



BASIC » TRAINING

PARLIAMENTARY PROCESS,
FACTS, AND STRATEGIES

Resolving House-Senate Differences

In order for a bill or measure to be transmitted out of the legislative branch to the executive branch, it is necessary for both the House and the Senate to pass identical versions of that bill. Every aspect of the versions passed through each chamber must match—from the bill number to every word, period, and comma. If the bill versions passed in either body differ in any respect, the two houses are in what is called “disagreement” and further amendments are necessary to resolve these discrepancies before the legislation can be transmitted to the President. The methods of transmission differ in the House and Senate, yet both have pressure points that can be used to slow down or stop a bill during this final stage.

GETTING TO “DISAGREEMENT”

Under the presentment clause of the Constitution, both the House and Senate must pass the exact same bill before it can be enrolled and presented to the President for signature or veto. It is not merely sufficient that both Houses pass similar (or even identical) measures; the same bill number must pass both Houses, one which agrees to the bill without further amendment.

When one House will not agree to an amendment passed by the other, the Houses are said to be in “**disagreement**,” the formal stage necessary to begin resolving differences. This stage may occur after one House will not agree to the amendment of the other, or after multiple attempts at amendment.

CONFERENCE COMMITTEES AND REPORTS

The traditional method for reconciling differences between House and Senate measures is through a conference committee, which is comprised of “managers” appointed by each of the Houses to reconcile the provisions in disagreement. The

conference process has several distinct stages: (1) sending the bill to conference, (2) the conference between the Houses, and (3) consideration of the conference report. Each of these stages have their own “pressure points” that can be brought to bear in the appropriate circumstances.

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Getting to conference. The first stage of the conference process is the “**hooking up**” of the House and Senate bills. Commonly, the practice is for each house to consider its own bill (an “S.” or “H.R.”), but engross its own measure into the companion legislation from the other body to establish the disagreement necessary for conference. In the House, this is often executed as part of a special rule, or done

by unanimous consent. If the minority (or any member) denies unanimous consent, the majority is forced to use the Rules Committee or another process to put the two bills together.

After the bills are combined, a motion to go to conference is in order. Most often, requesting (or agreeing to the request for) conference is achieved by unanimous consent. The House Rules, however, provide a privileged motion from the Chair of the committee of jurisdiction, so long as all committees of jurisdiction have specifically authorized the motion. That motion is debatable for one hour, but is debated rarely.

After the House requests or agrees to a conference, the Speaker will appoint conferees. After the appointment of conferees, a **motion to instruct conferees** is in order. The motion to instruct is in order at three times: (1) when the House votes to go to conference, (2) after the



House-Senate Conferences *continued*

expiration of 20 calendar-days of being in conference without a conference report being filed, and (3) when a conference report is recommitted back to conference. A Member offering a motion to instruct after the 20 calendar-day period must provide one day's notice. The motion to instruct is debatable for one hour, equally divided between the proponent and an opponent. Motions to instruct are merely advisory in nature and are not binding on the conferees.

In Conference. The most important rule to remember about conferences is that there are no rules. Because conferences necessarily involve members from both chambers, neither chamber's rules restrict the conferees, meaning they are free to adopt their own rules. For instance, while specifically prohibited by House rules, proxy voting is permissible in conferences. The only requirements are (1) the conference report and joint statement of managers have the signatures of a majority of the conferees from each body on each section and (2) there be at least one public meeting of the conference. If there are not enough signatures, the conference report is not valid and a point

of order lies against its filing. The requirement for a public meeting can be waived by the Rules Committee.

The Democratic majority adopted a number of provisions governing conferences at the beginning of the 110th Congress, including (1) providing adequate meeting notice and opportunity for the attendance by all conferees, (2) requiring that all provisions be open to discussion at the public meeting, (3) providing a single place and time for all conferees to review the documents and affix their signatures, and (4) requiring that there be no material change to the text of the conference report after the managers sign. The first three of these requirements, however, are merely hortatory, while the last requirement can be waived by the Rules Committee. These provisions were retained in the rules after Republicans regained the majority in the 112th Congress.

Consideration of the Conference Report. Conference reports are privileged, and must be filed from the floor in the House. A conference report consists of two separate and distinct elements: (1) the **conference report** itself, which contains the legislative language of the conference agreement, and (2) the **joint statement of managers**, which explains the conference agreement much in the same way a committee report explains a bill reported from committee.

While conference reports are considered privileged, they are usually considered in the House pursuant to a special rule that (1) waives all points of order and (2) provides that the conference report is considered as read. This waiver means that points of order against violations of scope, germaneness, the Budget Act, the conduct of the conference, layover of text, and other applicable rules are all waived. The only points of order available (indirectly) are for violations of the earmarks and unfunded mandates rules because points of order of this nature apply to a rule even when all points of order are waived.

House-Senate Conferences
107th Congress – 112th Congress (to date)

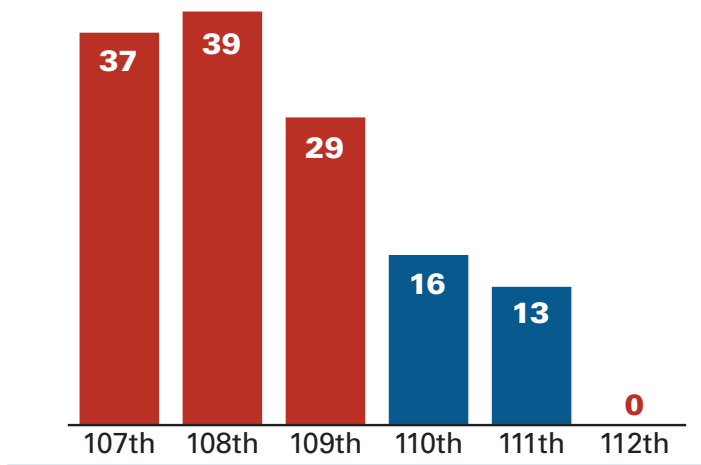


Figure 1. The use of House-Senate conferences has been steadily diminishing in the modern era. The figure shows the number of conferences from the 107th Congress through the 112th Congress to date.



1. Pass the same bill –

By far the simplest mechanism to clear a bill for the President's signature is for one House to pass a bill originated by the other House without amendment. This method is usually re

2. Hold a Conference –

served for non-controversial legislation and is only employed in cases where language has been "worked out" between the House and Senate in advance.


If either the House or Senate is not satisfied with the legislative product of the other body, they may amend the bill, insist on their amendment, and request a conference. If the other House



In cases where both the Majority and Minority floor managers (usually the chair and ranking minority member of the primary committee of jurisdiction) support the bill, but another member is opposed, the House rules provide for a **3-way division of debate**. In that case, the majority, minority, and member opposed each control 20 minutes.

A motion to recommit the conference report is available in the House so long as the Senate has not already acted on the conference report at the time the motion is offered. The motion to recommit may contain instructions to the House conferees, but

may not direct them to agree to items that would exceed the scope of conference or otherwise violate the rules of the House.

In the Senate, a conference report is privileged, meaning that the motion to proceed to the conference report is not debatable, eliminating a potential cloture motion and the time required to achieve cloture under the Senate rules. Just as in the House, a conference report is not amendable without destroying the conference. 

Amendments Between the Houses

While the use of House-Senate conferences have been the traditionally preferred method of resolving legislative differences, the use of **amendments between the Houses** has returned as an acceptable method for reaching the “end game” on legislation.

During the normal course of considering legislation, one House will propose a bill and the other, if the bill is unsatisfactory in its current form, will amend the bill. Normally, the originating House can either accept the amendment or disagree to the amendment.

In the past, when a chamber finds an amendment unacceptable, the most

common course for the originating House is to disagree to the amendment and request a conference. Due to the difficulty in the Senate to appoint conferees (the motion is subject to filibuster) and certain procedural advantages to the majority in the House, both bodies have lately chosen to amend a bill until the House and Senate can agree to a final text.

The motion in both the House and Senate is the same: a motion to concur in the amendment of the other body, and, if additional amendments are desired, with a further amendment.

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Figure 2. The practice of resolving differences through “amendments by the Houses” is colloquially known as “ping-pong” because the measure is passed back and forth between the House and Senate until the amendment of one body is acceptable to the other.

agrees to the conference, a conference committee is established and that committee will report its recommendations to the House and Senate in the form of a conference report and joint

statement of managers. The conference report is privileged in both Houses and is generally subject to only an up or down vote.

3. Amendments Between the Houses — Increasingly common due to procedural advantages in both the House and Senate, each House keeps amending the legislative product of the other until

they reach a text that both Houses can agree to.

While amendments cannot be in the third degree, the House can overcome this through a rule from the Rules Committee.

THE MOTION TO INSTRUCT: USES & LIMITATIONS

The motion to instruct is a tool primarily used by the minority or another member opposed to the measure in conference to express a desired outcome for the negotiations between the House and Senate.

The motion to instruct is available to these discontent members at three points during the conference process: (1) when the House votes to go to conference, (2) after the expiration of 20 calendar-days of conference without a conference report being filed, and (3) when a measure is recommitted back to the conference committee.

A member offering a motion to recommit under the post-20 calendar-day rule must provide one day's notice before the motion must be considered. Once the 20 calendar-day period has expired, multiple motions to instruct may be offered.

There are two other significant limitations on a motion to instruct. First, they are not binding on the conferees. While considered an expression of the will of the House, the conferees are allowed to exercise their own independent judgement.

Second, the motion to instruct may not direct the conferees to do anything that would be outside of the scope of the conference. Scope is measured by the items committed to conference in disagreement. For instance, a motion to instruct that directs conferees to change a provision that is identical in the House bill and Senate amendment is not in order because that provision is not in disagreement; technically, it is not committed to conference.

While perhaps useful from a political perspective, motions to instruct have little actual legislative value.

Amendments *continued*

In the House, there really is only a single procedural advantage concerning this process, and it accrues to the majority. Because the measure under consideration is an amendment, rather than a bill or joint resolution, there is no motion to recommit available to the minority. If the majority wants to forestall all opportunities to amend a measure for political reasons, outside of making the Rules Committee convene in order to “turn off” the motion to recommit, this is the best option. As shown in Figure 3, this became a common procedure to allow the Democratic majority avoid politically difficult motions to recommit in the 110th and 111th Congresses.

In the Senate, there is a more important advantage. Because a House amendment is privileged under the Senate rules, there is no filibuster available for the motion to proceed, allowing the Senate Majority Leader to move to consideration of the House amendment with a simple majority vote. This eliminates an entire cloture process, and shortens the time required

Amendments Between the Houses by Rule
106th Congress – 112th Congress (to date)

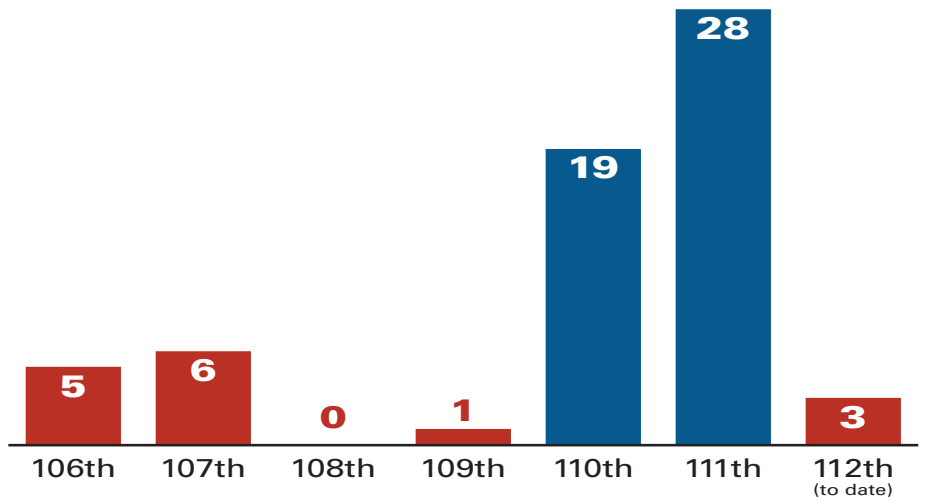


Figure 3. Amendments between the Houses considered pursuant to a Rule. In the 110th and 111th Congresses, the Democratic majority used amendments between the Houses as a means to avoid politically tricky motions to recommit.

for consideration of the amended bill or joint resolution.

Amendments between the Houses may take any number of forms. It can be an amendment in the nature of a substitute, which replaces the entire text of a particular bill. It can also be a simple perfecting amendment, changing a single discrete part of the underlying bill.

Amendments between the Houses are also subject to both House's rules against amendments in the third degree. While each House gets an opportunity to act on the measure, as the amendment tree is filled, it becomes more difficult to add further amendments, although in the House the Rules Committee can overcome any impediment this could cause. ⚠