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Senate Conferees: Their Selection and Authority

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Summary

Conference committees usually prepare the final versions of the most important bills that Congress approves. Who the conferees are and what decisions they can make, therefore, can have an important effect on the outcome of the legislative process. This report describes the selection and authority of Senate conferees.

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Selection of Senate Conferees

The Senate almost always agrees by unanimous consent that the presiding officer be authorized to appoint the Senate's conferees. At the start of the 113th Congress (2013-2014), the Senate altered the procedures that had effectively required the consent of all Senators to send a measure to a conference committee with the House. This change has not affected the formal method for appointment: The Senate has continued to authorize the presiding officer to do so. Due to the rules change, however, unanimous consent to grant the presiding officer the power to appoint conferees is not required. The presiding officer can instead be authorized to appoint as part of a debatable motion to send a measure to conference. Furthermore, with the support of three-fifths of the Senate, this authorization can be granted quickly, because the new rule accelerates the cloture process on the motion.¹

Although the Senate authorizes the presiding officer to name conferees, the presiding officer actually exercises no discretion. Instead, he or she presents to the Senate a list that has usually been prepared by the chair and ranking minority member of the standing committee with jurisdiction over the bill. Also, the Senate conferees are usually drawn exclusively from the membership of that committee. The committee chair, in consultation with the ranking member, normally decides on the number of Senators from each party who will serve on the conference committee. The chair selects the majority party conferees, and the ranking minority member selects a proportional number of conferees from among his or her committee colleagues. Committee seniority is an important but not controlling factor in the selection of committee members to serve on the conference.

Party leaders also are often involved in the selection of conferees. For example, when two or more committees considered the same bill and will be represented on the conference committee, the party leaders may participate in deciding how many members from each committee will be appointed as conferees. Also in such cases, Senators may be appointed as conferees for limited purposes. In the case of a budget reconciliation bill, for example, members of the Budget Committee may be appointed as conferees for the entire bill while members of other Senate committees are appointed as conferees only to consider provisions of the bill that are within their respective jurisdictions.

Authority of Senate Conferees

The rules of the House and Senate impose much the same restrictions on the kinds of decisions that their conferees may reach. However, the Senate's precedents give its conferees considerably more discretion than their House counterparts.

¹ The new rule also appears to allow the Senate to directly appoint conferees by stating that one portion of the motion to authorize a conference could be "a motion to appoint conferees." Appointing conferees by motion, instead of authorizing the presiding officer to do so, has not been the practice of the Senate previously, and it is not clear that the new motion will normally be used for this purpose. For more information on the rules change, 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.

Senate conferees are to limit themselves to the matters that are in disagreement with the House, and they are to resolve each such matter within the scope of the differences between the House and Senate positions. Paragraph 3 of Rule XXVIII states in part that the Senate’s conferees “shall not insert in their report matter not committed to them by either House, nor shall they strike from the bill matter agreed to by both Houses.” When the conferees are considering a bill from one house that the other house has passed with a single amendment in the nature of a substitute, the conferees write their own version of the bill in conference. However, Rule XXVIII also states that this conference version may not include “matter not committed to them” but that it may include “matter which is a germane modification of subjects in disagreement.” The Senate appears to take a commonsense approach to deciding whether new matter is sufficiently relevant to constitute a germane modification of subjects in disagreement.

If a point of order is sustained against a conference report on the grounds that it violates the prohibition of “new matter,” the matter is stricken from the conference recommendation, and the Senate considers a motion that it proposes to send to the House, in place of the original conference agreement, a proposal consisting of the conference agreement minus the “new matter” that was stricken. The terms for consideration of this motion are the same as those that would have applied to the conference report. If the Senate agrees to the motion, the text, in the form of an amendment between the houses, is sent to the House, and the House then has an opportunity to act on the amendment. The Senate can waive points of order raised under Rule XXVIII with a three-fifths vote of Senators duly chosen and sworn (60 Senators assuming no vacancies).

Senate conferees are also precluded by Paragraph 8 of Rule XLIV from including in a conference report “new directed spending provisions,” or provisions that provide specific items of appropriations or direct spending that were not committed to the conference committee in either the House or Senate versions of the legislation. This point of order is disposed of with the same procedure just described for Rule XXVIII, and this rule can also be waived by a three-fifths vote of Senators duly chosen and sworn.

Senate conferees must also bear in mind that there are significant restrictions on the agreements that House conferees can accept without violating their authority. However, the House can choose not to enforce these restrictions as they apply to a particular conference report. Before the House begins floor consideration of that report, the House Rules Committee can report, and the House can adopt, a resolution waiving all points of order against the conference report and against its consideration.²

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² For additional information on the authority and selection of Senate conferees, see Senate Rule XXVIII; *Riddick’s Senate Procedure*, pp. 449-493; CRS Report RS22733, *Senate Rules Restricting the Content of Conference Reports*, by Elizabeth Rybicki; and CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki.

Acknowledgments

This report was written by Stanley Bach, a former Senior Specialist in the Legislative Process. The listed author updated the report to reflect Senate rules changes in the 110th Congress (2007-2008) and the 113th Congress (2013-2014), and she is available to answer questions concerning the contents of this report.