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Amendments Between the Houses: Procedural Options and Effects

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SUMMARY

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Amendments Between the Houses: Procedural Options and Effects

The House and Senate must agree to the same measure with the same legislative language before a bill can be presented to the President. To resolve differences between House and Senate versions of legislation, Congress might appoint a conference committee to negotiate a compromise that is then reported to each chamber for consideration. Alternatively, Congress might use the process of amendment exchange. In this process, each chamber acts on the legislation in turn, shuttling the measure back and forth, sometimes proposing alternatives in the form of amendments, until both chambers have agreed to the same text.

The difference between a conference committee and an amendment exchange is not necessarily in the way a policy compromise is reached but in the formal parliamentary steps taken after the principal negotiators have agreed to a compromise. After each chamber has passed its version of the legislation—or in some cases even before that stage—Senators, Representatives, and staff from the relevant committees of jurisdiction engage in policy discussions in an effort to craft compromise legislation that can pass both chambers. These informal meetings and conversations are sometimes referred to colloquially as "pre-conference," although they need not be followed by the convening of a formal conference committee. The phrase is applied generally to final-stage efforts to prepare legislation for passage in both the House and the Senate.

The decision to use the amendment exchange route has procedural implications. Amendments between the houses are not subject to the same procedures as conference reports. For example, some of the limitations on the content of conference committee reports do not apply to amendment exchange. Furthermore, amendment exchange provides alternative opportunities to structure decisions, because the policy compromise can be voted on as separate amendments between the houses instead of as a single legislative package. In addition, in the Senate, House amendments are privileged, and therefore their consideration typically begins immediately after the majority leader asks the presiding officer to lay them before the Senate. In contrast, to begin consideration of a bill or resolution, the majority leader must either obtain unanimous consent or make a motion to proceed to the measure, which is debatable in most circumstances. Furthermore, in the House, consideration of Senate amendments is unlikely to include an opportunity for a Member of the minority party to offer a motion to recommit, an opportunity that is generally assured on initial consideration of a bill or joint resolution.

In an amendment exchange, the formal actions the chambers generally take on amendments from the other chamber are (1) to concur, (2) to concur with an amendment, or (3) to disagree. There is a limit to the number of times each house can propose amendment(s) and send the measure back to the other house, but in both chambers the limitation can be waived. In the contemporary House, Senate amendments are typically disposed of through a special rule reported by the Committee on Rules, a motion to suspend the rules, or by unanimous consent. In the Senate, absent unanimous consent, a cloture process could be necessary to bring the Senate to a vote on the disposition of House amendments. Because House amendments, unlike conference reports, are subject to amendment, the Senate majority leader might offer a motion to dispose of the House amendment and then "fill the tree" to temporarily prevent any Senator from proposing an alternative method of acting on the House amendment.

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Introduction

Congress relies on two formal means of resolving differences on House and Senate versions of legislation: conference committees and amendments between the houses. Conference committees can be created by the House and Senate after each chamber has disagreed to the position of the other. The House and Senate presiding officers then each appoint conferees, largely drawn from the committees with jurisdiction over the bill, to represent the chamber in conference committee negotiations. Conference committees develop and present compromise legislation, in the form of a conference report, for approval in each chamber.[1] Historically, conference committees have been used to resolve differences on major bills, where policy issues are complex and differences between the chambers are likely to be greater. The process of exchanging amendments between the houses is often used when differences between the chambers are comparatively small, although the chambers use it to resolve their differences on major legislation as well. In recent Congresses, the use of conference committees to resolve differences has decreased.[2]

Regardless of the formal parliamentary mechanism chosen, in the contemporary Congress the chambers generally arrive at a resolution of the substantive differences between House and Senate versions of a measure through informal, bicameral discussions that might resemble conference committee negotiations even though neither house has officially appointed conferees to consult over a bill. Once the interested legislators have negotiated an acceptable compromise through these discussions, the compromise can then be embodied in an amendment between the houses or, if conferees have been formally appointed, in a conference report. The difference between amendments between the houses and a conference committee is not necessarily in the way a policy compromise is reached but in the formal parliamentary steps taken after the principal negotiators have agreed to a compromise.

> Senators and Representatives and their staffs negotiate policy compromises through informal discussions; the difference between a conference committee and an amendment exchange is in the formal parliamentary steps taken to present and approve these compromises.

The purpose of this report is to explain the procedural options for resolving differences through amendments between the houses, and to discuss the procedural effects of resolving differences through this process as an alternative to a conference committee. Throughout the report, the phrase "amendment exchange" is sometimes used as an alternative to the longer but formal name of "amendments between the houses." The report is arranged to identify legislative options at each stage of the amendment exchange process, first for the Senate and then for the House. For each chamber, key procedural differences between amendments between the houses and conference committee are also discussed and then listed in **Table 1** (Senate) and **Table 2** (House). The answers to frequently asked questions are highlighted throughout the report in separate, shaded text boxes. The final section of the report describes a particularly complicated case of amendment exchange from the 110th Congress to illustrate a variety of actions the chambers might take.[3]

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[1] For information on conference committee procedures, see CRS Report 96-708, *Conference Committee and Related Procedures: An Introduction*, by Elizabeth Rybicki.

[2] Data on this point is presented in **Table A-1** of the **Appendix**. For more information on the causes of this recent change, and its implications, see CRS Report RL34611, *Whither the Role of Conference Committees: An Analysis*, by Walter J. Oleszek.

[3] For a brief description of the amendment exchange procedure, see CRS Report 98-812, *Amendments Between the*

Resolving Legislative Differences: A Brief Overview

The House and Senate must agree to the same legislative language in the same legislative vehicle before the bill can be presented to the President. The same legislative vehicle means the same numbered bill or resolution; lawmaking measures that originate in the Senate carry the designation S. (bill) or S.J.Res. (joint resolution); measures that originate in the House are designated H.R. (bill) or H.J.Res. (joint resolution).[4] Only one legislative vehicle, with either a Senate or House designation, is sent to the President. After one chamber passes a bill, it sends it to the other chamber. The receiving chamber then typically refers the measure to committee in the same way that measures introduced in that chamber are referred.

There is no requirement that one chamber act on a measure approved by the other chamber, and in each Congress many measures are approved only by the originating chamber. In order for a measure to become law, however, the House and Senate must pass the same vehicle with the same text. If one chamber passes a bill and the other chamber agrees to it without amendment, then the legislative process is complete, and the bill is sent to the President. This is extremely common; more than three-quarters of all legislation that became law in recent Congresses passed the second-acting chamber without amendment. Many of these measures that pass this way are salient to relatively few Members of Congress, such as bills naming post offices or other federal buildings. When major legislation is passed without amendment by the second-acting chamber, it usually reflects extensive negotiations between the chambers prior to the passage of the bill in either chamber. In other words, interested Members from the relevant committees and their staff consult beforehand to ensure that the bill that passes the first-acting chamber will be acceptable, without change, to the second-acting chamber.

Most major legislation is not passed by the second-acting chamber without amendment, however. In addition, on major policy topics, it is common for both the House and Senate to initiate legislation, such that there is often both a Senate bill (S.___) and a House bill (H.R.___) introduced on a topic. The requirement that the House and Senate act on the same bill with the identical text means that in this situation the House and Senate must (1) select a single measure—either the House or Senate bill—on which they will both act; and (2) agree on the same legislative language.

Select a Measure

The selection of the measure, or identifying which bill Congress will send to the President, does not restrict either chamber from acting on its preferred legislative language. More specifically, whether the chambers select an "H.R./H.J. Res." or an "S./S.J. Res." as the vehicle on which to resolve differences will not necessarily affect what policy proposals a chamber considers on the floor. Both the House and Senate can amend the legislation sent by the other chamber, and they can amend it in its entirety.

The selection of a measure that both chambers will act on is usually straightforward.[5] The bill that passes a chamber first and is sent to the other chamber is normally the bill that is selected as the

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Houses: A Brief Overview, by Elizabeth Rybicki and James V. Saturno.

[4] The House and Senate also must resolve differences on concurrent resolutions (S.Con.Res. and H.Con.Res) before they can take effect, but these measures are not submitted to the President because they are not used to make law.

[5] Strategic considerations can enter into decisions about which chamber should act first as well as over which bill should be selected as the vehicle to be sent to the President. For more information, see CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth

vehicle and is eventually presented to the President. The Constitution requires, however, that all revenue provisions originate in the House. The House interprets this to include all appropriations measures as well, and the Senate generally defers to the House on this issue because it does not affect the Senate's ability to propose changes to the legislation. For this reason, measures raising revenues or providing for appropriations that are sent to the President will carry a House bill number (H.R. or H.J. Res.).[6]

As mentioned above, most of the time, neither chamber finds it advantageous to wait for the other to act before beginning its own work on a major policy initiative. Typically, the committees of jurisdiction from both chambers will consider legislation regardless of what action is taking place on similar topics in the other chamber. At some point, however, the chambers must select one bill to be the vehicle that is sent to the President. The selection of the vehicle is either done at the start of floor consideration or at the very end. It can only be done at the beginning if one of the chambers has already passed a bill on the subject, in which case the other chamber might choose to take up that bill on the floor instead of legislation crafted by its own committee. Usually, in this situation, a full-text substitute amendment, representing the work of the committee of jurisdiction, is presented at the outset of consideration and is effectively treated as the text for further amendment by the chamber.[7] Alternatively, a chamber can take up a bill reported from its own committee. At the conclusion of floor consideration of its own bill, the chamber can take up the companion bill passed by the other chamber, strike all of the text after the enacting clause, and insert the text of the bill it originated.[8] Either way, the chambers have fulfilled the first requirement: selecting the same bill on which to act. The second step, agreeing to the same legislative language, is generally more challenging.

Agree on Same Legislative Language

If one chamber considers a bill from the other chamber and amends it before passing it, the House and Senate have acted on the same measure, but they have not agreed to the same text. The chambers can resolve their differences over the text either (1) through an amendment exchange, when the chambers shuttle the bill and amendments back and forth between them proposing alternatives in hopes that both houses will eventually agree on the same language; or (2) through a conference committee, a panel of Members from each chamber that meets to resolve the differences between the bill and the amendment(s) proposed by the second-acting chamber. Occasionally, Congress uses both methods to resolve differences on a measure if it first attempts to resolve differences through amendment exchange and then resorts to conference.[9] Although

Rybicki.

[6] For more information, see CRS Report R46556, *Blue-Slipping: Enforcing the Origination Clause in the House of Representatives*, by James V. Saturno.

[7] In the House, this could be accomplished through the adoption of a special rule that makes in order committee amendment(s) or provides for a committee-recommended amendment to be either automatically adopted or considered as an original bill for purposes of amendment. In the Senate, if the committee has reported the House bill with an amendment, that amendment is automatically pending when the bill is taken up on the Senate floor. If the committee has not formally reported the House bill, then the floor manager can offer the amendment in the nature of a substitute.

[8] In the House, this "hook-up" procedure is generally accomplished by unanimous consent, suspension of the rules, or the terms of a special rule. In the Senate, it is accomplished by unanimous consent.

[9] Alternatively, the chambers might form a conference committee but ultimately end up resolving their differences through amendment exchange after the conference reports in partial or full disagreement, or after the conference report is defeated or falls on a point of order. For more information on these potential complications, see CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki.

this report discusses some conference committee procedures for comparison purposes, its main subject is the formal parliamentary steps and options associated with an exchange of amendments between the chambers.

In both chambers, the procedures applicable to consideration of amendments from the other body change when the chamber reaches what is known as "the stage of disagreement." A chamber enters the stage of disagreement by formally agreeing to a motion or a unanimous consent request that it disagrees to the position of the other chamber, or that it insists on its own position. When both chambers reach the stage of disagreement, they usually form a conference committee. This report almost exclusively addresses the procedures available prior to the stage of disagreement.[10]

Senate Consideration of House Amendments

When the House amends a bill that has already passed the Senate, it sends the bill and its amendment(s) back to the Senate accompanied by a written document that describes what is being transmitted. This document is a message to the Senate, and sometimes the Senate uses the term *message* to refer to the amendment(s) received from the House. The Senate will generally hold House amendments at the desk for action by the full Senate, rather than refer them to committee. Nothing in Senate rules requires that the Senate consider the House amendments it receives. However, if the Senate wishes to act further on that particular bill or resolution, it must take some action on the House amendments.

Laying House Amendments Before the Senate

By long-standing custom, the majority leader usually makes motions and requests affecting the agenda of the Senate, including those concerning House amendments. Under Senate Rule VII, paragraph 3, House amendments are "privileged for consideration" in the Senate, which means that a Senator can request that the presiding officer lay the amendments before the Senate.

Most of the time, the majority leader requests that the presiding officer lay the amendment(s) before the Senate in the following way:[11]

> Senator: Mr. President, I ask the Chair to lay before the Senate a message from the House on the bill S.____, with the amendment(s) of the House thereto.
>
> Presiding Officer: The Chair lays before the Senate the amendment(s) of the House of Representatives to S. ____.

[10] For information on the consideration of amendments after the stage of disagreement, which is most likely to occur after a conference committee has reported in full or partial disagreement, see CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki, pp. 28-29.

[11] Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure: Precedents and Practices*, 101st Cong., 2nd sess., S.Doc. 101-28 (Washington: GPO, 1992) (hereinafter *Riddick's Senate Procedure*), p. 127.

After the House message is laid before the Senate, typically the majority leader immediately makes a motion to dispose of the amendment(s).

A Senator can cause the Senate to vote on a motion to lay the House message before the Senate by objecting to proceeding with the consideration of the House message after the majority leader made a motion to dispose of the amendment.[12] The majority leader might also make the nondebatable motion if he expects such an objection.[13]

> On occasion, the House has sent what is effectively a new legislative proposal to the Senate in the form of a House amendment; this is sometimes done in part because House amendments, unlike House bills, can be called up in the Senate without debate.

Sometimes, the House sends what is effectively a new legislative proposal to the Senate in the form of a House amendment, instead of as a House bill. House amendments, unlike House bills, can be called up in the Senate without debate. To be clear, it is only the question of *whether to consider* the House amendment that is not subject to debate; the question of *how to dispose* of the House amendment is debatable under the regular rules of the Senate.

The ability to take up a matter without debate can potentially make a difference in the Senate, because the Senate then needs to end debate only on the main question (or questions). To bring debate on a question to a close, the Senate may need to invoke cloture, and the process for doing so can be time-consuming. Most cloture motions are not voted on until two days of session after being filed. If cloture is successfully invoked by a vote of three-fifths of the Senate duly chosen and sworn (60 Senators if there is no more than one vacancy), then consideration of the question can continue for up to an additional 30 hours.[14] If there is opposition to calling up a bill, the Senate might need to go through this cloture process twice: once on the motion to proceed to the bill, and a second time on the bill itself. If the same legislative proposal is called up as a House amendment, then those in favor of moving forward on the matter can do so more quickly because cloture would need to be invoked, if at all, only on the question of disposing of the House amendment.[15]

Motions in the Senate to Dispose of House Amendments

Once the House amendment(s) are before the Senate, several motions are in order.[16] The basic choices before the Senate are to reject the House amendment and return it to the House, propose a change to the House amendment(s), or agree to the House amendment(s). More formally, the four central motions to dispose of House amendments are as follows:[17]

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[12] See proceedings on the House amendment to S. 764, 114th Congress, *Congressional Record*, daily edition, vol. 162 (June 29, 2016), pp. S4703-S4704.

[13] See, for example, proceedings on the House amendment to S. 139, 115th Congress, *Congressional Record*, daily edition, vol. 164 (January 11, 2018), p. S153; and on the House amendment to S. 178, 116th Congress, *Congressional Record*, daily edition, vol. 166 (September 29, 2020), p. S5923.

[14] For more information, see CRS Report 98-425, *Invoking Cloture in the Senate*, by Christopher M. Davis; and CRS Report RL30360, *Filibusters and Cloture in the Senate*, by Valerie Heitshusen and Richard S. Beth.

[15] In January 2013, the Senate established two expedited methods to begin consideration of a matter, but neither would allow the Senate to begin consideration of a matter as fast as it can begin consideration of a House amendment, and one method was in effect only for the 113th Congress. For more information, see CRS Report R42996, *Changes to Senate Procedures at the Start of the 113th Congress Affecting the Operation of Cloture (S.Res. 15 and S.Res. 16)*, by Elizabeth Rybicki.

[16] For a full list of available motions prior to the stage of disagreement, see *Riddick's Senate Procedure*, pp. 127-128.

[17] These four motions are available with the same order of precedence even if the Senate had insisted on its amendment (thus reaching the stage of disagreement) and the House had returned the Senate amendment with a House amendment

1. Motion to lay the House amendment(s) on the table
2. Motion to concur in the House amendment(s) with (an) amendment(s)
3. Motion to concur in the House amendment(s)
4. Motion to disagree to the House amendment(s)

If the chambers have reached the stage of disagreement—meaning that the House or Senate has already disagreed to an amendment of the other chamber or insisted on its own amendment—then a fifth motion, to recede, might be considered. The motion to recede, however, is rarely offered in the modern Senate.[18] It is used essentially to reverse the position a chamber took previously on an amendment, and to bring the chambers closer to agreement. The Senate could, for example

- recede from its disagreement to a House amendment and concur with the House amendment (and, in this way, reverse its previous stance against the House amendment and instead agree to it);
- recede from its disagreement to a House amendment and concur with the House amendment *with an amendment* (and, in this way, continue the amendment exchange by proposing a new alternative); or
- recede from its own amendment. After receding from its own amendment to a House amendment, the Senate has the option of concurring in the House amendment with a different amendment(s) in order to continue the amendment exchange.

After the stage of disagreement, the Senate might also choose to lay a message from the House on the table.[19] A motion to insist on a Senate amendment is also available after the stage of disagreement.

The procedures available for disposing of House amendments depend in certain respects on whether the House has proposed a single full substitute for the Senate proposal or a series of separate amendments to individual provisions.

Disposing of a Single House Amendment in the Nature of a Substitute

The House, like the Senate, often proposes an amendment to a bill from the other chamber that strikes all after the enacting clause (the first line of every bill that states "be it hereby enacted by the House and Senate") and inserts a new text. Any amendment that proposes a full-text alternative for a bill is formally called an "amendment in the nature of a substitute" or a "complete substitute." If the first amendment between the houses is a full-text substitute, further amendments between the chambers also tend to propose replacing the last-proposed text in its entirety, although this is not required.

(*Riddick's Senate Procedure*, p. 129).

[18] For an example from the 113th Congress (2013-2014), however, see the consideration, under the terms of a unanimous consent agreement, of a motion to recede from the Senate amendment to H.R. 5021 (*Congressional Record*, daily edition, vol. 160 [July 31, 2014], pp. S5198, S5209).

[19] For example, if the House disagreed to a Senate amendment to a House-passed bill and requested a conference, and the Senate did not wish to go to conference, it could table the House message requesting a conference. The Senate is then considered to have disagreed to the House request for a conference, and this is transmitted to the House. See the message from the Senate on H.J.Res. 59, making continuing appropriations for FY2014 (*Congressional Record*, daily edition, vol. 159 [October 1, 2013], p. H6065) and the message from the Senate on H.R. 240, Department of Homeland Security Appropriations Act, 2015 (*Congressional Record*, daily edition, vol. 161 [March 3, 2015], p. H1535).

If the Senate receives one amendment from the House, then the Senate can agree to one motion to dispose of it.[20] In some instances, the House amendment to a Senate bill is the result of extended negotiations between the chambers. In this situation, the majority leader is likely to propose that the Senate agree to the House amendment without changes, and he will do this by making a *motion to concur*. He is proposing that the Senate agree to the House text because that text is the negotiated compromise.

If the House amendment is not the result of bicameral negotiations, and instead is best viewed as the House version of the legislation, then the majority leader might make a *motion to disagree*. In the contemporary Congress, when the Senate formally disagrees to a House complete substitute amendment it almost always immediately requests that a conference committee be created to negotiate the differences. If a conference is not desired, and the Senate wishes to reject the House amendment, then the majority leader is more likely to propose simply that the House amendment be *laid on the table*. This motion is not debatable; once made, the Senate votes on it immediately. Unlike the other options, including arranging for a conference, it will not be necessary to secure the support of three-fifths of the Senate at any point to take this action. Tabling a House amendment has the effect of returning the papers to the House, just as agreeing to the motion to disagree would. In fact, when the Senate tables a House amendment, what is transmitted to the House is a message that the Senate has disagreed to the House amendment. The leader might choose to move to table the House amendment, instead of moving that the Senate disagree to the House amendment, because the motion to table would be voted on immediately, while the motion to disagree could require a cloture process.

Finally, the majority leader might make a motion that the Senate *concur in the House amendment with a further amendment.* That further amendment might be the result of bicameral negotiations. In other words, sometimes when the Senate agrees to a substitute amendment to a House amendment, the Senate substitute amendment is the bicameral compromise. (The Senate could also agree to a motion to concur in the House amendment with several distinct Senate amendments to the text, instead of a full-text substitute amendment. The Senate has not chosen this option in recent Congresses.)

All amendments in the Senate, including an amendment to a House amendment, are required under Senate rules to be read out loud by the clerk at the time they are offered. The reading is usually waived by unanimous consent and under certain circumstances may be waived by motion.[21]

The option of agreeing to a motion to concur with an amendment is not always available in the Senate, because there is a limit to the number of times the chambers can propose amendments as they shuttle the bill back and forth. Under House and Senate precedents, the amendment of the chamber that acts second on the bill is the text that is subject to amendment in two degrees. Thus, if the Senate passes a bill, and the House amends it, there can be one further Senate amendment and then one further House amendment to that. Another way to think of this is that there can be a total of four versions: (1) the original bill, (2) the first amendment of the other chamber, (3) the amendment of the chamber that originated the bill, and (4) the second amendment of the other chamber.

[20] House amendments that simply propose to insert or strike text can be divided into separate provisions on the demand of any Senator. A House amendment to strike out text and insert other text is not divisible, however. (*Riddick's Senate Procedure*, p. 138).

[21] Under a standing order of the Senate, a nondebatable motion to waive the reading is in order if an amendment was submitted at least 72 hours before the motion and if it is available in the *Congressional Record* (S.Res. 29, 111th Congress). This standing order presumably applies to amendments between the houses.

This limitation on the number of rounds of amendment exchange can be waived in the Senate by unanimous consent, and it does not apply if the House has already extended the number of rounds past the four allowed under chamber precedents. Thus, if the Senate receives a House amendment in the second degree (for example, a House amendment to a Senate amendment to a House amendment to a Senate-passed bill), then a motion to concur in the House amendment with an amendment would be in order only by unanimous consent. But if the Senate receives a House amendment that is already in the third degree (for example, House amendment to a Senate amendment to a House amendment to a Senate amendment to a House-passed bill) or greater, then unanimous consent is not necessary in the Senate to propose an amendment to the latest House amendment.

Limitation on the Number of Rounds of Amendment Exchange

House and Senate precedents allow only two degrees of amendment, or four "rounds" of amendment exchange:

- The bill
- The amendment(s) of the chamber that did not originate the bill
- The amendment(s) of the originating chamber to the amendment(s) of the other chamber (first degree)
- The amendments(s) of the other chamber to the amendments of the originating chamber (second degree)

In the House, these limitations can be waived by special rule, suspension of the rules, or unanimous consent. In the Senate, these limitations can be waived by unanimous consent, and they do not apply if the House has already extended the amendment exchange to the third degree.

When a motion to concur with an amendment is made, it is in order for a Senator to offer an amendment to the motion. The amendment is considered to be an amendment in the second degree to the amendment proposed in the original motion to concur. This second-degree amendment is not a "round" in the amendment exchange; it is a Senate floor amendment proposed to a Senate amendment to a House amendment. The Senate might agree to several floor amendments to the Senate amendment to the House amendment. When floor consideration is complete, however, the Senate will vote on the motion to concur with an amendment as it may have been amended. If the Senate agrees to the motion, it then sends to the House a single Senate amendment that incorporates all the changes to it that were agreed to by the Senate during floor consideration of the motion.

Disposing of Multiple House Amendments

From time to time, the House will send multiple amendments to the Senate. In this situation, the Senate must consider House amendments in the order that they affect the Senate text.[22] The Senate must act on each House amendment, and for this purpose the same four motions identified above are in order.[23] The Senate, however, does not necessarily need to agree to a separate motion

[22] For example, the House sent two amendments, numbered 1 and 2, to a Senate amendment to H.R. 2642 in the 110th Congress. The Senate first considered House Amendment No. 2 because it replaced text on pages 1-59 of the Senate amendment. House Amendment No. 1 inserted text on page 60. (*Congressional Record*, daily edition, vol. 154 [May 20, 2008], p. S4460 and [May 22, 2008], p. S4741.) The Senate can modify the order of consideration of House amendments by unanimous consent.

[23] Motions to strike are not amendable, and therefore presumably the motion to concur with an amendment is not available if the House proposes an amendment to simply strike a portion of a Senate bill or amendment. In one recent instance, the House amended a Senate amendment to strike by agreeing to a special rule reported by the Rules Committee that provided for a new section to be inserted. The Senate, however, did not act on this House amendment. The House later approved similar language as an amendment to a different Senate amendment to strike and insert. (See proceedings on H.R. 1035 and H.R. 1299, 111th Congress.) In another instance, however, the House agreed to a special rule reported by the Rules Committee that made in order an amendment to a Senate amendment that only proposed to strike text from the House bill. The Senate took up the House amendment at the request of the majority leader and later agreed to a motion to concur in the House amendment. (See proceedings on H.R. 244 in the 115th Congress.) The two

to dispose of each amendment. Instead, the Senate can agree to one motion to dispose of several House amendments—as long as the Senate is agreeing to dispose of them all in the same way.

For example, if the House were to send two amendments to the Senate, then the majority leader could make a single, debatable motion to concur in both of the House amendments. If he wished to propose that the Senate concur in one amendment and disagree to the other, however, then it would be necessary to make two separate, debatable motions. Under Senate Rule XXII, cloture can only be filed on a pending question. As a result, it might be necessary for the majority leader to file cloture multiple times (that is, separate efforts in relation to each of several House amendments).

> Amendments between the houses are discrete proposals; if one chamber sends multiple amendments to the other, one vote on all of them is not required.

In a situation where the Senate is considering each House amendment separately, the Senate will not cast a final vote on the package of House amendments at the end of consideration. This is true even though, in some cases, Members, staff, and the public might conceive of the multiple House amendments as a single policy proposal. The Senate at this stage of the legislative process has already passed the bill. It does not vote again on the bill but only on any remaining matters in disagreement, which in this situation are the House amendments.

The limitation on the number of rounds of amendment still applies in a situation in which the Senate must dispose of multiple House amendments. One additional restriction might arise when the Senate is considering a House amendment that is not a full-text substitute. The Senate cannot change text that both chambers have agreed to.[24] For example, if the Senate passed a bill with three titles, and the House messaged to the Senate two amendments—one that replaced Title 1 and one that replaced Title 3—then the two chambers have technically both agreed to Title 2. The House, after all, *concurred* in the Senate bill with amendments. The Senate could, in this situation, consider a further amendment to the House amendment to Title 1 or to Title 3, but it could not entertain motions concerning Title 2. The prohibition against amending text both chambers have agreed to can complicate changing long titles of bills in the Senate; if the House and Senate both passed a bill and agreed to the same long title, it would take unanimous consent in the Senate to agree to a House amendment to the title.[25]

"Filling the Tree" on a Motion to Dispose of House Amendments

Very often, particularly in situations when the procedures have the potential to become complicated, the Senate considers House amendments under the terms of a unanimous consent agreement. Under these agreements, all Senators agree to set aside the regular rules in favor of an arrangement that can specify exactly what motions and amendments will be offered and by whom, as well as when votes are likely to occur.

In the absence of such a unanimous consent agreement, it is possible for several motions to be pending at one time to dispose of a single House amendment. This situation becomes possible through the operation of *precedence*. A motion can be understood to have precedence over

chambers later agreed to a concurrent resolution, H.Con.Res. 53, directing the Clerk to make corrections in the enrollment of the bill.

[24] *Riddick's Senate Procedure*, pp. 130-131.

[25] Absent unanimous consent, the Senate could consider the House amendment to the title, but it could only dispose of it through a motion to disagree, which is debatable and would be considered separately from the motion to dispose of any House amendment(s) to the text of the bill.

another if (1) it may be offered while the other is pending and (2) it is disposed of first. The available motions, in order of precedence, are to concur with an amendment, to concur, and to disagree. Thus, with a motion to disagree pending, a motion to concur and a motion to concur with an amendment could be offered and would be voted on first. In addition, any motion to concur with an amendment is itself subject to amendment.

The procedural effect of "filling the tree" is that no Senator can propose an alternative method of acting on the House amendments until the Senate disposes of (or lays aside by unanimous consent) one of the pending motions.

The precedence of motions can also prevent action. Once one motion is offered, the other motions of lower precedence may not be offered until the Senate votes on or otherwise deals with the pending motion. Therefore, if a motion to concur with an amendment were pending, neither a motion to concur nor a motion to disagree could be offered until the Senate disposed of the motion to concur with an amendment.

In recent Congresses, the Senate majority leader has used his preferential recognition to offer all the available motions to dispose of a House amendment. This process has been referred to as "filling the tree." The procedural effect of filling the tree—or offering all of the amendatory motions available in a particular parliamentary situation—is that no Senator can propose an alternative method of acting on the House amendments until the Senate disposes of (or lays aside by unanimous consent) one of the pending motions.

Filling the tree does not affect the right of Senators to debate the matter at length. It does not, therefore, bring the Senate any closer to final disposition of the House amendments. If, however, the majority leader can build a coalition of at least 60 Senators (assuming no more than one vacancy in the Senate) in order to invoke cloture, then he can fill the tree to block other Senators from proposing other ways of disposing of House amendments, including perhaps the opportunity to propose Senate amendments to the House amendments prior to Senate disposition of the House amendments.

Motions Necessary to "Fill the Tree"

The number of motions that must be offered to "fill the tree" depends on what motion to dispose of a House amendment is offered first. Typically, the first motion that is offered by the majority leader is the one he wants the Senate to approve. If, for example, the majority leader wishes to propose that the Senate agree to a House amendment with changes that resulted from bicameral negotiations, the first motion he might offer is the *motion to concur with an amendment*. This motion has the highest precedence of the three motions to dispose of House amendments, but it is subject to amendment. To prevent other Senators from offering amendments, the majority leader could offer a perfecting amendment to the amendment proposed in the motion to concur. This second-degree perfecting amendment could be any amendment that proposed to insert text, strike text, or replace a portion of the text of the amendment. Often, the majority leader proposes an amendment with minimal impact, such as changing the enactment date of the legislation by one day.

If the goal, however, is to propose that the Senate agree to the House amendment, perhaps because the language of the House amendment actually reflects a negotiated bicameral compromise, then the *motion to concur* must be offered first. In recent Congresses, the majority leader has typically offered three motions to fill this tree: (1) the motion to concur in the House amendment; (2) the motion to concur in the House amendment with an amendment (a motion that would be in order with the straight motion to concur pending); and (3) a perfecting amendment to the amendment proposed in the motion to concur. Similarly, if the majority leader proposes that

the Senate disagree to a House amendment, then to fill the tree he must also offer a motion to concur with an amendment and a perfecting amendment to that.

With any of the motions to dispose of House amendments pending, a Senator could offer a motion to refer the House amendments to a Senate committee.[26] Motions to refer can contain instructions to the committee, but these instructions are not binding. For example, a Senator could propose that the House amendments be referred to a committee for further examination of a specific subject. If the motion to refer with instructions were agreed to, however, the committee would have the authority to decide what further action, if any, it would take. The motion to refer with instructions does provide a potential opportunity for Senators to bring a policy subject before the Senate. The majority leader could choose to offer all the available motions to dispose of the House amendments, as well as a motion to refer with instructions (and amendments to the instructions) in order to preclude such opportunities.[27] Furthermore, if the majority leader offers all the available motions to dispose of a House amendment, files cloture, and then makes a motion to proceed to something else, another Senator could not, at that time, make a motion to refer because the Senate had moved on to another matter. A Senator can only make a motion to refer a matter that is before the Senate. Once cloture is invoked, any pending motion to refer would fall.

"Filling the Tree" and Cloture

When the majority leader fills the tree on a motion to dispose of a House amendment, to end consideration of the motions it is not necessary to file cloture on each pending motion separately. Instead, the Senate needs only to invoke cloture on the motion of lowest precedence (which generally is the motion the majority leader is proposing the Senate approve). If the Senate agrees to invoke cloture on a motion to disagree to the House amendments, then all other pending motions of a higher precedence fall.[28] This is because the alternative—to consider and vote on the motions of higher precedence first—would contradict the language of the cloture rule, which states that the question on which cloture is invoked shall be the business of the Senate "to the exclusion of all other business until disposed of" (Senate Rule XXII).

If cloture is invoked on a motion to concur, however, then the higher-precedence motion to concur with an amendment (and any pending amendment to that) remains pending.[29] At the end of the maximum 30 hours of debate, if all three motions were still pending, the votes would occur first on the second-degree amendment to the motion to concur with an amendment, then on the motion to concur with an amendment, and then on the motion to concur. If the motion to concur with an amendment were agreed to, then the straight motion to concur would presumably then fall, since the Senate had already agreed to concur with an amendment. Because the motions offered to "fill the tree" typically propose simply to alter the enactment date, however, the Senate usually agrees that the two other amendatory motions be considered withdrawn.

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[26] *Riddick's Senate Procedure*, p. 128. In the 110th Congress, with a motion to concur with an amendment and a perfecting amendment to that pending, Senator Jim Bunning offered a motion to refer a House amendment with instructions under the terms of a unanimous consent agreement (*Congressional Record*, daily edition, vol. 154 [June 19, 2008], p. S5814).

[27] In several instances in the 110th Congress, the majority leader or his designee asked and received unanimous consent that no motions to refer be in order during consideration of the House message (*Congressional Record*, daily edition, vol. 154 [June 19, 2008], p. S5814; [September 26, 2008], p. S9851; [September 27, 2008], S10019.)

[28] *Congressional Record*, daily edition, vol. 154 (July 10, 2008), p. S6521.

[29] If cloture is invoked on a motion to concur in a House amendment, then presumably under the terms of Rule XXII, any motion to concur with an amendment would have to be germane to the amendment(s) between the houses or the underlying bill.

If the Senate has multiple House amendments to consider, and the majority leader makes separate motions to dispose of the House amendments, then to preclude other Senators from proposing alternative actions, he might fill the tree in relation to each motion and then must file cloture on each motion separately. The process of considering House amendments therefore has the potential to be time-consuming even if 60 Senators (assuming no more than one vacancy) are in favor of ending debate on every motion.

Comparison of Amendment Exchange and Conference Committee Procedures in the Senate

Consideration of a conference report and consideration of amendments between the houses are similar in certain respects. Conference reports are called up without debate, and they cannot be amended. House amendments are called up without debate, and if the majority leader then "fills the tree," amendments are precluded (at least temporarily). Furthermore, both conference reports and House amendments are debatable under the regular rules of the Senate. This means that regardless of the form in which the bicameral compromise is brought before the Senate, it might be necessary to secure the support of 60 Senators (assuming no more than one vacancy) to end debate and bring the Senate to a vote.[30]

There are, however, important procedural distinctions between conference committee and amendment exchange procedures (see **Table 1**). Only conference committees require formal action to initiate their creation. These actions are sometimes taken by unanimous consent, but an expedited cloture process can be used if three-fifths of the Senate support the formation of a conference.[31] Prior to the change in the rule, Senators sometimes objected, or threatened to object, to unanimous consent requests to take the actions necessary to send a bill to conference expeditiously. In some cases, Senate leadership responded to such objections by attempting to resolve the bicameral differences through amendments between the houses instead of conference committee.

Amendments between the houses are also not subject to the same constraints as conference reports with regard to their content.[32] In a situation where a negotiated bicameral compromise is being considered as an amendment between the houses, the compromise might not be subject to points of order that it would have been subject to if presented as a conference report. For example, implicit in the rules of both chambers is the requirement that conferees resolve the differences committed to them by reaching agreements within what is known as "the scope of the differences" between the House and Senate versions of the bill. Rulings and practices of the Senate allow matter in a conference report to be considered as within the scope of the differences as long as it is reasonably related to the matter sent to conference in either the House or Senate versions of the legislation. Senate Rule XXVIII restricting the content of a bicameral compromise does not apply to amendments between the houses. Furthermore, in the 110th Congress, the Senate changed the manner of disposing of points of order raised under this long-standing rule,

[30] Some measures, most prominently budget resolutions and budget reconciliation bills, are considered under special expedited procedures that preclude extended debate on conference reports and amendments between the houses. For more information, see CRS Report 98-511, *Consideration of the Budget Resolution*, by Bill Heniff Jr.; and CRS Report RL33030, *The Budget Reconciliation Process: House and Senate Procedures*, by Robert Keith and Bill Heniff Jr. (available to congressional clients from the author by request).

[31] For more information, see CRS Report R42996, *Changes to Senate Procedures at the Start of the 113th Congress Affecting the Operation of Cloture (S.Res. 15 and S.Res. 16)*, by Elizabeth Rybicki.

[32] For more information, see CRS Report RS22733, *Senate Rules Restricting the Content of Conference Reports*, by Elizabeth Rybicki.

effectively providing an opportunity for Senators to vote on whether to waive the rule and permit the inclusion of provisions not sufficiently related to the matter committed to conference. The opportunity for a separate vote in relation to matter potentially outside of scope does not exist when considering a House amendment, because the scope requirement does not apply.

Table 1. Senate Procedure: A Brief Comparison of Amendment Exchange and Conference Committees

Conference Report	Amendment Exchange
Unanimous consent or approval of a debatable motion is necessary to send a measure to conference in the Senate	No floor action is necessary to begin informal bicameral negotiations that can result in a proposal to be presented as an amendment between the houses
Conferees are formally appointed and meet publicly at least once	Negotiators are not formally identified
Conference reports are subject to content restrictions, including the requirement that any new matter be reasonably related to the matter submitted to conference	Amendments between the houses are not subject to the same content restrictions as conference reports
Joint explanatory statements, which describe the positions of each chamber and the compromises reached, are required to accompany conference reports	Joint explanatory statements are not required for an amendment exchange, although sometimes similar documents are submitted for printing in the *Congressional Record*
Conference reports must be available to Members of Congress and the general public at least 48 hours before the vote	No availability requirement for House amendments
Conference reports are not required to be read if they are available in the Senate	House amendments are not required to be read, but any Senate amendment offered to the House amendment must be read in full unless reading is waived
Conference reports are privileged for consideration in the Senate, which means they can be called up without debate	House amendments are privileged for consideration in the Senate, which means they can be called up without debate
Conference reports cannot be amended	House amendments can be amended; majority leader can "fill the tree" to temporarily block amendments
Conference report is a single package	House might send several House amendments to the Senate, potentially necessitating separate consideration and disposition of each amendment
Conference report generally debated under the regular rules of the Senate, which means it might be necessary to invoke cloture on the report to end debate	House amendments generally debated under the regular rules of the Senate, which means it might be necessary to invoke cloture in connection with each House amendment to end debate

Note: This table briefly identifies some of the procedural differences between conference committee and amendment exchange procedures in the Senate that are discussed more fully (and with references to relevant standing rules, standing orders, and precedents) in the text of this report.

Bicameral meetings and conversations among Senators, Representatives, and staff from the relevant committees of jurisdiction can be substantively similar regardless of whether the resulting compromise is embodied in an amendment between the houses or a conference report. Only in cases in which a conference committee is appointed, however, will there be any formal meeting of the conference. The House has interpreted its rules to require at least one public

meeting. In practice, most bicameral negotiations take place informally, and the conference committee may hold no more than one formal public meeting where Senators and Representatives typically make statements and perhaps discuss any major items in disagreement. In contrast, discussions that can result in a compromise presented as an amendment between the houses are never required to be public; in fact, unlike conference committees, the negotiators are never formally identified.

The documentation required at the conclusion of negotiations is another distinction between the two methods of resolving differences. Under Senate rules, every conference report must be accompanied by a joint explanatory statement, often called the managers' statement, which explains the position of each chamber and the recommendations of the conference committee on the issues in disagreement (Senate Rule XXVIII, paragraph 7). The requirement to produce this document does not apply in an amendment exchange, although sometimes committees prepare text similar to a managers' statement and submit it for printing in the *Congressional Record*.[33] A majority of Senate conferees and a majority of House conferees must sign both the conference report and the joint explanatory statement. No such requirement applies to a compromise considered as an amendment between the houses.

Senate rules further require that a conference report, but not a House amendment, be made available to Members and the general public on a congressional, Library of Congress, or Government Publishing Office website 48 hours before the vote on the report (Senate Rule XXVIII, paragraph 10). This availability requirement can be waived by three-fifths of Senators duly chosen and sworn (60 Senators if there is no more than one vacancy). It can also be waived by joint agreement of the majority and minority leader in the case of a significant disruption to Senate facilities or the availability of the internet. Senate Rule XXVIII, paragraph 1, also requires that a conference report must be "available on each Senator's desk" before the Senate may consider it, a requirement that is usually met by the printing of the conference report in the *Congressional Record* and its distribution. If the report is not yet printed in the *Congressional Record*, then a copy of the report itself is placed on Senators' desks.

Some requirements under the rules can apply to amendment exchange procedures but not to conference reports. Under a standing order of the Senate, conference reports are not required to be read if they are available in the Senate.[34] The text of a House amendment is also not read under Senate precedents. If a Senator proposes the chamber concur in the House amendment with an amendment, however, then that further amendment is required to be read. The reading might be waived by unanimous consent. In addition, a standing order of the Senate making in order a nondebatable motion to waive the reading of an amendment available in the *Congressional Record* that was submitted at least 72 hours before the motion was made presumably applies to amendments between the houses.

The final key procedural distinction is that amendment exchange is more likely to involve consideration of multiple questions. In the contemporary Congress, conference committee reports

[33] The amendment between the houses, which would become law, could include a provision stating that the material inserted in the *Record* shall have the same effect with respect as if it were a joint explanatory statement. See, for example, Section 5 of P.L. 117-81, the National Defense Authorization Act for Fiscal Year 2022. For the explanatory material submitted for printing in relation to the House amendment to this bill (S. 1605, 117th Congress), see *Congressional Record*, daily edition, vol. 167 (December 7, 2020), pp. H7265-H7459.

[34] U.S. Congress, Senate Committee on Rules and Administration, *Senate Manual Containing the Standing Rules, Orders, Laws, and Resolutions Affecting the Business of the United States Senate*, prepared by Matthew McGowan under the direction of Kelly L. Fado, 113th Cong., 1st sess., S.Doc. 113-1 (Washington: GPO, 2014), p. 133.

nearly always report in full agreement.[35] The Senate therefore only takes a single action: approval or disapproval of the conference report. In contrast, if the House sends multiple amendments to the Senate, it will not necessarily be possible for the Senate to take a single action to resolve differences with the House.

It bears emphasizing that these procedural differences are not the only factors that influence the decision on how to resolve differences between the chambers. Other differences between the two methods abound, and strategic decisions about how to resolve matters with the House take into account timing, the nature of policy disagreements, and the roles of likely negotiators, among many other factors. For more information on the larger decisionmaking context, see CRS Report RL34611, *Whither the Role of Conference Committees: An Analysis*, by Walter J. Oleszek.

House Consideration of Senate Amendments

When the House receives amendments from the Senate, the amendments are usually held at the Speaker's table for later consideration by the full House. The Speaker could refer Senate amendments to the committee or committees of jurisdiction, but the Speaker is likely to do so only if the Senate proposal is on a subject that has not already been considered by the House committee of jurisdiction.

If the House wishes to continue the legislative process on a particular measure, when the House receives a Senate amendment(s) to the measure, it must agree to take some action on the amendment(s). Generally speaking, the options for action are the same as those that the Senate can take on House amendments: propose a change to the amendment(s), agree to the amendment(s), or disagree to the amendment(s).[36] More formally, the House can agree to a motion

- to concur in the Senate amendment(s) with (an) amendment(s),
- to concur in the Senate amendment(s), or
- to disagree to the Senate amendment(s).

If the chambers have already reached the stage of disagreement, meaning that one chamber has already disagreed to an amendment of the other or insisted on its own position, then the House can also agree to a motion to recede from a position previously taken. For example, the House can recede from its disagreement to a Senate amendment, or it can recede from its own amendment that the Senate has disagreed to.

The limitation on the number of times each chamber can amend a text being passed back and forth applies to the House as well as the Senate. Essentially, after the second-acting chamber amends a bill initially passed by the other, that amendment can be amended in two degrees: once more by the originating chamber and then once more by the second-acting chamber. A majority of the House can override this practice, however, and extend the amendment exchange further.

[35] If the chambers have arranged to go to conference on a bill and multiple second-acting-chamber amendments, then it is possible (but not common) for the conference committee to report in partial disagreement. In this situation, there would be an opportunity to vote on the conference report and to act on any remaining amendments on which the chambers did not resolve their differences. For more information, see CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki.

[36] In contrast to the Senate, if the House agrees to table a Senate amendment, it permanently and adversely disposes of the Senate amendment and the underlying bill.

Under most circumstances, Senate amendments are not privileged for consideration in the House, which means Members cannot interrupt the regular order of business to make motions for their disposition.[37] Furthermore, under the regular rules of the House, any House amendments offered to Senate amendments are required to be germane. Typically, the House disposes of Senate amendments through one of the expedited processes described below: a special rule reported by the Committee on Rules, a motion to suspend the rules, or by unanimous consent.[38]

Rules Committee: Calling Up and Disposing of Senate Amendments

A majority of the House can set the terms for consideration of a Senate amendment by agreeing to a privileged resolution reported by the Rules Committee.[39] The Rules Committee might report a special rule that makes it in order at any time to take up a Senate amendment and dispose of it, usually by agreeing either to a motion to concur or to a motion to concur with an amendment. The rule would be required to lie over for one legislative day under House Rule XIII, clause 6(a), unless the House had previously adopted a waiver of this requirement (or the rule was adopted by a two-thirds majority).[40]

Special rules for considering motions to dispose of Senate amendments typically provide for a certain amount of time for debate of the motion, equally divided between a proponent and opponent. Most of the time, the rule does not provide an opportunity for Members to offer amendments to the Senate amendment on the floor. Any preferential or secondary motions, such as a motion to refer the Senate amendment, are also usually precluded. Typically, the House first considers the special rule and then, if the rule is adopted, considers the motion to dispose of the Senate amendment.

As an alternative to a special rule providing for the consideration of a motion to dispose of Senate amendments, the Rules Committee might instead report a rule that provides that when the rule is agreed to, the motion to dispose of the Senate amendment also be considered agreed to. These "self-executing" or "hereby" rules are occasionally used to dispose of Senate amendments because they eliminate the need for separate consideration of a motion to dispose of the Senate

[37] Senate amendments are privileged in the House in the unlikely event that they are not required to be considered in the Committee of the Whole; House rules require revenue, appropriations, and authorization measures to be first considered in the Committee of the Whole (House Rule XVIII, clause 3). In addition, the motion to disagree and go to conference is privileged if authorized by the committee of jurisdiction. Furthermore, after the stage of disagreement, motions to dispose of Senate amendments are privileged; however, even in this situation the House is likely to consider amendments under the terms of a special rule or a unanimous consent agreement, or by suspension of the rules. For a recent example when a privileged motion to recede and concur with a Senate amendment was made, see proceedings on H.R. 240, 114th Congress (*Congressional Record*, daily edition, vol. 161 [March 3, 2015], pp. H1535-H1552). (Provisions of H.Res. 134, which was agreed to before a Member moved to recede and concur, would have allowed the Speaker to postpone proceedings on the measure at any time.) See also Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham Jr., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington: GPO, 2017) (hereinafter *House Practice*), pp. 869-878.

[38] See **Table A-2** in the **Appendix**.

[39] For more information, see CRS Report 98-354, *How Special Rules Regulate Calling up Measures for Consideration in the House*, by Richard S. Beth.

[40] For more information, see CRS Report RS22015, *Availability of Legislative Measures in the House of Representatives (The "72-Hour Rule")*, by Elizabeth Rybicki.

amendment.[41] Most often, self-executing rules concerning Senate amendments also provide for the formation of a conference committee.

Special rules disposing of Senate amendments may provide for the equivalent of a joint explanatory statement, or statement of managers, which is required to accompany conference committee reports.[42] Sometimes, the rule concerning the disposition of Senate amendments provides the chair of the primary committee of jurisdiction the authority to submit for printing in the *Congressional Record* any statement explaining the content of the House amendment(s) to the Senate amendment. The inserted statement describes the content of the House amendments in plain language and resembles a joint explanatory statement.[43] The text of the amendment between the houses sometimes contains language giving the inserted statement the same effect on the implementation of the law that a joint explanatory statement would have.[44] If the special rule does not include the authority to insert the statement, the floor manager can request unanimous consent that it be printed in the *Record*.

Motion to Recommit Usually Not Allowed

In contrast to the initial consideration of a bill or joint resolution under the terms of a special rule, consideration of Senate amendments is unlikely to include an opportunity for a Member of the minority party to offer a motion to recommit (or to commit, if the matter had not already been before the committee).[45] When the House first considers a bill or joint resolution under a special rule, a Member of the minority party always has the opportunity to offer this motion. The Rules Committee is prevented by House Rule XIII, clause 6, from reporting a special rule that would not allow such a motion to recommit or commit.

The protection afforded to the motion under Rule XIII, however, applies only to bills and joint resolutions on initial passage. It does not apply, therefore, to motions to dispose of Senate amendments. In other words, nothing in House rules prevents the Rules Committee from reporting a special rule for the disposition of the Senate amendment that has the effect of precluding a motion to recommit.[46]

> In contrast to the initial consideration of a bill or joint resolution, consideration of Senate amendments is unlikely to include an opportunity for a Member of the minority party to offer a motion to recommit.

[41] *House Practice*, p. 865.

[42] For more information on joint explanatory statements, see CRS Report 98-382, *Conference Reports and Joint Explanatory Statements*, by Christopher M. Davis.

[43] See, for example, *Congressional Record*, daily edition, vol. 154 (May 15, 2008), pp. H3953-H4036. A more recent instance of a rule providing similar authority is H.Res. 838, 117th Congress.

[44] See, for example, Section 5 of S. 1605, 117th Congress.

[45] Under clause 2 of House Rule XIX, one motion is in order to recommit or commit a measure after the House has ordered the previous question on it and before the vote on passing it. The motion can contain instructions that, if adopted, have the effect of bringing an amendment to the bill immediately before the House. The Speaker grants preference in recognition to a Member of the minority party to offer the motion.

[46] Under the standing rules of the House, a motion to commit Senate amendments is in order prior to the stage of disagreement. U.S. Congress, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, One Hundred Seventeenth Congress*, H.Doc. 116-177, 116th Cong., 2nd sess. (Washington: GPO, 2021) (hereinafter *House Rules and Manual*), §1002, p. 845.

Considering Multiple House Amendments to a Senate Amendment

If the House is considering a motion to concur in a Senate amendment with several amendments, separate votes might be held on each House amendment. There is no need for a single vote to approve the entire package of House amendments. The House has already, in a previous "round" of the amendment exchange, agreed to the bill as a whole; at this stage, accordingly, it need only agree to any changes.

> If the House is agreeing to several amendments to a Senate amendment, there will not necessarily be a single vote to approve the entire package of House amendments. The House is not voting to pass the bill; it has already done that in an earlier "round." Instead, it is voting on accepting proposed changes to a measure that has already passed both the House and Senate.

As a result, the amendment exchange procedure, in comparison to the consideration of either a new bill or a conference report, provides additional options for structuring votes in the House. In the case study from the 110th Congress (2007-2008) described in the last section of this report, the House agreed to three separate amendments to a Senate complete substitute amendment to H.R. 3221: one amendment concerned matters within the jurisdiction of the Financial Services Committee; one amendment concerned matters within the jurisdiction of the Ways and Means Committee; and the final amendment was a bipartisan proposal to preempt state housing foreclosure laws. In the case of H.R. 3221, different committees had worked on different amendments to the Senate amendment.

In another example from the 110th Congress, the House agreed to two separate amendments to a Senate amendment to H.R. 2206, an emergency supplemental appropriations bill. The first amendment provided funding for various government agencies and programs. The second amendment included funding requested by the President for the Department of Defense, as well as State and Foreign Operations appropriations and funds for the Gulf Coast recovery. The second amendment was generally described as funding for the Iraq War, and it included provisions setting benchmarks for the Iraqi government that were different from the benchmarks that had been passed in an earlier version of the legislation that the President vetoed.[47] The House agreed to the first amendment by a vote of 348-73, and to the second amendment by 280-142.[48] Considering two amendments to the Senate-approved complete substitute allowed these issues to be voted on separately, allowing the leadership in the House to build separate majorities for the two amendments.[49]

In both of the above identified cases, the special rule provided for a limited time for debate of the motion to concur with several amendments and precluded all other motions—but provided that the votes be taken separately on each House amendment. More specifically, each special rule

[47] The summary of the House amendments to the Senate amendment is based on the description provided in U.S. Congress, House Committee on Rules, *Providing for the Consideration of the Senate Amendment to the Bill (*H.R. 2206*)*, 110th Cong., 1st sess., May 24, 2007, H.Rept. 110-168 (Washington: GPO, 2007), p. 3. See also *Congressional Record*, daily edition, vol. 153 (May 24, 2007), pp. H5805-H5910.

[48] For accounts of the consideration of these amendments, see Liriel Higa, "War Funding Bill Sent to Senate for Final Passage," *CQ Today Online News*, May 24, 2007; and John M. Donnelly and Susan Ferrechio, "House GOP Support Needed to Pass Iraq Funding Bill," *CQ Today Online News*, May 23, 2007.

[49] In the 110th Congress, the House also agreed to two amendments to a Senate amendment to H.R. 2764 and three amendments to a Senate complete substitute amendment to H.R. 2642. In both cases, the consideration of multiple amendments allowed for separate votes on distinct issues.

provided for one motion to concur with amendments, and then the question of adopting that motion was divided among each of the amendments.[50]

Since 2009, the House has occasionally used special rules to structure consideration of Senate amendments in a way that allows the chamber to hold multiple separate votes, but then transmit a single amendment back to the Senate. A special rule can provide that if the House agrees to two or more amendments, then they will be engrossed as a single amendment for transmission to the Senate.[51] The effect of such a provision in a rule is that the Senate receives, for its consideration, not two (or more) House amendments, but one. This allows the Senate to take a single action, instead of considering separate motions to dispose of separate House amendments. Special rules like this also typically contain provisions addressing what would happen if some, but not all, of the House amendments are agreed to. For example, it could provide that if only one House amendment is agreed to, it will be engrossed as an amendment in the nature of a substitute to the Senate amendment.[52]

The House has also structured consideration of Senate amendments by agreeing to special rules that provide that the question of agreeing to concur with a single amendment (to a Senate bill or amendment) be divided. For example, the House could vote first on agreeing to concur with one portion of the text of a House amendment, and then could vote on agreeing to concur with a second portion of the text of a House amendment. In effect, such rules allow separate votes on different issues but result in a single amendment being transmitted to the Senate. Special rules that provide for such division votes also will usually provide that, if any division of the amendment is not agreed to, then the Senate amendment will not be disposed of. In other words, the bill will not be returned to the Senate unless the House agrees to all portions of the proposed House changes to the Senate text.[53]

Suspending the Rules to Dispose of Senate Amendments

The House also has the option of agreeing to suspend the rules to dispose of Senate amendments. A motion to suspend the rules requires a two-thirds vote for adoption, so it is a procedural option generally used only when a large majority of the House favors the proposed action. Under this procedure, the House casts just one vote to suspend the rules and agree to one of the motions for disposing of the Senate amendment. For example, the House can consider one motion to suspend the rules and agree to a Senate amendment.

Motions to suspend the rules are debated for no more than 40 minutes. No point of order can be made because the motion is proposing to suspend any rule that would interfere with its approval. Once the motion to suspend the rules is made, no further motion to dispose of the Senate amendment(s) is in order. A motion to commit or recommit is also not in order. The motion to suspend the rules is privileged under House rules only on Mondays, Tuesdays, and Wednesdays,

[50] See, in the 110th Congress, H.Res. 438 for the consideration of House amendments to the Senate amendment to H.R. 2206, H.Res. 878 for the consideration of House amendments to the Senate amendment to H.R. 2764, H.Res. 1175 for the consideration of House amendments to the Senate amendment to H.R. 3221, and H.Res. 1197 for the consideration of House amendments to the Senate amendment to H.R. 2642.

[51] Engrossment is the process, undertaken by the House clerks, of preparing a final certified version of a matter that has been approved by the chamber. For more information, see *House Practice*, p. 784, and CRS Report 98-826, *Engrossment, Enrollment, and Presentation of Legislation*, by R. Eric Petersen.

[52] See H.Res. 811 and H.Res. 891 in the 116th Congress. H.Res. 438, 110th Congress, provided that if both amendments were adopted, they would be engrossed as a single amendment to the Senate amendment.

[53] See H.Res. 1065, 111th Congress, H.Res. 305, 114th Congress, and H.Res. 1271, 116th Congress.

although special rules occasionally provide for consideration of motions to suspend the rules on other days of the week.

Usually when the House uses the suspension process to dispose of Senate amendments, it suspends the rules and concurs in an amendment of the Senate. The House could agree to suspend the rules and concur in a Senate amendment with an amendment. If that motion were made, the House amendment would be read in full by the clerk after the suspension motion was agreed to. For that reason, if the suspension process were used for this purpose, the House might be more likely to agree to a motion to suspend the rules and agree to a resolution that states that, upon adoption of the resolution, the Senate amendment be agreed to with the amendment printed in the text of the resolution.[54]

Unanimous Consent

The House might also agree to Senate amendments by unanimous consent, particularly at the end of a session when time constraints make this a more desirable option than suspension of the rules. The chair of the committee of jurisdiction often asks unanimous consent to take from the Speaker's table the bill and Senate amendment(s), and, if there is no objection, the manager then makes a motion to concur in the amendment(s) which can be debated under the hour rule and voted upon. Alternatively, the floor manager might make one unanimous consent request to take the bill from the Speaker's table and concur in the Senate amendments. The request is not debatable, and a vote is not necessary. On occasion, the House enters into a unanimous consent agreement that sets a total time for debate of the motion to concur, and typically provides that the time be equally divided and controlled.

Any unanimous consent request would be subject to the Speaker's guidelines for recognition laid out at the start of each Congress.[55] The effective result of these guidelines is that a Representative will only be recognized to make a unanimous consent request to dispose of Senate amendments after clearing the consent request with the majority and minority floor leadership and the chair and ranking member of the committee(s) of jurisdiction. In practice, it is the chair of the committee of jurisdiction, or the chair's designee, who makes the unanimous consent request.

Comparison of Amendment Exchange and Conference Committee Procedures in the House

Acting on Senate amendments to a House bill (or to a House amendment) is a stage of the legislative process distinct from the initial passage of the measure. As discussed at length above, if the House acts on a Senate amendment, instead of acting on a bill or joint resolution that has not yet passed the House, then (1) the motion to recommit is less likely to be in order, and (2) there will not necessarily be a single vote in relation to the Senate amendment, because the House proposal might be divided or considered as separate amendments to the Senate amendment.

[54] *Deschler's [and Deschler-Brown] Precedents of the House of Representatives*, 94th Cong., 2nd sess., H.Doc. 94-661 (Washington: GPO, 1977) (hereinafter *Deschler*), ch. 32, §5.22, p. 73.

[55] *Congressional Record*, daily edition, vol. 167 (January 4, 2021), p. H39; *House Rules and Manual*, §956, pp. 789-790.

Under the standing rules of the House, amendment exchange is different in many respects from conference committee procedures. In the contemporary Congress, however, conference committee reports are almost always considered under a special rule that waives all points of order that could be raised against the report or against its consideration. As a result, in practice, the consideration of a conference report and the consideration of amendments between the houses can be quite similar. For example, under the standing rules, bicameral compromises reported by a conference committee are required to remain within the scope of the differences between the House and Senate;[56] amendments between the houses are not subject to these scope requirements. However, if agreed to by a majority of the House, the special rule for the consideration of a conference report would likely protect the conference report from a point of order. Furthermore, while conference reports (but not Senate amendments) are required to be available under House Rule XXII, clause 8, for three days prior to their consideration, in practice the special rule can waive this availability requirement. Special rules can also modify the manner in which amendments between the houses are considered. For example, under the standing rules conference reports cannot be amended, and Senate amendments can be amended; in practice, however, the special rule for the consideration of a Senate amendment would likely prevent amendments from being offered from the floor.

> In the contemporary Congress, both conference reports and amendments between the houses are often considered under the terms of a special rule reported by the Rules Committee. As a result, in practice, the consideration of a conference report and the consideration of amendments between the houses can be quite similar in many respects.

Nevertheless, procedural distinctions do remain between conference committee procedures and amendments between the houses. Perhaps most significantly, the process for arranging a formal conference committee in the House includes an opportunity for a Member of the minority party to offer a motion to instruct conferees. Such motions typically direct the House conferees to take a position on a particular issue in disagreement between the chambers. The motion to instruct is not binding on the conferees; in other words, even if the conferees report contrary to the instructions, the report will not be subject to a point of order. Despite this limitation, motions to instruct are sometimes viewed as an opportunity for a Member of the minority party to present a view on a policy issue of his or her choosing.[57] If the chambers resolve their differences through amendment exchange, instead of conference committee, then there is no opportunity to offer a motion to instruct conferees.

Furthermore, under clause 12 of House Rule XXII, conference committee meetings are required to be open to the public, and the House has interpreted this rule to require that at least one public meeting of the conference committee be held after conferees are formally appointed.[58] The same clause states that the chair of the House delegation "should endeavor to ensure" that all Members of the conference committee be given notice of all meetings and that all provisions in disagreement between the chambers will be open to discussion. The rule also guarantees managers access to a complete copy of the conference agreement at a unitary time and place for the collection of signatures. Although these requirements can be waived by special rule, generally conference committees do hold at least one public meeting and abide by these guidelines. No

[56] For more information, see CRS Report RS20219, *House Conferees: Restrictions on Their Authority*, by Michael Greene.

[57] It is not in order, however, to instruct House conferees to reach agreement that is not within their authority. For more information, see CRS Report RS20219, *House Conferees: Restrictions on Their Authority*, by Michael Greene; and CRS Report 98-381, *Instructing House Conferees*, by Elizabeth Rybicki.

[58] A conference report would be subject to a point of order if a formal meeting of the appointed conferees was not held in open session. *House Rules and Manual*, §1093, p. 969.

such requirements apply to negotiation meetings that result in a compromise embodied in an amendment between the houses.

The appointment of a formal conference committee can facilitate a structured division of labor in negotiations. The Speaker can appoint conferees for a limited purpose—for example, only for consideration of a single title of the bill in conference. These appointments are more likely when the matters in conference fall under the jurisdiction of multiple standing committees, and the Speaker appoints Representatives from the various committees to negotiate over matters within their respective jurisdictions. A conference committee might choose to form structured subconferences to consider the matters under its jurisdiction, although generally negotiations among conferees are less structured. In any case, the House requires that, for every portion of the conference report that a distinct group of conferees is appointed to consider, a majority of the Representatives in that group (and a majority of Senators in that group) sign the report. Under this requirement, the House counts the signatures of limited-purpose conferees only for those matters within their respectively assigned authorities.[59] In this way, the specific appointments and signature requirement can give some guidance to negotiators about the portion of the compromise under their responsibility. Because bicameral negotiations in an amendment exchange situation are by definition informal, and no signatures are collected, similar opportunities to enforce structure on the negotiations do not exist.

The documentation required at the conclusion of negotiations is another distinction between the two methods of resolving differences. Under House rules, every conference report must be accompanied by a joint explanatory statement, often called the managers' statement, which explains the position of each chamber and the recommendations of the conference committee on the issues in disagreement (House Rule XXII, clause 7). The requirement to produce this document does not apply in an amendment exchange, although on some occasions committees have prepared text similar to a managers' statement and submitted it for printing in the *Congressional Record*. The special rule for the consideration of the Senate amendment can include language stating that the chair of the committee shall insert into the *Congressional Record* material deemed explanatory of the motion. The text of the amendment between the houses could also contain language giving the statement printed in the *Congressional Record* the same effect on the implementation of the law that a joint explanatory statement would have.

Even taking into account the usual use of special rules to set the terms for consideration of the compromise, floor consideration of a conference report might differ procedurally from floor consideration of a Senate amendment. Clause 9 of House Rule XXI requires the public disclosure of any "congressional earmarks, limited tax benefits, and limited tariff benefits" included in a conference report. This rule, like other House rules, can be waived by a special rule; however, if a special rule waives House Rule XXI, clause 9, then a Representative can make a point of order against the special rule itself. The point of order is disposed of by a debatable question of consideration; this means that if any Member makes a point of order against a special rule on the grounds that it waives the earmark disclosure requirement, the presiding officer will submit to the House the question "Will the House now consider the conference report?" The question is then

[59] For more information, see CRS Report RS21629, *Sufficiency of Signatures on Conference Reports*, by Richard S. Beth and Elizabeth Rybicki.

debated for up to 20 minutes, equally divided.[60] In contrast, clause 9 of Rule XXI does not apply to amendments between the houses.[61]

An additional difference in the consideration of a conference report, as opposed to amendments between the houses, is that there may be an opportunity for a Member of the minority party to offer a motion to recommit a conference report. When the House is the first chamber to consider a conference report, a motion to recommit the conference report is in order.[62] The motion to recommit is a prerogative of the minority party, and it is not debatable.[63]

Table 2. House Procedure: A Brief Comparison of Amendment Exchange and Conference Committees

Conference Committee	Amendment Exchange
Opportunity for a Member of the minority party to offer a nonbinding motion to instruct conferees, which is debatable for up to one hour	No motion to instruct available
Speaker formally appoints conferees, sometimes for limited purposes, such as to negotiate only over identified portions of the matter in conference	Negotiators are not formally identified
Conference reports are typically considered under the terms of a special rule that might waive rules restricting the content of conference reports	Amendments between the houses are typically considered under the terms of a special rule that might waive rules restricting the content of House amendments to Senate amendments
Joint explanatory statements, which describe the positions of each chamber and the compromises reached, are required to accompany conference reports	Joint explanatory statements are not required for an amendment exchange, although sometimes similar documents are submitted for printing in the *Congressional Record*
At least one formal, public meeting of the conference committee will be held; conferees must sign conference report	No public meetings are held, as negotiators are not formally identified; no document is signed
Earmarks disclosure rule applies to conference reports; if special rule waives it, a point of order can be made against the special rule	Earmark disclosure rule does not apply to amendments between the houses
Conference report is voted on as a single package; it cannot be amended	House can consider questions separately by considering multiple amendments to a Senate bill or Senate amendment
Often an opportunity for Member of the minority party to offer a nondebatable motion to recommit the conference report	No motion to recommit available

Note: This table briefly identifies some of the procedural differences between conference committee and amendment exchange procedures in the House that are discussed more fully (and with references to relevant standing rules, standing orders, and precedents) in the text of this report.

[60] CRS Report RL34462, *House and Senate Procedural Rules Concerning Earmark Disclosure*, by Sandy Streeter (available to congressional clients from the author of this report by request).

[61] See letter from the Office of the Parliamentarian submitted for printing in the *Congressional Record*, daily edition, vol. 153 (October 3, 2007), pp. H11184-H11185.

[62] For more information on the motion to recommit with instructions, see CRS Report 98-381, *Instructing House Conferees*, by Elizabeth Rybicki.

[63] The Rules Committee can report a rule that precludes the opportunity to offer a motion to recommit a conference report, but it rarely does so (*Deschler*, ch. 33, §32.26, pp. 1100-1101).

Case Study: The Amendment Exchange on H.R. 3221, 110th Congress

A detailed discussion and diagram of one case in the 110th Congress when the Senate considered multiple House amendments serves to illustrate some of the procedural options, and potential procedural complexities, in an amendment exchange. In April 2008, the Senate passed H.R. 3221 with a full-text substitute amendment and an amendment to the title. The Senate sent the newly titled "Foreclosure Prevention Act of 2008" to the House.[64]

In May, the House agreed to three separate amendments to the Senate full-text substitute and sent those to the Senate. Each of the House amendments addressed a group of titles in the Senate amendment that fell within the jurisdiction of a single House committee. As a result, some of the House amendments affected noncontiguous titles of the Senate amendment. House Amendment No. 1 struck Titles 1 through 5, 7, 9, and 11 of the Senate substitute and inserted five new titles, making up a "housing package," that were largely based on bills that had previously been considered by the House Financial Services Committee. House Amendment No. 2 struck Titles 6, 8, and 10 of the Senate substitute and inserted a new title consisting largely of the text of a housing assistance tax bill previously reported by the House Ways and Means Committee. House Amendment No. 3 proposed inserting a new section stating that the bill (and other federal laws) did not preempt state laws regulating foreclosure of residential real property or the treatment of foreclosed property.[65]

Senate precedents require that the chamber consider House amendments in the order that they affect the Senate text (in this case, the text of the substitute amendment the Senate had agreed to in April). To comply with this requirement, the Senate considered the three House amendments as though they were nine separate amendments. Under the Senate reorganization of the House amendments, House Amendment No. 1 struck Titles 1 through 5 of the Senate substitute and inserted the five titles comprising the "housing package." House Amendment No. 2 struck Title 6; House Amendment No. 3 struck Title 7; House Amendment 4 struck Title 8; House Amendment No. 5 struck Title 9; House Amendment No. 6 struck Title 10; House Amendment No. 7 struck Title 11; House Amendment No. 8 inserted the tax title; and House Amendment No. 9 inserted the proposed section affirming state laws (see **Figure 1**).

Senate Consideration of the First House Amendment: Motion to Concur with an Amendment

With the House amendments reorganized, the majority leader could then propose actions on the amendments, provided he proceeded in the order they affected the Senate text. On June 19, 2008, the majority leader moved that the Senate concur in House Amendment No. 1 with an amendment. The bipartisan Senate amendment offered by the majority leader on behalf of the

[64] The Senate took up a bill (H.R. 3221) passed by the House the previous year, instead of passing a new Senate bill, in part because the Constitution requires that bills including revenue provisions originate in the House, and the Senate-approved text contained revenue provisions. In August 2007, the House had passed H.R. 3221 as a revenue bill, the Renewable Energy and Energy Conservation Tax Act of 2007. When the Senate took up H.R. 3221 in 2008, a related energy measure, H.R. 6, had already become law (P.L. 110-140). For more information on the procedures related to the consideration of the energy legislation in 2007, see CRS Report RL34611, *Whither the Role of Conference Committees: An Analysis*, by Walter J. Oleszek, pp. 14-18.

[65] U.S. Congress, House Committee on Rules, *Providing for the Consideration of the Senate Amendments to the bill (*H.R. 3221*)*, 110th Cong., 2nd sess., May 6, 2008, H.Rept. 110-622 (Washington: GPO, 2008), pp. 5-6.

chair and ranking member of the Banking, Housing, and Urban Affairs Committee proposed to replace the "housing package" of the other chamber. The majority leader did not "fill the tree," and therefore the Senate amendment he proposed was open to further amendment. By unanimous consent, the Senate required that amendments offered that day be on the subject of housing. The agreement further provided that no other motions, except motions to table and reconsider, be in order during the day's consideration.[66]

On July 19, Senators offered six amendments to the Senate amendment offered by the majority leader to the first House amendment. Although under the rules, only a single second-degree amendment to an amendment offered with a motion to concur is in order at one time, Senators asked and received unanimous consent to set the other pending amendments aside so they could offer their own amendments. On several occasions that day and on subsequent days, however, unanimous consent was not granted to a Senator who attempted to set aside pending amendments in order to offer another amendment.[67]

The majority leader filed cloture on the motion to concur with an amendment on Friday, June 20, 2008, and two days of session later, on Tuesday, June 24, the Senate agreed to invoke cloture by a vote of 83-9. Of the six amendments that had been offered to the proposed amendment to the first House amendment, the Senate agreed to three of them.[68] These three amendments were second-degree amendments to the Senate amendment to the House amendment. They were not "amendments between the houses" but instead can be understood as Senate floor amendments offered to an "amendment between the houses." As such, all three were incorporated into the Senate amendment to the first House amendment before the Senate, on June 25, agreed to the motion to concur in the first House amendment with an amendment.

Senate Consideration of the Next Six House Amendments: Motion to Concur

After the Senate disposed of the first House amendment, it was in order to consider the additional House amendments in the order that they affected the Senate text. On June 26, 2008, the majority leader moved that the Senate concur in the next six House amendments as reorganized by the Senate. Each of the House amendments proposed to strike a title of the Senate substitute for H.R. 3221 (see **Figure 1**). The majority leader then immediately filed cloture on the motion to concur.[69]

After the majority leader made the motion to concur, no other motions to dispose of the House amendments were in order. The motion to concur has precedence over the motion to disagree; therefore, with the motion to concur pending, a motion to disagree was not in order. The motion

[66] Prior to agreeing to this unanimous consent request, a Senator received assurances from the majority leader that the leader would discuss the possibility of allowing a motion to refer (*Congressional Record*, daily edition, vol. 154 [June 19, 2008] pp. S5775-S5776). Later that day, the Senate entered into a unanimous consent agreement to allow one motion to refer the House message on H.R. 3221. Under the terms of the agreement, debate on the motion was limited to 30 minutes, no amendments were in order, and the motion was subject to an affirmative 60-vote threshold. The agreement further provided that if the motion was not agreed to, the motion would be withdrawn and no further motion to refer would be in order during consideration of the House message on H.R. 3221 (*Congressional Record*, daily edition, vol. 154 [June 19, 2008], p. S5814).

[67] *Congressional Record*, daily edition, vol. 154 (June 19, 2008), pp. S5809 and S5811. On the following day, other Senators unsuccessfully sought unanimous consent to set aside the pending amendments to offer another (June 20, 2008, pp. S5925 and S5926). See also proceedings on June 24, 2008, pp. S5975-S5976.

[68] Of the remaining three, one failed on a roll call vote, another was withdrawn, and the third fell on a point of order after a motion to waive the Congressional Budget Act failed.

[69] *Congressional Record*, daily edition, vol. 154 (June 26, 2008), p. S6224.

to concur does not have precedence over the motion to concur with an amendment. No motion to concur with an amendment could be offered in this situation, however, because the House amendments were all simple motions to strike. Under long-standing Senate precedents, motions to strike are not subject to amendment.[70] Furthermore, the Senate had agreed by unanimous consent that no further motions to refer would be in order during consideration of the House message.

Pursuant to the terms of a unanimous consent agreement, the Senate voted, 76-10, on July 7, 2008, to invoke cloture on the motion to concur in the House amendments to strike. The following day, the Senate agreed by unanimous consent to the motion to concur.

Senate Consideration of the Final Two House Amendments: Motion to Disagree

With the other amendments disposed of, the only House amendments remaining for Senate consideration were the proposals to insert the House tax title and to insert the section concerning state foreclosure laws and regulations. On July 8, 2008, the majority leader made a motion that the Senate disagree to these two House amendments and filed cloture on the motion.

The majority leader then used his preferential recognition to "fill the tree" by offering the following:[71]

- A motion to concur in the House amendment adding a new title with a first-degree amendment (No. 5067), which proposed adding a sentence: "This title shall become effective in 3 days."
- A second-degree amendment (No. 5068) to amendment No. 5067, which proposed to strike "3" and insert "2."

After the majority leader made those motions, no further motions proposing action on the House amendments were in order until one was disposed of or laid aside by unanimous consent. The majority leader could "fill the tree" on a motion proposing to dispose of multiple House amendments (one to insert a new title and a second to insert a new section) by offering a motion that only concerned the first House amendment. No motion to concur in the second House amendment, with or without an amendment, was in order.

Two days of session later, on July 10, 2008, the Senate agreed to the motion to invoke cloture on the motion to disagree to the final two House amendments by a vote of 84-12. The motion to concur with an amendment (No. 5067) and the amendment to that (No. 5068) fell when cloture was invoked, pursuant to the Senate cloture rule requiring that the motion to disagree (on which cloture was invoked) remain the business before the Senate until disposed of. The following day the Senate agreed to the motion to disagree to the amendments, and the message of the Senate stating all of its actions on the House amendments was sent to the House.

House Action: House Concurs in Senate Amendment (to House Amendment to Senate Amendment to H.R. 3221) with an Amendment

The Senate, after agreeing to the three motions described above, messaged to the House only one amendment: the substitute amendment for the "housing package" sent from the other chamber. It

[70] When the Senate is amending a bill, with a motion to strike pending it is in order to offer an amendment to the text proposed to be stricken. In the case of an amendment between the houses, in contrast, the text proposed to be stricken is the Senate amendment, and the Senate cannot amend its own amendment.

[71] *Congressional Record*, daily edition, vol. 154 (July 8, 2008), p. S6448. Recall that under a previous unanimous consent agreement, no motions to refer were in order. See footnote 66.

also communicated its agreement to the House proposal to strike Titles 6 through 11 of the first Senate substitute. Similarly, the Senate communicated its disagreement to the House proposal to insert a tax title and a section concerning state law. In short, the Senate, by its actions, effectively combined the matters in disagreement between the chambers into a single large amendment that was another version of the housing bill.

More precisely, the Senate sent the following message to the House:

- The Senate concurs in the House amendment, striking Section 1 through Title V and inserting certain language, to the Senate amendment to the bill (H.R. 3221) with an amendment.
- The Senate concurs in the House amendments, striking titles VI through XI, to the Senate amendment to the aforesaid bill.
- The Senate disagrees to the amendments of the House, adding a new title and inserting a new section to the amendment of the Senate to the aforesaid bill.

The House, pursuant to the terms of a special rule reported by the Committee on Rules, agreed to the Senate amendment with an amendment on July 23, 2008. The House amendment was yet another version of the full bill, proposing to insert text in lieu of that proposed by the Senate. According to both Senators and Representatives, the amendment resembled earlier versions of the legislation and resulted from bicameral negotiations.[72] The special rule also provided through a self-executing provision that the House recede from any other remaining amendments or disagreements.

When the House further amended the Senate amendment, it had agreed to an amendment in the third degree. Although under the precedents of the House and Senate, an amendment between the chambers can be amended in only two degrees, the House was able to offer a further amendment because it considered the motion under the terms of a special rule.

Final Step: Senate Concurs in House Amendment (to Senate Amendment to House Amendment to Senate Amendment to H.R. 3221)

After the Senate received the House message on July 23, the majority leader called up the House amendment (to the Senate amendment to the House amendments to the Senate amendment to H.R. 3221). At this point, the majority leader wished to propose that the Senate agree with this final bicameral compromise so that the bill could be forwarded to the President. To prevent another Senator from making any other motion, he made two additional tree-filling motions. The majority leader offered the following:

- A motion to concur in the House amendment;
- A motion to concur in the House amendment with a first-degree amendment (No. 5103), which proposed adding a sentence: "The provisions of this act shall become effective 2 days after enactment"; and
- A second-degree amendment (No. 5104) to amendment No. 5103, which proposed to strike "2" and insert "1."

After "filling the tree," the majority leader filed cloture on the motion to concur. The leader also asked unanimous consent that no motions to refer be in order when the House message was before the Senate. A Senator "reserved the right to object" in order to express his desire to offer a

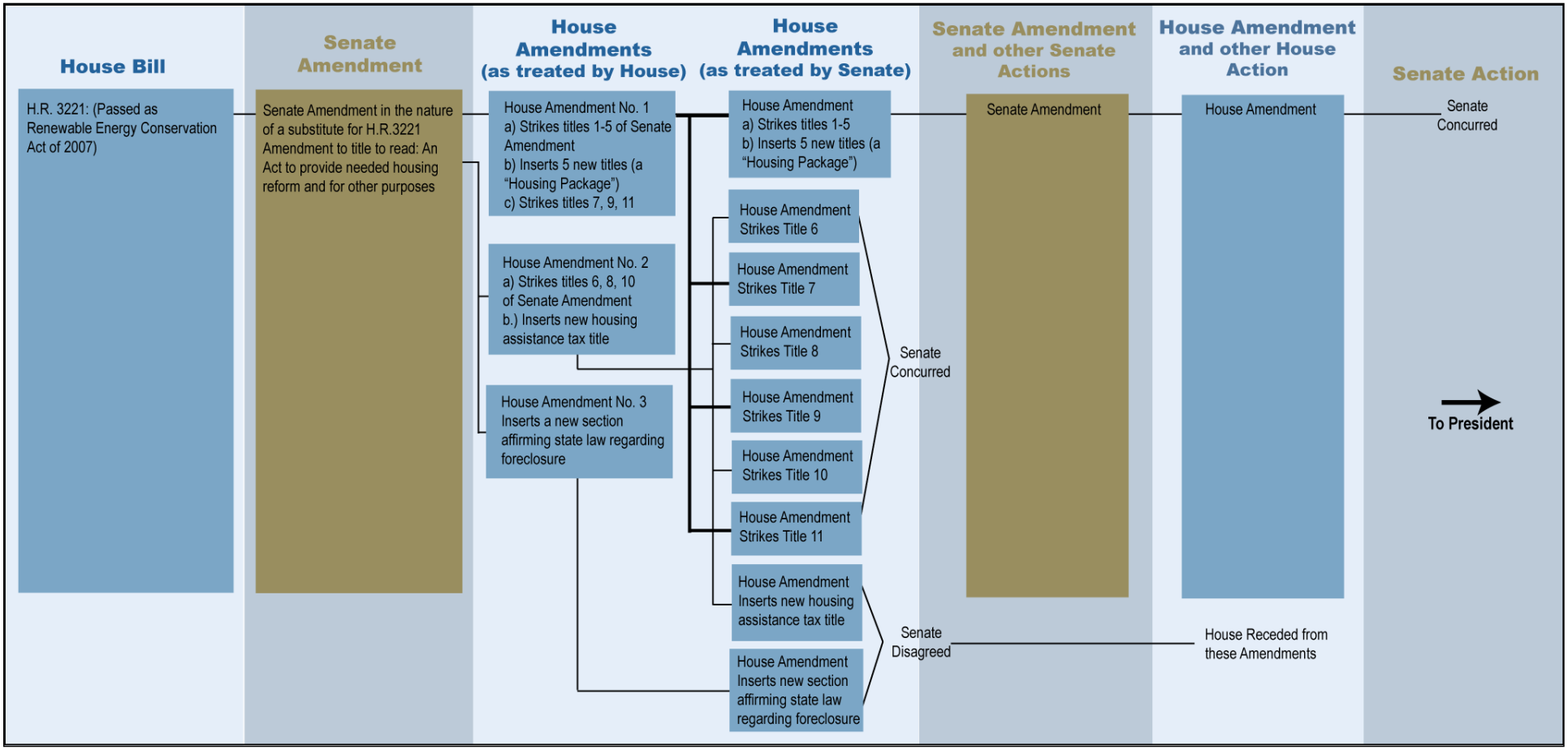
[72] *Congressional Record*, daily edition, vol. 154 (July 23, 2008), pp. S7090, H6991, and H6998.

further amendment. The majority leader withdrew his unanimous consent request and instead made a motion to proceed to another matter.[73] A motion to refer is not in order when a different question is before the Senate.

Two days of session later, on July 25, the Senate voted to invoke cloture on the motion to concur by a vote of 80-13. The next day the Senate voted to concur in the House amendment, and under the terms of a unanimous consent agreement, the motion to concur with an amendment was withdrawn (and the second-degree amendment to that therefore fell). The Senate concurring in the House amendment was the final congressional action necessary to clear the measure to be sent to the President.

[73] *Congressional Record*, daily edition, vol. 154 (July 23, 2008), pp. S7130-S7131.

Figure 1. The Amendment Exchange on H.R. 3221, 110th Congress



Source: Figure developed by author based on congressional actions (see text of report for *Congressional Record* citations). Graphic design by Jamie L. Hutchinson.

Appendix. Tables on Procedures Used to Resolve Differences, 1999-2020

Data on the manner of resolving differences were collected for recent Congresses from the *House Final Calendars*. The data are for measures that became public law. The total number of conference committees presented in **Table A-1** therefore does not include conference committees on measures that do not become law, such as budget resolutions, nor does it include unsuccessful conferences or measures that went through conference committee and were eventually vetoed.

Table A-1. Resolving Differences on Measures That Became Public Law

106th through 116th Congresses (1999-2020)

Congress	Agreed to Without Amendment	Agreed to Amendment of Second-Acting Chamber	More Complicated Amendment Exchange	Conference Committee
106th (1999-2000)	436	90	16	38
107th (2001-2002)	289	48	7	33
108th (2003-2004)	406	55	2	35
109th (2005-2006)	395	53	6	28
110th (2007-2008)	371	69	11	9
111th (2009-2010)	293	66	12	12
112th (2011-2012)	225	46	5	7
113th (2013-2014)	255	30	8	3
114th (2015-2016)	257	56	11	5
115th (2017-2018)	350	75	11	6
116th (2019-2020)	291	45	5	3

Source: *House Final Calendars.* The number of measures "agreed to without amendment" was calculated by subtracting the total counted in the other three categories (agreeing to second-acting chamber amendment, more complicated amendment exchange, and conference committee) from the total number of public laws.

Note: If both chambers appointed conferees, the measure was included in the count of conference committee, even if some differences were resolved through amendment exchange.

Table A-2. House Consideration of Senate Amendments by Special Rule, Suspension, or Unanimous Consent (to Measures That Became Public Law)

106th through 116th Congresses (1999-2020)

Congress	Special Rule	Suspension of the Rules	Unanimous Consent
106th (1999-2000)	13	44	22
107th (2001-2002)	5	26	17
108th (2003-2004)	1	24	16
109th (2005-2006)	4	28	9
110th (2007-2008)	17	34	15
111th (2009-2010)	32	38	7
112th (2011-2012)	7	26	10

113th (2013-2014)	7	13	10
114th (2015-2016)[a]	12	19	19
115th (2017-2018)	12	23	29
116th (2019-2020)	8	8	16

Source: *House Final Calendars, Survey of Activities of the House Committee on Rules* and Congress.gov.

Notes: The table reports the number of House actions (in each category) on Senate amendments; it is not a count of bills. The count of special rules only includes rules agreed to by the House and it does not include rules that also arranged for a measure to go to conference.

a. In the 114th Congress, in one instance, H.R. 240, a Senate amendment was taken up as privileged in the House because the chambers had passed the stage of disagreement. See footnote 37 in the text of the report for more information.

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