

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 a 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, debate can continue under cloture for an additional thirty 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.

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 have the Senate vote on them, even if they have not been studied and evaluated by the appropriate standing committees. Similarly, Senators can bypass the committee system by introducing measures and having them placed directly on the Calendar of Business without having been referred to committee at all.

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) proposes 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.

In January 2001, the Senate agreed to S.Res. 8, adjusting the Senate's organization and procedures during the 107th Congress. Explanations of pertinent provisions of this resolution appear in italics.

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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 it sets aside some of its 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 one hundred 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 it 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. But the standing rules remain available 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 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 either leader and another Senator are seeking recognition at the same time. And by custom, only the Majority Leader (or another Senator acting at his behest) 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, but it imposes no limit at all on the number of Senators who may make those two speeches, nor 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 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, they usually may 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). And if the Senate agrees to the 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 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, in the hope of changing their colleagues' minds, winning support for amendments that meet 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, insisting that amendments be read in

full, demanding roll call votes on amendments and motions, and a 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 paragraph 2 of Rule XXII. However, cloture cannot be voted until two days after it is proposed, and a simple majority of the Senate is insufficient to invoke cloture. *Also, during the 107th Congress, it is not be in order to file a cloture motion on “an amendable item during its first 12 hours of Senate debate.” The Senate established this standing order for the 107th Congress as part of S.Res. 8, adopted on January 5, 2001, in light of the equal party division in the Senate.*

Cloture requires the support of three-fifths of the Senators duly chosen and sworn, or a minimum of 60 votes (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 (or anything else), the result is not an immediate vote on passing the bill. The cloture rule permits a maximum of thirty additional hours for considering the bill, during which each Senator may speak for one hour. The time consumed by rollcall votes and quorum calls is deducted from the thirty 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 ten minutes for debate. Thus, cloture does not stop debate immediately; it only ensures that debate cannot continue indefinitely. And even the thirty hours allowed 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 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 fifty hours. If no such provision applies, Senators can prolong the debate indefinitely on any bill or amendment, as well as on many motions, subject only to tabling motions or cloture.

Yet filibusters are not daily events even though there are Senators who adamantly oppose most major bills the Senate considers. One reason is that conducting a filibuster is physically demanding. 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 resort to filibusters only on matters of the greatest importance to them because this policy 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. And just threatening to filibuster can give Senators great influence over whether the Senate considers a bill, when it considers it, and how it is amended.

If a majority of Senators support a bill that is being filibustered, they may be able to pass it anyway 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 can strain the endurance and determination of the filibustering Senators. But the potency of filibusters does not depend 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.

Scheduling Legislative Business

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 one or more of the Senate's standing committees 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"). *S.Res. 8 created a special procedure, in effect during the 107th Congress, to be available if there should be a tie vote in committee on ordering reported a measure or nomination. In such a case, S.Res. 8 provides for the majority or minority leader to make a motion to discharge the committee from further consideration of the matter in question. The Senate*

decides this motion by majority vote, after no more than four hours of debate. If the Senate agrees to the motion, the measure or nomination is placed on the appropriate Senate calendar as if it had been reported from committee

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' willingness to relinquish to him the right to make the motion that the standing rules provide for deciding the order of legislative business—namely, the motion that the Senate proceed to the consideration of a particular bill.

To govern the Senate during the 107th Congress, S.Res. 8 reaffirmed that “a motion to proceed to any Legislative or Executive Calendar item shall continue to be considered the prerogative of the Majority Leader,” while recognizing that “the Senate Rules do not prohibit the right of the Democratic Leader, or any other Senator, to move to proceed to any item.”

Whenever possible, however, bills reach the Senate floor not by motion but by unanimous consent. The motion to consider a bill usually is debatable and, therefore, subject to a filibuster. Even before the bill can reach the floor, and perhaps face a filibuster, there may be extended debate on the question of whether or not the Senate should even consider the bill at all.

It is to avoid this danger 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, although this practice is not recognized in Senate rules or precedents, 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. More often than not, 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. *In addition, to guide the equally divided Senate during the 107th Congress, S.Res. 8 directs that both party leaders “shall seek to attain an equal balance of the interest of the two parties when scheduling and debating legislative and executive business generally....”*

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 because some Senators object to considering them. But most are not, 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 which, 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. But if a Senator plans to introduce a bill and believes that the committee to which it would be referred will be unsympathetic, Rule XIV permits the Senator to bypass the standing committee system 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 the subject of extensive hearings and exhaustive mark-up meetings in committee.

By the same token, if a committee fails to act on a bill that was referred to it, the bill may die for lack of action, but not the proposal it embodies. 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. In either event, the committee that has been circumvented may oppose bringing the bill from the Calendar to the floor by unanimous consent or by motion, but now the fate of the bill can be decided by the Senate as a whole, not only by one of its committees. Senators generally view this use of Rule XIV as a last resort, both because it undermines the committee system as a whole and because they do not wish to encourage a practice that can be used against their own committees.

As noted above, S.Res. 8 created a special procedure, available only during the 107th Congress, by which either party leader can move to discharge a committee from further consideration of a measure or nomination if there had been a tie vote in committee on ordering that matter reported. However, this procedure is not available if the committee to which a matter was referred failed to act on it.

Non-Germane Amendments

Even more important is the absence in the standing rules of any general requirement that the amendments which Senators offer 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. (Various statutes impose such a requirement on a limited number of other bills.) 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 usually 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 will be offered, but they cannot be certain that there will be no other, far more controversial, non-germane amendments. In fact, it is not unusual for one or more non-germane amendments to occupy the Senate's attention far more than the subject the bill itself addresses.

The Nature of Time 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, the bill could be debated for as long as Senators wish, as could each amendment, 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 require unanimous consent to be imposed. Complex unanimous consent agreements of this special kind are frequently called "time agreements" because one of their primary purposes and effects is to limit the time available for debate, and thereby ensure that there will be no filibuster. Often after the Senate has begun debating a bill, Senators 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 such a comprehensive time agreement "in the usual form:"

ORDERED, That when the Senate proceeds to the consideration of S. 1651 (Order No. 636), the Veterans' Dioxin and Radiation Exposure

Compensation Standards Act, debate on any amendment in the first degree shall be limited to 1 hour, to be equally divided and controlled by the mover of such and the manager of the bill, and debate on any amendment in the second degree, debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: PROVIDED, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the Minority Leader or his designee; PROVIDED FURTHER, That no amendment that is not germane to the provisions of the said bill shall be received.

ORDERED FURTHER, That on the question of final passage of the said bill, debate shall be limited to 4 hours, to be equally divided and controlled by the Majority Leader and the Minority Leader, or their designees: PROVIDED, That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

Before discussing the effect of this agreement, some of its terms require definition. A first degree amendment is an amendment that proposes to change or add to the text of the bill, while a second degree amendment proposes to change or replace the text of a first degree amendment that has been proposed but not yet voted on. The manager of the bill usually is the chairman of the standing committee that had considered and reported it, although it may be the chairman of one of the committee's subcommittees instead. Finally, debate on the question of final passage 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 against non-germane amendments, 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 first degree amendment for no more than one hour. Moreover, only a very few Senators have a right to speak during that hour; other Senators may speak only if one of their colleagues agrees to yield them part of the time that he or she controls. Senators still may offer as many amendments as they wish, but they have lost their valued right of unlimited debate. And there are even more stringent time limits for debate on second degree amendments and other questions, as well as a limit on time for debating 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 offer whatever non-germane amendments they want; under the time agreement, no non-germane amendments at all are permitted. Under the standing rules, Senators may debate the bill, each amendment, and a variety of other questions for as long as they want; under the time agreement, only two Senators have the right to speak on each question, and their time is severely limited. The differences could hardly be

more dramatic. But it must be emphasized 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.

Senators prefer to expedite the conduct of legislative business whenever possible, and so normally cooperate in reaching time agreements. But 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 other occasions, however, agreements have been even more restrictive—for example, by prohibiting all amendments to a bill except for a few that are identified specifically in the agreement itself (and perhaps also prohibiting amendments to those amendments). But 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

The Senate now 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 seek an agreement unsuccessfully, 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 an agreement setting a time for the Senate to vote on whether to pass the bill.

In the absence of a time agreement covering all amendments and other questions, the Majority Leader and the majority floor manager often try to arrange unanimous consent agreements for more limited purposes while the Senate is debating a bill. During consideration of a controversial amendment, either Senator may propose to limit 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 or postpone roll call votes until a later time that is more convenient for Senators.

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. 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 already have been mentioned. But 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 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 frequently recesses 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, even voting to consider them by non-debatable motions. 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 practice, the Senate very often recesses at the end of the day, so there is no Morning Hour on the following day of session. Instead, the Majority Leader usually arranges by unanimous consent for “a period for transacting routine morning business” that follows “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 there is time available and when 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. 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; and 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. But these opening statements are a matter of custom and practice; 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; and 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. Sometimes, however, the Senate agrees 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. The Senate then debates the amendment and may dispose of it either by voting “up or down” on the amendment itself or by voting to table it. 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 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 votes must occur.

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.

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. If there is no such limitation, each Senator may debate the amendment for as long as he or she pleases, subject only to the rule limiting each Senator to two speeches on a question during each legislative day. 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, or propose other amendments, 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.

There are a number of general principles governing 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 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 own amendment.

As mentioned before, floor amendments to most bills need not be germane unless a germaneness requirement is part of the unanimous consent agreement under which a particular bill is being considered. 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, or 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 if 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, 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. If a roll call is ordered, that is how the Senate will vote on the question whenever 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, when Senators no longer wish to debate the amendment.

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.” 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, 2d Session). The text of the standing rules and more recent precedents are available in a computerized data file accessible to Senators and their staff.

The Parliamentarian and his assistants welcome inquiries about Senate procedures, and offer expert assistance compatible with their other responsibilities.

The Congressional Research Service has prepared a variety of other reports on the Senate and its procedures, including *Senate Rules Affecting Committees* (Report No. 98-311), *Filibusters and Cloture in the Senate* (Report No. RL30360), *Senate Floor Procedure: a Summary* (Report No. 97-368), *The Amending Process in the Senate* (Report No. 98-853), *Conference Committee and Related Procedures: An Introduction* (Report No. 96-708), and *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses* (Report No. 98-696).

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