



BASIC » TRAINING

PARLIAMENTARY PROCESS,
FACTS, AND STRATEGIES

Drafting and Offering Amendments

The motion to amend is among the most basic in the House and in committee. Its purpose is to allow a member to make changes in a measure under consideration. In committee and under “open” rules, members often have wide latitude in the kinds of amendments which they can offer; during consideration of measures under a “structured” process on the floor, the amendment process is more limited and predictable. In either case, there are a number of issues to be considered during the drafting and markup process. Both open and structured amendment processes during floor consideration are usually conducted in the Committee of the Whole, which is structured to allow for amendment debate.

DRAFTING AMENDMENTS

Legislative Counsel. When drafting amendments, Members should use the House **Office of Legislative Counsel**. Legislative Counsel has a large team of attorneys who are experts in legislative drafting in their particular areas of responsibility. By using the Office of Legislative Counsel, members will receive expert advice on drafting issues, as well as having amendments properly formatted so that they can be easily engrossed if adopted. While the Office of Legislative Counsel serves both parties, their attorneys are bound by law to maintain confidentiality allowing them to effectively work with Members from opposing sides without conflict.

Due to limited resources, the Office of Legislative Counsel prioritizes requests from leadership and committee offices to ensure that drafting needs for the floor and committee are met. While they are usually able to meet the needs of rank-and-file members, they do offer templates for House offices to use in drafting their own amendments if necessary. Those

templates can be found at <http://legcoun.house.gov/members/amends.html>.

Members should also ask the **Office of the Parliamentarian** to review the amendment to get advice on whether it complies with House rules, such as germaneness or budget act points of order.

Finally, Members should also ask for a review by the **Congressional Budget Office** to ensure that the amendment does not change direct spending, resulting in a point of order for violating the CUTGO rules.

AMENDING A BILL THROUGH AN OPEN AMENDMENT PROCESS

While the majority of bills are considered through structured amendment processes, important legislation is still considered under open amendment scenarios. For instance, most of the regular appropriations bills are considered under open rules, and many other bills are considered under modified-open rules. The most common type of modified open rule requires the pre-printing of amendments in the *Congressional Record* prior to consideration.

Pre-Printing. To have an amendment preprinted in the *Congressional Record*, the amendment should be submitted the day prior to consideration (or by the deadline announced by the Rules Committee) in the amendment box located on the Speaker’s Rostrum on the same side as the Hopper. The amendment will be printed in House section of the *Congressional Record* labeled “AMENDMENTS”.

Managers under an open amendment process will attempt to establish a “**universe**” of amendments by entering into a **unanimous consent agreement** as soon as possible. Under an open amendment process, they will try to limit amendments to those printed in the Record and at the Speaker’s desk, and will likely try to establish time limits for debate. As a result, it is important that the amendment either be printed in Record as soon as possible, or the Republican bill manager be advised about the amendment so that they

Amendments *continued*

can ensure that the amendment is covered by the unanimous consent agreement.

Reading for Amendment. While the Rules Committee can specify another process, consideration of bills under open rules is usually by section (or paragraph in the case of appropriations bills). Amendments to a particular section may be offered only at the point that the section or paragraph that they are amending is being read. If a member misses the correct point in the reading, unanimous consent is required to allow the member to go back, although often an amendment may be redrafted to the end of the bill.

Amendments can be subject to points of order, and are debated under the 5-minute rule, unless a unanimous consent agreement is in operation. Under the 5-minute rule, a proponent and opponent are each recognized for 5 minutes, and other members may use **pro forma amendments** to “strike the last word” to get 5 minutes to speak on an amendment.

A pro forma amendment is a device used to obtain time to speak on a pending item. Although pro forma amendments are phrased to make some minor change in the language under consideration, such as “striking the last word,” they do not contemplate an actual change in the measure under consideration. A member may not be recognized for a second pro forma amendment on the same amendment.

AMENDING A BILL THROUGH A STRUCTURED AMENDMENT PROCESS

In many ways, a structured amendment process is easier to manage, particularly for the bill manager. Under a **structured rule**, the most common type of rule, the Rules Committee will announce a filing deadline for amendments, and in its rule providing for consideration for the bill will make certain amendments in order for a defined amount of time.

The text of the amendments made in order is usually printed in the report to accompany the special rule. While the **rule usually waives points of order** against the amendments, those waivers are generally only prophylactic in nature, meaning that no waivers are actually required. It is important to note that the Rules Committee is generally reluctant to provide waivers of particular rules for amendments, so it is important to ensure that amendments comply with House rules prior to submission to the Rules Committee.

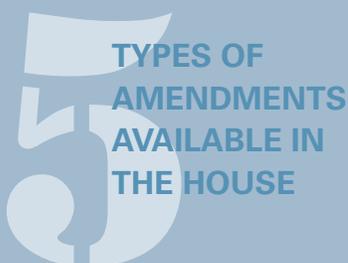
During consideration of the bill under a structured rule, amendments made in order—

- » May only be offered in the order printed in the report;
- » Must be offered by the sponsor or his or her designee;
- » Are debatable only for the time specified in the report; and,
- » Are considered as read.

The terms of the rule may not be changed during amendment debate in the Committee of the Whole, even by unanimous consent. They may only be changed by a subsequent order of the House, usually in the form of a unanimous consent agreement propounded in the House or a subsequent rule reported by the Rules Committee.

The only exception is a change to the text of an amendment, which may be modified by unanimous consent. Members are not permitted to amend their own amendment, only modify it.

Lastly, **members may only offer an amendment in their own name**, or as the “designee” of another member. Members may not “jointly” offer amendments, although the Rules Committee does allow members to “cosponsor” amendments for purposes of its report. ▲



TYPES OF AMENDMENTS AVAILABLE IN THE HOUSE

Clause 6 of rule XVI specifies the 4 kinds of amendments that are available in the House and its committees:

1. Amendment — The most basic form, this is a “perfecting” amendment to the measure under consideration and is

referred to as an amendment in the “first degree.”

2. Amendment to the Amendment — Commonly called a “second degree” amendment, this is a perfecting amendment to the amendment. It must be ger-

mane to the amendment under consideration, as well as the underlying bill.

3. Substitute amendments — A substitute amendment “takes the place of” the currently pending amendment, i.e. “substituting” for the



Forms of Amendments in the House

In addition to the basic types of amendments described in this document, amendatory instructions take different forms, depending on the desired effect. When drafting amendments, it's important to remember that while **references to page and line numbers are preferred** for both ease and accuracy in engrossment of the amendment, relative references (e.g. "Section 201 is amended to read...") may also be used.

AMENDMENTS TO PARTS OF BILLS

Often referred to as "**cut and bite**" amendments, these amendatory forms are usually used to make changes to discrete portions of bills.

Strike. Among the most basic amendment forms, this type of amendment is used to delete language from the measure being amended.

Page 14, line 12, strike "qualified".

Note that the punctuation falls outside the quotation marks, as the period indicates the end of the amendatory instruction and not that the period should be stricken.

Insert. Similarly, the insert amendment adds language at the point described in the amendment.

Page 14, line 12, insert "until July 1, 2013" before the period.

Strike and insert. Another common form of amendment combines the strike and insert into a single amendment.

Page 14, line 12, strike "qualified" and insert "until July 1, 2013" before the period.

Rewrites. If there are a number of changes to be made to a particular portion of a bill, it may be easier to rewrite the entire portion being amended. These kinds of amendments may be expressed either in relative or page and line number references. Note that the amendment itself is usually not in quotes, but delineated from the amendatory instruction by line numbers. Quotation marks may or may not be used depending on whether the amendment is to a free-standing measure or existing law.

Page 14, line 1 through page 15, line 12 is amended to read as follows:

SEC. 101. LIMITATION ON CERTAIN HEALTH PLANS.

(a) No health plan may ...

Global Changes. An amendatory instruction may be drafted to make changes throughout a portion of text and can be used when there are changes to a term or condition used in multiple places throughout a measure.

Page 14, line 1 through page 15, line 12 is amended by striking "2013" and inserting "2014" in each place it appears.

Amendments en bloc. Amendments offered en bloc are amendments to multiple portions of the measure being amended offered together. It is important to note that if a bill (or other measure being amended) is not open for amendment at any point, **amendments en bloc may only be offered by unanimous consent.**

pending text, and not the entire bill.

4. Amendments to the Substitute — A substitute amendment may also be further amended through a perfecting amendment.

As shown on the amendment tree (See "The Amendment Tree") all 4 forms of amendment may be pending at one time.

There is an additional form of amendment that bears men-

tioning, though it is not one of the 4 basic types:

5. Amendment in the Nature of a Substitute — This amendment is a subset of the perfecting amendment, and replaces the entire text of the pending measure. It occupies the 1st

degree position and may only be offered as the first section of a bill is read, or at the end of the bill. It is often confused with "substitute amendments," though they are fundamentally different forms.

THE AMENDMENT “TREE”

A common metaphor used to describe the various kinds of amendatory forms available during consideration of bills in the House or in committee is the amendment “tree.”

Assuming that the base text (either the bill itself or an amendment in the nature of a substitute considered as base text by unanimous consent) is the “trunk,” the various amendatory forms can be viewed as “branches.”

The most common form, the perfecting amendment, is an amendment to the base text.

That amendment can be further perfected, at which point the amendment is in the “second degree”. The rules of the House prohibit consideration of amendments beyond the second degree.

A first degree is also subject to amendment by a complete substitute amendment. A substitute amendment is distinguishable from an amendment in the nature of a substitute by the object of the amendment and the amendatory instructions.

An amendment in the nature of a substitute amends a bill, and contains the amendatory instruction “Strike all after the enacting clause and insert the following:”. In contrast, a substitute amendment amends a pending amendment in the first degree with a

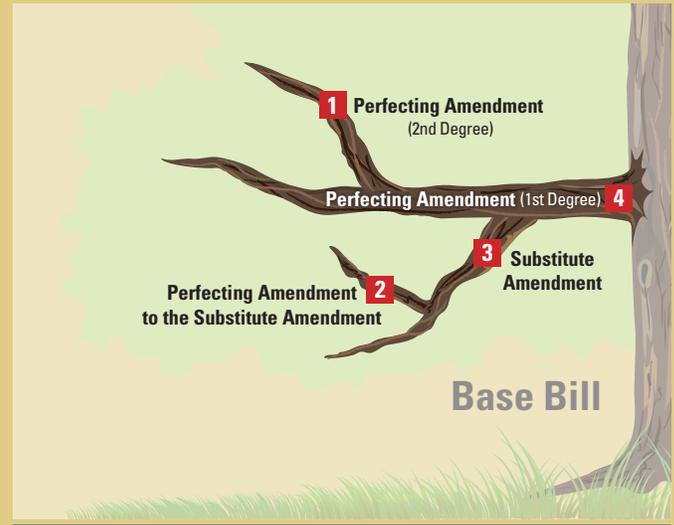


Figure 3. The classic, single-branch amendment “tree”. Numbers in red squares indicate voting order.

complete replacement for the text, and generally can only be distinguished by its caption, “Substitute Amendment to the Amendment by M. _____.”

A pending substitute amendment can also be further perfected.

All of these forms of amendment may be pending at the same time. In figure 3, the numbered red squares indicate the order in which the Chair puts the question on each amendment.

Amendment Forms *continued*

Amendments En Bloc offered by M. _____

Page 14, line 12, strike “qualified” and insert “until July 1, 2013”.

Page 22, line 8, before the period insert “unless such plan is not a qualified plan.”

MAJOR AMENDMENT FORMS

These amendatory forms are usually used to make changes to entire measures under consideration, either bills or entire amendments. There are two basic forms usually distinguished by their captions and amendatory instructions:

Amendment in the Nature of a Substitute. This amendatory form substitutes for an entire text, and is distinguished by its amendatory

instruction. When a bill is being read by section, it is only in order when the first section is being read for amendment or after all sections have been read.

Amendment in the Nature of a Substitute offered by M. _____

Strike all after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Sample Act of 2012”. ...

Substitute Amendment. While an Amendment in the Nature of a Substitute is often referred to as a “substitute” it is different than a substitute amendment. A substitute amendment is intended to substitute for a pending amendment

in its entirety, and is subject to further perfection, even while the underlying amendment is pending and has been perfected. The caption of a substitute amendment usually describes the amendment it substitutes for, and the amendatory instructions are within the scope of those of the underlying amendment. It is important to remember that the substitute amendment must be germane to both the bill and the amendment it is substituting for.

Substitute Amendment for the Jones Amendment offered by M. _____

Page 14, line 12, strike “qualified” and insert “until July 1, 2013”.