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February 2, 2009

Congressional Research Service

Report 98-813

Amendments in Disagreement

James V. Saturno, Government and Finance Division

November 3, 2004

Abstract. The House and Senate must approve an identical version of a measure before it may be presented for the President's approval or veto. If the House and Senate approve differing versions of a measure, the differences must first be resolved. When the differences are complex or controversial, the two chambers typically attempt to resolve those difference by going to conference.

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James V. Saturno

Specialist on the Congress and Legislative Process

November 3, 2004

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Congressional Research Service

7-5700

www.crs.gov

98-813

CRS Report for Congress

Prepared for Members and Committees of Congress

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The House and Senate must approve an identical version of a measure before it may be presented for the President's approval or veto. If the House and Senate approve differing versions of a measure, the differences must first be resolved. When the differences between the House and Senate are complex or controversial, the two chambers typically attempt to resolve those differences by going to conference.

Not all differences between the House and Senate versions of a measure, however, might be resolved through the conference process. When conferees are unable to resolve differences, they may report back to their respective chambers "in disagreement," so that the House and Senate may then use an exchange of amendments and motions between the houses to resolve outstanding issues. Amendments may be reported back either in true or technical disagreement. If the conferees are unable to reach agreement they may report back in true disagreement, but this is rare in modern practice. If the conferees are able to reach agreement on their substantive differences, but not within the procedural constraints posed by the conference process, reporting back an amendment in technical disagreement may allow them to avoid exposing a conference report to certain potential points of order.

Neither the House or the Senate makes any procedural distinction between amendments in true disagreement and those in technical disagreement. Any procedural option available for disposing of an amendment in true disagreement would also be available for disposing of an amendment in technical disagreement. In most instances, Congress chooses to adopt the agreement negotiated by the conferees rather than to resolve complex disagreements between the House and Senate on the floor. For more on options for considering amendments in disagreement, see CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*. See <http://www.crs.gov/products/guides/guidehome.shtml> for more information on legislative process.

Conditions for Reporting Amendments in Disagreement

When a conference concerns a bill from one house with a single amendment in the nature of a substitute from the other, conferees must report back in complete agreement or disagreement. However, when a bill from one house is sent to conference with a series of separate and discrete amendments from the other house, the conferees may report each of these separate matters as part of the conference report or as amendments in either true or technical disagreement. In modern practice, amendments in disagreement arise almost exclusively from consideration of appropriations measures, although this has been less frequent in recent years.

The rules of the House and Senate impose varying degrees of restrictions on the authority of their conferees and the contents of conference reports. Especially in the House, conferees are limited by the scope of the differences between the House and Senate positions on a matter, and are limited to consideration only of those matters in the two versions that are in disagreement. Because these and other restrictions apply to conference reports, but not to amendments between the houses, conferees may be able to take advantage of this distinction and avoid potential points of order. As a result, provisions which could potentially subject a conference report to a point of order may be more easily dealt with separately as amendments between the houses.

In addition, House Rule XXII, clause 5 prohibits conferees from including in conference reports unauthorized appropriations or legislation in general appropriations bills as prohibited under House Rule XXI unless "specific authority to agree to the amendment first is given by the House by a separate vote." Conferees have historically operated without this authority, instead reporting

back amendments in technical or true disagreement, which could then be disposed of by a separate motion.

Consideration of Amendments in Disagreement

The House is typically the first chamber to act when conferees report a partial conference report accompanied by amendments in disagreement. This occurs because amendments in disagreement are most likely to arise from consideration of appropriations measures. Under longstanding practice, appropriations bills originate in the House, and may include separate Senate amendments to the House bill (although this practice has been less frequent in recent years).

After the first house agrees to the partial conference report, any amendments in technical disagreement are disposed of individually. For each amendment, the majority floor manager offers a motion that reflects the agreement negotiated by the conferees. This motion may provide for the first chamber to recede from disagreement with the second chamber and concur in its amendment (accepting the position of the second chamber) or concur with a further amendment of their own (as negotiated by the conferees). In the House, any further House amendment must be germane. The majority manager in the House will sometimes ask unanimous consent to recede and concur with two or more Senate amendments *en bloc* when they are noncontroversial.

Once the first chamber has disposed of all amendments in disagreement, the conference papers are messaged to the second chamber for their consideration. The second chamber likewise first acts on the partial conference report, and then on any amendments on which action is required. Because any action in the first chamber to recede and concur in the amendment of the second chamber accepts the position of the second chamber, no further action on these amendments is necessary. When the Senate considers amendments in technical disagreement they typically dispose of them *en bloc*. If the second chamber agrees to the further amendments adopted by the first chamber (as negotiated by the conferees) the measure is cleared for the President.

Author Contact Information

James V. Saturno
Specialist on the Congress and Legislative Process
jsaturno@crs.loc.gov, 7-2381