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Instructing Senate Conferees

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The Senate and House can create a conference committee to propose the final version of a bill that the two houses have passed in different forms. Sometimes, the Senate votes to instruct its conferees on the nature of the agreement they should reach. These instructions are not binding, and they may not ask conferees to reach an agreement that goes beyond their authority. Conferees may be instructed by motion only before they are appointed; thereafter, they may be instructed by resolution, amendment, or motion to recommit.

Restrictions on Instructions

Inasmuch as conference committees are negotiating forums, the two houses impose few general rules governing their work or restricting the content of the agreements they can reach. Instead, the Senate and House leave it largely to conferees themselves to decide how they can conduct negotiations most productively. Although practice nevertheless permits the Senate to instruct its conferees, all such instructions are limited in the following two ways:

1. Instructions to conferees are never binding. A point of order may never be sustained against a conference report because it is not consistent with instructions that the Senate gave its conferees; and
2. It is not in order to instruct Senate conferees to reach some agreement that is not within their authority as conferees.

In particular, rules of each house (in the Senate, Rule 28, paragraphs 3 and 4) require conferees to restrict their agreements to the “scope of the differences” between the Senate and House positions. In recent practice, however, any provisions may be considered to satisfy this requirement so long as they meet a standard of “common sense relevance” to the matters in disagreement. (For detail on this “scope” requirement, see CRS Report RS22733, *Senate Rules Restricting the Content of Conference Reports*, by Elizabeth Rybicki.)

Initial Instructions

To go to conference on a measure, the Senate must complete three parliamentary actions: (1) disagree with the House version (or insist on its own), (2) request or agree to a conference, and (3) authorize the chair to appoint Senate conferees. A motion to instruct conferees is in order only after these actions are agreed to but before the conferees are actually appointed. The Senate, historically, has taken all three steps pursuant to a unanimous consent agreement. Under an amendment to the Standing Rules adopted in the 113th Congress (2013-2014), however, a single motion can be made to accomplish all three parliamentary steps when the Senate is acting on a House message, and that motion is subject to an expedited cloture process. (For detail on the new motion, 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.)

Normally, the presiding officer appoints the conferees immediately after the Senate authorizes him or her to do so. In some instances, however, some time may intervene between the agreement to go to conference and the appointment. After the conferees are named, a motion to instruct is no longer in order.

A motion to instruct may, for example, instruct Senate conferees to insist on, or to recede from, a certain Senate position in conference; to accept, or not to accept, a certain House position; or to negotiate a compromise position with the House that satisfies specified conditions. Inasmuch as the instructions are not binding, motions to instruct may be stated in broad advisory language rather than as specific legislative text.

A motion to instruct conferees is amendable, so amendments could be offered to add further instructions, for example. The Senate may also entertain in succession several separate motions to instruct conferees on the same measure. If a motion to instruct conferees contains more than one separable proposition, such as instructions on different subjects, the motion will be divided for voting if any Senator so demands. The motion to instruct conferees is debatable; therefore, it may be subjected to filibuster and, potentially, to cloture. The motion may also be laid on the table.

Subsequent Instructions

Once a measure is in conference, the Senate may no longer instruct its conferees by motion (except by unanimous consent), but it sometimes does so by adopting a “sense of the Senate” amendment to other legislation. In principle, it might also do so by resolution, but consideration of such a resolution could, in effect, be blocked by an objection, which makes this vehicle for instructing conferees difficult to utilize. Either an amendment or a resolution to instruct conferees is debatable, and the instructions are amendable, but it may be laid on the table.

No motion to instruct conferees is in order after conferees have filed their report or while the Senate is considering it. While the Senate is considering a conference report, however, if it is the first house to do so, a motion to recommit the report to conference is in order, and this motion to recommit may include instructions to the conferees. This motion, too, is debatable, and the instructions are amendable, but the motion may be laid on the table.

The Senate also may defeat a conference report and then agree to motions for a second conference. (In addition, under certain conditions that are unusual today, it might adopt a partial conference report and then agree to a second conference on provisions remaining in disagreement.) When motions for a second conference are adopted, a motion to instruct conferees at the new conference is in order until the new conferees are named, in the same way as initially.

Purposes of Instructing Conferees

In general, the Senate has not often instructed its conferees, perhaps in part because doing so might limit the negotiating flexibility of conferees and, thereby, their chances of success. Nevertheless, the Senate may sometimes find it useful to have on record a formal expression of its expectations for conferees. Instructions may afford conferees an indication of what kind of provisions the Senate is likely to accept, especially when Senate floor amendments add provisions that conferees may not favor. It is also possible that Senate conferees might use instructions as grounds for maintaining their position in conference; they might even seek instructions for this purpose. Finally, debate on a motion to instruct conferees may afford an opportunity to draw attention to a particular policy question.

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