



## CRS Report for Congress

### Going to Conference in the Senate

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#### Summary

There are three steps that the Senate must take, and one more step that it may take, in arranging to send a bill to conference. These steps rarely are contentious but they have the potential to become time-consuming. This report discusses these steps and how they are taken on the Senate floor.

There are as many as four actions that the Senate may take on the floor in the process of sending a bill to a conference committee.<sup>1</sup> Three of these actions are required; the fourth is not. The Senate typically completes these stages of the legislative process quickly and routinely, most often by unanimous consent. Singly or collectively, however, the four actions can require considerable time to complete if Senators choose to exercise their rights to debate one or more of them at length. At the extreme, Senators can engage in one or several filibusters that can delay or even stall further action on a bill that a majority of the Senate wishes to send to conference.<sup>2</sup>

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<sup>1</sup> Like the Senate, the House typically arranges by unanimous consent to go to conference. Alternatively, the House can arrange for a conference by agreeing by simple majority vote to a motion for that purpose that is offered by direction of the House committee with jurisdiction over the bill in question. Procedures relating to conference committees are discussed at greater length in CRS Report 96-708, *Conference Committees and Related Procedures: An Introduction* and CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, both by Elizabeth Rybicki.

<sup>2</sup> This report was written by Stanley Bach, formerly a Senior Specialist in the Legislative Process at CRS. Dr. Bach has retired, but the listed author updated the report and can respond to inquiries on the subject.

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## The Four Steps in Going to Conference

Before a conference committee can convene, the two houses *must* complete the same three actions. These actions take somewhat different forms in each house, depending on the actions that the other house already has taken.

First, the Senate and House must agree to disagree. They must reach the *stage of disagreement*, which marks the point at which each house has disagreed formally to the legislative proposal of the other. The Senate takes this first action either by insisting on its own amendment(s) to a House-passed bill (or amendment) or by disagreeing to the House's amendment(s) to a Senate-passed bill (or amendment).

Second, the two houses must agree that they want to create a conference committee in order to resolve the legislative disagreement that they have just acknowledged formally. The Senate takes this second step either by requesting a conference with the House or by agreeing to a request for a conference that the House already has made.

Third, each house must appoint its members of the conference committee. The Speaker appoints House conferees. The Senate can elect its conferees, although it almost always authorizes its presiding officer to appoint the conferees. The Senate must take formal action on the floor to grant this authority to the presiding officer before he or she can appoint the Senate's conferees.<sup>3</sup>

These are the three actions that each house must take. In addition, there is an opportunity for each house to instruct its conferees immediately before they are formally appointed. By simple majority vote, each house can instruct its conferees to take a certain position in conference, so long as the conferees would not violate their authority if they agreed to that position. However, instructions to conferees are not binding. No Representative or Senator can make a point of order against a conference report on the ground that it is inconsistent with instructions that the House or Senate gave its conferees.

In the House, one valid motion to instruct can be made after the House agrees to go to conference but before the Speaker names the House's conferees.<sup>4</sup> Similarly, a Senator can move to instruct Senate conferees after the Senate takes all three required actions but before the presiding officer announces the list of Senate conferees. In the Senate, there is no limit on the number of motions to instruct that Senators can make. Any motion to instruct, and the instructions in the motion, must be read before the Senate begins to debate it, unless the Senate agrees by unanimous consent to dispense with the reading. Once the Senate has begun to debate a motion to instruct, any Senator who has been recognized can move to table the motion (unless the time for debating the motion is controlled by a unanimous consent agreement).

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<sup>3</sup> In practice, the Senate's presiding officer exercises no discretion; he or she appoints a list of conferees assembled by committee and party leaders. For more information, see CRS Report 98-380, *Senate Conferees: Their Selection and Authority*, by Elizabeth Rybicki.

<sup>4</sup> Representatives can offer additional motions to instruct once 20 calendar days and 10 legislative days have passed since House and Senate conferees were appointed. For more information, see CRS Report 98-381, *Instructing House Conferees*, by Elizabeth Rybicki.

## Taking These Steps on the Senate Floor

The Senate normally completes these actions quickly and routinely. Most often, it takes the three required steps by agreeing to a single unanimous consent request, after which the presiding officer immediately announces the names of the Senate conferees. In practice, Senators do not often make motions to instruct their conferees.

The majority leader usually makes a unanimous consent request such as the following:

Mr. President, I ask unanimous consent that the Senate disagree to the House amendments to the bill, S. 1, that the Senate agree to the conference requested by the House on the disagreeing votes of the two Houses, and that the chair be authorized to appoint the conferees on the part of the Senate.

If any Senator objects to such a unanimous consent request, the majority leader can make motions to take each of the same three actions. He may not offer one motion to take all three actions. Each motion is debatable under the regular rules of the Senate. Thus, all three motions are subject to extended debate, and the Senate may invoke cloture on any of them — or on all of them, one at a time — if that is necessary to bring the debate to a close. Senators may offer various motions during the Senate's consideration of the first motion — that the Senate reach the stage of disagreement — and the second motion — that the Senate agree to go to conference. These motions, which rarely are offered, are listed in *Riddick's Senate Procedure*.<sup>5</sup>

After the Senate approves the three-part unanimous consent request or after it agrees to the last of the three motions, which authorizes the presiding officer to appoint Senate conferees, Senators then can make motions to instruct those conferees. A motion to instruct is fully debatable, and Senators can offer amendments to the instructions. After the Senate disposes of a motion to instruct — either by voting for or against it, or by voting to table it — another such motion is in order. Only when no Senator seeks recognition to offer another motion to instruct does the presiding officer proceed to appoint the Senate's conferees.

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<sup>5</sup> Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure*, S.Doc. 101-28; 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., 1992, pp. 127-130.