

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue cap at the top. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The text is centered within the hourglass.

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Senate Conferees: Their Selection and Authority

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November 29, 2007

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Senate Conferees: Their Selection and Authority

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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 report¹ describes the selection and authority of Senate conferees. For more information on legislative process, see <http://www.crs.gov/products/guides/guidehome.shtml>.

Selection of Senate Conferees

The Senate takes three steps whenever it wants to go to conference with the House. First, the Senate either insists on its own position or disagrees to the House's position on the bill in question. Second, the Senate either requests a conference with the House or agrees to such a request that the House already has made. And third, the Senate decides how it will select its conferees.²

Most often, the Senate takes all three steps at once, by unanimous consent, and, immediately thereafter, the presiding officer names the Senate conferees. However, any Senator can insist that each step be taken separately. In that case, the Senate can take each step by agreeing to a debatable motion, if unanimous consent cannot be obtained.

In practice, the Senate almost always agrees by unanimous consent that the presiding officer be authorized to appoint the Senate's conferees. If the Senate chose not to give this authority to the presiding officer, the Senate could elect its conferees instead. Senate Rule XXIV provides for the election of the members and chairs of standing committees, and states further that all other committees shall be appointed in the same way, unless the Senate decides otherwise. It has been many years since the Senate actually elected conferees, and it is precisely because such a process could become so complicated and time-consuming that the Senate regularly delegates this authority to its presiding officer.

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 usually has been prepared by the chair and ranking minority member of the standing committee with jurisdiction over the bill. Usually also, the Senate conferees are 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.

In some cases, the party leaders also become 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

¹ This report was written by Stanley Bach, a former Senior Specialist in the Legislative Process. The listed author updated the report and can answer questions concerning its content.

² For more information on the process of arranging for a conference in the Senate, see CRS Report RS20454, *Going to Conference in the Senate*, by Elizabeth Rybicki.

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.

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 2 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 also can 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.³

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³ 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 Changes in the 110th Congress Affecting Restrictions on 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.