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Floor Consideration of Conference Reports in the Senate

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Availability Requirements

When a conference committee approves its report, the next step in the legislative process is for the report, along with a joint explanatory statement of the managers, to be presented to the House and Senate for consideration. A conference report must be considered in one chamber at a time when a chamber is in possession of the official conference papers. The papers consist of the conference report as well as the bill and the amendment(s) sent to conference.

Paragraph 1 of Senate Rule XXVIII requires that a conference report must be “available on each Senator’s desk” before the Senate may consider it. In addition, under paragraph 10 of that same rule, it is not in order to vote on the adoption of a conference report unless it has been available to Members and the general public for at least 48 hours before the vote. This availability requirement can be waived by three-fifths of Senators duly chosen and sworn (60 Senators if there are no vacancies). The motion to waive is debatable for one hour equally divided between the majority and minority leaders. It can also be waived by joint agreement of the majority and minority leaders in the case of a significant disruption to Senate facilities or the availability of the Internet. Under the rule, a report is considered to be available to the general public if it is posted on a congressional website or on a website controlled by the Library of Congress or the Government Printing Office.

Under a standing order of the Senate, the reading of a conference report is not required if the report is “available in the Senate.”¹ Otherwise, the presentation of a conference report includes its reading, and a conference report must be read on the demand of any Senator. Under Senate Rule XXVIII, conference reports are required to be printed as Senate reports. However, when a conference report has already been printed by the House, the Senate also routinely dispenses with this requirement in accordance with a unanimous consent agreement approved at the start of a Congress.²

Consideration of Conference Reports

The consideration of a conference report is highly privileged, and a conference report may be called up for consideration at almost any time another matter is not pending. A motion to proceed to the consideration of a conference report is not debatable. The conference report itself, however, is debatable, and consideration follows normal Senate procedures. A cloture process might be necessary to bring consideration of a conference report to a close.³ Senate Rule XXVIII, paragraph 8, provides that, if time for debate on the consideration of a conference report is limited (presumably by a unanimous consent agreement), the time allotted for debate is to be equally divided and controlled by the majority and minority parties.

Conference reports may not be amended on the floor of either the House or the Senate. Conferees are appointed to negotiate over the differences between the versions of the same bill that the two houses have passed; the delegations return to their respective chambers with identical recommendations in the form of a report that proposes a package settlement of all these

¹ U.S. Congress, Senate, *Senate Manual*, S. Doc. 112-1, 112th Cong., 1st sess., prepared by Committee on Rules and Administration (Washington: GPO, 2011), p. 127.

² “Unanimous Consent Agreements,” *Congressional Record*, daily edition, vol. 161 (January 6, 2015), p. S8.

³ For more information on the process for invoking cloture, see CRS Report 98-425, *Invoking Cloture in the Senate*, by Christopher M. Davis.

differences. The House and Senate may accept or reject the settlement, but they may not amend it directly.

The chamber that *agrees to a request* for a conference is normally the one to consider a conference report *first*. This is significant because the first chamber to act can agree or disagree to a conference report, or it can agree to a preferential motion to recommit the report to conference. However, after one chamber has acted on a report, its conferees are discharged, and the other chamber may only accept or reject the conference report.

If the Senate rejects a conference report, the measure is left in the procedural situation it was in before the conference was requested. In such a circumstance, one house could propose a new position to the other house as an amendment between the houses, or it could request a new conference. In the event that a conference report is recommitted or rejected and the measure submitted to a new conference committee, all of the matters originally sent to conference are again before the conferees *de novo* for consideration.

Points of Order

In the Senate, a point of order may be made against a conference report at any time during its consideration prior to its adoption, but it cannot be made until after the conference report has been read or the reading has been dispensed with. If the conference report is being considered under a unanimous consent agreement that provides a time limitation on debate, the point of order cannot be raised until all time has been used or yielded back. A point of order against a conference report is not debatable, although an appeal of a ruling of the presiding officer would be. A point of order may be made only against the conference report and not against the language in the joint explanatory statement.

Points of order may be made against conference reports on a variety of grounds. For example, the limitations established in the Congressional Budget Act generally apply to a conference report as well as to a bill during initial consideration. Points of order that are either waived or not raised during initial consideration are not implicitly waived for the conference report.

Two Senate rules affect the authority of conferees to include in their report matter that was not passed by the House or Senate before the conference committee was appointed.⁴ Colloquially, such provisions are sometimes said to have been “airdropped” into the conference report. First, generally speaking, Rule XXVIII precludes conference agreements from including policy provisions that were not sufficiently related to either the House or the Senate version of the legislation sent to conference. Such provisions are considered to be “out of scope” under long-standing Senate rules and precedents. Second, paragraph 8 of Rule XLIV establishes a point of order that can be raised against “new directed spending provisions,” or provisions in a conference report that provide specific items of appropriations or direct spending that were not committed to the conference committee in either the House or Senate versions of the legislation.

If a point of order is sustained against a conference report on the grounds that conferees exceeded their authority, either by including “new matter” (Rule XXVIII) or “new directed spending provisions” (paragraph 8 of Rule XLIV) in the conference report, then there is a special procedure to strike out the offending portion(s) of the conference recommendation and continue consideration of the rest of the proposed compromise. However, because it is not in order for

⁴ This report briefly summarizes the main provisions of these rules. For more information, see CRS Report RS22733, *Senate Rules Restricting the Content of Conference Reports*, by Elizabeth Rybicki.

either chamber to alter the text of a conference report, this process therefore converts the text of the conference compromise minus the “new matter” or “new directed spending provisions” into an amendment between the houses. If the Senate agrees to this amendment, it is then sent to the House in place of the conference report for consideration in that chamber.⁵ The terms for consideration of the motion to send to the House the proposal without the offending provisions are the same as those that would have applied to the conference report itself.

The points of order under Rule XXVIII and paragraph 8 of Rule XLIV can be waived with the support of three-fifths of all Senators duly chosen and sworn (60 Senators if there is no more than one vacancy). A motion to waive all points of order is not amendable, but a motion to waive points of order against specific provisions is. Time for debate on a motion to waive is limited to one hour and is divided equally between the majority leader and the minority leader or their designees. If the motion to waive garners the necessary support, the Senate is effectively agreeing to keep the matter that is potentially in violation of either rule in the conference report.

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⁵ More specifically, the Senate votes on a motion to dispose of the amendment, and the form of the motion depends on what the House and Senate sent to conference. Very often, a House bill and a Senate amendment are sent to conference. The motion in that case would be for the Senate to recede from its amendment and concur in the House bill with a further Senate amendment consisting of the conference committee compromise without the “new matter” or “new directed spending provision.” If a Senate bill and House amendment were sent to conference, the motion would be that the Senate recede from its disagreement to the House amendment and concur in the House amendment with a further amendment.