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Congressional Budget Resolutions: Motions to Instruct Conferees

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Summary

Both the House and the Senate have procedures whereby the full bodies may issue instructions to conferees on budget resolutions. Such instructions usually are issued in the form of a motion, but in at least one instance the Senate adopted a simple resolution containing such instructions. If a motion (or resolution) instructing conferees is agreed to, however, the instructions are not binding on the conferees and no point of order would lie against the conference report on the ground that the instructions had been violated.

The practices of the House and Senate regarding such motions differ markedly in key respects, including in terms of the frequency and number of motions and the prerogative to offer such motions

First, the House resorts to such motions regularly, having considered such motions in 12 of the past 15 years (covering FY1991-FY2005). The House regularly used such motions in earlier years as well. During this period, the Senate instructed its conferees on only one budget resolution, for FY2000. For earlier years, the Senate precedents only cite one instance when budget resolution conferees were instructed.

Second, the House usually has considered only one motion per budget resolution, while the Senate considered five motions during consideration of the FY2002 budget resolution. The House considered multiple motions only once, in connection with the FY2005 budget resolution.

Finally, the House regards the motion to instruct conferees strictly as a prerogative of the minority party, while the Senate does not. While four of motions considered in the Senate were offered by Members of the minority, one was offered by the chairman of the Senate Budget Committee.

In both chambers, the content of a motion may range from a broad statement of policy to a position focused more narrowly on one or a few issues. Further, there is no clear pattern of acceptance or rejection of such motions in either chamber. Finally, motions to instruct conferees are amendable in each chamber.

This report will be updated as developments warrant.

Contents

Background	1
House and Senate Practices	1
Frequency of Motions	1
Number of Motions	2
Prerogative to Offer Motion	2
Other Procedural Issues	3

List of Tables

Table 1. Motions to Instruct House Conferees on Budget Resolutions: FY1991-FY2005	4
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Congressional Budget Resolutions: Motions to Instruct Conferees

Background

The Congressional Budget Act of 1974 requires the House and Senate to reach agreement on at least one budget resolution each year.¹ In most years, the House and Senate initially pass separate versions of a budget resolution and then resolve their differences through regular conference procedures, but sometimes the differences have been resolved by means of the two chambers formally exchanging amendments.

Both the House and the Senate have procedures whereby the full bodies may issue instructions to conferees on legislation.² Instructions to conferees on a budget resolution usually are issued in the form of a motion, but in at least one instance the Senate adopted a simple resolution containing such instructions. If a motion (or resolution) instructing conferees is agreed to, however, the instructions are not binding on the conferees and no point of order would lie against the conference report on the ground that the instructions had been violated.

House and Senate Practices

The practices of the House and Senate regarding motions to instruct budget resolution conferees differ markedly in key respects. These differences are discussed below in terms of the frequency and number of motions and the prerogative to offer such motions. Some additional procedural issues also are discussed.

Frequency of Motions. The House resorts to such motions regularly while the Senate seldom uses them. As **Table 1** shows, the House considered 15 such motions in 12 of the last 15 years, covering FY1991-FY2005. (The table lists another motion, for FY2005, that a Member announced he would offer, but the House vitiated the motion before it was considered.) The House regularly used such motions in earlier years as well.

¹ For detailed information regarding the record of experience with budget resolutions, see CRS Report RL30297, *Congressional Budget Resolutions: Selected Statistics and Information Guide*, by Bill Heniff Jr. The House and Senate have adopted at least one budget resolution every year since 1975, except in 1998 (for FY1999) and in 2002 (for FY2003); the FY2005 budget resolution has not been adopted as of this date.

² For information on these procedures generally, see (1) CRS Report RS20209, *Instructing Senate Conferees*, by Richard S. Beth; and (2) CRS Report 98-381, *Instructing House Conferees*, by Elizabeth Rybicki.

During this period, the Senate instructed its conferees on only one budget resolution (for FY2000), as discussed in more detail below. For earlier years, the Senate precedents cite only one instance when budget resolution conferees were instructed.³

Number of Motions. The House has considered only one motion per budget resolution, except for FY2005, when four different motions were considered. With regard to FY2005, three of the motions were rejected and the fourth was vitiated. (As indicated previously, one Member announced his intention to offer a fifth motion to instruct conferees on the budget resolution, but that motion was vitiated as well.)

The Senate considered (on April 13, 1999) the following five motions to the FY2000 budget resolution, accepting four and rejecting one:

- Lautenberg motion, to include in the conference report provisions that would reserve all Social Security surpluses only for Social Security, and not for other programs (including other retirement programs) or tax cuts; adopted by a vote of 98-0;
- Domenici motion, to include in the conference report a Roth/Breaux modified amendment regarding Medicare reform and a section of the Senate-passed budget resolution regarding the use of on-budget surpluses for a prescription drug benefit; adopted by a vote of 57-42;
- Dodd motion, to include in the conference report a Dodd/Jeffords modified amendment to provide for an increase in the mandatory spending in the Child Care and Development Block Grant; adopted by a vote of 66-33;
- Dorgan motion, to include in the conference report provisions that would provide additional funding for income assistance for family farmers above the level provided in the Senate-passed resolution; adopted by voice vote; and
- Kennedy motion, to include in the conference report provisions that would allow targeted tax relief for low- and middle-income working families, and reserve a sufficient portion of projected non-Social Security surpluses to extend significantly the solvency of the Medicare Hospital Insurance Trust Fund and modernize and strengthen the program; rejected by a vote of 54-45; a Domenici amendment to this motion was withdrawn.

Prerogative to Offer Motion. The House regards the motion to instruct conferees strictly as a prerogative of the minority party. In the 11 instances identified in **Table 1** when only one motion was considered, the motion was made by the ranking minority member of the House Budget Committee. With regard to the FY2005 budget resolution, all four of the motions considered were offered by

³ The Senate adopted S.Res. 562 on September 14, 1978, by a vote of 63-21. The measure instructed the Senate conferees on the second budget resolution for FY1979 to insist on the Senate position not to add \$2 billion for public works spending. See the remarks of Sen. Edmund Muskie and others in the *Congressional Record* of Sept. 13 and 14, 1978, at pages 29157-29158 and 29391-29403, respectively.

Members of the minority party, two of them serving on the House Budget Committee. (The fifth motion, which was not considered by the House, also was offered by a member of the minority party.) A motion to instruct conferees, however, is subject to amendments offered by members of the majority party, as discussed below.

Although four of the motions made in the Senate to instruct conferees on the FY2000 budget resolution were made by members of the minority party, one was made by the chairman of the Senate Budget Committee.

Other Procedural Issues. In both chambers, the content of a motion may range from a broad statement of policy to a position focused more narrowly on one or a few issues. For example, a broadly-worded motion offered by Representative John Kasich to the FY1994 budget resolution instructed the conferees

to agree to the highest level of deficit reduction, the lowest levels of budget outlays, and the lowest level of revenues within the scope on the conference without resorting to higher taxes on Social Security beneficiaries.

A more narrowly drawn motion, offered by Representative Willis Gradison to the FY1990 budget resolution, instructed the conferees “to agree to Senate provision relating to the adoption of a joint resolution to amend the U.S. Constitution to require a balanced budget.”

Further, there is no clear pattern of acceptance or rejection of such motions in either chamber.⁴ Of the 14 motions decided by a vote in the House, six were approved and eight were rejected. The six motions approved were decided either by a voice vote or a strong affirmative vote (the smallest margin of victory was 322-66). The eight motions that failed were decided by closer margins, averaging 14 votes (the closest vote failed on a 209-209 tie). Similarly, the four motions approved in the Senate were decided by a voice vote or a strong affirmative vote (the smallest margin of victory was 66-33), and the one rejected motion failed on a much closer vote (54-45).

Finally, motions to instruct conferees are amendable in each chamber. In the House, a motion offered by Representative Willis Gradison (the ranking minority member of the House Budget committee) regarding the FY1992 budget resolution was amended by a substitute offered by Representative Leon Panetta (the chairman of the House Budget Committee). In the Senate, Senator Pete Domenici (the chairman of the Senate Budget Committee) offered an amendment to a motion offered by Senator Edward Kennedy, but then withdrew it.

⁴ For recent commentary on how Members sometimes perceive acceptance or rejection of a motion to instruct conferees, see (1) Mark Wegner and Bill Ghent, “House Lawmakers Spin on Budget Vote to Instruct Conferees,” *National Journal’s CongressDaily AM*, Apr. 2, 2003; and (2) Bud Newman and Brett Ferguson, “Budget Conference to Begin April 2 Amid Differences on Taxes, Spending,” *BNA Daily Report for Executives*, Apr. 2, 2003, page G-7.

Table 1. Motions to Instruct House Conferees on Budget Resolutions: FY1991-FY2005

Fiscal Year	Congress/ Session	H. Con. Res.	Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
1991	101 st , 2 nd	310	—	[none]	—	—	—
1992	102 nd , 1 st	121	Gradison ^a	To ensure that within the reserve fund areas specified in the Senate amendment, pay-as-you-go legislation will not harm working families and Medicare beneficiaries, and will adhere to the 1990 budget process agreement between President Bush and the Congress. ^a	Agreed to	Voice	05-09-91
1993	102 nd , 2 nd	287	Gradison	To agree to Senate provision relating to the adoption of a joint resolution to amend the U.S. Constitution to require a balanced budget.	Agreed to	322-66	05-06-92
1994	103 rd , 1 st	64	Kasich	To agree to the highest level of deficit reduction, the lowest levels of budget outlays, and the lowest level of revenues within the scope on the conference without resorting to higher taxes on Social Security beneficiaries.	Agreed to	413-0	03-25-93
1995	103 rd , 2 nd	218	Kasich	To agree to Senate provisions: reflecting a \$26 billion 5-year deficit reduction by agreeing to reduce the total spending levels specified in the House-passed resolution by specified amounts; and providing no further cuts in defense spending if the President's defense budget request is approved.	Rejected	202-216	04-14-94

CRS-5

Fiscal Year	Congress/ Session	H. Con. Res.	Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
1996	104 th , 1 st	67	Sabo	To agree to revenue levels (within the scope of the conference) that exclude the revenue effects of the Contract With America Tax Relief Act and insist on House position regarding the Earned Income Tax Credit.	Rejected	183-233	06-08-95
1997	104 th , 2 nd	178	Sabo	To agree to Senate provisions on: levels of discretionary spending; “balance billing” of Medicare patients by health care providers; federal nursing home quality standards; and protection under the Medicaid program against spousal impoverishment.	Rejected	187-205	05-30-96
1998	105 th , 1 st	84	Spratt	To agree to Senate provisions on limiting 10-year net cost of tax cuts to \$250 billion and fair distribution of tax cuts.	Agreed to	Voice	06-03-97
1999	105 th , 2 nd	284	—	[none]	—	—	—
2000	106 th , 1 st	68	Spratt	To insist that tax cuts set forth in the reconciliation directives in the concurrent resolution be reported at the latest possible date within the scope of the conference and to require that the reconciliation legislation implementing these tax cuts not be reported any earlier to provide Congress with time to first enact legislation extending the solvency of the Social Security and Medicare trust funds.	Agreed to	349-44	04-12-99

CRS-6

Fiscal Year	Congress/ Session	H. Con. Res.	Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
2001	106 th , 2 nd	290	Spratt	To insist that reconciliation legislation implementing tax cuts be reported no earlier than September 22, 2000, thereby allowing time to enact legislation establishing a universal prescription drug benefit, and that the House recede to the lower tax cuts in the Senate amendment.	Rejected	198-210	04-10-00
2002	107 th , 1 st	83	Spratt	To increase the funding for education in the House resolution to provide for the maximum feasible funding, provide that the costs for coverage of prescription drugs under Medicare not be taken from the surplus of the Federal Hospital Insurance Trust Fund, increase the funding provided for Medicare prescription drug coverage to the level set by the Senate amendment, and insist that the on-budget surplus set forth in the budget resolution for any fiscal year not be less than the surplus of the Federal Hospital Insurance Trust Fund for that year.	Rejected	200-207	04-24-01
2003	107 th , 2 nd	353	— ^b	[none] ^b	—	—	—

CRS-7

Fiscal Year	Congress/ Session	H. Con. Res.	Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
2004	108 th , 1 st	95	Spratt	To (1) eliminate the reconciliation instruction to the Committees on Agriculture, Education and the Workforce, Energy and Commerce, Transportation and Infrastructure, Veterans' Affairs, and Ways and Means contained in section 201(b) of the House resolution; (2) recede to the Senate on section 319 (entitled "Reserve Fund to Strengthen Social Security") of the Senate amendment; and (3) adjust the revenue levels by the amounts needed to offset the cost of the instructions set forth in (1) and (2), without resulting in any increase in the deficit or reduction in surplus for any fiscal year covered by the resolution.	Agreed to	399-22	04-01-03

Fiscal Year	Congress/ Session	H. Con. Res.	Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
2005	108 th , 2 nd	95 (S.Con. Res.)	Thompson (CA)	To recede to the Senate on the provisions contained in section 408 of the Senate concurrent resolution (relating to the pay-as-you-go point of order made applicable to all legislation increasing the deficit as a result of direct spending increases or tax cuts).	Rejected	209-209	03-30-04
			Moore	[same as above]	Rejected	208-215	05-05-04
			Pomeroy	[same as above]	Rejected	207-211	05-12-04
			Stenholm	To reject provisions that provide for an increase in the statutory debt limit.	Considered but vitiated ^c	—	05-19-04
			Price	[same as Thompson, Moore, and Pomeroy motions]	Vitiated ^d (not considered)	—	05-19-04

- a. The Gradison motion was amended by a Panetta substitute. The House failed, by a vote of 132-284, to move the previous question on the original Gradison motion.
- b. The House and Senate did not reach the conference stage during consideration of the FY2003 budget resolution.
- c. On May 19, 2004, the Speaker announced that the motion to instruct conferees offered by Representative Stenholm and debated by the House the previous day was vitiated; see the *Congressional Record*, daily ed., vol. 150 (May 19, 2004), p. H3259.
- d. On May 18, 2004, Representative Price, pursuant to House Rule XXII, Clause 7(c), announced his intention to offer a motion to instruct conferees on the budget resolution. The next day, the Speaker announced that the motion (which the House had not considered) was vitiated; see the *Congressional Record*, daily ed., vol. 150 (May 19, 2004), p. H3259.