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The Amending Process in the Senate

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Summary

A bill is subject to amendment as soon as the Senate begins to consider it. Committee amendments are considered first; then Senators can offer amendments to any part of the bill, generally, in any order. Senators may debate each amendment without limit unless the Senate (1) agrees to a motion to table (kill) the amendment, (2) agrees to a unanimous consent request to limit debate on the amendment, or (3) invokes cloture, limiting debate on the amendment or on the bill and all amendments to it.

There are several different types of amendments. A first-degree amendment proposes to change the text of the bill; a second-degree amendment proposes to change the text of a first-degree amendment that the Senate is considering. Third-degree amendments are not allowed. An amendment may propose to strike out language from a bill (or a first-degree amendment), insert new language, or replace language by striking out and inserting. In general, an amendment that proposes to replace the entire text of a bill is known as an amendment in the nature of a substitute; an amendment to replace the entire text of a first-degree amendment is known as a substitute amendment. An amendment, especially in the second degree, that makes some lesser change is known as a perfecting amendment.

Depending on the kinds of amendments that Senators offer and the order in which they are recognized to offer their amendments, Senators can offer anywhere from three to 11 amendments before the Senate has to vote on any of them. “Amendment trees” are the graphic ways of depicting these possible situations.

The Senate requires only that amendments be germane when they are offered (1) to general appropriations bills and budget measures, (2) under cloture, or (3) under certain unanimous consent agreements and certain statutes. Otherwise, Senators can offer amendments on any subject to any bill. There are several general restrictions on the amending process. For example, it is not in order to propose an amendment that would only amend language in a bill that has already been amended. However, it is possible to re-amend that language in the process of amending a larger portion of the bill. There are also special provisions in Senate rules to limit amendments to appropriations bills if those amendments propose unauthorized appropriations or changes in existing law. The Senate can, and sometimes does, choose not to enforce these restrictions.

The Senator who has offered an amendment may withdraw or modify it at any time until the Senate has taken some action on it, such as by amending it or ordering a roll-call vote on it. Senators may also demand that certain amendments be divided into two or more parts. A roll-call vote on an amendment is ordered at the request of at least 11 Senators. The Senate’s amending process changes under cloture. For example, no amendment can be offered under cloture unless a Senator submitted it in writing before the cloture vote occurred.

This report will be updated as events warrant.

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Introduction

This report summarizes many of the rules, precedents, and practices of the Senate affecting the consideration of amendments to measures on the floor. Much of the information presented here has been extracted from *Riddick's Senate Procedure* (Senate Document 101-28), the published collection of Senate precedents.

This report is intended to provide an overview of the fundamentals of the Senate amendment process. It should be read with several caveats in mind. First, no report of this length can take account of every ruling that has been made and every contingency that can arise. Second, the Senate conducts much of its business by unanimous consent and may thereby change or set aside its rules or customary procedures. Although this report may provide useful background information, it should not be considered a substitute for consultation with the Parliamentarian's office on specific procedural problems and opportunities. This report should not be cited as authority in Senate proceedings.

Offering and Debating Amendments

When the Senate agrees to consider a bill or resolution (either by motion or by unanimous consent), the title of the measure is read. If there are committee amendments printed in the measure as reported, the first of these amendments is then pending automatically. Debate usually begins with opening statements about the measure as a whole by its majority and minority floor managers and other Senators. This is a customary practice of the Senate; its rules do not set aside a time for these opening statements. The Senate then acts on the committee amendments, after which Senators may offer their own amendments to any part of the measure, generally in any order. In the House, measures are often read for amendment by sections or titles; in that case, Representatives may offer amendments only to the one section or title that is then open to amendment. In the Senate, by contrast, measures are considered to be open to amendment at any point.

The first amendments that the Senate considers are amendments recommended by the committee or committees that reported the measure. Senators do not have to call up these amendments for consideration. They are considered automatically, individually, and in the order in which they are printed in the measure as reported (except by unanimous consent). Individual Senators may offer second-degree amendments to each committee amendment (or first-degree amendments to that part of the measure that a committee amendment proposes to strike out or replace—see "The Amendment Trees"), and the Senate considers and disposes of any such amendments before acting on the committee amendment itself.

Under regular Senate procedure, then, the Senate may consider each committee amendment before Senators offer other unrelated amendments from the floor. But the Senate may not dispose of all committee amendments at the beginning of the amending process. In fact, when a committee reports a measure with an amendment in the nature of a substitute for the entire text of the bill, the vote on that committee amendment may conclude the amending process and immediately precede the vote on passing the bill (see "The Amendment Trees"). In another common alternative, the Senate may consider an amendment in the nature of a substitute for a measure and, by unanimous consent, consider it to be adopted with the text considered to be original text for the purposes of further amendment. In this way, the Senate can preserve the ability to amend the substitute in two degrees.

This can also be the situation when a Senate committee reports a bill with a series of separate amendments and the Senate often decides not to consider the amendments individually. The Senate can agree, by unanimous consent, to consider and agree to all the committee amendments *en bloc*—that is, as if they were one amendment—and then consider the measure, as thus amended, as original text for the purpose of further amendment.

Under such an agreement, Senators may offer amendments in two degrees to the text of each committee amendment that has now been made part of the measure. The effect of this arrangement is to create the same opportunities for Senators to propose amendments to each of the committee's recommendations that Senators enjoy when a committee reports a single text that includes all of its recommendations—either in the form of a complete substitute for a measure referred to it, or in the form of a new original measure that is introduced at the same time the committee reports it to the Senate. From time to time, one or more committee amendments may be excluded from such a unanimous consent agreement, leaving that amendment or those amendments to be considered separately.

The Appropriations Committee is the only Senate committee that may occasionally report measures to the Senate with a series of separate committee amendments. Other Senate committees usually consolidate all their amendments to a major bill into a single complete substitute amendment for the text of the bill as introduced, or they incorporate their amendments into the text of an original bill that the committee chairman introduces on behalf of the committee. The Appropriations Committee also sometimes uses this latter option.

Paragraph 5 of Rule XV prohibits the consideration of a substantive committee amendment that "contains any significant matter not within the jurisdiction of the committee proposing such amendment." However, this prohibition does not apply if a committee chooses to incorporate that committee amendment into the text of an original bill it orders reported.

After disposing of committee amendments, the Senate considers additional first-degree amendments, and amendments thereto, in whatever order Senators wish to offer them. In the case of a committee amendment in the nature of a substitute for the entire text of the bill, both that amendment and the text of the underlying measure are open to amendment at any point.

To offer an amendment, a Senator must have the floor, and paragraph 1 of Rule XIX directs the presiding officer "to recognize the Senator who shall first address him." As a matter of established practice, however, preference in recognition is accorded to the majority and minority leaders when either leader and another Senator are seeking recognition at the same time. The chair may also give preference in recognition to either floor manager of the measure the Senate is considering. Technically, a Senator loses the floor after offering an amendment (or making any motion) unless recognized again. In practice, the Senator offering an amendment is normally recognized to begin the debate on it.

With the exception of committee amendments, the order in which first-degree amendments are offered is determined not by rule or precedent but by the convenience of Senators. A second-degree amendment, of course, may be offered only while the first-degree amendment it would affect is pending. The form of first- and second-degree amendments determines what additional amendments may be offered and pending simultaneously. (See "Classification of Amendments" and "The Amendment Trees.") Normally, amendments are offered and considered individually, but Senators may request unanimous consent that two or more related amendments be considered *en bloc*. This is a useful practice when, for example, a Senator needs to amend a bill in two non-contiguous places in order to accomplish a single policy change.

An amendment must be in writing and, when offered, is to be read before debate begins. The reading of an amendment is usually dispensed with by unanimous consent when the floor

managers and other interested Senators are already familiar with the amendment's purpose and provisions. In 2011, the Senate adopted a standing order that permits the offering of a non-debatable motion to waive the required reading of an amendment if that amendment has been submitted at least 72 hours before the motion is made and is available in printed or electronic form in the *Congressional Record*.[1] In 2007, Senate Rule XV was amended to require that a written copy of each amendment and any instructions in a motion to recommit be provided to the desks of the majority and minority leaders before debate on the amendment commences.[2]

For the information and convenience of the Senate, Senators often submit proposed amendments to be printed in the *Congressional Record* a day or more before they are to be called up for consideration. They are listed in a section called "Amendments Submitted." If an amendment is submitted for printing in the *Record*, it is assigned a number at that time. Otherwise, the amendment is numbered at the time it is offered and read on the floor. In this way, all floor amendments are numbered sequentially throughout the course of a Congress. The text of each amendment usually appears in the *Congressional Record* at the point at which it is called up, even if it had been printed in an earlier issue of the *Record*.

Except under cloture, an amendment printed in advance in the *Record* enjoys no special standing (see "Amendments Under Cloture"); it must be called up by a Senator in the same manner as any other amendment. However, a printed amendment may be called up by any Senator, not just by the Senator who submitted it for printing. This does not occur often.

In common Senate practice, a pending amendment may sometimes be laid aside temporarily, by unanimous consent, in order to permit consideration of another amendment instead. Once the second amendment is disposed of, the first amendment is back before the Senate automatically. The Senate sometimes does not dispose immediately of the second amendment in this scenario. Instead, amendments may be virtually "stacked," having been offered but not disposed of, until the Senate decides to act on one of the set-aside amendments. When an amendment is laid aside temporarily, it is usually for one of two reasons: either to accommodate another Senator who wishes to offer an amendment at a certain time or to permit interested Senators to discuss, and perhaps to agree on changes in, a pending amendment without occupying the time of the full Senate. The Senate can (but rarely does) adopt a motion that postpones to a time certain further action on an amendment that it has been considering.

After the Senate agrees to consider a measure, amendments to it are in order at any time—subject to limitations on the number and types of amendments that may be pending simultaneously—until the measure has been read a third time by title. Except under cloture, Senate rules and precedents impose no limits on the number of amendments that may be offered. By the same token, there is no limit on how long Senators may debate one amendment or all amendments, except (1) by unanimous consent, (2) under cloture, or (3) under the provisions of certain statutes, such as the Congressional Budget and Impoundment Act of 1974, which imposes a time limit for Senate floor action on budget resolutions and reconciliation bills. Rule XIX states that "no Senator shall speak more than twice upon any one question in debate on the same day without leave of the Senate," but the length of each speech is not controlled.

A Senator may stop debate on an amendment by being recognized and then moving to lay it on the table. If the Senate agrees to this non-debatable motion, the amendment is considered to be rejected or tabled. (The Senate may vote to table a first-degree amendment while a second-degree amendment to it is pending.) If the tabling motion is defeated, debate on the amendment may

[1] *Senate Manual*, 112th Cong., 1st sess., S.Doc. 112-1 (Washington: GPO, 2011), pp. 129-130.

[2] P.L. 110-81, §514, formerly S. 1, *The Honest Leadership and Open Government Act of 2007*, enacted on September 14, 2007.

resume. However, the vote on a motion to table an amendment is often considered to be a decisive test vote on the amendment; if the tabling motion is defeated on a roll-call vote, the amendment itself may be agreed to by voice vote shortly thereafter. Moving to table an amendment is essentially a negative action, and there is no other motion available in the Senate to bring the body to an immediate vote to dispose of a pending amendment.

The notion of precedence has an important effect on the amending process. Paragraph 1 of Rule XXII specifies an order of precedence among motions, including the motion to amend. Under the terms of this paragraph, a motion to adjourn or recess is in order while an amendment is pending. It is also in order to move to lay a pending amendment on the table. In fact, all the other motions listed in Rule XXII have precedence over the motion to amend.

Unanimous Consent Agreements

The Senate frequently does impose limitations on itself in the form of unanimous consent agreements that specify parliamentary conditions for considering and amending a particular measure. In their most comprehensive form, these agreements can impose a time limit for debating each first- and second-degree amendment and indicate how the time in each case is to be divided and controlled. A standard period of time may be provided for debating each amendment—for example, one hour for each first-degree amendment and 30 minutes for each second-degree amendment and any other debatable question—but the agreement may permit lengthier debates on certain specific amendments. The time for debating each amendment is usually divided between its proposer and the majority floor manager (or the minority floor manager, if the majority floor manager supports the amendment).

Such comprehensive unanimous consent agreements (or time agreements, as they are often called) also provide a period of time for debate on the question of final passage—that is, debate on the measure as a whole that may be used or yielded by the majority and minority floor managers at any time that the Senate is considering the measure. In addition, these agreements normally require that all amendments must be relevant, although specific amendments may be exempted from this requirement.

Instead of approving a comprehensive time agreement when it begins debate on a bill, the Senate frequently debates and amends a major bill for some time before developing an agreement that identifies the remaining amendments that may be offered to the bill and the amount of time available for debating each of those amendments. That agreement may even specify the order in which the remaining amendments are to be offered. The Senate may also reach agreements during the course of debate that apply only to individual amendments—for instance, an agreement limiting how long the pending amendment will be debated and which amendment will be the next one to be considered.

Unanimous consent agreements affect the amending process in another important respect. Under such an agreement covering one or all amendments to a measure, it is not in order to move to table a pending amendment, offer another amendment that has precedence, or make a point of order against the amendment until all the time for debating it has expired or has been yielded back, at least by the proponent of the amendment. In the absence of a unanimous consent agreement, any Senator who is recognized may take any of these actions at any time after an amendment has been called up.

A unanimous consent agreement to limit debate on a specific amendment also constitutes action by the Senate on that amendment. Once such an agreement is reached, the Senator offering the amendment may modify or withdraw it only by unanimous consent. (See “Modification, Withdrawal, and Division of Amendments.”)

Through unanimous consent agreements, the Senate imposes an order and some limits on the amending process that are not required by Senate rules and precedents. These agreements require the explicit or implicit concurrence of every Senator: If a single Senator objects, the amending process may continue indefinitely or until the measure is fully amended and without limitations on debate unless the Senate invokes cloture.

Classification of Amendments

As noted in *Riddick's Senate Procedure*, amendments may be distinguished in terms of their *degree*, *form*, *type*, and *class*.

Degree

As a general rule, a measure being considered on the Senate floor is open to amendment in two degrees. Unless the Senate agrees otherwise by unanimous consent, it is in order to offer an amendment to the text of any measure (an amendment in the *first degree*), and it is also in order to offer an amendment to that amendment (an amendment in the *second degree*) while the first-degree amendment is pending. It is not in order to offer an amendment in the third degree—an amendment to an amendment to an amendment—except by unanimous consent. (There are parliamentary conditions under which, in principle, as many as 11 amendments may be pending simultaneously; see "The Amendment Trees.")[3]

Form

An amendment can take three different forms. First, an amendment may propose to *insert* additional language in a measure or pending first-degree amendment without changing anything that is already in the text it would amend. Second, an amendment may take the form of a motion to *strike out* part of a measure or pending first-degree amendment without inserting anything in its place. Or third, an amendment may propose to *strike out and insert*—to replace one or more words or provisions of a measure or pending first-degree amendment with one or more different words or provisions.

Type

There are different types of amendments. A *substitute amendment* in the first degree proposes to replace some part of the text of a measure. A *complete substitute* (denoted in this report as an *amendment in the nature of a substitute*) is a special form of substitute amendment that proposes to replace the entire text of the measure—to strike all after the enacting clause and insert "in lieu thereof" a different text.[4] A substitute amendment in the second degree proposes to replace the entire text of a pending first-degree amendment with a different text. All substitute amendments

[3] Technically, there may be only one amendment pending before the Senate at any moment. The "pending amendment" is the amendment on which the Senate is to act first. For the sake of convenience in this report, however, the term *pending amendments* is used more generally to refer to all the amendments that have been offered and that have not been laid aside temporarily, withdrawn, or disposed of by the Senate in some fashion.

[4] Unlike the House, the Senate does not use the phrase "amendment in the nature of a substitute" to refer consistently and exclusively to an amendment that proposes to strike out all after the enacting clause of a bill (or resolving clause of a resolution) and replace that text with a different text. For purposes of clarity, the phrase will be used only in that sense in this report, but it should be borne in mind that Senators may use the same phrase in a broader sense. When an amendment in the nature of a substitute has been offered, it is not considered to be a first-degree amendment; thus, the amendment in the nature of a substitute is open to two degrees of amendment.

are motions to strike out and insert, but not all motions to strike out and insert are considered substitutes.

Perfecting amendments may insert, strike, or strike and insert. A first-degree amendment to insert or a first-degree motion to strike out is a perfecting amendment. A first-degree amendment in the form of a motion to strike out and insert is a perfecting amendment if it would replace less of the measure than a pending first-degree substitute amendment. A perfecting amendment in the second degree may take any of the three possible forms so long as it proposes to alter or "perfect," rather than to replace entirely, the text of a pending first-degree amendment.

Whether a first-degree amendment is considered to be a perfecting or a substitute amendment may depend on the parliamentary circumstances in which it is offered. Also, the distinction between perfecting and substitute amendments can depend on the way in which the amendments are drafted, not on the significance of the legislative changes they propose. When a Senator offers a first-degree amendment in the form of a motion to strike out and insert, that amendment is considered to be a substitute amendment if no other such first-degree amendment is already pending. However, the same first-degree amendment to strike out and insert may be considered to be a perfecting amendment instead if it is offered while there is already pending a substitute for some larger portion of the measure. Any motion to strike out and insert in the first degree—even an amendment that would replace an entire title of the measure—is a perfecting amendment if it is offered while the Senate is considering an amendment in the nature of a substitute that would replace the text of the measure altogether.

With regard to second-degree amendments, any amendment is a substitute amendment so long as it proposes to insert something in the measure in place of the matter that the pending first-degree amendment proposes to insert—without regard to whether the first-degree amendment proposes only to insert or to strike out and insert. On the other hand, a second-degree amendment is a perfecting amendment so long as it proposes to alter, but not replace entirely, the matter proposed to be inserted by the pending first-degree amendment.

As a result, a second-degree perfecting amendment may propose major changes in a first-degree amendment, while a second-degree substitute amendment may be identical to the text it would replace except for one word or number. It is sometimes possible, and useful, for the same second-degree amendment to be drafted both as a perfecting amendment and as a substitute amendment so that the amendment may be offered under the widest range of parliamentary circumstances.

Class

There are two classes of amendments, committee and floor, which have been discussed earlier in this report.

Precedence Among Amendments

The distinctions among amendments can be of considerable practical importance because of the relations of *precedence* among amendments.

For purposes of the amending process in the Senate, "precedence" has two related meanings. If one amendment has precedence over another, (1) it may be offered while the other is pending, and (2) it is disposed of first. Thus, if amendment A has precedence over amendment B, amendment A may be offered even though amendment B has already been offered and is still pending before the Senate. And if both amendments are pending at the same time, the Senate acts on amendment A before it acts on amendment B. Precedence also has negative consequences: Amendment B may

not be offered while amendment A is pending and if both are pending at the same time, the Senate may not act on amendment B before it acts on amendment A (except by unanimous consent).

Senate precedents set out three principles of precedence among amendments that are directed to the same text:

1. A second-degree amendment has precedence over a first-degree amendment;
2. A motion to insert and a motion to strike out and insert have precedence over a motion to strike out; and
3. A perfecting amendment (and an amendment to it) has precedence over a substitute amendment (and an amendment to it).

The first of these principles is axiomatic. A second-degree amendment is an amendment to a first-degree amendment, and it must be offered while the first-degree amendment is pending—that is, after the first-degree amendment has been offered but before the Senate has disposed of it. The Senate also acts on an amendment to a first-degree amendment before it acts on the first-degree amendment itself. So this principle conforms to Senate practice under both meanings of precedence.

It may be helpful in understanding the second two principles to think about decisions the Senate needs to make about a text. Changing the text of an amendment, through a second-degree amendment, could "cure" a problem Senators may have had with the amendment's original language. That could obviate the need to strike out the text entirely.

For example, if a first-degree substitute amendment is pending (including an amendment in the nature of a substitute), an amendment may be offered to perfect the part of the measure that the substitute proposes to replace. If that perfecting amendment is offered, the Senate votes on the perfecting amendment to the measure before it acts on the substitute. By the same token, while a motion to strike out part of a measure is pending, an amendment may be offered to the text proposed to be stricken, and the Senate acts on the latter amendment before it votes on the motion to strike out. Because of these principles of precedence among amendments, a number of amendments may be pending at the same time (see "The Amendment Trees").

Precedence controls what amendments *may* be offered at any given time, but it has no effect on the order in which Senators are recognized to offer amendments. If two Senators wish to offer amendments, the order in which the amendments are called up for consideration, assuming both are in order, depends on which Senator seeks recognition first, not on the relative precedence of the two amendments.

The Amendment Trees

Under certain parliamentary circumstances, a number of amendments may be pending at the same time. The graphic display of the amendments that are in order at any one time can be called an "amendment tree." Senators sometimes speak of "filling the amendment tree" when talking about offering a series of amendments to a bill.

Sometimes, the goal of filling the amendment tree might be to prevent or limit further amendments from being offered to the underlying measure. Even if several amendments to a measure have been offered, a Senator may be able to offer an amendment by asking for unanimous consent that a pending amendment be set aside so that the Senate may consider his or her amendment. In this way, the Senate may consider one or more amendments even in the absence of final action on a prior amendment. This action, however, requires unanimous consent to set aside the earlier amendment. One indication that the tree may have been filled for the

purpose of blocking further amendments is that objection is heard when the Senate is asked to lay aside pending amendments.

The same tactic can also be used to limit the amendments that can be offered if one or more Senators systematically object to laying aside pending amendments in order to allow additional amendments to be offered unless they meet specified conditions. For example, by keeping the amendment tree full, a Senator might be able to prevent non-germane amendments from being offered to a bill.

Amendments that are offered to measures under these circumstances are often slight variations on the base text, so, whether adopted or defeated, they achieve the basic intent of supporters of the measure. Sometimes the amendment can be all-encompassing so that if it is adopted it will amend the entire text of the bill, thus prohibiting further amendment.

In addition, once the amendment tree has been filled, a Senator may also then file a cloture petition either to the pending amendment or to the underlying measure. If cloture is successful, it both limits amendments that may be offered to the underlying measure to those that are germane and also establishes a time limit for further consideration of the bill. By keeping the amendment tree full until the expiration of the time available under cloture, a Senator or a group of Senators may even be able to prevent any other amendments from being offered to the bill.

Two methods of depicting the amendment trees are presented in this report. First is the official system used in *Riddick's Senate Procedure*. The four diagrams in this section that are labeled "charts" are taken directly from *Riddick* and are explained in considerable detail in its extended discussion of precedents concerning amendments (pages 24-125).

On the pages facing three of the four charts from *Riddick's Senate Procedure* are "figures" that depict precisely the same situations and possibilities but using different visuals.[5] The discussion that follows in this section focuses on these figures as an alternative way of visualizing and understanding the amendment situations that can develop on the Senate floor. Both depict the same information; however, only the charts in *Riddick's Senate Procedure* have any standing as Senate precedents.

The amendments that are in order at any one time depend on the form and scope of the first amendment to be proposed and then on the form, type, and degree of subsequent amendments. Thus, depending on the form and type of the first amendment to be offered, as few as two or as many as 10 other amendments may be offered before the Senate must vote on any one of them. But whether all of these amendments will actually be pending depends on what amendments Senators wish to offer and the order in which they are recognized to do so.

With an Amendment to Insert Pending

An amendment to insert additional matter in a measure is a first-degree perfecting amendment. While such an amendment to the text of the measure is pending, no other first-degree amendments may be offered (because no other first-degree amendment has precedence over such a perfecting amendment to a measure). However, the amendment to insert, as a first-degree amendment, is open to an amendment in the second degree, which may be either a perfecting amendment or a substitute amendment.

Once the second-degree amendment is disposed of, another perfecting or substitute amendment may be proposed to the pending first-degree amendment so long as a subsequent second-degree

[5] There is no companion figure for *Riddick's* **Figure 5**, "Amendment to Strike." The tree that can develop in that situation is depicted in **Figure 3**.

amendment does not propose only to amend matter in the first-degree amendment that has already been amended. The process of offering and disposing of second-degree amendments may continue until no further second-degree amendments are proposed or until the entire text of the first-degree amendment has been amended. After acting on all second-degree amendments, the Senate proceeds to vote on the first-degree amendment, if and as amended.

If a second-degree perfecting amendment is offered—that is, an amendment to alter or perfect the matter proposed to be inserted—no further amendments are in order until the second-degree amendment is disposed of. The second-degree perfecting amendment may propose to delete, insert, or replace matter in the first-degree amendment.

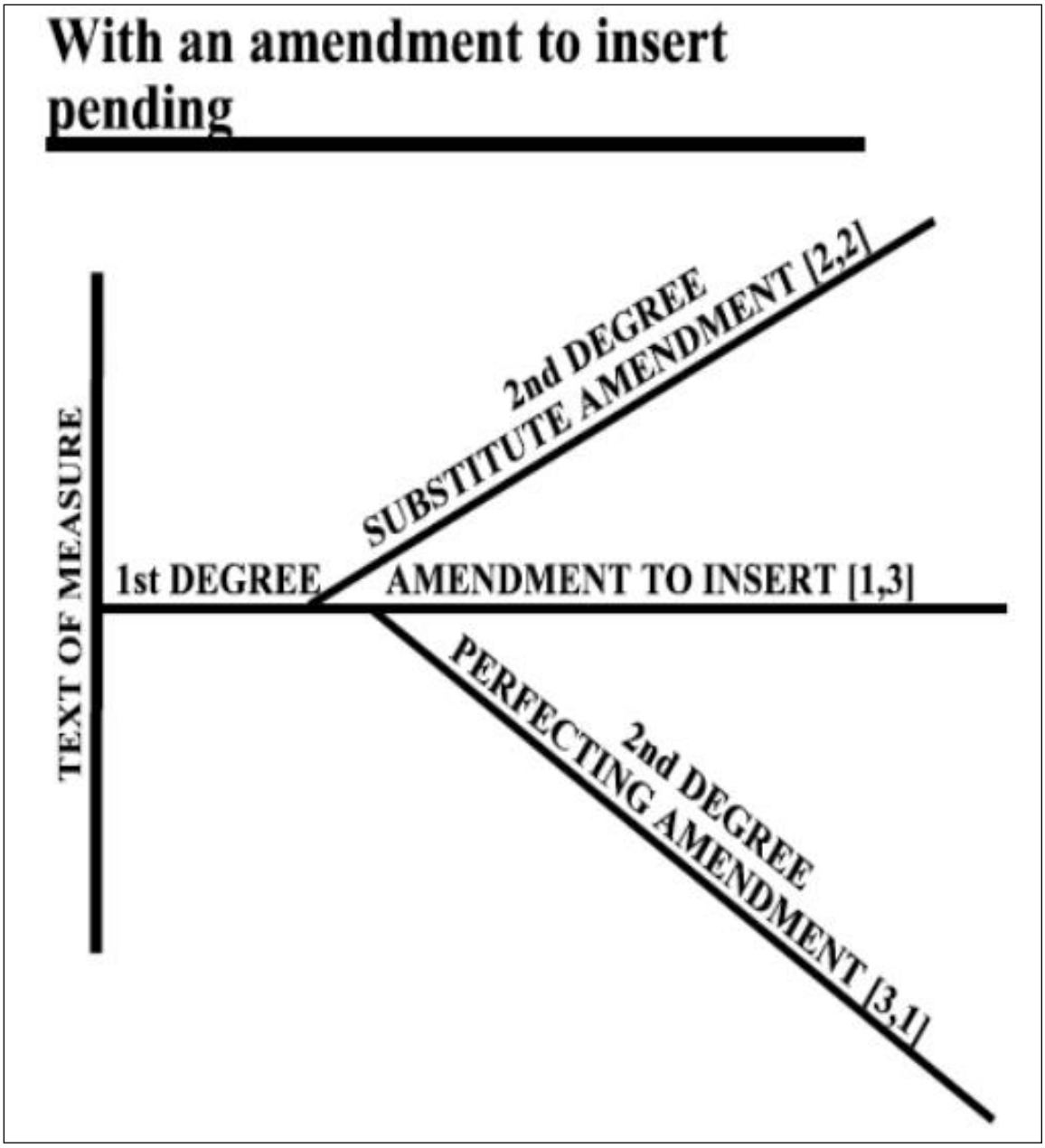
The order in which the second-degree amendments are offered is decisive. Because a perfecting amendment has precedence over a substitute amendment directed to the same text (in this case, the text being the first-degree amendment), a second-degree perfecting amendment may be offered before the Senate votes on a pending second-degree substitute. The converse, however, is not true: A second substitute is not in order while a second-degree perfecting amendment is pending.

A second-degree substitute amendment may be offered if the first amendment in the second degree to be offered is a substitute rather than a perfecting amendment or if a second-degree substitute is offered when a second-degree perfecting amendment is not already pending. In such a case, while the second-degree substitute is pending to the first-degree perfecting amendment, it is also in order for a Senator to offer a second-degree perfecting amendment to the first-degree amendment. (See **Figure 2** and **Figure 1**.)

If second-degree perfecting and substitute amendments are pending at the same time to a first-degree amendment to insert, the Senate acts first on the second-degree perfecting amendment and then on the second-degree substitute amendment; after disposing of both second-degree amendments, the Senate then acts on the first-degree amendment, if and as amended. This voting order also reflects the principles of precedence: The perfecting amendment has precedence over the substitute amendment directed to the same text, and both second-degree amendments have precedence over the first-degree amendment.

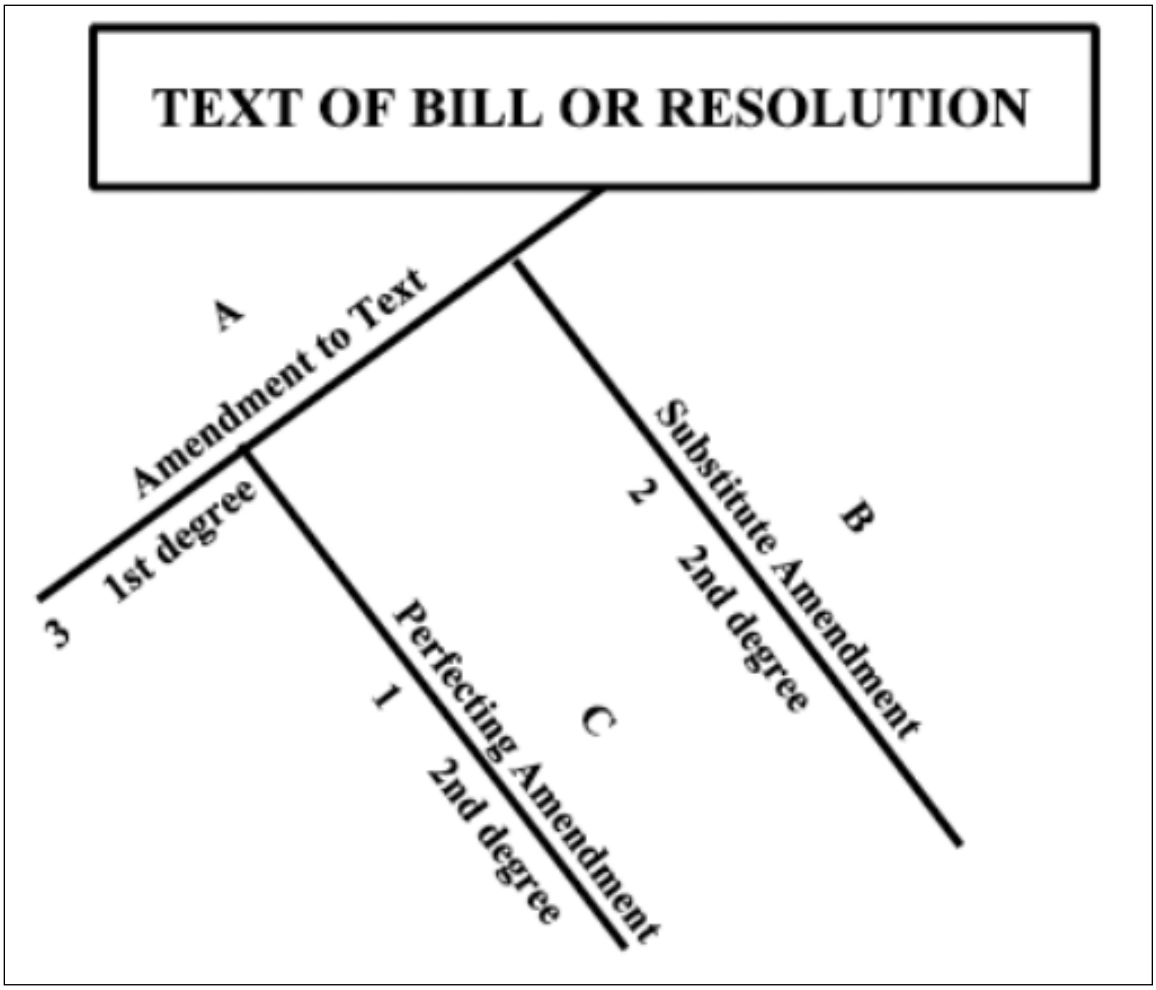
Thus, when the first amendment is a first-degree perfecting amendment, there may be three amendments pending at the same time: the first-degree perfecting amendment to insert additional matter, a second-degree perfecting amendment to that amendment, and a second-degree substitute amendment. After the Senate acts on the second-degree perfecting amendment, Senators may offer other such amendments one at a time, and the Senate acts on each of them before acting on the second-degree substitute. By the same token, if the second-degree substitute is rejected or tabled, another such substitute may be proposed, and while it is pending, additional second-degree perfecting amendments may be offered. Neither of the second-degree amendments is open to amendment, because third-degree amendments are prohibited.

Figure 1. Amendment to Insert



(x,y) = order of offering, order of voting

Figure 2. *Riddick's* Amendment to Insert



A through C = order of offering
1 through 3 = order of voting

With an Amendment to Strike Out and Insert Pending

When a Senator proposes a first-degree amendment in the form of a motion to strike out and insert and does so when no other such amendment is pending, that motion to strike out and insert is considered to be a substitute amendment for part of the measure, and as many as four other amendments may be pending simultaneously—but only if the amendments are offered in a specific order. (See **Figure 4** and **Figure 3**.)

A first-degree substitute for part of the measure is open to an amendment in the second degree, and the second-degree amendment may be either a perfecting amendment or a substitute amendment. If a second-degree perfecting amendment is offered, no additional amendments to the first-degree substitute are in order until the Senate acts on the second-degree amendment. At that time, a second-degree substitute amendment or another second-degree perfecting amendment may be offered while the first-degree substitute remains pending.

If a Senator offers a second-degree substitute amendment for the pending first-degree substitute, a second-degree perfecting amendment may also be offered while the first- and second-degree

substitute amendments are pending. The second-degree substitute must be offered before any second-degree perfecting amendment has been offered or after one or more second-degree perfecting amendments have already been offered and acted on. With a second-degree substitute amendment pending, the Senate may consider and act on a series of second-degree perfecting amendments before it votes on the second-degree substitute. Should the second-degree substitute be rejected or tabled, another such substitute may be offered, and while it is pending, additional second-degree perfecting amendments may be offered to the first-degree substitute amendment.

To this point, the tree is the same for a first-degree perfecting amendment that would insert language and a first-degree substitute amendment. But with the substitute amendment, further branches of the tree may develop—more amendments may be offered.

When a substitute amendment for part of the measure is pending and a second-degree perfecting amendment or a second-degree substitute amendment, or both, is pending to the first-degree substitute, it is also in order for a Senator to offer a perfecting amendment to the part of the measure that the first-degree substitute would strike out and replace. That is because a perfecting amendment has precedence over a substitute amendment that is directed to the same text, and the perfecting amendment also has precedence over an amendment to the substitute. As a result, first-degree perfecting and substitute amendments may be pending to the same part of the measure at the same time. The perfecting amendment may take the form of an amendment to insert, to strike out, or to strike out and insert. Moreover, because the perfecting amendment to the measure is a first-degree amendment, it is open to an amendment in the second degree.

With a substitute amendment pending for part of the measure, therefore, as many as four additional amendments may be pending simultaneously: (1) a second-degree substitute amendment for the first-degree substitute, (2) a second-degree perfecting amendment to the first-degree substitute, (3) a first-degree perfecting amendment directed to the same part of the measure that the first-degree substitute would strike out and replace, and (4) a second-degree perfecting or substitute amendment directed to the first-degree perfecting amendment.

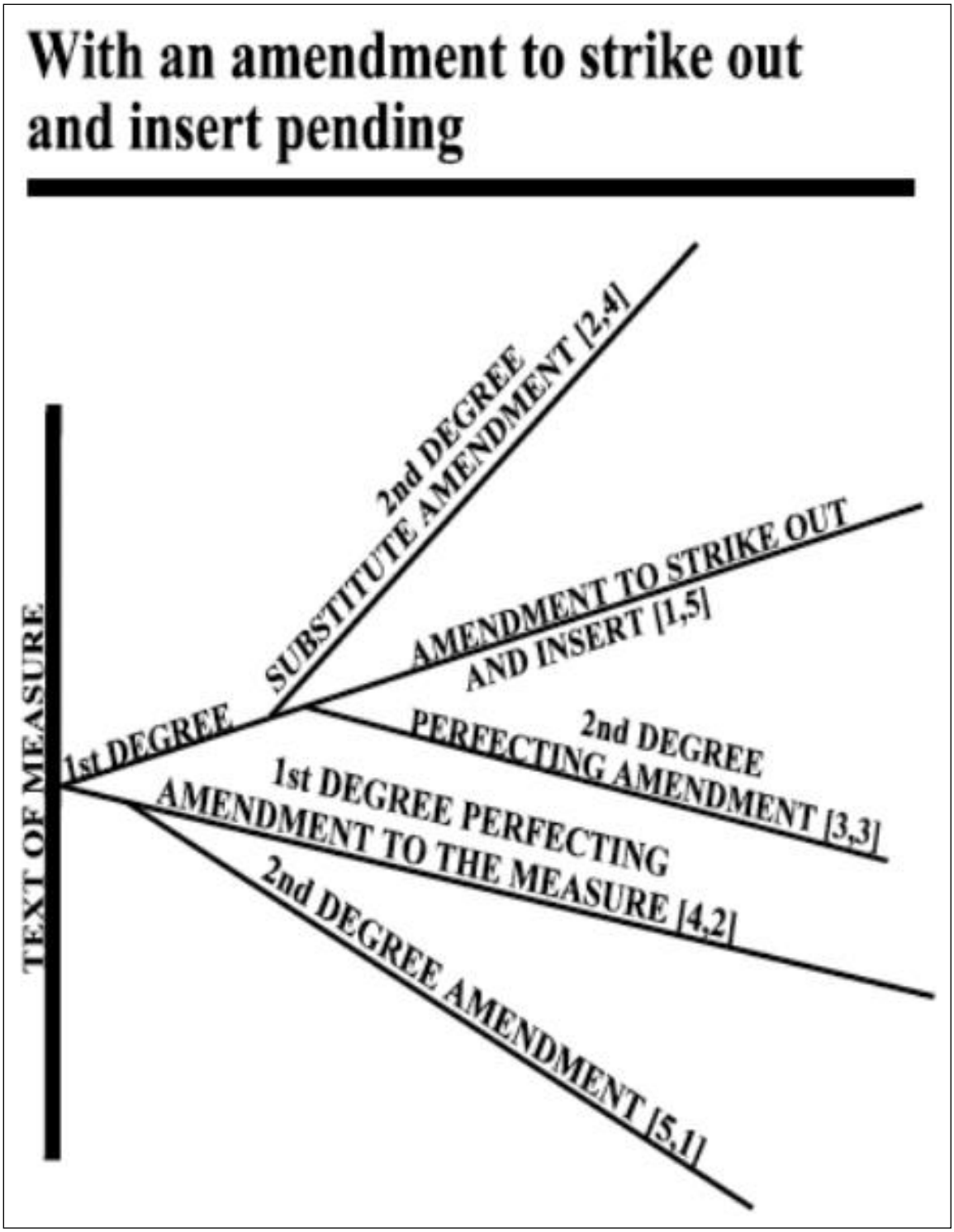
When a substitute amendment for part of the measure is pending, the first-degree perfecting amendment to the measure may be a motion to strike out and insert, but if so, it proposes to replace less of the measure than the initial motion to strike out and insert. This is one situation in which a first-degree amendment is considered to be a perfecting amendment even though it might be treated as a substitute amendment under other circumstances. For example, if the first-degree substitute amendment (the first motion to strike out and insert to be offered) proposes to replace a title of the measure, the first-degree perfecting amendment may propose to replace an entire section of that title. This latter amendment would be considered a substitute if no other amendments were already pending, but it is treated as a perfecting amendment if it is offered while a substitute amendment for a larger part of the measure is pending.

For all five amendments to be pending simultaneously, they must be offered in exactly the order in which they were listed earlier. If the various amendments are not proposed in the specific order noted in **Figure 3** and **Figure 4**, only part of the five-branched tree may develop.

If part or all of this tree does develop, the order of voting is the reverse of the order in which the amendments are offered. The Senate acts first on perfecting amendments to the measure; the first vote occurs on the second-degree amendment (or on a tabling motion), after which the Senate disposes of the first-degree perfecting amendment to the measure (if and as amended). The Senate then acts, in order, on the second-degree perfecting amendment to the first-degree substitute, the second substitute for the first-degree substitute, and, finally, the first-degree substitute (if and as amended).

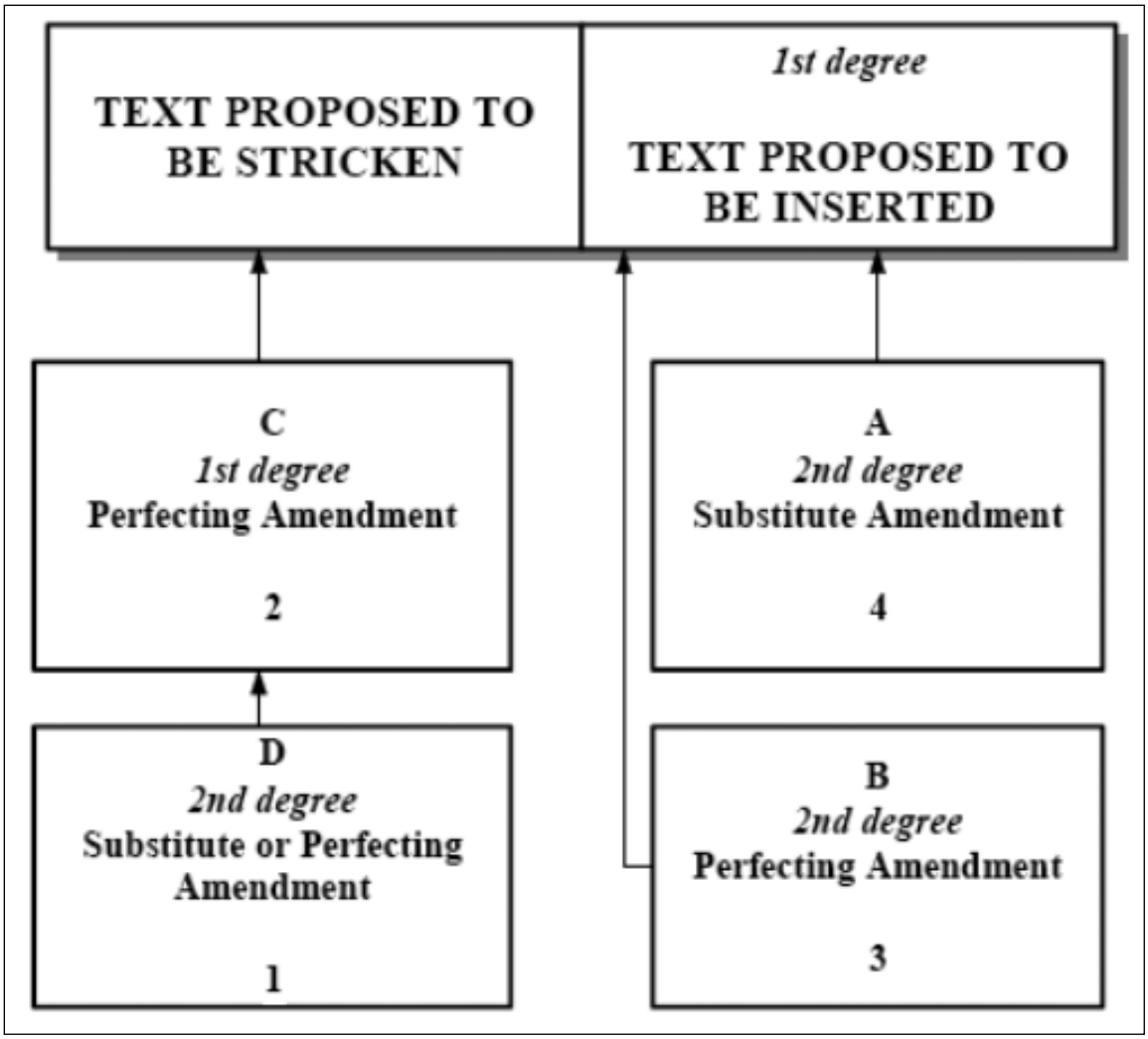
The five amendments may not be disposed of in any other order (except by unanimous consent), but the Senate may consider and act on several amendments on one branch of the amendment tree before it turns to the amendment on the next branch in order. For example, if all five amendments have been offered, and the Senate has acted on the first- and second-degree perfecting amendments to the measure, Senators may offer additional such amendments, and they must be acted on before the Senate acts on the second-degree amendments to the first-degree substitute. Similarly, once the text of the measure has been perfected, a succession of second-degree perfecting amendments to the first-degree substitute may be proposed and acted on before a vote occurs on the second-degree substitute. If the first-degree substitute (if and as amended) is finally rejected by the Senate, another first-degree substitute may be offered, and the amendment tree may develop once again.

Figure 3. Amendment to Strike and Insert



(x,y) = order of offering, order of voting

Figure 4. *Riddick's* Amendment to Strike and Insert (Substitute for Section of a Bill)



A through D = order of offering to get all the above amendments before the Senate

1 through 4 = order of voting

With an Amendment to Strike Out Pending

An amendment (or motion) to strike out is not amendable. However, Senators may offer amendments to the part of the measure that is proposed to be stricken. A motion to insert has precedence over a motion to strike out; therefore, an amendment may be offered to insert new matter in the text against which a motion to strike out is pending.

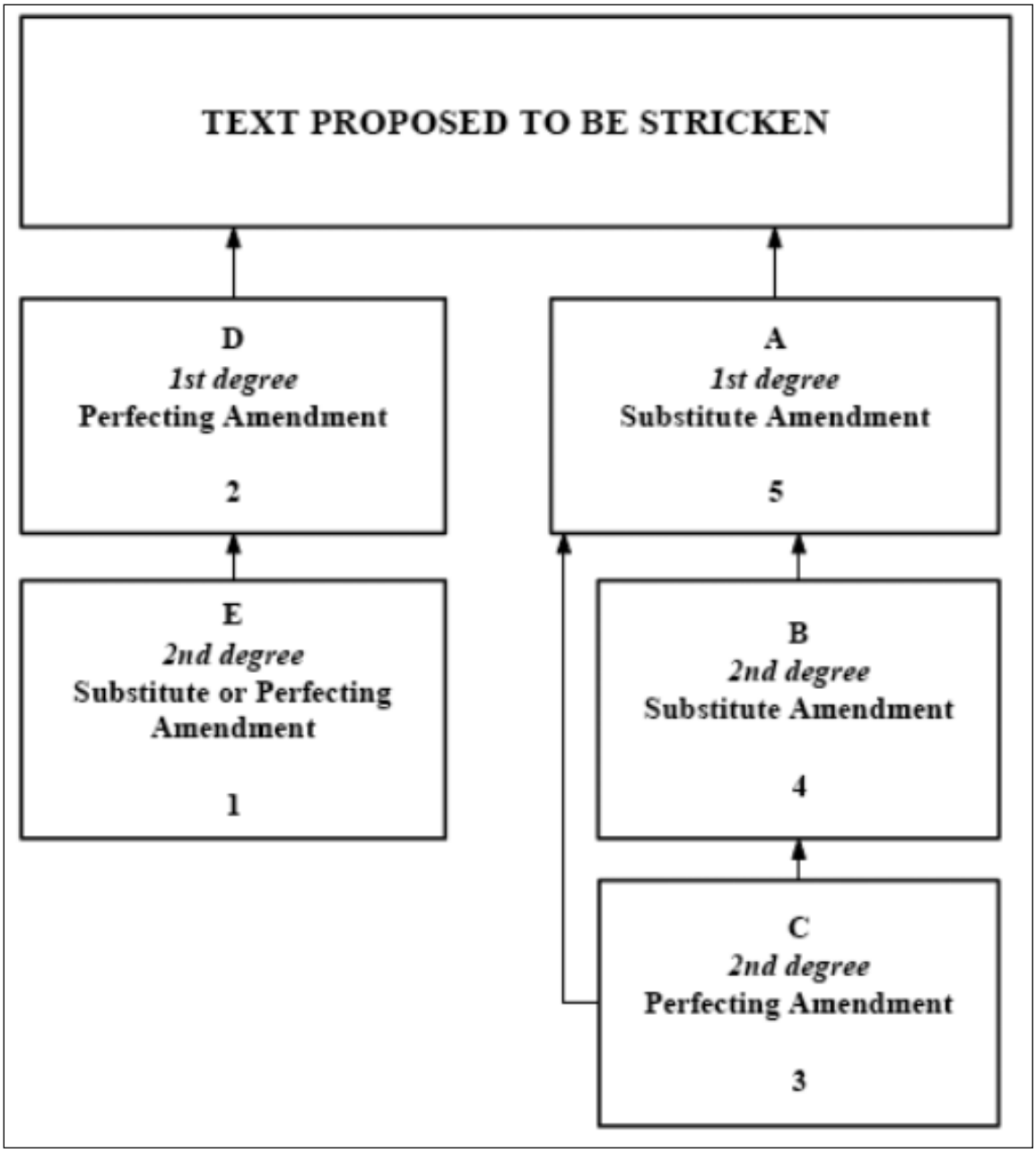
After one Senator has moved to strike out some matter from a measure, it is in order for another Senator to move to strike out only part of that matter. Under these circumstances, one may think of the first motion to strike out as akin to a substitute amendment—in that it proposes to substitute nothing for something—and the second motion to strike out as a perfecting amendment—proposing to strike out less than the first motion.

Senate precedents permit variations of the amendment trees in **Figure 2** and **Figure 4** (**Figure 1** and **Figure 3**) to develop after a motion to strike out has been offered and before the Senate votes on it. Which of these amendments (and how many of them) may be offered while a motion to

strike out is pending depends first on the next amendment that is called up—that is, whether it is an amendment to strike out and insert that would replace all of the text proposed to be stricken—and then on the other amendments that Senators seek recognition to offer.

The maximum number of amendments that Senators can offer with a motion to strike out pending is depicted in **Figure 5** of *Riddick's Senate Procedure*. These five amendments to the text proposed to be stricken are the same five amendments shown in **Figure 3**, when the pending first-degree amendment was to strike out and insert. In other words, the amendment tree in **Figure 3** may develop while a motion to strike out is pending if the first amendment offered after the motion to strike out is a complete substitute for the text proposed to be stricken. That motion to strike out and insert is amendable by a perfecting amendment, a substitute amendment, or both, and while any or all of these amendments are pending, Senators may propose perfecting amendments in two degrees to the text that is proposed to be stricken or entirely replaced.

Figure 5. *Riddick's* Amendment to Strike



A through **E** = order of offering to get all of the above amendments before the Senate

1 through **5** = order of voting

If the motion to strike out is followed by either a motion to insert or a motion to strike out and insert that would replace only part of the text proposed to be stricken, fewer amendments would be in order. Either amendment is considered to be a perfecting amendment, and it may be amended in the second degree. However, only one second-degree amendment may be pending at a time; Senators may not offer both the second-degree perfecting amendment and the second-degree substitute amendment depicted in **Figure 1** before either is voted on. Finally, if the motion to strike out is followed by a motion to strike out less of the text that is at issue, neither motion to strike out is amendable.

Since **Figure 3** may develop with a motion to strike out pending, there can be as many as three amendments offered to change a section (or any part) of a measure before the Senate must act on any one of them—a motion to strike out the section, an amendment to strike out and insert that constitutes a complete substitute for the section, and an amendment to perfect the section (by inserting, striking out, or striking out and inserting).

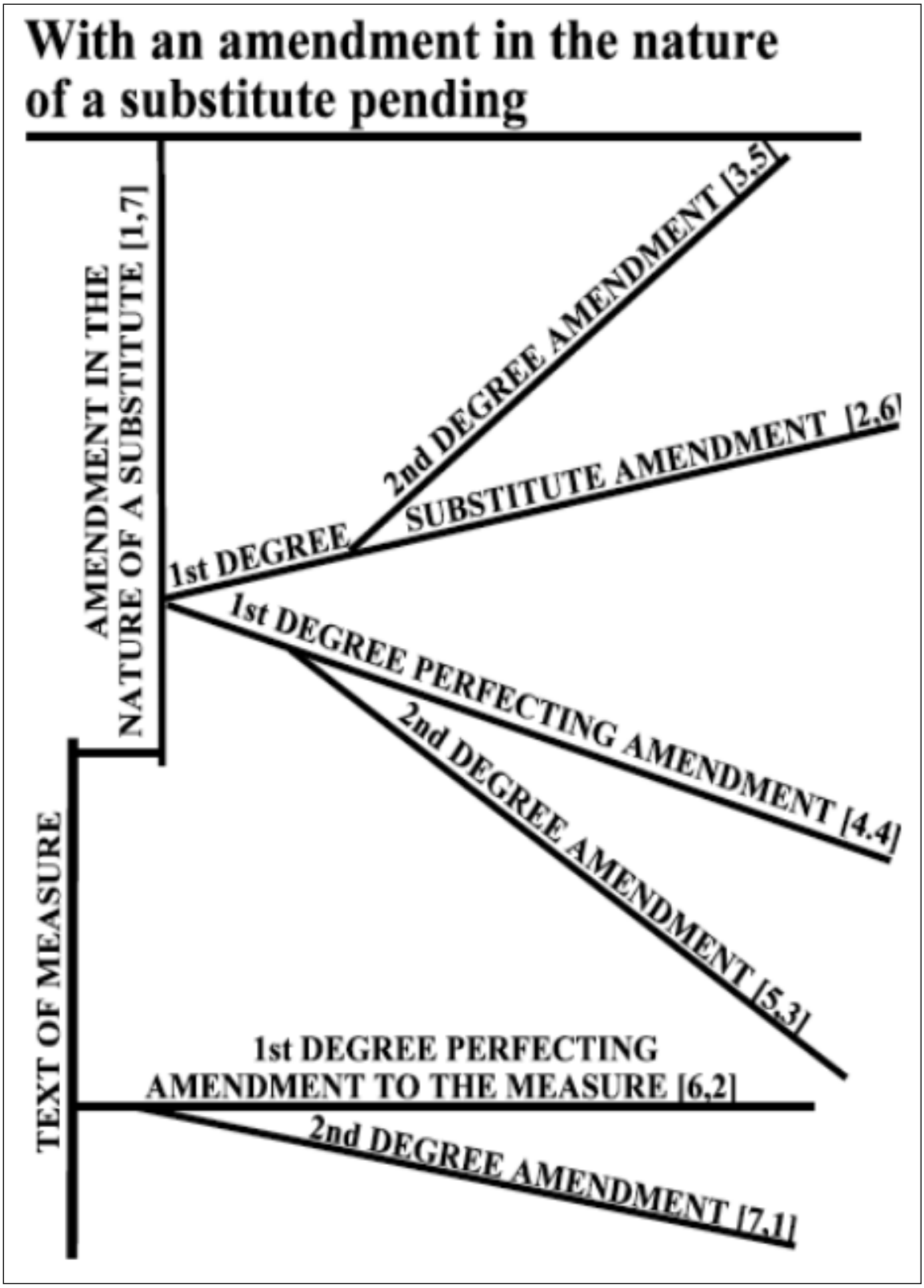
The Senate acts on any and all of the amendments that "come behind" a motion to strike out before it then acts on that motion to strike out. If a Senator offers an amendment to perfect the text proposed to be stricken, the Senate votes on that amendment (as and if amended), and then it proceeds to vote on the motion to strike out. If that motion is agreed to, the effect is to remove the text at issue, as it has been perfected. On the other hand, if the Senate agrees to a complete substitute for the text proposed to be stricken, the motion to strike out falls automatically without being voted on. The entire text in question having been amended, the motion to strike out would constitute an attempt to re-amend that text and, therefore, is no longer in order.

It should be noted that it would be highly unusual for all of the amendments depicted in **Figure 3** to be proposed after an amendment to strike out is offered. Also, the opportunity to perfect or substitute for the text that a motion to strike out proposes to eliminate is available only when the motion to strike out is directed to a part of the text of a measure or to a part of a complete substitute for the text of the measure (which is treated as an original question for purposes of amendment). If a Senator offers a second-degree perfecting amendment that proposes to strike out part of a first-degree amendment, that part of the first-degree amendment may not be perfected while the motion to strike out is pending.

With an Amendment in the Nature of a Substitute Pending

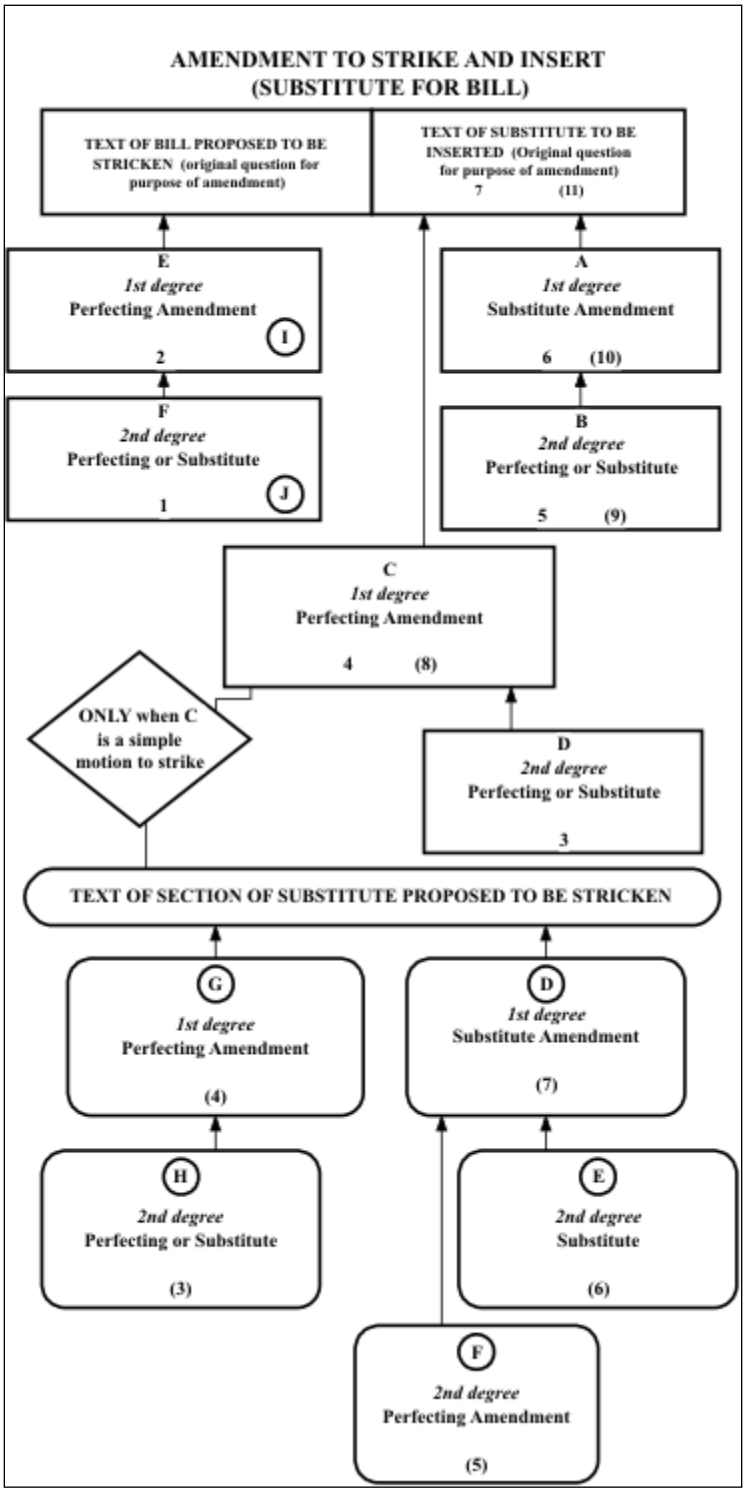
The most complex amendment tree can develop when a Senator or Senate committee proposes an amendment in the nature of a substitute for the full text of the measure—that is, a complete substitute that proposes to strike out all after the enacting (or resolving) clause of the measure and replace it with a completely different text. Individual Senators do not offer such amendments very often, but it is a common practice for Senate committees to report a House or Senate measure with an amendment in the nature of a substitute that preserves the original number of the bill or resolution while proposing to replace its entire text.

Figure 6. Amendment to Strike and Insert (Substitute for Bill)



(x,y) = order of offering, order of voting

Figure 7. *Riddick's* Amendment to Strike and Insert (Substitute for Bill)



A through J = order of offering to have all amendments pending at the same time

1 through 11 = order of voting

Circled and parenthetical material apply only when C is a motion to strike

Under the precedents of the Senate, such an amendment is treated as an original question for purposes of amendment under either of two circumstances: (1) when it is a reported committee amendment that becomes pending automatically when the measure itself is called up, or (2) when an individual Senator offers it at a time that no other amendment of any kind is pending.

As an original question for purposes of amendment, such a complete substitute is not considered to be a first-degree amendment that may be amended in only one further degree. Instead, both the amendment in the nature of a substitute and the text of the measure itself may be amended in two degrees, creating the possibility of seven or even 11 amendments pending simultaneously. (See **Figure 3**, **Figure 6**, and **Figure 4**.)

To repeat, when an amendment in the nature of a substitute is considered as an original question, it is amendable in two degrees. A Senator may propose a first-degree amendment that is a substitute for the amendment in the nature of the substitute for the measure; the effect of such an amendment is to propose a third version of the text of the bill or resolution. It is then in order also to offer a first-degree perfecting amendment to the text of the substitute for the measure that the first-degree substitute would replace. Furthermore, both the first-degree substitute amendment and the first-degree perfecting amendment are open to amendments in the second degree.

Only one second-degree amendment may be pending at a time to each of the first-degree amendments. Second-degree perfecting and substitute amendments may not be pending at the same time to either the first-degree perfecting amendment or the first-degree substitute amendment.

Even when any or all of these amendments are pending to the amendment in the nature of a substitute, the text of the measure itself is amendable in two degrees. Any first-degree amendment to the measure is considered to be a perfecting amendment, even though it might be a substitute under other circumstances, because it must affect less of the measure than the pending amendment in the nature of a substitute. Furthermore, this perfecting amendment to the text of the measure may be amended by either a perfecting amendment or a substitute amendment in the second degree, but second-degree perfecting and substitute amendments may not both be pending simultaneously.

Once a perfecting amendment is offered to the text of the measure, no further amendments are in order to the amendment in the nature of a substitute until the Senate disposes of that perfecting amendment and any amendment proposed to it.

Thus, as many as seven amendments may be pending at the same time—but only if offered in the following order:

1. The amendment in the nature of a substitute, considered to be an original question for purposes of amendment;
2. The first-degree substitute for the text of the amendment in the nature of a substitute;
3. The second-degree perfecting or substitute amendment directed to the first-degree substitute;
4. The first-degree perfecting amendment to the amendment in the nature of a substitute;
5. The second-degree perfecting or substitute amendment directed to the perfecting amendment to the amendment in the nature of a substitute;
6. The first-degree perfecting amendment to the text of the measure; and

7. The second-degree perfecting or substitute amendment directed to the first-degree perfecting amendment to the measure.

The order in which these amendments must be offered if they are all to be pending is dictated by their relative precedence—and primarily by the principle that a perfecting amendment (and an amendment to it) has precedence over a substitute amendment (and an amendment to it). This principle applies to the amendments depicted in **Figure 6**, whether the substitute in question is the amendment in the nature of a substitute or the first-degree substitute for that amendment.

If all seven amendments are pending simultaneously, the order for acting on them is the reverse of the order for offering them. First, the Senate perfects the original text of the measure, considering and acting on any second-degree amendments, one at a time, before acting on the first-degree amendment, if and as amended. Other perfecting amendments to the measure then may be offered, amended, and acted on. Second, the Senate disposes of the perfecting amendments (and amendments to them) to the amendment in the nature of a substitute. Third, the Senate turns to the amendment to the first-degree substitute and then to the first-degree substitute as it may have been amended.

Motions to Commit or Recommit and Amendment Trees

In addition to amendments to a measure, Senators may also offer motions to commit or recommit the measure to committee. Such a motion may be offered even when an amendment tree is full. A motion to commit or recommit would send the bill to a specified committee, if it is successful, and may be offered with or without instructions. Motions that include instructions typically contain language that would instruct a committee to amend the bill. Those instructions may be amended to two degrees: a first-degree amendment to the instructions and a second-degree amendment to the amendment.

Restrictions on Amendments

In General

In addition to the limitations on the amending process that have already been noted—for example, the general prohibition against third-degree amendments—the Senate imposes a number of other restrictions on the amendments that its members may offer. Several of these restrictions are a matter of precedent and apply to all amendments. It is not in order, for instance, to offer an amendment that is substantially the same as an amendment that has already been offered and disposed of unfavorably (for example, an amendment that has been tabled). However, a Senator may offer part of a previously rejected or tabled amendment as a separate amendment, and an amendment that has been rejected or tabled may be re-offered as part of a later amendment that proposes other changes as well. An amendment that has been offered and withdrawn may be offered again without being substantially changed, except under cloture. (See “Modification, Withdrawal, and Division of Amendments.”)

Under some circumstances, the substance of an amendment that has been offered and agreed to may be proposed a second time. For example, if the Senate has agreed to an amendment to a substitute for part or all of the measure, an amendment with the same effect may also be proposed to the text of the measure that the substitute would replace. In this way, the effect of the amendment is certain to survive, regardless of the fate of the substitute.

Once the text of a measure or first-degree amendment has been amended, it is not in order to propose an amendment that would simply re-amend the text already amended (with certain limited exceptions made by the Congressional Budget and Impoundment Act). However, a Senator may offer a second amendment that takes a "bigger bite" out of the measure or first-degree amendment—that is, an amendment that re-amends text that has already been amended but does so in the process of proposing a substantive change in a larger unamended part of the text. For example, after the Senate has adopted an amendment that changes provisions within a section of a measure, a substitute for the whole section is in order. Similarly, after substitutes have been adopted for several sections of a title, a Senator may move to strike out the entire title. But once the Senate agrees to an amendment for the entire text of a measure (or first-degree amendment), no further amendments to that text are in order, because there is no part of the measure (or first-degree amendment) that has not already been amended.

An amendment that would amend a measure in several different places is actually a series of amendments that may be considered *en bloc* without objection or by unanimous consent.

A second-degree amendment should affect the same portion of the measure as the first-degree amendment to which it is offered. By the same token, while a substitute is pending for part of a measure, any perfecting amendment to the measure should deal with the same part of the measure that the substitute would replace.

Germaneness and Relevancy

Rule XVI of the Standing Rules of the Senate require that first-degree amendments be germane only when offered to general appropriations measures. And Rule XXII lists the same requirement when cloture has been invoked. Some statutes also impose a germaneness requirement—for example, Section 305(b) of the Congressional Budget and Impoundment Act prohibits non-germane amendments to concurrent budget resolutions. Amendments to budget reconciliation bills must also be germane. Under all other circumstances, there is no rule limiting the subjects of amendments.

Senators may impose a germaneness requirement on themselves as part of unanimous consent agreements. It has also become common in recent years for the Senate to, by unanimous consent, establish a super-majority vote threshold (usually 60 votes) for passage of non-germane amendments. An agreement that limits and divides control of the time for debating a measure and all amendments thereto may include an additional provision that "no amendment that is not germane to the provisions of the said bill shall be received." Senators who wish to protect their right to offer non-germane amendments may object to the inclusion of the germaneness provision or request that their proposed amendments be specifically exempted under the terms of the agreement.

Alternatively, the Senate usually includes in unanimous consent agreements the requirement that amendments to a specific bill must be relevant. To be relevant, an amendment must not introduce a subject that the bill does not already address. It is possible for an amendment to be relevant but not germane—for example, if the amendment were to expand the applicability of the bill or the authority it grants. The Parliamentarian advises the presiding officer and other Senators as to whether amendments qualify as germane or relevant.

On General Appropriations Measures

The Senate imposes certain special restrictions on the amendments that may be offered to *general* appropriations measures. A general appropriations bill is a measure that appropriates funds for

more than a single, specific purpose or program. The regular annual appropriations bills, some supplemental and deficiency appropriations bills, and joint resolutions making continuing appropriations have generally been held by the Senate to be general appropriations bills.

Rule XVI of the Senate is devoted to the subject of appropriations measures and amendments to them. Because of the long-standing practice that general appropriations are enacted into law as House bills, much of this rule is framed in terms of Senate amendments to House-passed appropriations bills. These practices have been fluid, however. Prior to the mid-1990s, the Senate Appropriations Committee typically reported general appropriations bills in the form of the House-passed bill with a series of individual amendments adopted in their markup. In recent years, particularly for appropriations measures on which the House had not acted, initial Senate action has sometimes been in the form of an original bill reported from the Senate Appropriations Committee. In current practice, the Appropriations Committee has typically reported general appropriations bills in the form of the House-passed bill with a committee substitute.

Generally, the provisions of Rule XVI are designed to preserve a separation between the process of appropriating funds and the process of enacting substantive legislation, including authorizations and re-authorizations. However, each of the restrictions in the rule is modified by exceptions derived either from the rule itself or from precedents. In some respects, these exceptions are so major that the Senate cannot be said to enforce a strict separation between appropriations on the one hand and authorizations and other substantive legislation on the other. Certainly the restrictions on amendments to general appropriations measures are not nearly as severe in the Senate as they are in the House.

Paragraphs 1, 3, and 7 of Rule XVI address the relationship between authorizations and appropriations. Paragraphs 2, 4, and 6 restrict the inclusion of other legislative provisions in general appropriations measures.

Paragraph 1 deals with appropriations amendments, whether recommended by a Senate committee or offered by a Senator in his or her individual capacity. Under the terms of this paragraph, no amendment may propose to add or increase an item of appropriation unless it meets one of four conditions. Such an amendment is in order (1) if it has already been authorized by law or treaty, (2) if it would carry out the provisions of a bill or joint resolution already passed by the Senate during that session, even if the measure has not yet been enacted into law, (3) if it is recommended by the Appropriations Committee or a Senate committee with legislative jurisdiction over the subject of the amendment, or (4) if the appropriation amendment is "proposed in pursuance of an estimate submitted in accordance with law."

The Senate may consider an amendment making an unauthorized appropriation if the authorization has passed the Senate alone or if the appropriation is recommended by the Appropriations Committee. The Appropriations Committee is free to propose any appropriation it wishes, whether authorized or not. The existence of a statutory authorization is merely one of the conditions, not a necessary one, by which an appropriation amendment is eligible for consideration in the Senate.

Paragraph 3 requires that, when an amendment to add or increase an appropriation is offered at the direction of any other Senate committee, the amendment is to be referred to the Appropriations Committee at least one day before it is offered on the floor. This procedure, which is very rarely invoked, is designed to give the Appropriations Committee an opportunity to examine the proposed amendment but not to prevent the Senate from considering it. Paragraph 3 also provides that the appropriation proposed in any such amendment may not be increased by a further amendment on the Senate floor.

Paragraph 7 of the rule requires that the reports of the Appropriations Committee on general appropriations bills must indicate all amendments they are proposing for appropriations that do not have prior Senate or statutory authorization.

Other provisions of Rule XVI address the inclusion of legislative amendments in general appropriations measures. Paragraph 2 deals with amendments recommended by the Appropriations Committee; legislative amendments proposed by other committees or individual Senators are the subject of paragraph 4.

Paragraph 2 prohibits the Appropriations Committee from reporting an appropriations measure "containing amendments proposing new or general legislation." However, the rule implicitly acknowledges that limitation amendments are in order—amendments that impose some restrictions on how appropriations may be expended without, for example, repealing or amending existing statutory authorities. No such limitation amendment is in order under paragraph 2 if its effect is dependent on some contingency, such as the subsequent enactment of an unrelated measure.

Paragraph 4 imposes similar restrictions on amendments to general appropriations bills other than those recommended by the Appropriations Committee. No such amendment may propose general legislation except in the form of a limitation, and no limitation may be tied to the occurrence of a contingency. In addition, this paragraph imposes a germaneness requirement on all amendments to general appropriations bills, even amendments recommended by the Appropriations Committee.

Although the precedents cited in *Riddick's Senate Procedure* do not provide clear and explicit criteria for determining in all cases whether a particular limitation amendment is in order, paragraph 6 of Rule XVI directs that points of order against questionable limitations should be sustained.[6] However, the Senate enjoys somewhat greater discretion when it amends a limitation that has already been passed by the House. If the House includes a limitation (or some other legislative provision) in a general appropriations bill, the limitation is subject to germane amendments in the Senate, even if the amendments would have the effect of changing existing law. If the House of Representatives "opens the door" by incorporating legislation in a general appropriations bill, the Senate allows itself the opportunity to walk through that door and perfect or replace the House's language. This opportunity does not exist if the Senate acts on a Senate version of an appropriations bill.

The Senate's germaneness requirement and the prohibition against legislative amendments apply only to general appropriations measures. Thus, amendments to special appropriations bills, which appropriate funds for only one agency, need not be germane and may be legislative in character and effect. Moreover, Senate rules and precedents do not prohibit legislative measures from including appropriations, but this asymmetry is more apparent than real because the House may well refuse to consider an appropriation originating in the Senate. Also, special appropriations bills are rarely used.

Paragraph 8 of Rule XVI states that no general appropriations bill, or amendment to such a bill, shall be considered if it would reappropriate unexpended balances of appropriations—that is, if it would continue the availability of appropriations that would otherwise lapse—unless "in continuation of appropriations for public works on which work has commenced." The rationale underlying this prohibition is that money should be appropriated anew each year so that Congress can accurately gauge the annual costs of federal activities. Paragraph 5 of the same rule prohibits

[6] For more information, see CRS Report R41634, *Limitations in Appropriations Measures: An Overview of Procedural Issues*, by Jessica Tollestrup .

amendments to general appropriations bills that would provide funds for a private claim unless the proposed amendment would carry out the provisions of some existing law or treaty.

Congressionally Directed Spending

Senate Rule XLIV establishes a requirement for the submission of certain information to the *Congressional Record* if an amendment is offered on the Senate floor that proposes a new congressionally directed spending item or a limited tax or tariff benefit.[7]

Points of Order Against Amendments

Under regular Senate procedure, a Senator who has the floor can make a point of order against an amendment at any time after the amendment is offered but before the Senate begins to act on it. When an amendment is being considered under a unanimous consent agreement limiting debate, no point of order may be made against the amendment until at least all of the proponent's time for debating it has expired or has been yielded back. In either case, a point of order may not be made against only part of an amendment; if a point of order is sustained against any portion of an amendment, the entire amendment is tainted and is out of order. However, the Senator offering an amendment may modify it even while a point of order is pending against it so long as the Senate has not already taken some action on the amendment. (See "Modification, Withdrawal, and Division of Amendments.")

Rule XX provides that most questions of order are to be decided by the presiding officer, but he or she may submit any question of order directly to the Senate instead. Some questions of order must be decided by a vote of the Senate itself, not by the presiding officer; for example, only the Senate as a whole may decide whether a measure or amendment is out of order on the grounds that it is unconstitutional. Similarly, Rule XVI requires that questions of germaneness raised against proposed amendments to general appropriations bills be submitted directly to the Senate and decided without debate.

When a point of order is to be decided by the presiding officer, Senators have no right to debate it, although the chair may entertain as much or as little debate as he or she chooses. Points of order to be decided by the Senate are generally debatable unless a rule provides otherwise, as in the case of questions of germaneness on general appropriations bills. Time agreements on measures usually limit debate relating to points of order, and questions of order are not debatable when the Senate is operating under cloture.

In most cases, a proposed amendment may be ruled out of order without affecting the status of the measure to which it is offered. For example, if an amendment to add or increase appropriations on a general appropriations bill is ruled out of order, the Senate proceeds to consider other amendments to the bill. However, if the Appropriations Committee proposes an amendment to add new or general legislation to such a measure, a point of order may be made against the bill itself; if the point of order is sustained, the bill is recommitted to the committee. If a point of order is made against any amendment to a general appropriations bill on the grounds that it is legislative in character, a Senator may raise the question of germaneness before the point of order is decided. If the Senate votes that the amendment is germane, the point of order falls automatically; the presiding officer does not rule on it.

[7] For more information, see CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by Megan S. Lynch.

The most frequent bases for points of order against amendments are those already mentioned: the germaneness or relevancy requirement when in force and the restrictions on amendments to general appropriations bills under Rule XVI. In addition, points of order may be made against amendments for violating one of several provisions of the Congressional Budget and Impoundment Act of 1974, as amended. The points of order that can be made in the Senate under these increasingly complex procedures are identified and described in CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

If the measure itself would violate a provision of the Congressional Budget and Impoundment Act, the Senate may adopt a resolution waiving that provision. Such a resolution protects consideration of the measure, but it does not protect amendments, including committee amendments, that may be offered to it. Under Section 904(b) of the Congressional Budget and Impoundment Act, an amendment (or provision of a measure) can be protected against certain points of order if a majority of the Senate agrees to a motion to waive the applicable provision of the act. Section 904(c) requires a vote of three-fifths of the entire Senate (not just the Senators present and voting) to waive other Congressional Budget and Impoundment Act and related statutory provisions.

Possible points of order against amendments may also be waived by unanimous consent agreements. If an agreement under which a measure is considered provides for a specific amendment, that amendment is protected against the general requirement imposed by the agreement that all amendments to the measure must be germane or relevant.

Any Senator may appeal the ruling of the presiding officer on a point of order, and such appeals are not unusual in the Senate. When a ruling is appealed, the Senate votes on whether it will sustain the ruling of the chair. There are no constraints, of course, on the criteria that Senators may apply in deciding how to vote on appeals.

Modification, Withdrawal, and Division of Amendments

Modification of Amendments

Under certain conditions, an amendment may be modified—that is, its text may be changed without the Senate acting on a second-degree amendment to it.

Except under cloture, a Senator who has offered an amendment may modify it, without unanimous consent, at any time before the Senate takes some action on the amendment. Under Senate precedents, the Senate has taken action for this purpose if (1) the yeas and nays have been ordered on the amendment, (2) the Senate has entered into a unanimous consent agreement limiting debate on that specific amendment, (3) the Senate has amended the amendment, or (4) the amendment itself has been agreed to, rejected, or tabled. An amendment may be modified even while a tabling motion or a point of order against the amendment is pending.

After the Senate has taken some action on an amendment, it may be modified only by unanimous consent. However, a Senator who has lost the right to modify his or her own amendment has another recourse: He or she may offer an amendment to his or her own amendment instead. This is the only condition under which a Senator may propose to amend his or her own amendment.

One Senator may modify an amendment offered by another Senator only by unanimous consent, and committee amendments may be modified only at the direction of the committee or by unanimous consent.

Withdrawal of Amendments

Even under cloture, a Senator who has offered an amendment may withdraw it from consideration, without unanimous consent, unless the Senate has already taken some action on it in one of the four ways listed above. The amendment may be withdrawn even while a point of order is pending against it. But after the Senate has taken some action on an amendment, it may be withdrawn only by unanimous consent. Withdrawing a first-degree amendment also eliminates any second-degree amendment that may be pending to it, even if the yeas and nays have been ordered on the second-degree amendment. An amendment that has been withdrawn may be re-offered at a later time, except under cloture.

One Senator may withdraw another Senator's amendment only by unanimous consent, and committee amendments may be withdrawn only by unanimous consent or at the direction of the committee.

Division of Amendments

Rule XV permits any Senator to demand that an amendment containing several propositions be divided into its component parts. The presiding officer determines, subject to appeal to the Senate, whether an amendment is susceptible to division—that is, whether its parts can stand independently. When an amendment is divided, each part is considered as if it were a separate amendment. After the Senate disposes of one part (division), the next division is placed automatically before the Senate for consideration.

An amendment may be divided even after the yeas and nays have been ordered on it. In such a case, a roll-call vote occurs on each part unless the order for the yeas and nays is vitiated by unanimous consent. Amendments considered *en bloc* may be divided only by unanimous consent.

Rule XVIII also includes an important exception: Motions to strike out and insert are not divisible. Consequently, the only amendments that are typically subject to demands for division are amendments to add new provisions to a measure or pending amendment.

Voting on Amendments

The Senate may act on an amendment either by voting on it directly or by voting on a motion to table the amendment. If an amendment is tabled, it is disposed of adversely and permanently (unless the Senate reconsiders the vote on the tabling motion). Tabling an amendment does not affect the status of the measure to which it was offered. Except under cloture or the provisions of certain rule-making statutes or by unanimous consent, the Senate may not vote on an amendment if there are Senators seeking recognition to debate it further (subject to the two-speech limit of Rule XIX). Under these circumstances, the motion to table offers two advantages: (1) It may be offered by a Senator who has the floor at any time after debate on the amendment has begun, and (2) the motion is not debatable. So a tabling motion can be used to end debate on an amendment but only if the Senate is prepared to reject the amendment. If a tabling motion is made and defeated, debate on the amendment may resume. Another motion to table the same amendment may not be made unless the amendment has been changed significantly or a substantial period of time has elapsed (in practice, normally three days).

Under a unanimous consent agreement that limits and divides control of the time for debating an amendment, a motion to table is not in order until at least all the proponent's time on the amendment has expired or has been yielded back, at which point the Senate may be ready to vote on the amendment itself. As a result, tabling motions are somewhat less frequent and useful when amendments are being considered under the terms of unanimous consent agreements.

In practice, the Senate usually votes on amendments and motions to table amendments either by voice vote or by roll-call vote. Division votes occur infrequently. The Constitution provides that a roll-call vote may be demanded by one-fifth of the Senators present, a quorum being present. Since a quorum of the Senate is 51 Senators, the minimum number required for demanding a roll-call is 11 (unless the number of Senators actually present was ascertained shortly before the demand).

The yeas and nays may be demanded on an amendment at any time that it is pending before the Senate but not before it is offered or while an amendment that has precedence is pending (except by unanimous consent). A roll-call vote may be demanded even after a voice or division vote has occurred but before the result has been announced. In practice, however, roll-call votes are normally ordered while debate on the amendment is still in progress. The yeas and nays must be ordered separately on a tabling motion, even if a roll-call has already been ordered on the amendment proposed to be tabled. The yeas and nays on a measure may be ordered at any time it is before the Senate, even while an amendment to the measure is pending.

The Senate acts on all amendments and tabling motions by majority vote of the Senators present and voting, even if offered during consideration of a measure or matter such as a constitutional amendment that requires a two-thirds vote for final action. The Constitution requires that a quorum (a majority of all Senators) must be present for the Senate to conduct business. But the Senate assumes that a quorum is always present unless a majority of Senators fail to respond to a quorum call or fail to participate in a roll-call vote. Consequently, a voice or division vote in which only a few Senators participate is still valid unless challenged.

Amendments Under Cloture

A decision by the Senate to invoke cloture, under the terms of Rule XXII, affects the amending process in a number of important respects.

First, the cloture rule imposes a time limit on the amending process. After the Senate has considered a matter under cloture for a total of 30 hours, no further amendments may be called up for consideration, and the Senate proceeds to vote on any pending amendments and then on the matter on which cloture was invoked. (The 30 hours for consideration may be increased by a three-fifths vote of all Senators.)

Second, no Senator may offer more than two amendments until every other Senator has had an opportunity to offer two amendments. This provision is intended to give every Senator a chance to offer some amendments during the 30 hours of consideration under cloture.

Third, to be in order under cloture, amendments must be submitted in writing to the Journal clerk by certain deadlines before the Senate votes on the cloture motion. Specifically, any first-degree amendment must be submitted by 1:00 p.m. on the day after the cloture motion is filed; any second-degree amendment must be received at least one hour before the Senate begins to vote on the cloture motion. The difference between these two deadlines is designed to give all Senators roughly one day to examine the first-degree amendments that may be proposed and to frame any second-degree amendments they may wish to offer.

Fourth, after cloture is invoked, all amendments must be germane to the matter under consideration. The presiding officer is also empowered in extreme circumstances to rule amendments out of order as being dilatory.

Fifth, the reading of an amendment is dispensed with automatically, not by unanimous consent, if it has been reproduced and available for at least 24 hours.

Sixth, unanimous consent is required to modify amendments—except for changes in page and line numbers that may be required if the matter under consideration is reprinted after cloture is invoked.

Finally, once an amendment has been submitted in writing, it may be called up by any Senator. Thus, any Senator may call up any amendment that is eligible for consideration under cloture. But once an amendment has been withdrawn under cloture, it may not be re-offered. Consequently, if one Senator offers and withdraws an amendment, another Senator may not bring the same amendment back before the Senate for a vote unless he or she had also submitted it in writing before cloture was invoked.

Author Information

Christopher M. Davis
Analyst on Congress and the Legislative Process

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