in Senate amendments considered as pending immediately upon adoption of the rule. Deschler Ch 21 § 27.15.
- Consideration of a reported bill and consideration, after passage, of Senate amendments to another House bill, so as to commit the matters contained in both House-passed bills to one conference with the Senate. 95–2, Sept. 29, 1978, p 32664.

If a motion for the previous question is voted down on a resolution providing for consideration of the Senate amendments, the resolution is open to germane amendment. Deschler Ch 21 § 27.18. If a resolution providing for concurring in Senate amendments to a House bill before the stage of disagreement is rejected, the bill and amendments remain on the Speaker's table for further action by the House. Deschler Ch 21 § 27.20.

“Hereby” Special Rules

On occasion the Committee on Rules has recommended a so-called “hereby” special rule. Such a rule, if adopted by the House, orders a disposition of a Senate amendment, often before the stage of disagreement. Such a resolution eliminates the need for a motion to dispose of the amendment. Such rule is sometimes referred to as a “hereby” special order because the House, in adopting the resolution as drafted, “hereby” agrees to the disposition of the amendment as proposed by that resolution. If the House adopts a resolution, no further action by the House is required. The amendment is never itself before the House for separate consideration.

Deschler Ch 21 §§ 27.16, 27.19. Illustrative “hereby” rules from the Committee on Rules have provided for:

- Hereby disposition of Senate amendments in three ways: (1) by disagreeing to several designated amendments; (2) by concurring with a specified amendment to one designated amendment; and (3) by concurring in the remainder of the amendments. 99–2, Oct. 17, 1986, p 32982.
- Hereby disposition of sundry Senate amendments as follows: (1) by disagreeing to several designated amendments and agreeing to a conference requested by the Senate on those amendments; and (2) by concurring in other designated amendments. Deschler Ch 21 § 27.27.
- Hereby disagreement to Senate amendments and to message such action to the Senate without intervening motion. Deschler-Brown Ch 32 § 5.40.
- Hereby concurrence in Senate amendments. Deschler Ch 21 § 27.19.
- Hereby concurrence in a Senate amendment with a designated amendment. Deschler Ch 21 § 27.19; 107–2, H. Res. 450, June 26, 2002, p ____.

Special orders of this nature may include provisions for a motion to dispose of Senate amendments as well as “hereby” provisions applicable to a related proposition. Illustrative rules from the Committee on Rules have provided for:

- “Hereby” concurrence in a Senate amendment with a specified amendment, “hereby” adoption of a related concurrent resolution, and preclusion of the Clerk from transmitting the Senate a message regarding the disposition of the Senate amendment until the House has received a message that the Senate has agreed to the concurrent resolution as adopted by the House. 104–2, H. Res. 336, Jan. 5, 1996, pp 36, 380, 381.
- Consideration of a motion to concur in a Senate amendment and also “hereby” adopting a separate resolution expressing the legislative intent of the House in concurring in the Senate amendment. 99–2, Sept. 12, 1986, p 23119.

The adoption of a “hereby” resolution disposing of a Senate amendment obviates the requirement of consideration in Committee of the Whole under rule XXII clause 3 that would otherwise apply. *Manual* § 1072.

Special Rules and Motion to Recommit

Rule XIII clause 6 precludes the Rules Committee from preventing a motion to recommit with instructions a bill or joint resolution on which the previous question has been ordered to passage. *Manual* § 857. Under that stricture, the Rules Committee may not propose that the House “hereby” pass a bill or joint resolution or provide for initial passage thereof without intervening motion. The Rules Committee has reported resolutions that ultimately deny a motion to recommit on the disposition of a Senate amendment. See, *e.g.*, 107–2, H. Res. 450, June 26, 2002, p ____.

§ 12. — By Unanimous Consent

Generally

Senate amendments may be considered in the House by unanimous consent, even though such amendments normally would require consideration in Committee of the Whole. Typically, the House will agree by unanimous consent to take from the Speaker's table a House bill with Senate amendments and concur in or otherwise dispose of the amendments or permit the consideration of those amendments in the House. Deschler-Brown Ch 32 § 5.7.

This procedure may be invoked to permit the House to consider a Senate amendment and concur therein with an amendment consisting of the text of a House-passed bill. 95–1, May 11, 1977, p 14390. In one instance, pursuant to a single unanimous-consent request, the House amended a Senate amendment with the text of another bill introduced in the House, insisted on the House amendment, and requested a conference. 97–2, Mar. 16, 1982, p 4227. In another instance, the House by unanimous consent made in order the consideration of a motion to disagree to *any* Senate amendment that might be added to a House-passed bill then pending in the Senate. Subsequently, pursuant to this authority, the House considered and adopted a motion disagreeing to a Senate amendment. 99–2, Aug. 15, 1986, p 22132.

Guidelines for Recognition

Recognition for unanimous consent to consider a Senate amendment on the Speaker's table may be subject to announced guidelines imposed by the Speaker as a precondition to such recognition. *Manual* § 956. The Speaker has indicated that he would entertain a unanimous-consent request for the disposition of a Senate amendment to a House-passed bill on the Speaker's table only if made by the chairman of the committee with jurisdiction, or by another committee member authorized to make the request.

Form of Request as Affecting Votes

The pendency of a unanimous-consent request to take from the Speaker's table a measure with a Senate amendment and concur in the amendment precludes the necessity for a vote on the amendment because the amendment would be disposed of if the request is granted. Deschler-Brown Ch 32 §§ 5.11, 9.14. The failure of a Member to object to the unanimous-consent request constitutes final House action on the measure, thereby precluding a vote on the amendment. However, a unanimous-consent request invoked merely to consider a Senate amendment in the House permits a vote on a

subsequent motion to concur in the Senate amendment. Deschler-Brown Ch 32 § 5.14.

§ 13. — By Suspension of the Rules

The House may consider a proposition, offered under suspension of the rules, taking a House bill with one or more Senate amendments from the Speaker's table and concurring in, disagreeing to, or making some other disposition of, the amendment(s). Deschler-Brown Ch 32 § 5.25.

A motion to suspend the rules and take a House bill with Senate amendments from the Speaker's table and concur in the amendments with a designated amendment may state the language of the designated amendment (95-1, July 12, 1977, p 22483) or, more likely, may set forth the designated amendment in the text of a resolution. Deschler-Brown Ch 32 § 5.22. The House also has agreed to a motion to suspend the rules and agree to a resolution whereby the House agreed to the Senate amendment with a further amendment, insisted on the House amendment, and requested a conference with the Senate. 98-2, Aug. 8, 1984, p 22963.

The suspension procedure in such cases does not require a resolution when the language to be voted on directly is in the Senate message and the House is not originating new language. For example, the House has agreed to a motion to suspend the rules and take from the Speaker's table a Senate bill with a Senate amendment to House amendments thereto, and to concur in the Senate amendment. 95-1, Oct. 18, 1977, pp 34086, 34087, 34091.

§ 14. — By Sending to Conference

House bills returned with Senate amendments requiring consideration in the Committee of the Whole may be taken from the Speaker's table and sent to conference by unanimous consent. 6 Cannon § 732. Such amendments also may be sent to conference by motion under the provisions of rule XXII clause 1 if the House is in possession of the official papers. Deschler-Brown Ch 29 § 17.1. That rule provides that a motion to disagree with an amendment of the Senate to a House proposition and to request or agree to a conference with the Senate is always in order if the Speaker, in his discretion, recognizes for that purpose and if the motion is made by direction of the committee having jurisdiction of the subject matter of the proposition. *Manual* §§ 1069, 1070. On a bill that has been referred to more than one committee, the motion must be authorized by the primary committee and all committees of initial referral reporting thereon. A committee of sequential referral need not authorize a motion made by direction of the

committee that reported the bill. *Manual* § 1070; generally, see CONFERENCES BETWEEN THE HOUSES.

While a privileged motion to go to conference under rule XXII clause 1 is pending, preferential motions to concur or to concur with amendment are not in order (the stage of disagreement not having been reached). Deschler-Brown Ch 32 § 5.

§ 15. Motions; Precedence Before Stage of Disagreement

The stage of disagreement not having been reached on a Senate amendment, motions in the House to dispose of the amendment are not privileged and require unanimous consent or a special rule from the Committee on Rules, the only exception being a motion to ask or agree to a conference under rule XXII clause 1. Deschler-Brown Ch 32 § 5.34. However, if a Senate amendment is considered pursuant to an order of the House that does not specify the motion to be considered, the amendment may then be disposed of by invoking one of the motions shown in Chart No. 1 (§ 16, *infra*). Such motions are available in the specified sequence and are arranged in order of precedence. *Manual* § 528b.

The relative preference of motions at this stage favors allowing the House to perfect the amendment; that is, to first consider any amendments to the Senate amendment before considering whether to agree or disagree to it. Thus, at this stage, the motion to concur with an amendment takes precedence over the motion to concur. *Manual* § 528b. These motions yield to the motion under rule XXII clause 1 to disagree and send to conference, which must be made by direction of the pertinent committees.

A motion in the House to dispose of a Senate amendment to a House bill is itself subject to the secondary motions ordinarily applicable to any question that is under debate—to table, to postpone to a day certain, to refer, and to amend—all of which remain privileged under rule XVI clause 4, the last three yielding to the motion for the previous question. *Manual* § 528b. Thus, an amendment to a motion to concur in a Senate amendment with an amendment may not be offered unless the Member having the floor yields for that purpose, or unless a motion for the previous question on the motion is defeated. Deschler-Brown Ch 32 § 11.20.

Where a motion to recede and concur in an amendment reported from conference in disagreement is divided on demand, and the House votes to recede, the motion to concur with an amendment may be offered as preferential to the motion to concur (the House having retreated from the stage of disagreement). If the motion to concur with an amendment is rejected, the question recurs on the original proposal to concur in the Senate amend-

ment. Deschler-Brown Ch 32 § 9.16. On rejection of a motion to concur in a pending Senate amendment, a motion to concur with an amendment or a motion to disagree is in order. Deschler-Brown Ch 32 § 9.17.

A motion to concur in a Senate amendment with an amendment (before the stage of disagreement) is not subject to a demand for a division of the question. 8 Cannon § 3176. Divisibility after the stage of disagreement, see §§ 20, 21, *infra*.

B. Reaching the Stage of Disagreement

§ 16. In General

Reaching the stage of disagreement is a critical threshold in the disposition of amendments between the Houses. Before the stage of disagreement is reached on Senate amendments, motions in the House to dispose of amendments that require consideration in Committee of the Whole are not privileged and require unanimous consent unless other action is made in order by special rule or by the prescription in rule XXII clause 1, relating to motions to ask or agree to a conference. §§ 8, 11, 15, *supra*. After the stage of disagreement has been reached, motions in the House to resolve the matter in disagreement are privileged and do not require unanimous consent for their consideration. § 17, *infra*. The stage of disagreement having been reached, a bill with Senate amendments may be called up as privileged when the House is in possession of the papers. 8 Cannon § 3194.

Whether the House has reached the stage of disagreement also is important in determining the kinds of motions that may be sought and the precedence thereof. These motions (*Manual* § 528) are shown in Chart No. 1 and are listed in preferential order.

<u>MOTIONS TO DISPOSE OF SENATE AMENDMENTS</u>	
SENATE AMENDMENT	
Motions before the stage of disagreement	Motions after the stage of disagreement
<ol style="list-style-type: none"> 1. Concur with amendment(s) 2. Concur 3. Disagree and request or agree to conference 4. Disagree <p>Chart No. 1.</p>	<ol style="list-style-type: none"> 1. Recede and concur 2. Recede and concur with amendment(s) 3. Insist on disagreement and request or agree to a (further) conference 4. Insist on disagreement 5. Adhere

The stage of disagreement between the two Houses is reached when the House has either disagreed to the Senate amendments or has insisted on its own amendments to a Senate measure and has messaged that action to the Senate. *Manual* §§ 528a, 1074. For example, where the House concurred in a Senate amendment to a House bill with an amendment, insisted on the amendment, and requested a conference, and the Senate then concurred in the House amendment with a further amendment, the matter was privileged in the House for further disposition because the House had communicated its insistence and request for a conference to the Senate. *Manual* § 1074.

The House has reached the stage of disagreement on a bill when it has disagreed to a Senate amendment or insisted on a House amendment (with or without requesting or agreeing to a conference) and has informed the Senate of its action by message. Only previous insistence or disagreement by the House itself (and not merely disagreement, insistence, or amendment

by the Senate) places the House in disagreement. *Manual* §§ 528a, 528c; Deschler-Brown Ch 32 § 7.5.

Once the stage of disagreement has been reached on a bill with amendments, the House remains in the stage of disagreement until the matter is finally disposed of, and motions for its disposition are privileged whenever the House is in possession of the papers. This principle applies both where the stage of disagreement is reached without a conference, and where matters remain in disagreement after conferees have reported. *Manual* § 528c. Where a Senate amendment reported from conference in disagreement remains in disagreement following subsequent action by the House and the Senate, a further motion to dispose of that Senate amendment in the House is privileged under rule XXII clause 4 and subject to one hour of debate. *Manual* § 1075.

C. After the Stage of Disagreement; Motions

§ 17. In General; Privilege of Motions

Under rule XXII clause 4, once the stage of disagreement has been reached and the House is in possession of the papers, motions in the House to resolve the matter in disagreement are privileged and no longer require unanimous consent for their consideration. Deschler-Brown Ch 32 § 7.3. For example, the House having disagreed to a Senate amendment and the Senate having insisted thereon, motions to dispose of the matter in disagreement are privileged for consideration in the House.

Once the stage of disagreement has been reached between the two Houses on an amendment, motions in the House to dispose of the matter at subsequent permissible stages of amendment remain privileged. For example, where the House concurred in a Senate amendment to a House bill with an amendment, insisted on the House amendment and requested a conference, and the Senate then concurred in the House amendment with a further amendment, the matter was privileged for further disposition in the House because the stage of disagreement had been reached. Deschler-Brown Ch 32 § 7.5.

§ 18. Motions in Order; Precedence of Motions

Generally

The stage of disagreement having been reached on a Senate amendment, the amendment is subject to disposition in the House by various motions. The primary motions to dispose of the amendment, arranged in preferential

order, are shown in Chart No. 1 (§ 16, *supra*). *Manual* § 528d. These motions have precedence in the order shown without regard to the order in which they might be offered. 5 Hinds § 6324. A demand for the previous question by the Member in charge of a bill does not preclude consideration of a preferential motion to dispose of the amendment in disagreement. 8 Cannon § 3204.

In theory, once at the stage of disagreement, preferential status is accorded to a motion that tends most directly to bring the Houses into agreement. 8 Cannon § 3204; Deschler-Brown Ch 32 § 7.8. Thus, the stage of disagreement having been reached, a motion to recede and concur takes precedence over a motion to recede and concur with an amendment and a motion to insist on disagreement, because the motion to recede and concur most promptly tends to bring the two Houses together. *Manual* § 528d.

For a discussion of the preferential status of a motion to insist on disagreement to a Senate amendment reported from conference in disagreement, where the original motion to dispose of the matter portends legislation on an appropriation bill within the jurisdiction of another committee, see rule XXII clause 8(b)(3); *Manual* § 1084; CONFERENCES BETWEEN THE HOUSES. Where the matter in disagreement is a House amendment, see § 29, *infra*.

Secondary Motions

Secondary motions applicable when any question is under debate, such as the motion to table, to refer, or to postpone, are available to dispose of a Senate amendment and are in order when preferential. *Manual* § 911. The motion to table a Senate amendment in disagreement is preferential over other motions to dispose of the amendment. § 19, *infra*. The motion to refer a Senate amendment is preferential only to the motion to adhere to disagreement. *Manual* § 528d. A motion to recommit with instructions to report back forthwith with an amendment may not be offered after the previous question has been ordered on a motion to recede and concur, a motion of higher privilege. *Manual* § 1002; Deschler-Brown Ch 32 § 7.5. Motions to postpone, either to a day certain or indefinitely, may be presumed to have the lowest privilege with respect to a Senate amendment after the stage of disagreement has been reached. *Manual* § 528d.

§ 19. — To Lay on the Table

The stage of disagreement having been reached, a motion to table a Senate amendment to a House bill is in order and takes precedence over other motions to dispose of the amendment, including the motion to insist on disagreement. Adoption of a motion to table the amendment carries the

bill to the table. *Manual* § 528d; 5 Hinds §§ 5424, 6201–6203; Deschler-Brown Ch 32 § 7.22.

Laying on the table a motion to dispose of a Senate amendment should be distinguished from the tabling of the Senate amendment itself. *Manual* §§ 528d, 914. A privileged motion to dispose of a Senate amendment in disagreement is itself subject to the motion to table. *Manual* § 519. Thus, a motion to recede and concur is subject to the motion to table (Deschler-Brown Ch 32 § 7.27), as is the motion to recede and concur with an amendment (Deschler-Brown Ch 32 § 7.26). A motion to table a privileged motion to dispose of an amendment between the Houses is in order before debate thereon or at the end of debate (and before the previous question is ordered). *Manual* § 914; 5 Hinds §§ 5393–5395.

Adoption of a motion to table a motion to dispose of an amendment represents final adverse disposition of that motion at that stage of the question, but would not necessarily dispose of the amendment or the bill, because other motions could still be available to dispose of the amendment. See Deschler-Brown Ch 32 § 7.10.

§ 20. — To Recede and Concur

In General

After the stage of disagreement has been reached, a motion to recede and concur is highly preferential, yields only to a motion to table (§ 19, *supra*), and takes precedence over:

- A motion to recede and concur with an amendment. 8 Cannon §§ 3198, 3202.
- A motion to insist on disagreement. 5 Hinds § 6208; 8 Cannon § 3194.
- A motion to disagree (or insist) and request a conference. *Manual* § 528d.
- A motion to adhere. 5 Hinds § 6271.

A motion to recede and concur is in order even after a motion for the previous question has been demanded on a motion of lesser privilege, such as a motion to insist. 5 Hinds § 6208.

If the House agrees to the motion to recede and concur, other less preferential motions to dispose of the amendment fall and are not voted upon. Deschler-Brown Ch 32 § 10.25. However, if the House rejects the motion to recede and concur, further action must be taken to dispose of the amendment. *Manual* § 488. If the motion to recede and concur in the Senate amendment is defeated, a further motion relating to the amendment in disagreement is in order. Deschler-Brown Ch 32 § 10.27. If a motion to insist on disagreement to the Senate amendment was pending, the question would recur on that motion. Deschler-Brown Ch 32 § 10.28.

Dividing the Question

The question on a motion to recede and concur in a Senate amendment may be divided on demand of any Member. 8 Cannon § 3203. The division may be demanded as a matter of right under rule XVI clause 5. *Manual* § 921. The House does not vote on whether to permit a division of the question. Deschler-Brown Ch 32 § 10.11.

If the question on receding and concurring is divided before the ordering of the previous question, the hour rule for debate applies to each motion separately. See Deschler-Brown Ch 32 §§ 8.1, 10.13.

If the question has been divided and the motion to recede is agreed to, then the question of concurring is before the House. Deschler-Brown Ch 32 § 10.20. However, the House having receded, it is no longer in the stage of disagreement with the Senate on that amendment, and in that event a motion to amend takes precedence over the motion to concur. 5 Hinds §§ 6209, 6210; 8 Cannon § 3198. Thus, where a motion to recede and concur has been divided, and the House recedes, a motion to concur with an amendment then takes precedence over the motion to concur, is considered as pending if part of the original motion, and is voted on first. *Manual* § 528d.

§ 21. — To Recede and Concur With Amendment

A Senate amendment in disagreement is subject to disposition in the House pursuant to a motion to recede from disagreement and concur in the amendment with an amendment. See, *e.g.*, 97–1, May 20, 1981, p 10319. This motion ordinarily yields to the motion to recede and concur but takes precedence over the motion to insist and over the motion to adhere. *Manual* § 528d; 5 Hinds §§ 6219–6223; 8 Cannon §§ 3200, 3202.

A motion to recede and concur with an amendment is subject to amendment if the motion for the previous question is voted down or if the Member in control of the floor yields for that purpose. Deschler-Brown Ch 32 §§ 11.19, 11.21. Where one motion to recede and concur with an amendment is rejected, another motion to recede and concur with a different amendment may be offered. Deschler-Brown Ch 32 § 11.12.

A motion to recede from disagreement to a Senate amendment and concur therein with an amendment may, on demand of any Member, be divided to permit separate votes; the House votes first on the motion to recede, and (if the House does recede) then on the motion to concur with an amendment. 94–1, Oct. 7, 1975, p 32064; 99–1, Nov. 1, 1985, pp 30147, 30163. If the House refuses to recede, the motion to further insist is in order. § 22, *infra*.

§ 22. — To Insist

A Senate amendment in disagreement may be disposed of pursuant to a motion to insist on disagreement or a compound motion to insist on disagreement and request a (further) conference. Because the motion to insist on disagreement and request a conference is more likely to bring the two Houses together, that motion takes precedence over the simple motion to insist. *Manual* § 528d. Where both Houses insist and neither House asks for a conference or recedes, the bill fails. 5 Hinds § 6228.

A motion to insist on disagreement to a Senate amendment yields to preferential motions, such as a motion to recede and concur in the amendment but takes precedence over the motion to refer. 5 Hinds § 6225; 8 Canon § 3183. A motion to insist on disagreement and request a further conference is not in order so long as preferential motions to dispose of amendments in disagreement are pending. Deschler-Brown Ch 33 § 29.50.

The motion to insist on disagreement is in order and most commonly used after the House has refused to recede from disagreement to a Senate amendment. See, *e.g.*, Deschler-Brown Ch 32 §§ 12.2, 12.9. Thus where the House refuses to recede from its disagreement to a Senate amendment—the motion to recede and concur having been divided on demand of a Member—the motion to insist on disagreement is in order. Deschler-Brown Ch 32 § 12.10. Underlying these precedents is the reasoning that because the refusal of the House to recede is not equivalent to insisting upon disagreement, the House may vote separately on that question pursuant to the motion to insist on disagreement. Deschler-Brown Ch 32 § 12.8.

A motion to insist on disagreement and request a further conference may be in order after the rejection of a conference report or after the conference managers have reported a Senate amendment in disagreement. Deschler-Brown Ch 32 §§ 11.13, 12.13. For example, on rejection of a motion to recede and concur in a Senate amendment with an amendment, the manager may be recognized to offer a motion that the House insist on its disagreement to the amendment. 96–1, May 23, 1979, p 12489. Where a motion to recede and concur with an amendment to an amendment reported in disagreement from conference has been divided, and the motion to recede is rejected, the manager is entitled to recognition to offer a motion to insist on disagreement. 94–1, Sept. 24, 1975, pp 30081, 30082.

Rejection of a motion to insist on disagreement to a Senate amendment is not tantamount to concurrence. Further action is required to dispose of the Senate amendment. Indeed, a motion to insist having been rejected, the same Member who had offered the motion may be recognized, absent recognition of another Member, to offer a motion to recede and concur. Desch-

ler-Brown Ch 32 § 12.8. Similarly, the rejection of a motion to recede and concur is not equivalent to the adoption of a motion that the House insist on disagreement. Deschler-Brown Ch 32 § 12.5.

Under rule XXII clause 8(b)(3), a motion to insist on disagreement to a Senate amendment to a general appropriation bill reported in disagreement by a conference committee is preferential and separately debatable if the original motion to dispose of the Senate amendment proposes to change existing law and the motion to insist is timely offered by the chairman of a committee of jurisdiction or a designee. Under clause 8(b)(3), the previous question is considered as ordered on such motion to its adoption without intervening motion. *Manual* § 1084.

§ 23. — To Refer to Committee

A Senate amendment in disagreement may be disposed of pursuant to a motion to refer (or recommit) to committee when and if such motion is preferential. The simple motion to refer is preferential only to the motion to adhere. *Manual* § 528d. The motion to refer must yield to motions of higher preferential status, such as the motion to recede and concur and the motion to insist. 5 Hinds § 6225; 8 Cannon § 3259. A motion to recommit with instructions may be offered, but it too must yield to preferential motions to dispose of the amendment. Thus, a motion to recommit with instructions to report back forthwith with an amendment may not be offered after the previous question has been ordered on a motion to recede and concur, a motion of higher privilege. *Manual* § 1002; Deschler-Brown Ch 32 § 7.5. However, after the House has receded from disagreement to a Senate amendment, a motion to amend is preferential, so that, after the previous question is ordered on a motion to concur, a motion to recommit with instructions to amend would be in order. 8 Cannon § 2744.

§ 24. — To Adhere

Where the House has expressed its disagreement to a Senate amendment and the amendment remains in disagreement after a Senate response thereto, a motion that the House adhere to its disagreement is in order. See, *e.g.*, 5 Hinds § 6239. The motion to adhere is rarely used in modern practice, but when both Houses have insisted, neither inclining to recede, it is in order. This motion yields to motions of higher precedence, such as the motion to recede and concur and the motion to insist. *Manual* § 528d; 5 Hinds § 6324. When both Houses adhere, the bill fails, even though the disagreement may be over a very minor amendment. 5 Hinds §§ 6163, 6233–6240, 6313, 6324, 6325.

The adoption of a motion of higher preferential status—to recede from disagreement to the amendment—precludes a motion to adhere to the same amendment. However, the House may recede from its disagreement to certain amendments and adhere to it as to other amendments to the same bill. 5 Hinds § 6229; for adherence to House amendments, see § 29, *infra*.

Adherence is to be distinguished from insistence in that adherence represents an uncompromising position and may not be accompanied by a request for a conference. The House that votes to adhere does not ask for a conference, although it may agree to one, whereas the other House may vote to insist and, at the same time, seek a conference. 5 Hinds §§ 6241, 6308. One House, having adhered, may recede from its adherence and agree to a conference asked by the other, or it may vote to further adhere. 5 Hinds § 6251.

§ 25. Debate; Recognition

Debate in the House on a privileged motion to dispose of a Senate amendment in disagreement is under the hour rule. Deschler-Brown Ch 32 § 8.1. Under rule XXII clause 8(d), when an amendment is reported from conference in disagreement, the Speaker recognizes the manager of the report for a motion to dispose of the amendment. The motion is debatable for one hour, equally divided between the majority and minority (and sometimes a third Member). See CONFERENCES BETWEEN THE HOUSES. The equal division of debate between the majority and minority parties under clause 8(d) technically applies only to conference reports and to motions to dispose of amendments reported from conference in disagreement and does not apply to the Member offering the initial motion to dispose of an amendment in disagreement that has not been reported from conference but that is subsequently before the House. Deschler-Brown Ch 32 § 7.4. However, the current practice in the House is to divide the time in this fashion on all motions to dispose of amendments still in disagreement following a conference. *Manual* § 1086.

Although a motion to dispose of the amendment in disagreement may be displaced by a preferential motion, the Member offering the preferential motion does not thereby gain control of time for debate. Deschler-Brown Ch 33 § 29.12. For example, although the motion to concur in a Senate amendment takes precedence over the motion to disagree where the stage of disagreement has been reached, the Member offering the preferential motion does not thereby gain control of the time for debate, which remains in the control of the proponent of the original motion under the hour rule. Deschler-Brown Ch 32 § 7.14. Similar rules are applied to amendments re-

ported from conference in disagreement; that is, the proponent of the preferential motion does not thereby gain control of the time for debate. Deschler-Brown Ch 32 § 8.1.

Although the manager of a conference report is entitled to prior recognition to offer motions to dispose of amendments in disagreement, he is not entitled to offer two motions, one preferential to the other, to be pending at the same time. However, where the first motion to insist on disagreement has been superseded by a preferential motion to recede and concur, then the initial motion is no longer pending. When the House votes to recede on the first portion of that divided question, the manager may be recognized to offer another motion to concur with an amendment, which would be preferential to the remaining proposal to concur. Deschler-Brown Ch 32 § 8.2. This is to be contrasted with the situation where the bill manager offers a motion to dispose of a Senate amendment that is rejected by the House. In that case, recognition to offer a subsequent motion to dispose of the pending Senate amendment shifts to a Member who led the opposition to the rejected motion. See *Manual* § 954.

§ 26. Disposition of Nongermane Senate Provisions

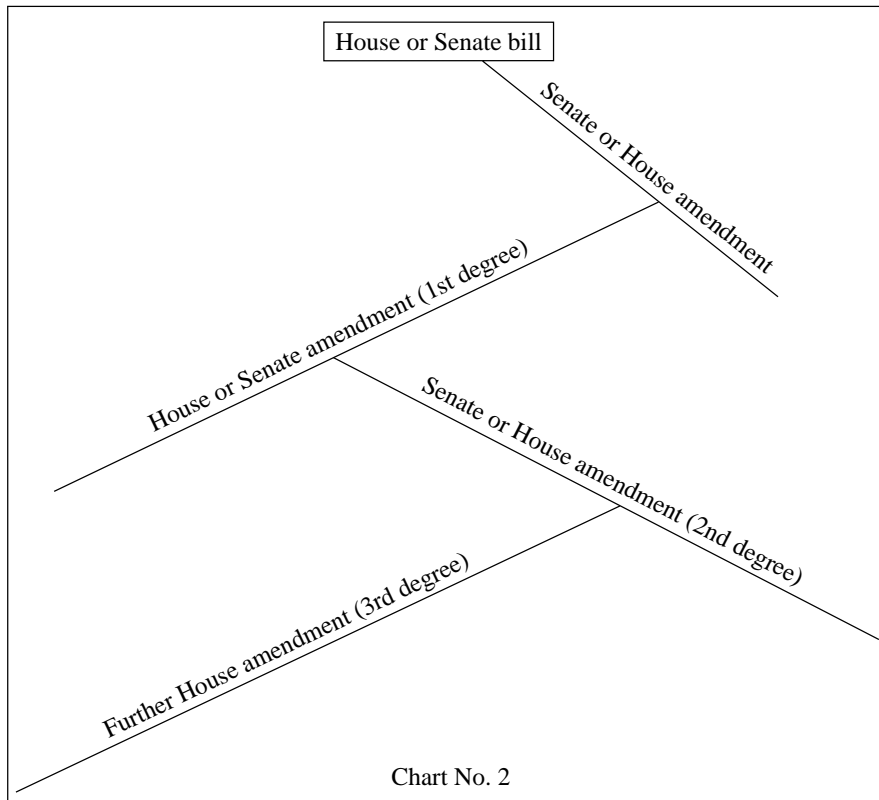
Under rule XXII clause 10, points of order may be made and separate votes demanded on motions to reject portions of conference reports and Senate amendments in disagreement containing language that would not have been germane if offered in the House. Clause 10 permits points of order against language in a conference report that was originally in a Senate bill and that would not have been germane if offered to the House-passed version, and permits a separate motion to reject such portion of the conference report if found nongermane. *Manual* §§ 931, 1089, 1090. Clause 10 permits a similar procedure if a Senate amendment or portion thereof would have been nongermane if offered in the House. Motions to reject under these clauses are subject to 40 minutes of debate, equally divided between a proponent and an opponent of the motion. *Manual* §§ 1089, 1090; see GERMANENESS. Under the modern practice, conference reports are considered pursuant to a special rule that waives all points of order against the conference report and its consideration, including rule XXII clause 10.

III. House Amendments to Senate Measures

§ 27. In General; Degree of Amendment

A Senate bill may be subject to amendment by the House when the bill is called up in the House pursuant to a unanimous-consent request or a mo-

tion authorized by a special rule from the Committee on Rules. §§ 2–4, supra. A Senate amendment to a House measure also is subject to amendment by the House. The motion to concur with an amendment is in order before the stage of disagreement, and the motion to recede and concur with an amendment is in order after the stage of disagreement. §§ 15, 21, supra. As pointed out elsewhere, however, an amendment to an amendment is in the third degree and not in order absent unanimous consent, suspension of the rules, or a special rule providing such procedure. See AMENDMENTS. This rule governs the two Houses, according to Jefferson’s Manual, and is applicable to amendments between the Houses, as shown in Chart No. 2. *Manual* § 529.



Where a bill of one House is amended by the other, the originating House may respond with an amendment, and the second House may offer an amendment to that amendment, but there the process stops; any further amendment is in the third degree and not in order. 5 Hinds § 6163. An amendment of one House being amended by the other, the first amending

House may amend the last amendment, but further amendment is not permissible. 5 Hinds §§ 6176–6178. Thus, where a Senate amendment to a House bill has been reported in disagreement, and a House amendment thereto is amended by a further Senate amendment, motions in the House to agree or disagree to the Senate amendment to the House amendment are in order, but a motion to concur with a further amendment would be in the third degree and not in order. Deschler-Brown Ch 32 § 6.4. Likewise, where there is pending in the House a motion to amend a Senate amendment to a House amendment to a Senate bill, and the House adopts the motion, the Senate may then either concur in or disagree to the House amendment, but a further Senate amendment would be in the third degree. 94–1, Dec. 15, 1975, pp 40711, 40712. However, a conference report recommending amendments at this stage is not subject to a point of order that the amendments are in the third degree.

The House may consider a third-degree amendment by unanimous consent, under suspension of the rules, or pursuant to a special order from the Committee on Rules. Unanimous-consent requests have been used to seek consideration of amendments in the fourth or fifth degree. 99–2, Mar. 20, 1986, p 5796. If the House adopts an amendment pursuant to such a procedure, the Senate may consider itself no longer bound by Jefferson’s proscription against third-degree amendments and amend further.

§ 28. Germaneness Requirements

An amendment offered in the House to a Senate amendment (that merely inserts new matter and does not strike House provisions) must ordinarily be germane to the particular Senate amendment to which it is offered, its germaneness to the provisions of the bill being insufficient. *Manual* § 931; 5 Hinds § 6188. The test of germaneness of an amendment in the nature of a substitute to a Senate amendment—proposed in a motion to concur therein with an amendment—is the relationship between the proposed amendment in its entirety and the Senate amendment (and not the relationship between any one provision of the amendment and any one provision of the Senate amendment). *Manual* § 931.

A motion to recede and concur in a Senate amendment with an amendment must be germane to the Senate amendment. Deschler-Brown Ch 28 § 27.1. However, where a Senate amendment proposes to strike language in a House bill, the test of the germaneness of a motion to recede and concur with an amendment is the relationship between the language in the motion and the provisions in the House bill proposed to be stricken by the Senate

amendment, as well as to the matter to be inserted by the Senate amendment. Deschler-Brown Ch 28 § 27.9.

Rule XXII clause 10 permits points of order against portions of motions to concur or concur with amendment in nongermane Senate amendments, the stage of disagreement having been reached. If such points of order are sustained, the rule permits separate motions to reject such nongermane matter. *Manual* §§ 1089–1091; for more comprehensive discussion, see GERMANENESS OF AMENDMENTS.

§ 29. Amending House-passed Amendments; Receding, Insisting, Adhering

Generally

Jefferson reasoned that, although the House may modify an amendment from the Senate, the House cannot amend its own amendment “because they have, on the question, passed it in that form.” *Manual* § 526. Thus, although the House may recede from or insist on its own amendment, it may not couple an amendment with such an action. 5 Hinds § 6163. Indeed, few motions are available to enable the House to act on its own amendment to a Senate measure. These motions (*Manual* § 528b), which are used primarily when the Senate has disagreed to the House amendment, are as follows:

- To recede.
- To insist and request or agree to a conference.
- To insist.
- To adhere.

These motions have precedence in the House in the order named without regard to the order in which they might be offered. 5 Hinds § 6324. Accordingly, the Senate having disagreed to a House amendment, the House may recede from or insist on its own amendment. When both Houses have insisted, neither inclining to recede, it is in order to adhere. 5 Hinds § 6163.

Receding

The House may recede from its own amendment to a Senate bill by motion or by unanimous consent. *Manual* § 524; Deschler-Brown Ch 32 §§ 10.3, 10.5. If the House recedes from its own amendment, the bill is passed unamended, unless the Senate has concurred in the House amendment with a Senate amendment. Deschler-Brown Ch 32 § 10. If the House recedes from its amendment to a Senate amendment, further House action is in order: the House may either concur in the Senate amendment or amend it. *Manual* § 528d.

The stage of disagreement having been reached on a House amendment to a Senate amendment to a House proposition, the House may recede from its amendment and, having receded, may then concur in the Senate amendment with a different amendment (and such separate actions are not tantamount to the House's receding from its own amendment with an amendment as proscribed by Jefferson's Manual). *Manual* § 526. Of course, where the House has previously concurred in a Senate amendment with an amendment, the House does not, merely by receding from its amendment, concur in the Senate amendment. *Manual* § 524.

Insisting

The motion to insist on a House amendment yields to the motion to recede therefrom. 5 Hinds § 6270. However, where both Houses insist and neither asks for a conference or recedes, the bill fails. 5 Hinds § 6228.

The compound motion to insist on a House amendment and request or agree to a conference takes precedence over simple motions to insist or to adhere. Preferential status is accorded to the compound motion because of the greater likelihood that it will resolve the differences between the two Houses. *Manual* § 528b.

Adhering

Although it has been permitted, adherence before the stage of disagreement has been extremely rare and is used infrequently under the modern practice, even after the stage of disagreement. 5 Hinds § 6303. The motion to adhere to an amendment is the least-privileged motion, yielding to the motion to recede and the motion to insist. In addition, the ordinary motions applicable to any question that is under debate—to table, to postpone to a day certain, and to refer—remain privileged under rule XVI clause 4. *Manual* § 528b.

It has been held that after the previous question has been moved on a motion to adhere, a motion to recede may not be offered. 5 Hinds § 6310.

Effect of Adherence; Adherence as Related to Conferences

When both Houses adhere—one House adhering to its amendment and the other to its disagreement therewith—the bill fails. 5 Hinds §§ 6163, 6313, 6325. Adherence is to be distinguished from insistence in that adherence represents an uncompromising position and may not even be accompanied by a request for a conference. 5 Hinds § 6308. However, one House, having adhered, may recede from its adherence and agree to a conference asked by the other, or it may vote to further adhere. 5 Hinds § 6251. Con-

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ferences often have been asked and granted where only one House has adhered. 5 Hinds §§ 6241–6244.