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Amendments in the House: Types and Forms

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Summary

The amending process is central to the consideration of legislation by the House of Representatives, and the rules, practices, and precedents that underlie this process frequently depend on distinguishing among amendments based on their type and form. Simply put, not all amendments are equal in a procedural sense, and the form or type of amendment frequently determines what further amendments may be offered and, therefore, what alternatives the House may choose among.

Contents

Distinctions Among Amendments	1
Degrees of Amendments.....	1
Forms of Amendments	1
Scope of Amendments.....	2

Contacts

Author Contact Information	2
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Distinctions Among Amendments

The amending process is central to the consideration of legislation by the House of Representatives, and the rules, practices, and precedents that underlie this process frequently depend on distinguishing among amendments based on their type and form. Simply put, not all amendments are equal in a procedural sense, and the form or type of amendment frequently determines what further amendments may be offered and, therefore, what alternatives the House may choose among.¹

Degrees of Amendments

A fundamental aspect of the amending process in the House is that it is limited to two degrees. Amendments may be offered to the measure under consideration (first degree) and to amendments to the measure (second degree). A second-degree amendment may be offered only while the first-degree amendment to which it is offered is pending, and the House must vote on any second-degree amendments before it votes on a pending first-degree amendment, as it may have been amended. That is, any second-degree amendment that is agreed to is incorporated into a first-degree amendment before that first-degree amendment is voted on.

House Rule XVI, clause 6, provides that “it also shall be in order to offer a further amendment by way of substitute.”² Such a substitute is treated as a first-degree amendment, presumably because it is offered in the form of an alternative to the original first-degree amendment rather than an amendment to it. Like the original first-degree amendment, this one is also subject to second-degree amendments. Rule XVI also provides that second-degree amendments to the original first-degree amendment must be voted on before pending second-degree amendments to the first-degree substitute. A first-degree substitute, as it may have been amended, must be voted on prior to a vote on the original first-degree amendment, as it may have been amended.

Only one second-degree amendment may be pending at a time to any first-degree amendment. Additional second-degree amendments, however, may be offered subsequently if other conditions permit.

The degree of an amendment will have an impact on the application of the germaneness requirement imposed by Rule XVI, clause 7. Since the definition of germaneness is dependent on the specific propositions involved, first-degree amendments must be germane to the measure, while second-degree amendments must be germane to the first-degree amendment to which they are offered.

Forms of Amendments

Amendments may also be distinguished by whether they are posed in the form of (1) a motion to strike out some existing text from a measure (or from a first-degree amendment); (2) a motion solely to insert some new text into a measure (or into a first-degree amendment); or (3) a motion

¹ For additional information, see CRS Report 98-995, *The Amending Process in the House of Representatives*, by Christopher M. Davis.

² U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives*, H.Doc. 113-181, 113th Cong., 2nd sess. (Washington: GPO, 2015), §922, pp. 713-714.

to both strike out some existing text and insert something new (in either a measure or a first-degree amendment).

Scope of Amendments

A third way to distinguish among amendments is by their scope. The procedural scope of an amendment is defined in relation to the text the amendment would affect and is not indicative of any substantive policy changes that would result from the proposed amendment. An amendment is a substitute if it would replace all of a pending text. Generally, a perfecting amendment is one that inserts text or replaces less than a complete text.

Although they are rarely referred to as such, first-degree amendments that are drafted to amend some portion of a measure (but less than the entire measure) are perfecting amendments. Likewise, second-degree amendments that are drafted to amend some portion of a first-degree amendment are perfecting amendments.

As provided by Rule XVI, clause 6, a substitute for a first-degree amendment is in order and will likewise be treated as a first-degree amendment. The substitute, as it may have been amended, will be voted on prior to a vote on the original first-degree amendment, as it may have been amended.

A special case arises when a substitute is offered in the form of a motion to strike out everything in a measure after the enacting clause (or the resolving clause, in the case of a resolution) and insert a different text. This is known as an amendment in the nature of a substitute and is rarely offered without protection under a special rule reported by the Rules Committee. Because committees frequently report their recommendations to the House in this form, Members typically focus their consideration on the substitute, and special rules typically provide that the substitute be treated as “an original bill for the purpose of amendment.” This language means that the amendment in the nature of a substitute will not be treated as a first-degree amendment; instead, two degrees of amendment will be allowed as though the amendment in the nature of a substitute were the text of the measure.

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