



The Legislative Process on the Senate Floor: An Introduction

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Summary

The standing rules of the Senate promote deliberation by permitting Senators to debate at length and by precluding a simple majority from ending debate when they are prepared to vote to approve a bill or other matter. This right of extended debate permits filibusters that can be brought to an end if the Senate invokes cloture, usually by a vote of three-fifths of all Senators. Even then, consideration can typically continue under cloture for an additional 30 hours. The possibility of filibusters encourages the Senate to seek consensus whenever possible and to conduct business under the terms of unanimous consent agreements that limit the time available for debate and amending.

Except when the Senate is considering appropriations, budget, and certain other measures, Senators also may propose floor amendments that are not germane to the subject or purpose of the bill being debated. This permits individual Senators to raise issues and potentially have the Senate vote on them, even if they have not been studied and evaluated by the relevant standing committees.

These characteristics of Senate rules make the Senate's daily floor schedule potentially unpredictable unless all Senators agree by unanimous consent to accept limits on their right to debate and offer non-germane amendments to a bill. Also to promote predictability and order, Senators traditionally have agreed to give certain procedural privileges to the majority leader. The majority leader enjoys priority in being recognized to speak, and only the majority leader (or a Senator acting at his behest) is able to successfully propose what bills and resolutions the Senate should consider.

Thus, the legislative process on the Senate floor reflects a balance between the rights guaranteed to Senators under the standing rules and the willingness of Senators to forego exercising some of these rights in order to expedite the conduct of business.

Contents

Introduction.....	1
The Right to Debate.....	2
Filibusters and Cloture.....	3
Restraint and Delay.....	4
Scheduling Legislative Business	5
Routine Agenda Setting.....	5
Committee Referral and Rule XIV	6
Non-Germane Amendments	6
Unanimous Consent Agreements.....	7
The Nature of Unanimous Consent Agreements	7
Negotiating Time Agreements.....	8
Other Unanimous Consent Agreements	9
The Daily Order of Business	9
The Amending Process	11
Quorum Calls and Rollcall Votes.....	13
Sources of Additional Information	13

Contacts

Author Contact Information.....	14
Acknowledgments	14

Introduction

The legislative process on the Senate floor is governed by a set of standing rules, a body of precedents created by rulings of presiding officers or by votes of the Senate, a variety of established and customary practices, and ad hoc arrangements the Senate makes to meet specific parliamentary and political circumstances. A knowledge of the Senate's formal rules is not sufficient to understand Senate procedures, and Senate practices cannot be understood without knowing the rules to which the practices relate.

The essential characteristic of the Senate's rules, and the characteristic that most clearly distinguishes its procedures from those of the House of Representatives, is their emphasis on the rights and prerogatives of individual Senators. Like any legislative institution, the Senate is both a deliberative and a decision-making body; its procedures must embody some balance between the opportunity to deliberate or debate and the need to decide. Characteristically, the Senate's rules give greater weight to the value of full and free deliberation than they give to the value of expeditious decisions. Put differently, legislative rules also must strike a balance between minority rights and majority prerogatives. The Senate's standing rules place greater emphasis on the rights of individual Senators—and, therefore, of minorities within the Senate—than on the powers of the majority. The Senate's legislative agenda and its policy decisions are influenced not merely by the preferences of its Members but also by the intensity of their preferences.

Precisely because of the nature of its standing rules, the Senate cannot rely on them exclusively. If all Senators took full advantage of their rights under the rules whenever it might be in their immediate interests, the Senate would have great difficulty reaching timely decisions. Therefore, the Senate has developed a variety of practices by which Senators set aside some of their prerogatives under the rules to expedite the conduct of its business or to accommodate the needs and interests of its Members. Some of these practices have become well-established by precedent; others are arranged to suit the particular circumstances the Senate confronts from day to day and from issue to issue. In most cases, these alternative arrangements require the unanimous consent of the Senate—the explicit or implicit concurrence of each of the 100 Senators. The Senate relies on unanimous consent agreements every day for many purposes—purposes great and small, important and routine. However, Senators can protect their rights under Senate rules simply by objecting to a unanimous consent request to waive one or more of the rules.

Generally, the Senate can act more efficiently and expeditiously when its Members agree by unanimous consent to operate outside of its standing rules. Generally also, Senators insist that the rules be enforced strictly only when the questions before them are divisive and controversial. Compromise and accommodation normally prevail. Senators exercise great self-restraint by not taking full advantage of their rights and opportunities under the standing rules, and often by agreeing to unanimous consent requests for arrangements that may not promote their individual legislative interests. The standing rules remain available, however, for Senators to invoke when, in their judgment, the costs of compromise and accommodation become too great.

Thus, the legislative procedures on the Senate floor reflect a balance—and sometimes an uneasy balance—between the operation of its rules and the principles they embody, on the one hand, and pragmatic arrangements to expedite the conduct of business, on the other. The interplay between the principles of the Senate's standing rules and the pragmatism of its daily practices will be a theme running throughout the following sections of this report.

The Right to Debate

The standing rule that is probably most pivotal for shaping what does and does not occur on the Senate floor is paragraph 1(a) of Rule XIX, which governs debate:

When a Senator desires to speak, he shall rise and address the Presiding Officer, and shall not proceed until he is recognized, and *the Presiding Officer shall recognize the Senator who shall first address him*. No Senator shall interrupt another Senator in debate without his consent, and to obtain such consent he shall first address the Presiding Officer, and no Senator shall speak more than twice upon any one question in debate on the same legislative day without leave of the Senate, which shall be determined without debate. (Emphasis added.)

The presiding officer of the Senate (unlike the Speaker of the House) may not use the power to recognize only certain Senators in order to control the flow of business. If no Senator holds the floor, any Senator seeking recognition has a right to be recognized. Moreover, once a Senator has been recognized, he or she may make any motion that Senate rules permit, including motions affecting what bills the Senate will consider (though a Senator loses the floor when he or she makes a motion, offers an amendment, or takes one of many other actions). In practice, however, the Senate has modified the effect of this rule by precedent and custom. By precedent, the majority and minority leaders are recognized first if the leader and another Senator are seeking recognition at the same time. In addition, by custom, only the majority leader (or another Senator acting at his behest) typically makes motions or requests affecting when the Senate will meet and what legislation it will consider.

In these respects, Senators relinquish their equal right to recognition and their right to make certain motions, and they do so in order to lend some order and predictability to the Senate's proceedings. Otherwise, it would be nearly impossible for any Senator to predict with assurance when the Senate will be in session and what legislation it will consider. For example, during debate on one bill, any Senator could move that the Senate turn to another bill instead. This would make it very difficult for the Senate to conduct its business in an orderly fashion, and it would be equally difficult for Senators to plan their own schedules with any confidence. Thus, Senate precedents and practices modify the operation of this rule, as it affects recognition, in the interests of the Senate as an institution and in the interests of its Members individually.

Even more important is what paragraph 1(a) of Rule XIX says and does not say about the length of debate. The rule imposes a limit of two speeches per Senator per question per day (though Senators rarely insist on imposing this limit on their colleagues). Beyond this restriction, it imposes no limit at all on the number of Senators who may make those two speeches or on the length of the speeches. In fact, there are few Senate rules that limit the right to debate, and no rules that permit a simple majority of the Senate to end a debate whenever it is ready to vote for a bill, amendment, or other question that is being considered. When Senators are recognized by the presiding officer, the rules normally permit them to speak for as long as they wish, and questions generally cannot be put to a vote so long as there are Senators who still wish to make the speeches they are permitted to make under Rule XIX.

The House of Representatives may bring a question to a vote if a simple majority agrees to a motion to order the previous question. When meeting in Committee of the Whole, a majority of Representatives also can move to close debate on a pending amendment or sometimes on a bill and all amendments to it. No such motions are possible in the Senate. As a result, a majority of

Senators does not have nearly the same control over the pace and timing of their deliberations as does a majority of the House.

There is one partial exception to this generalization. The Senate often disposes of an amendment by agreeing to a motion to lay the amendment on the table. When a Senator who has been recognized makes this motion, it cannot be debated (except by unanimous consent, of course). If the Senate agrees to this motion to table, the amendment is rejected; to table is to kill. On the other hand, if the Senate defeats the motion, debate on the amendment may resume; the Senate only has determined that it is not prepared at that time to reject the amendment. Thus, a tabling motion can be used by a simple majority to stop debate even if there still are Senators wishing to speak, but only by defeating the amendment at issue. Although the effect of the motion is essentially negative, it frequently is a test vote on Senate support for an amendment. If the motion fails, the Senate may agree to the amendment shortly thereafter. But this is a reflection of political reality, not a requirement of Senate rules or precedents.

Filibusters and Cloture

The dearth of debate limitations in Senate rules creates the possibility of filibusters. Individual Senators or minority groups of Senators who adamantly oppose a bill or amendment may speak against it at great length (or threaten to), in the hope of changing their colleagues' minds, winning support for amendments that address their objections, or convincing the Senate to withdraw the bill or amendment from further consideration on the floor. Opposing Senators also can delay final floor action by offering numerous amendments and motions, demanding roll call votes on amendments and motions, and by using a variety of other devices.

The only formal procedure that Senate rules provide for breaking filibusters is to invoke cloture under the provisions of Rule XXII (commonly called the "cloture rule"). Under the rules, however, once cloture is proposed, the cloture vote cannot occur until after a further period of time (typically two days of Senate session); further, a simple majority of the Senate is insufficient to invoke cloture.

Cloture requires the support of three-fifths of the Senators duly chosen and sworn, or a minimum of 60 votes if there is no more than one vacancy (unless the matter being considered changes the standing rules, in which case cloture requires a vote of two-thirds of the Senators present and voting). For this reason alone, cloture can be difficult to invoke and almost always requires some bipartisan support. In addition, some Senators are reluctant to vote for cloture, even if they support the legislation being jeopardized by the filibuster, precisely because the right of extended debate is such an integral element of Senate history and procedure.

Even if the Senate does invoke cloture on a bill, the result is not an immediate vote on passing the bill. The cloture rule permits a maximum of 30 additional hours for considering the bill, during which each Senator may speak for one hour. (On a limited number of motions, Rule XXII does not permit additional consideration after cloture has been invoked; in those cases, the Senate proceeds to an immediate vote on the motion in question.) The time consumed by rollcall votes and quorum calls is deducted from the 30-hour total; as a result, each Senator does not have an opportunity to speak for a full hour, although he or she is guaranteed at least 10 minutes for debate. Thus, cloture does not typically stop debate immediately; it only ensures that debate cannot continue indefinitely. Even the additional 30 hours allowed on a bill under cloture is quite

a long time for the Senate to devote to any one bill, especially since Senators may not be willing to invoke cloture until the bill already has been debated at considerable length.

Restraint and Delay

Any Senator can filibuster almost any legislative proposal (or most other matters) that the Senate is considering. The only bills that cannot be filibustered are the relatively few which are considered under provisions of law that limit the time available for debating them. For example, Section 305(b)(1) of the Budget Act of 1974 restricts debate on a budget resolution, “and all amendments thereto and debatable motions and appeals in connection therewith,” to not more than 50 hours. If no such provision applies, Senators can prolong the debate indefinitely on any bill or amendment (or nomination or treaty), as well as on many motions, subject only to tabling motions or to a successful cloture process.

Although there may be many matters to which some Senators may be adamantly opposed, filibusters are not daily events. One reason is that conducting a filibuster may be physically demanding (at least if it is not supported by a number of other Senators), but there are more compelling reasons for self-restraint. If Senators filibustered every bill they opposed, the Senate as an institution would suffer. It could not meet its constitutional responsibilities in a timely fashion and it could not respond effectively to pressing national needs. Public support for the Senate as an institution, and for its Members as individuals, would be undermined. Furthermore, all Senators have legislation they want to promote. They appreciate that if they used the filibuster regularly against bills they oppose, other Senators would be likely to do the same, and every Senator’s legislative objectives would be jeopardized. In short, Senators typically have resorted to filibusters only on matters of pronounced significance to them because this practice serves the long-term interests of the Senate and all Senators alike.

Nonetheless, the right to debate at length remains, and the possibility of filibusters affects much of what happens on the Senate floor. Many of the ways in which the Senate agrees to set aside its standing rules are designed in response to the possibility of filibusters. Simply threatening to filibuster can give Senators great influence over whether the Senate considers a bill, when it considers it, and how it may be amended.

If a majority of Senators support a bill that is being filibustered, they may be able to pass it eventually if they are committed and patient enough—and especially if they are able to invoke cloture. Even if cloture is not invoked, devices such as late-night sessions may strain the endurance and determination of a filibustering Senator (though, in most circumstances, the burden imposed by such sessions is borne more by those supporting an end to debate). The potency of filibusters does not depend, however, solely on Senators’ ability to prolong the debate indefinitely. From the right to debate flows the ability to delay, and the prospect of delay alone can often be sufficient to influence the Senate’s agenda and decisions.

The legislative process is laborious and time-consuming, and the time available for Senate floor action each year is limited. Every day devoted to one bill is a day denied for consideration of other legislation, and there are not enough days to act on all the bills that Senators and Senate committees wish to see enacted. Naturally, the time pressures become even greater with the approach of deadlines such as the date for adjournment and the end of the fiscal year. So, for all but the most important bills, even the threat of a filibuster can be a potent weapon. Before a bill reaches the floor or while it is being debated, its supporters often seek ways to accommodate the

concerns of opponents, preferring an amended bill that can be passed without protracted debate to the time, effort, and risks involved in confronting a filibuster or the threat of one.

Scheduling Legislative Business

Routine Agenda Setting

One way in which the possibility of extended debate affects the Senate's procedures is in how the Senate determines its legislative agenda—the order in which it decides to consider bills and other business on the floor. When a Senate standing committee reports a bill back to the Senate for floor debate and passage, the bill is placed on the Senate's Calendar of Business (under the heading of "General Orders").

The Senate gives its majority leader the primary responsibility for deciding the order in which bills on the calendar should come to the floor for action. The majority leader's right to preferential recognition already has been mentioned, as has Senators' general willingness to relinquish to him the right to make the motion (provided for in the standing rules) for deciding the order of legislative business—namely, the motion that the Senate proceed to the consideration of a particular bill.

Whenever possible, however, bills reach the Senate floor not by motion but by unanimous consent. Under the Senate standing rules, the motion to proceed to a bill usually is debatable and, therefore, subject to a filibuster. (The question of proceeding to certain matters—for example, to a conference report or to executive session to take up and consider a nomination on the calendar—is not, however, subject to a filibuster, though the matter itself is.) Even before the bill can reach the floor (and perhaps face a filibuster), there may be extended debate on the question of whether the Senate should even consider the bill at all.

It is to avoid this possibility that the majority leader attempts to get all Senators to agree by unanimous consent to take up the bill he wishes to have debated. If Senators withhold their consent, they are implicitly threatening extended debate on the question of considering the bill. Senators may do so because they oppose that bill or because they wish to delay consideration of one measure in the hope of influencing the fate of some other, possibly unrelated, measure. Senators can even place a "hold" on a bill, by which they ask their party's floor leader to object on their behalf to any unanimous consent request to consider the bill, at least until they have been consulted. The practice of holds is not recognized in Senate standing rules or precedents (though both a provision in public law and a recently adopted Senate standing order govern their use); more often than not, however, the majority leader will not even make such a unanimous consent request if there is a hold on a bill.

In attempting to devise a schedule for the Senate floor, the majority leader seeks to promote the legislative program of his party (and perhaps the President) as he also tries to ensure that the Senate considers necessary legislation in a timely fashion.

When the majority leader is confronted with two bills, one of which can be brought up by unanimous consent and the other of which cannot, he is naturally inclined to ask the Senate to take up the bill that can be considered without objection. Time is limited, and the majority leader is concerned to use that time with reasonable efficiency. Some bills, of course, are too important

to be delayed only because some Senators object to considering them. Most are not, however, especially if the objections can be met through negotiation and compromise. Thus, the possibility of extended debate affects decisions for scheduling legislation in two ways: by discouraging the majority leader and the Senate from attempting to take up bills to which some Senators object, and by encouraging negotiations over substantive changes in the bills in order to meet these objections.

The right of Senators to debate at length is not the only way in which they can influence the Senate's legislative agenda. The standing rules of the Senate give its Members at least two other opportunities to influence the matters that reach the Senate floor for debate and decision. One opportunity affects the prerogatives of Senate committees; the other affects the amendments that Senators may propose on the floor.

Committee Referral and Rule XIV

The Senate's standing committees play an essential part in the legislative process, as they select the small percentage of the bills introduced each Congress that, in their judgment, deserve the attention of the Senate as a whole, and as they recommend amendments to these bills based on their expert knowledge and experience. Most bills are routinely referred to the committee with appropriate jurisdiction as soon as they are introduced. However, paragraph 4 of Rule XIV permits a Senator to bypass a committee referral altogether and have the bill placed directly on the Calendar of Business, with exactly the same formal status the bill would have if it had been considered and reported by a Senate committee.

By the same token, if a committee fails to act on a bill that was referred to it, while this may mean the bill will die for lack of action, the proposal it embodies may not. The Senator sponsoring the bill may introduce a new bill with exactly the same provisions as the first, and have the second bill placed directly on the calendar. However, taking the bill off the calendar (via unanimous consent or a motion to proceed) remains a question the Senate expects the majority leader to propose; thus, a Senator who uses Rule XIV to bypass a committee is not in a position to ensure the bill's movement to the floor. In recent practice, the majority leader more frequently uses this method to put a measure directly on the calendar—often to expedite consideration of a complicated or high-profile bill that has been drafted outside of the committee process or in relation to a legislative vehicle that closely resembles another bill already considered in committee (or by multiple committees).

Non-Germane Amendments

An even more important opportunity for individual Senators is a result of the absence in the standing rules of any general requirement that the amendments offered by Senators on the floor must be germane or relevant to the bill being considered. The rules impose a germaneness requirement only on amendments to general appropriations and budget measures and to matters being considered under cloture, and various statutes impose such a requirement on a limited number of other bills. (The Senate generally interprets germaneness strictly, to preclude amendments that expand the scope of a bill or introduce a specific additional topic.) In all other cases, Senators are free to propose whatever amendments they choose on whatever subjects to whatever bill the Senate happens to be considering.

The right to offer non-germane amendments is extraordinarily important because it permits Senators to present issues to the Senate for debate and decision, without regard to the judgments of the Senate's committees or the scheduling decisions and preferences of its majority leader. Again consider the position of a Senator whose bill is not being acted on by the committee to which it was referred. Instead of introducing an identical bill and having it placed directly on the calendar, he or she has a second and typically more attractive option: to offer the text of the bill as a floor amendment to another bill that has reached the floor and that can serve as a useful legislative "vehicle."

The existence of this opportunity can make it extremely difficult to anticipate what will happen to a bill when it reaches the floor and how much of the Senate's time it will consume. The party leaders and the floor managers of the bill may know what amendments on the subject of the bill are likely to be offered, but they cannot be certain that Senators will not want to also offer non-germane (and often quite controversial) amendments. In fact, it is not unusual for one or more non-germane amendments to occupy far more of the Senate's attention than the subject the bill itself addresses.

Unanimous Consent Agreements

The Nature of Unanimous Consent Agreements

Just as the right of extended debate encourages Senate committee and party leaders to bring up bills for consideration by unanimous consent, the right to debate combined with the right to offer non-germane amendments encourages the same leaders to seek unanimous consent agreements limiting or foreclosing the exercise of these rights while a bill is being considered. Without such an agreement (or in the absence of a successful cloture process), the bill could be debated for as long as Senators wish—as could each amendment offered, whether germane or not, unless the Senate votes to table it. These are the essential conditions under which the Senate considers a bill if it adheres to its standing rules.

It is precisely to avoid these conditions that the Senate often debates, amends, and passes bills under very different sets of parliamentary ground rules—ground rules that are far more restrictive, but that can be imposed only by unanimous consent. One of the frequent purposes of these unanimous consent agreements is to limit the time available for debate, and thereby ensure that there will be no filibuster. Complex unanimous consent agreements of this special kind are frequently called "time agreements."

In addition, before taking up a bill, or after the Senate has begun debating it, Senators often reach unanimous consent agreements to govern consideration of individual amendments that have been or will be offered. Less often today, the Senate reaches an encompassing agreement, limiting debate on a bill and all amendments to it, before or at the time the bill is called up for floor action.

The following example illustrates several contemporary features of such a comprehensive time agreement:

Ordered, That at a time to be determined by the Majority Leader with concurrence of the Democratic Leader, the Senate proceed to the immediate consideration of S. 1516, a bill to reauthorize Amtrak, and for other purposes; provided that the committee-reported substitute be withdrawn and the Managers amendment at the desk be agreed to as original text for the

purposes of further amendment, the amendment offered by the Senator from Iowa (Mr. Harkin) at the desk be agreed to and that the only other amendments in order be the following, the text of which is at the desk: McCain—Rail Security, Sununu—Long Distance Trains, Sununu—Competition, Sessions—Amtrak Debt.

Ordered further, That there be 1 hour for debate equally divided on each of the amendments and 1 hour of general debate on the bill; further, following the disposition of amendments and the use or yielding back of time, the bill as amended, be read a third time and the Senate proceed to a vote on passage without any intervening action or debate; further, that no points of order be waived by virtue of this agreement. (Aug. 3, 2006.)

Before discussing the effect of this agreement, some of its terms require definition. The manager of the bill usually is the chair of the standing committee that had considered and reported it (although it may be the chair of one of the committee's subcommittees instead). In addition, general debate on the question is debate on the bill as a whole, not on any amendment or motion affecting the bill; this debate may occur throughout the time the Senate considers the bill.

The two essential features of this and comparable time agreements are (1) a prohibition on any amendments not listed in the agreement, and (2) strict limitations on the time available for debating the bill and every question that may arise during its consideration. Under the terms of this agreement, for example, the Senate as a whole may debate each amendment for no more than one hour. There is also a time limit for debate on the bill itself.

The differences between considering a bill under the terms of the Senate's standing rules and considering it under this kind of time agreement are so great and so fundamental that they bear repeating. Under the standing rules, Senators may be able to offer whatever amendments, even if non-germane, that they want (as long as there are not already pending amendments that must first be disposed of); under the time agreement, only specified amendments are in order. Under the standing rules, Senators may debate the bill, each amendment, and a variety of other questions for as long as they want, subject only to limits that would be imposed under a successful cloture process; under the time agreement, on each question, time for debate is severely limited. The differences could hardly be more dramatic. It must be emphasized, however, that time agreements are *unanimous consent* agreements. They cannot be imposed on the Senate by any vote of the Senate; they require the concurrence or acquiescence of each and every Senator.

Negotiating Time Agreements

Negotiating these complex unanimous consent agreements can be a difficult and time-consuming process, the responsibility for which falls primarily on the majority and minority leaders and the leaders of the committee that reported the bill at issue. They consult interested Senators, but it would be impractical to consult every Senator about every bill scheduled for floor action. For this reason, individual Senators and their staffs take the initiative to protect their own interests by advising the leaders of their preferences and intentions. Negotiations sometimes take place on the floor and on the public record, but at least the preliminary discussions and consultations usually occur in meetings during quorum calls or off the floor. (The negotiation process may also be facilitated by use of the clearance process [or "hotline"], an informal communication mechanism by which each party's leadership gauges the preferences of its conference members.)

Senators prefer to expedite the conduct of legislative business whenever possible, and so normally cooperate in reaching time agreements. However, when Senators have special

concerns—for instance, when they are intent on offering particular amendments or guaranteeing themselves ample time for debate—their interests must be accommodated. Any Senator who is dissatisfied with the terms of a proposed time agreement has only to object when it is propounded on the floor; so long as any one Senator objects, the standing rules remain in force with all the rights and opportunities they provide. As a result, time agreements may include exceptions to their general provisions in order to satisfy individual Senators. For example, a comprehensive agreement that generally limits debate on each first degree amendment to an hour and prohibits non-germane amendments may identify one or more specific amendments that are exempted from the germaneness requirement, and also may provide different amounts of time for debating them.

In these ways, time agreements can be less restrictive than the one quoted earlier. There may be no agreement at all if one or more Senators decide to fully preserve their rights to debate and offer amendments. On many other occasions, however, an agreement's provisions are even more restrictive—for example, all amendments to the bill may be prohibited except for a few that are identified specifically in the agreement itself. If the Senate does accept a unanimous consent agreement, whatever its terms, it may be changed at a later time only by unanimous consent.

Other Unanimous Consent Agreements

In current practice, the Senate usually begins consideration of most bills without first having reached a time limitation agreement. In some cases, the floor managers expect few amendments and relatively little debate, making an elaborate agreement unnecessary. In other cases, the majority leader and committee chairman cannot reach an agreement with all Senators, but proceed with the bill anyway because of its timeliness and importance. After the Senate has debated such a bill and controversial amendments for many hours or even days, the leaders often renew their attempts to reach an overall agreement limiting debate on each remaining amendment or setting a time for the Senate to vote on passage of the bill.

In the absence of a time agreement covering all amendments and other questions, the party leaders and the floor managers often try to arrange unanimous consent agreements for more limited purposes while the Senate is debating a bill. During consideration of a controversial amendment, a Senator may propose that the Senate agree—by unanimous consent—to limit any further debate on it. Senators also may agree to time limits on individual amendments before offering them. By unanimous consent, the Senate may set aside one amendment temporarily in order to consider another one. Other agreements may define the order in which Senators will offer their amendments, postpone roll call votes until a later time that is more convenient for Senators, or even set a super-majority threshold for the adoption of a particular amendment.

These examples only begin to illustrate the many ways in which the Senate relies every day on unanimous consent arrangements. From routine requests to end a quorum call or waive the reading of an amendment to extremely elaborate and complicated procedural “treaties,” the Senate depends on unanimous consent requests and the willingness of Senators to agree to them.

The Daily Order of Business

The extent to which the Senate uses unanimous consent arrangements to supplement or supplant operation of its standing rules makes it difficult to predict with confidence what will actually take place on the Senate floor each day. This report already has mentioned some of the problems that

can arise in scheduling legislation and in anticipating the time that will be consumed (and the amendments that Senators will offer) during consideration of each bill. In addition, the other proceedings that occur each day also depend on whether the Senate decides to operate under or outside of its rules.

The time at which the Senate convenes each day is set by a resolution the Senate adopts at the beginning of each Congress, but that time is often changed from day to day by unanimous consent—at the request of the majority leader—to suit changing circumstances. When the Senate does convene, and after the opening prayer and the Pledge of Allegiance, a brief period of “leader time” is set aside for the majority leader and for the minority leader, under a standing order also established at the beginning of the Congress. During this time, the two party leaders may discuss the legislative schedule as well as their views on policy issues, and they also may conduct non-controversial business by unanimous consent.

What happens thereafter depends on whether the Senate is beginning a new legislative day. A legislative day begins when the Senate convenes after an adjournment, and it continues until the next adjournment. When the Senate recesses at the end of a day, as it often does, a legislative day continues for two or more calendar days. Standing Rules VII and VIII prescribe what the Senate should do at the beginning of each new legislative day, and one of the reasons the Senate may recess from day to day is to set aside the requirements imposed by these rules.

Under the two standing rules, the first two hours of session on each new legislative day are called the “morning hour.” They are a period for conducting routine business at a predictable time each day that does not interfere with the consideration of major legislation. The morning hour begins with the transaction of “morning business,” which includes the introduction of bills and joint resolutions and the submission of Senate and concurrent resolutions and committee reports. During the remainder of the morning hour, the Senate can act on bills on the Calendar of Business. At the end of the morning hour, the Senate resumes consideration of the unfinished business—whatever bill, if any, was the pending business when the Senate adjourned.

In current practice, however, the Senate either recesses at the end of the day, or adjourns but, by unanimous consent, deems the morning hour to have expired; thus, there is no morning hour on the following day of session. Instead, the majority leader usually arranges by unanimous consent that “a period for transacting routine morning business” follow “leader time.” Senators make brief statements on whatever subjects they like during this period, the length of which can change from day to day, depending on the legislative schedule. Also by unanimous consent, there may be other periods for transacting morning business during the course of the day when time is available and Senators wish to speak on subjects unrelated to the pending bill.

After the morning hour or the period for transacting routine morning business, the Senate normally resumes consideration of the bill that is either the unfinished business (if the Senate had adjourned on the preceding day) or the pending business (if the Senate had recessed instead). However, this bill may be set aside—temporarily or indefinitely—in favor of other legislative or executive business if the Senate agrees to motions or unanimous consent requests made for that purpose by the majority leader (or his designee). Before the end of the day, the majority leader also makes arrangements for the following day—establishing a meeting time by unanimous consent and commenting on the expected legislative program.

The Amending Process

The amending process is at the heart of the Senate’s floor deliberations. If the Senate reaches a final vote on passing or defeating a bill, the bill is very likely to pass. It is through the amending process that Senators have an opportunity to influence the content of the bill before the vote on final passage occurs; this is an especially important opportunity for Senators who do not serve on the committee that marked up the bill and reported it.

When a bill is called up for floor consideration, opening statements usually are made by the two floor managers—the chairman and ranking minority Member of the committee (or sometimes the subcommittee) that reported the bill—and often by other Senators as well. These statements lay the groundwork for the debate that follows, describing the purposes and provisions of the bill, the state of current law and the developments that make new legislation desirable or necessary, and the major points of controversy. These opening statements are a matter of custom and practice, however; the bill is open to amendment as soon as it is before the Senate.

The first amendments to be considered are those recommended by the committee reporting the bill, and so designated in the printed version of the bill “as reported.” As each committee amendment is being debated, Senators may propose amendments to it and to the part of the bill the committee amendment would change. The Senate votes on any such amendments before it votes on the committee amendment itself. Thereafter, Senators may offer amendments in any order to any part of the bill that has not already been amended. The order in which amendments are offered depends largely on the convenience of the Senators proposing them, not on requirements imposed by standing rules or precedents. As a general rule, a Senator cannot propose an amendment to a bill while first degree (and possibly second degree) amendments to the bill are pending. It is not unusual, however, for the Senate to agree by unanimous consent to lay aside pending amendments temporarily in order to consider another amendment that a Senator wishes to offer at that time.

After a Senator offers an amendment, it must be read unless the Senate dispenses with the reading by unanimous consent (or by non-debatable motion, in the case of certain amendments that have been previously available). The Senate then debates the amendment and may eventually dispose of it either by voting “up or down” on the amendment itself or by voting to table it. (In some cases, an amendment is disposed of when it falls on a successful point of order.) However, the amending process can become far more complicated. Bills are amendable in two degrees, so before the Senate votes on a first degree amendment, it is subject to second degree amendments that propose to change its text. After voting on any second degree amendments, the Senate votes on the first degree amendment as it may have been amended. Third degree amendments—amendments to second degree amendments—are not in order.

Additional complications are possible, depending on whether the first degree amendment proposes (1) to insert additional language in the bill without altering anything already in the bill; (2) to strike out language from the bill without inserting anything in its place; (3) to strike out language from the bill and insert different language instead; or (4) to strike out the entire text of the bill (everything after the enacting or resolving clause at the very beginning of the measure) and replace it with a different text. In the case of a motion to insert, for example, Senators can offer as many as three first and second degree amendments before the Senate would potentially face votes on any of them; in the case of an amendment that is a complete substitute for the text

of the bill, Senators can propose six or more first and second degree amendments to the substitute and to the original text of the bill before any offered amendments could receive votes.

These possibilities depend on several principles of precedence among amendments—principles governing the amendments that may be offered while other amendments are pending and also governing the order in which the Senate votes on the amendments that have been offered. Complicated amendment situations do not arise very often, but they are most likely to occur when the policy and political stakes are high. Majority leaders of the Senate have sometimes offered a series of amendments, one immediately after another, taking up available slots for pending amendments for the purpose of “freezing” the amendment process so that no other amendments can be offered (except by unanimous consent) at that time.

Once a Senator has offered an amendment, the conditions for debating it depend on whether or not there is a time limitation for considering that particular amendment or all amendments to the bill (imposed either through a unanimous consent agreement, or via a successful cloture process). If there is no such limitation, each Senator typically may debate the amendment for as long as he or she pleases. However, any Senator who has been recognized may move to table the amendment, and that motion is not debatable. If there is a time limitation, the time provided is both a minimum and a maximum. Senators may not make motions or points of order, propose other amendments, or move to table, until all the time for debating the amendment has been used or until all remaining time has been yielded back. After the time has expired, on the other hand, the amendment can be debated further only by unanimous consent or if the Senators controlling time for debating the bill as a whole choose to yield part of that time.

A number of general principles govern the amending process. For example, an amendment that has been defeated may not be offered again without substantive change. An amendment should not make changes in two or more different places in the bill, nor may it propose only to amend a part of the bill that already has been amended. If an amendment consists of two or more parts that could each stand as separate and independent propositions, any Senator may demand that the amendment be divided and each division treated as if it were a separate amendment (except that a motion to strike out and insert is not divisible). Generally speaking, Senators may not propose amendments to their own amendments, but they can modify or withdraw their amendments instead. If the Senate takes some “action” on an amendment (such as ordering the yeas and nays on it), the Senator who offered the amendment loses his right to modify it, but now gains the right to offer an amendment to his or her own amendment.

As mentioned before, floor amendments to most bills need not be germane unless cloture has been invoked, or unless a germaneness requirement is part of the unanimous consent agreement under which a particular bill is being considered (or under a few other specific circumstances). Alternatively, the Senate may, by unanimous consent, require that amendments to a bill be relevant to it; relevancy is a somewhat less restrictive standard that seeks to ensure that unrelated issues will not be raised in the form of amendments.

The amending process continues until Senators have no other amendments they wish to offer or until the entire bill has been changed by amendments. At either point, the Senate orders the bill engrossed and read a third time—a formal stage that precludes further amendments—and then votes on final passage.

Quorum Calls and Rollcall Votes

The Constitution requires that a quorum—that is, a majority of all Senators—be present to conduct business on the floor. Even though Senators have many responsibilities that frequently keep them from the floor, the Senate presumes that a quorum is present unless a quorum call demonstrates that it is not.

A Senator who has been recognized may suggest the absence of a quorum at almost any time; a clerk then begins to call the roll of Senators. Senators may not debate or conduct business while a quorum call is in progress. If a majority of Senators do not appear and respond to their names, the Senate can only adjourn or recess, or attempt to secure the attendance of additional Senators. However, quorum calls usually are ended by unanimous consent before the clerk completes the call of the roll and the absence of a quorum is demonstrated. The reason is that most quorum calls are not really intended to determine whether a quorum is present.

The purpose of a quorum call usually is to suspend floor activity temporarily. If a Senator is coming to the floor to speak, a colleague may suggest the absence of a quorum until the expected Senator arrives. If the Senate finds itself confronted with unexpected procedural complications, if the majority leader needs to meet with several Senators on the floor about a possible unanimous consent agreement, or if the floor manager of a bill wants to discuss a compromise alternative to an amendment another Senator has offered—for any of these or many other reasons—a Senator may suggest the absence of a quorum to permit time for informal consultations. The time consumed by many quorum calls permits intensive and productive discussions that would be far more difficult to hold under the rules of formal Senate debate.

The Constitution also provides that one-fifth of the Senators on the floor (assuming that a quorum is present) can demand a rollcall vote. Since the smallest possible quorum is 51 Senators, the support of at least 11 Senators is required to order a rollcall vote. A Senator who has been recognized can ask for “the yeas and nays” at any time that the Senate is considering a motion, amendment, bill, or other question. Agreement to this request does not terminate debate. Instead, if a rollcall is ordered pursuant to his request, then that is how the Senate will vote on the question when (or if) the time for the vote arrives. Thus, the Senate may order a rollcall vote on an amendment as soon as it is offered, but the vote itself may not take place for several hours or more (or, potentially, not at all), when Senators no longer wish to debate the amendment (or when a cloture process forces a vote).

The alternative to a rollcall vote usually is a voice vote in which the Senators favoring the bill or amendment (or whatever question is to be decided) vote “aye” in unison, followed by those voting “no.” (Sometimes in relation to a voice vote—when the outcome of the vote is not in question—the presiding officer will note that “without objection, the amendment (or bill) is agreed to.”) Although a voice vote does not create a public record of how each Senator voted, it is an equally valid and conclusive way for the Senate to reach a decision.

Sources of Additional Information

The standing rules of the Senate are published periodically in a separate Senate document and in the *Senate Manual*, which contains other related documents as well. The most recent compilation of the Senate’s precedents is the *Riddick’s Senate Procedure*, named in honor of Floyd M.

Riddick, Parliamentarian Emeritus of the Senate (Senate Document No. 101-28; 101st Congress, second session).

The parliamentarian and her assistants welcome inquiries from congressional offices about Senate procedures, and offer expert assistance compatible with their other responsibilities.

The Congressional Research Service has prepared numerous other reports on the Senate and its procedures, including CRS Report RL30788, *Parliamentary Reference Sources: Senate*, by Megan S. Lynch and Richard S. Beth; CRS Report 98-836, *Calling Up Measures on the Senate Floor*, by Christopher M. Davis; CRS Report 98-712, *“Holds” in the Senate*, by Walter J. Oleszek; CRS Report RL30360, *Filibusters and Cloture in the Senate*, by Richard S. Beth and Valerie Heitshusen; CRS Report 98-853, *The Amending Process in the Senate*, by Christopher M. Davis; CRS Report 98-306, *Points of Order, Rulings, and Appeals in the Senate*, by Valerie Heitshusen; CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki. A large number of additional reports on specific topics related to Senate procedure are also available (categorized by subject area) at <http://crs.gov/analysis/Pages/CongressionalOperations.aspx>.

The staff of CRS are available to consult with individual Senators and staff; they also present periodic staff seminars and institutes on legislative procedures.

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