

The Amending Process in the Senate

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Summary

A bill is subject to amendment as soon as the Senate begins to consider it on the floor. Any committee amendments are considered first; then Senators can offer amendments to any part of the bill in any order. Senators may debate each amendment without limit unless the Senate (1) agrees to a motion to table (kill) the amendment, (2) agrees to a unanimous consent request to limit debate on the amendment, or (3) invokes cloture, thereby limiting debate on the amendment or on the bill and all amendments to it.

There are several different types of amendments. A first degree amendment proposes to change the text of the bill; a second degree amendment proposes to change the text of a first degree amendment that the Senate is considering. Third degree amendments are not allowed. An amendment may propose to strike out language from a bill (or a first degree amendment), to insert new language, or to replace language by striking out and inserting. In general, an amendment that proposes to replace the entire text of a bill is known as an amendment in the nature of a substitute; an amendment to replace the entire text of a first degree amendment is known as a substitute amendment. An amendment, especially in the second degree, that makes some lesser change is known as a perfecting amendment.

Depending on the kinds of amendments that Senators offer and the order in which they are recognized to offer their amendments, Senators can offer anywhere from three to 11 amendments before the Senate has to vote on any of them. The graphic ways of depicting these possibilities often are called the Senate's "amendment trees."

The Senate only requires that amendments be germane when amendments are offered (1) to general appropriations bills and budget measures, (2) under cloture, or (3) under certain unanimous consent agreements and rulemaking statutes. Otherwise, Senators can offer amendments on any subject to any bill. There are several general restrictions on the amending process. For example, it is not in order to propose an amendment that proposes only to amend language in a bill that already has been amended. However, it is possible to re-amend that language in the process of amending a larger portion of the bill. There also are special provisions in Senate rules to limit amendments to appropriations bills if those amendments propose unauthorized appropriations or changes in existing law. The Senate can, and sometimes does, choose not to enforce these restrictions.

The Senator who has offered an amendment may withdraw or modify it at any time until the Senate has taken some action on it, such as by amending it or by ordering a rollcall vote on it. Senators also may demand that certain amendments be divided into two or more parts. A rollcall vote on an amendment is ordered at the request of at least eleven Senators.

The Senate's cloture procedure makes several changes in the amending process. For example, no amendment can be offered under cloture unless a Senator submitted it in writing before the cloture vote occurred.

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Introduction

This report summarizes many of the rules, precedents, and practices of the Senate affecting the consideration of amendments to measures on the floor. Much of the information presented here has been extracted from *Riddick's Senate Procedure* (Senate Document 101-28) the sole published collection of Senate precedents.

This report should be read with several caveats in mind. First, no report of this length can take account of every ruling that has been made and every contingency that can arise. Second, the Senate conducts much of its business by unanimous consent, and may thereby change or set aside its rules or customary procedures for specific and limited purposes. Third, Senate procedures are not static; the accuracy of this report will be affected by future changes the Senate makes in its formal rules or informal practices. Although this report may provide useful background information, it should not be considered a substitute for consultation with the parliamentarian and his associates on specific procedural problems and opportunities. This report should not be cited as authority in Senate proceedings.

Offering and Debating Amendments

When the Senate agrees to consider a bill or resolution (either by motion or by unanimous consent), the title of the measure is read. If there are committee amendments printed in the measure as reported, the first of these amendments then is pending automatically. Debate usually begins with opening statements about the measure as a whole by its majority and minority floor managers and other Senators. This is a customary practice of the Senate; its rules do not set aside a time for these opening statements. The Senate then acts on the committee amendments, after which Senators may offer their own amendments to any part of the measure in any order. In the House, measures often are read for amendment by sections or titles; in that case, Representatives may offer amendments only to the one section or title that is then open to amendment. In the Senate, by contrast, measures are considered to be open to amendment at any point.

The first amendments that the Senate considers are amendments recommended by the committee or committees that reported the measure. Senators do not have to call up these amendments for consideration. They are considered automatically, one by one, and in the order in which they are printed in the measure as reported (except by unanimous consent). However, individual Senators may offer second degree amendments to each committee amendment (or first degree amendments to that part of the measure that a committee amendment proposes to strike out or replace—see

“The Amendment Trees”), and the Senate considers and disposes of any such amendments before acting on the committee amendment itself.

This means that the Senate usually considers each committee amendment before Senators offer other unrelated amendments from the floor. But the Senate may not dispose of all committee amendments at the beginning of the amending process. In fact, when a committee reports a measure with an amendment in the nature of a substitute for the entire text of the bill, the vote on that committee amendment normally concludes the amending process and immediately precedes the vote on passing the bill (see “The Amendment Trees”).

When a Senate committee reports a bill with a series of separate amendments, the Senate often decides not to consider the amendments individually. Instead, the Senate may agree, by unanimous consent, to consider and agree to all the committee amendments *en bloc*, and then to consider the measure, as thus amended, as original text for the purpose of further amendment. Under such an agreement, Senators may offer amendments in two degrees to the text of each committee amendment that now has been made part of the measure. The effect of this arrangement is to create the same opportunities for Senators to propose amendments to each of the committee’s recommendations that Senators enjoy when a committee reports a single text that includes all of its recommendations—either in the form of either a complete substitute for a measure referred to it or in the form of a new original measure that is introduced at the same time the committee reports it to the Senate. From time to time, one or more committee amendments may be excluded from such a unanimous consent agreement, leaving that amendment or those amendments to be considered separately.

When the Senate begins consideration of an appropriations measure that the House already has passed, the majority floor manager typically proposes this kind of unanimous consent agreement. The agreement normally includes a stipulation that Senators retain their rights to make points of order against any of the committee amendments that are to be incorporated into the measure under the terms of the agreement. The Appropriations Committee is the only Senate committee that often has reported important measures to the Senate with a series of separate committee amendments. Most other Senate committees usually consolidate all their amendments to a major bill into a single complete substitute amendment for the text of the bill as introduced, or they incorporate their amendments into the text of an original bill that the committee chairman introduces on behalf of the committee.

Paragraph 5 of Rule XV prohibits the consideration of a substantive committee amendment “which contains any significant matter not within the jurisdiction of the committee proposing such amendment.” However, this prohibition does not apply if a committee chooses to incorporate that committee amendment into the text of an original bill it orders reported.

After disposing of individual committee amendments, the Senate considers additional first degree amendments, and amendments thereto, in whatever order Senators wish to offer them (absent some unanimous consent agreement to the contrary). In the case of a committee amendment in the nature of a substitute for the

entire text of the bill, both that amendment and the text of the underlying measure are open to amendment at any point.

To offer an amendment, a Senator must have the floor, and paragraph 1 of Rule XIX directs the presiding officer “to recognize the Senator who shall first address him.” As a matter of established practice, however, preference in recognition is accorded to the majority and minority leaders when either leader and another Senator are seeking recognition at the same time. The chair also may give preference in recognition to either floor manager of the measure the Senate is considering. Technically, a Senator loses the floor after offering an amendment (or making any motion) unless recognized again. In practice, the Senator offering an amendment normally is recognized to begin the debate on it.

With the exception of committee amendments, the order in which first degree amendments are offered is determined not by rule or precedent, but by the convenience of Senators. A second degree amendment, of course, must be offered while the first degree amendment it would affect is pending. The form of first and second degree amendments determines what additional amendments may be offered and pending simultaneously. (See “Types of Amendments” and “The Amendment Trees.”) Normally, amendments are offered and considered individually, but Senators may request unanimous consent that two or more related amendments be considered *en bloc*, that is, as if they were one amendment. This is a useful practice when, for example, a Senator needs to amend a bill in two non-contiguous places in order to accomplish a single policy change.

An amendment must be in writing and, when offered, is to be read before debate begins. The reading of an amendment usually is dispensed with by unanimous consent when the floor managers and other interested Senators already are familiar with the amendment’s purpose and provisions.

For the information and convenience of the Senate, Senators often submit proposed amendments to be printed in the *Congressional Record* a day or more before they are to be called up for consideration. If an amendment is submitted for printing in the *Record*, it is assigned a number at that time. Otherwise, the amendment is numbered at the time it is offered and read on the floor. In this way, all floor amendments are numbered sequentially throughout the course of a Congress. The text of each amendment usually appears in the *Congressional Record* at the point at which it is called up, even if it had been printed in an earlier issue of the *Record*.

Except under cloture, an amendment printed in advance in the *Record* enjoys no special standing (see “Amendments under Cloture”); it must be called up by a Senator in the same manner as any other amendment. However, a printed amendment may be called up by any Senator, not just by the Senator who submitted it for printing. This does not occur often.

The Senate can (but rarely does) adopt a motion that postpones to a time certain further action on an amendment that it has been considering. More commonly, a pending amendment may be laid aside temporarily, by unanimous consent, in order to permit consideration of another amendment instead. Once the second amendment is disposed of, the first amendment is back before the Senate automatically. When

an amendment is laid aside temporarily, it is usually for one of two reasons: either to accommodate another Senator who wishes to offer an amendment at a certain time, or to permit interested Senators to discuss, and perhaps to agree on changes in, a pending amendment without occupying the time of the full Senate.

After the Senate agrees to consider a measure, amendments to it are in order at any time, subject to limitations on the number and types of amendments that may be pending simultaneously, until the measure has been read a third time by title. Except under cloture, Senate rules and precedents impose no limits on the number of amendments that may be offered. By the same token, there is no limit on how long Senators may debate one amendment or all amendments, except (1) by unanimous consent, (2) under cloture, or (3) under the provisions of certain rule-making statutes, such as the Congressional Budget Act of 1974 which imposes a time limit for Senate floor action on budget resolutions and reconciliation bills. Rule XIX states that “no Senator shall speak more than twice upon any one question in debate on the same day without leave of the Senate,” but the length of each speech is not controlled.

A Senator may stop debate on an amendment by being recognized and then moving to lay it on the table. If the Senate agrees to this non-debatable motion, the amendment is considered to be rejected. (The Senate may vote to table a first degree amendment while a second degree amendment to it is pending.) If the tabling motion is defeated, debate on the amendment may resume. However, the vote on a motion to table an amendment often is considered to be a decisive test vote on the amendment; if the tabling motion is defeated on a roll call vote, the amendment itself may be agreed to by voice vote shortly thereafter. Moving to table an amendment is essentially a negative action, and there is no other motion available in the Senate to bring the body to an immediate vote to dispose of a pending amendment. Unlike the House, the Senate does not permit its members to move the previous question or to move the close debate.

The Senate frequently does impose limitations on itself in the form of unanimous consent agreements that specify parliamentary conditions for considering and amending a particular measure. In their most comprehensive form, these agreements can impose a time limit for debating each first and second degree amendment and indicate how the time in each case is to be divided and controlled. A standard period of time may be provided for debating each amendment—for example, one hour for each first degree amendment and 30 minutes for each second degree amendment and any other debatable question—but the agreement may permit lengthier debates on certain specific amendments. The time for debating each amendment usually is divided between its proposer and the majority floor manager (or the minority floor manager, if the majority floor manager supports the amendment).

Such comprehensive unanimous consent agreements (or time agreements, as they often are called) also provide a period of time for debate on the question of final passage—debate on the measure as a whole, that may be used or yielded by the majority and minority floor managers at any time that the Senate is considering the measure. In addition, these agreements normally require that all amendments must be germane, although specific amendments may be exempted from this requirement.

Instead of approving a comprehensive time agreement when it begins debate on a bill, today the Senate is more likely to debate and amend a major bill for some time before developing an agreement that identifies the remaining amendments that may be offered to the bill and the amount of time available for debating each of those amendments. That agreement even may specify the order in which the remaining amendments are to be offered. The Senate also may reach agreements during the course of debate that apply only to individual amendments—for instance, an agreement limiting how long the pending amendment will be debated and which amendment will be the next one to be considered.

Unanimous consent agreements affect the amending process in another important respect. Under such an agreement, covering one or all amendments to a measure, it is not in order to move to table a pending amendment, or to offer another amendment that has precedence, or to make a point of order against the amendment, until all the time for debating it has expired or has been yielded back, at least by the proponent of the amendment. In the absence of a unanimous consent agreement, any Senator who is recognized may take any of these actions at any time after an amendment has been called up.

A unanimous consent agreement to limit debate on a specific amendment also constitutes action by the Senate on that amendment. Once such an agreement is reached, the Senator offering the amendment may modify or withdraw it only by unanimous consent. (See “Modification, Withdrawal and Division of Amendments.”)

Through unanimous consent agreements, the Senate imposes an order and some limits on the amending process that are not required by Senate rules and precedents. However, these agreements require the explicit or implicit concurrence of every Senator. If a single Senator objects, the amending process may continue indefinitely or until the measure is fully amended, and without limitations on debate unless the Senate invokes cloture.

Types of Amendments

Some aspects of the amending process in the Senate are predicated upon several distinctions among types of amendments. Amendments may be distinguished in terms of their *degree*, *form*, and *scope*.

As a general rule, a measure being considered on the Senate floor is open to amendment in two degrees. Unless the Senate agrees otherwise by unanimous consent, it is in order to offer an amendment to the text of any measure (an amendment in the *first degree*), and it is also in order to offer an amendment to that amendment (an amendment in the *second degree*) while the first degree amendment is pending. It is not in order to offer an amendment in the third degree—an amendment to an amendment to an amendment—except by unanimous consent.

(There are parliamentary conditions under which, in principle, as many as 11 amendments may be pending simultaneously; see “The Amendment Trees.”)¹

Amendments also differ in their form. First, an amendment may propose to *insert* additional language in a measure or pending first degree amendment without changing anything that already is in the text it would amend. Second, an amendment may take the form of a motion to *strike out* part of a measure or pending first degree amendment without inserting anything in its place. Or third, an amendment may propose to *strike out and insert*—to replace one or more words or provisions of a measure or pending first degree amendment with one or more different words or provisions.

Finally, amendments differ in scope. A *substitute amendment* in the first degree proposes to replace some part of the text of a measure. A *complete substitute* (denoted in this report as an *amendment in the nature of a substitute*) is a special form of substitute amendment that proposes to replace the entire text of the measure—to strike all after the enacting clause and insert “in lieu thereof” a different text.² A substitute amendment in the second degree proposes to replace the entire text of a pending first degree amendment with a different text. By their very nature, all substitute amendments are motions to strike out and insert; but not all motions to strike out and insert are characterized as substitutes.

On the other hand, *perfecting amendments* may take different forms. A first degree amendment to insert or a first degree motion to strike out is a perfecting amendment. In addition, a first degree amendment in the form of a motion to strike out and insert is considered to be a perfecting amendment if it would replace less of the measure than a pending first degree substitute amendment. A perfecting amendment in the second degree may take any of the three possible forms so long as it proposes to alter or “perfect,” rather than to replace entirely, the text of a pending first degree amendment.

Whether a first degree amendment is considered to be a perfecting or a substitute amendment may depend on the parliamentary circumstances in which it is offered. When a Senator offers a first degree amendment in the form of a motion to strike out and insert, that amendment is considered to be a substitute amendment if

¹Technically, there may be only one amendment pending before the Senate at any moment. The “pending amendment” is the amendment on which the Senate is to act first. For the sake of convenience in this report, however, the term “pending amendments” is used more generally to refer to all the amendments that have been offered and that have not been laid aside temporarily, withdrawn, or disposed of by the Senate in some fashion.

²Unlike the House, the Senate does not use the phrase “amendment in the nature of a substitute” to refer consistently and exclusively to an amendment that proposes to strike out all after the enacting clause of a bill (or resolving clause of a resolution) and replace that text with a different text. For purposes of clarity, the phrase will be used only in that sense in this report; but it should be borne in mind that Senators may use the same phrase in a broader sense.

no other such first degree amendment is already pending. However, the same first degree amendment to strike out and insert may be considered to be a perfecting amendment instead if it is offered while there is already pending a substitute for some larger portion of the measure. Any motion to strike out and insert in the first degree—even an amendment that would replace an entire title of the measure—is a perfecting amendment if it is offered while the Senate is considering an amendment in the nature of a substitute that would replace the text of the measure altogether.

By the same token, the distinction between perfecting and substitute amendments can depend on the way in which the amendments are drafted, not on the significance of the legislative changes they propose. With regard to second degree amendments, for example, any amendment is a substitute amendment so long as it proposes to insert something in the measure in place of the matter that the pending first degree amendment proposes to insert—without regard to whether the first degree amendment proposes only to insert or to strike out and insert. On the other hand, a second degree amendment is a perfecting amendment so long as it proposes to alter, but not replace entirely, the matter proposed to be inserted by the pending first degree amendment.

As a result, a second degree perfecting amendment may propose major changes in a first degree amendment, while a second degree substitute amendment may be identical to the text it would replace except for one word or number. It is sometimes possible, and useful, for the same second degree amendment to be drafted both as a perfecting amendment and as a substitute amendment so that the amendment may be offered under the widest range of parliamentary circumstances.

Precedence Among Amendments

The distinctions among types of amendments are not merely analytical; they can be of considerable practical importance because of the relations of *precedence* among amendments.

For purposes of the amending process in the Senate, “precedence” has two related meanings. If one amendment has precedence over another, (1) it may be offered while the other is pending, and (2) it is disposed of first. Thus, if amendment A has precedence over amendment B, amendment A may be offered even though amendment B already has been offered and is still pending before the Senate. And if both amendments are pending at the same time, the Senate acts on amendment A before it acts on amendment B. Precedence also has negative consequences: amendment B may not be offered while amendment A is pending and if both are pending at the same time, the Senate may not act on amendment B before it acts on amendment A (except by unanimous consent).

Three principles of precedence among amendments that are directed to the same text may be derived from Senate precedents, as follows:

1. a second degree amendment has precedence over a first degree amendment;

2. a motion to insert and a motion to strike out and insert have precedence over a motion to strike out; and
3. a perfecting amendment (and an amendment to it) has precedence over a substitute amendment (and an amendment to it).

The first of these principles is axiomatic. A second degree amendment is an amendment to a first degree amendment, and it must be offered while the first degree amendment is pending—that is, after the first degree amendment has been offered but before the Senate has disposed of it. The Senate also acts on an amendment to a first degree amendment before it acts on the first degree amendment itself. So this principle conforms to Senate practice under both meanings of precedence.

The other two principles are less obvious but their practical applications are similar. For example, if a first degree substitute amendment is pending (including an amendment in the nature of a substitute), an amendment may be offered to perfect the part of the measure that the substitute proposes to replace. If that perfecting amendment is offered, the Senate votes on the perfecting amendment to the measure before it acts on the substitute. By the same token, while a motion to strike out part of a measure is pending, an amendment may be offered to the text proposed to be stricken, and the Senate acts on the latter amendment before it votes on the motion to strike out. Because of these principles of precedence among amendments, a number of amendments may be pending at the same time (see “The Amendment Trees”).

Precedence controls what amendments *may* be offered at any given time, but it has no effect on the order in which Senators are recognized to offer amendments. If two Senators wish to offer amendments, the order in which the amendments are called up for consideration, assuming both are in order, depends on which Senator seeks recognition first, not on the relative precedence of the two amendments. If two Senators seek recognition at the same time, the relative precedence of their two amendments does not determine which Senator will be recognized first.

The notion of precedence has another important effect on the amending process. Paragraph 1 of Rule XXII specifies an order of precedence among motions, including the motion to amend. Under the terms of this paragraph, a motion to adjourn or recess is in order while an amendment is pending. It is in order also to move to lay a pending amendment on the table. In fact, all the other motions listed in Rule XXII have precedence over the motion to amend.

The Amendment Trees

Under certain parliamentary circumstances, a number of amendments may be pending at the same time. The graphic display of the amendments that are in order at any one time sometimes is referred to as an “amendment tree.”

There are at least two ways of depicting the amendment trees, both of which are presented in this section. The official system is the one used in *Riddick's Senate Procedure*. The four diagrams in this section that are labeled “charts” are taken

directly from this source and are explained in considerable detail in the extended discussion of precedents concerning amendments (pages 24-125 of that volume). On the pages facing three of the four charts from *Riddick's Senate Procedure* are "figures" that depict precisely the same situations and possibilities, but in different ways. The discussion that follows in this section focuses on these figures as an alternative way of visualizing and understanding the amendment situations that can develop on the Senate floor. An understanding of the charts and figures will lead to the same practical conclusions. However, only the charts in *Riddick's Senate Procedure* have any standing as Senate precedents.

The amendment trees in the Senate generally reflect the meaning and principles of precedence among amendments. The three principles discussed in the previous section of this report are summary statements derived from an examination of Senate precedents under which certain amendments have been offered under various conditions. However, the Senate does not permit every amendment to be offered, under all circumstances, that might seem to be in order under the logic of these principles. The principles of precedence are sufficient to account for the order in which the Senate acts on amendments that have been offered.

The amendments that are in order at any one time depend on the form and scope of the first amendment to be proposed, and then on the form, scope, and degree of subsequent amendments. Thus, depending on the form and scope of the first amendment to be offered, as few as two or as many as ten other amendments may be offered before the Senate must vote on any one of them. But whether all of these amendments actually will be pending depends on what amendments Senators wish to offer and the order in which they are recognized to do so.

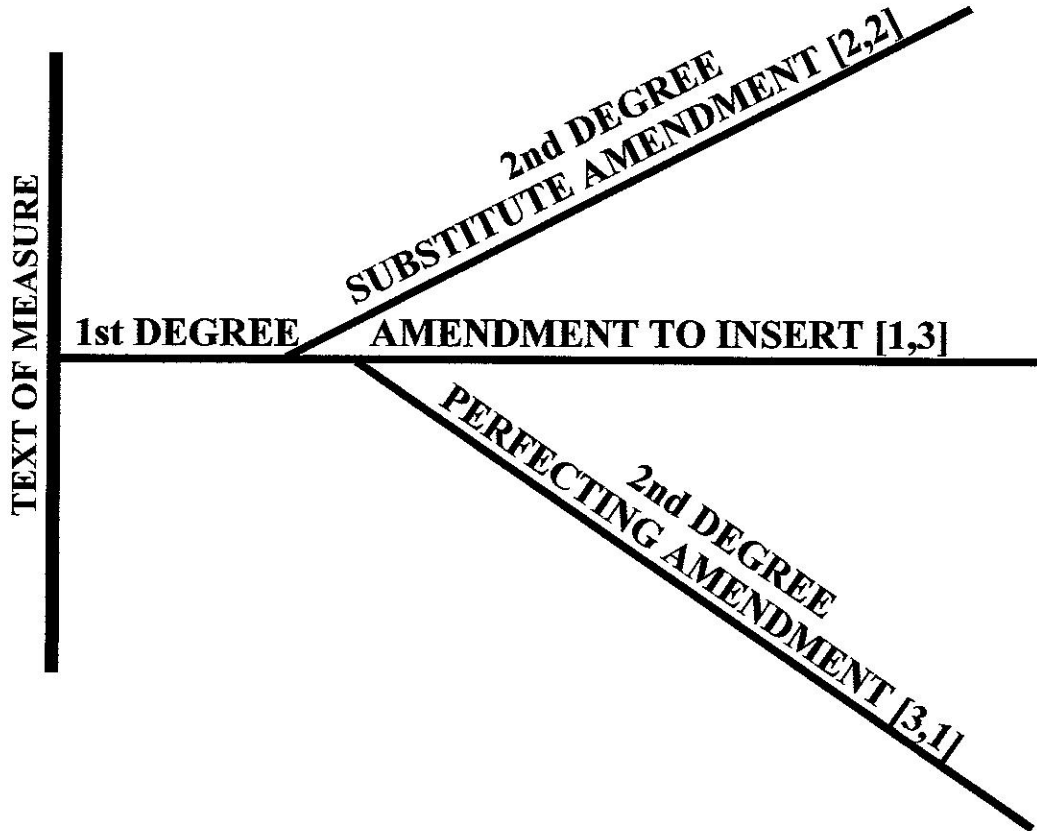
With An Amendment to Insert Pending

An amendment to insert additional matter in a measure is a first degree perfecting amendment. While such an amendment to the text of the measure is pending, no other first degree amendments may be offered (because no other first degree amendment has precedence over such a perfecting amendment to a measure). However, the amendment to insert, as a first degree amendment, is open to an amendment in the second degree, which may be either a perfecting amendment or a substitute amendment.

If a second degree perfecting amendment is offered—that is, an amendment to alter or perfect the matter proposed to be inserted—no further amendments are in order until the second degree amendment is disposed of. The second degree perfecting amendment may propose to delete, insert, or replace matter in the first degree amendment. Once the second degree amendment is disposed of, another perfecting or substitute amendment may be proposed to the pending first degree amendment, so long as a subsequent second degree amendment does not propose only to amend matter in the first degree amendment that already has been amended. The process of offering and disposing of second degree amendments may continue until no further second degree amendments are proposed or until the entire text of the first degree amendment has been amended. After acting on all second degree amendments, the Senate proceeds to vote on the first degree amendment, if and as amended.

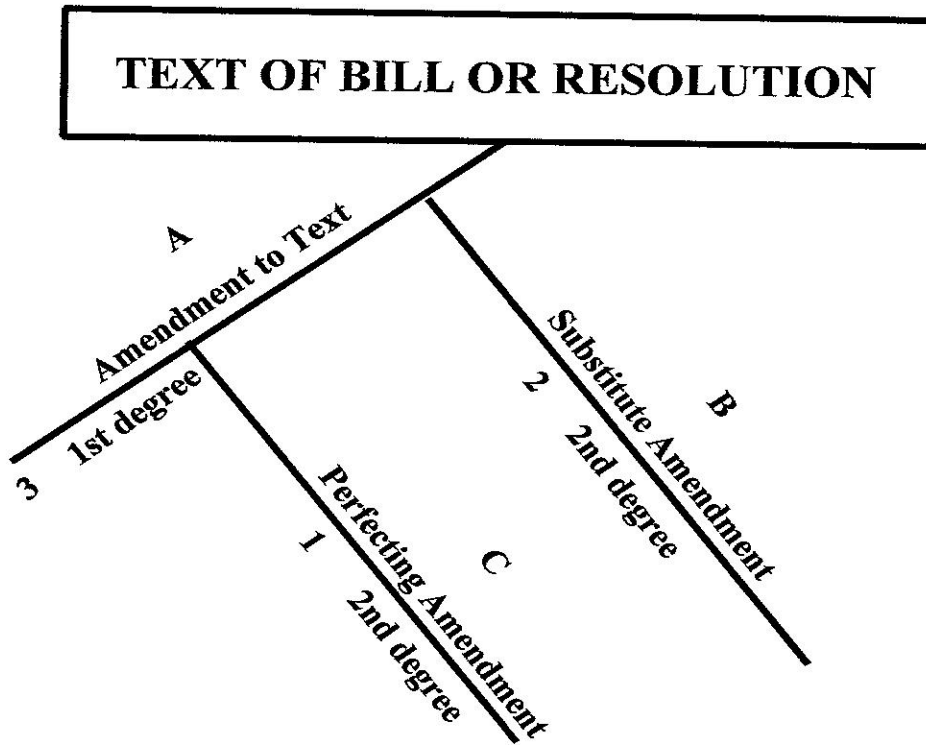
Figure 1.

**With an amendment to insert
pending**



(x,y) = order of offering, order of voting

Chart 1. Amendment to Insert



A through C = order of offering
1 through 3 = order of voting

An additional possibility becomes available if the first amendment in the second degree to be offered is a substitute rather than a perfecting amendment, or more generally, if a second degree substitute is offered when a second degree perfecting amendment is not already pending. In such a case, while the second degree substitute is pending to the first degree perfecting amendment, it also is in order for a Senator to offer a second degree perfecting amendment to the first degree amendment. (See Chart 1 and Figure 1.) The order in which the second degree amendments are offered is decisive. Because a perfecting amendment has precedence over a substitute amendment directed to the same text (in this case, the text being the first degree amendment), a second degree perfecting amendment may be offered before the Senate votes on a pending second degree substitute. The converse, however, is not true: a second substitute is not in order while a second degree perfecting amendment is pending.

If second degree perfecting and substitute amendments are pending at the same time to a first degree amendment to insert, the Senate acts first on the second degree perfecting amendment and then on the second degree substitute amendment; after disposing of both second degree amendments, the Senate then acts on the first degree amendment, if and as amended. This voting order also reflects the principles of precedence: the perfecting amendment has precedence over the substitute amendment directed to the same text, and both second degree amendments have precedence over the first degree amendment.

Thus, there may be three amendments pending at the same time: the first degree perfecting amendment to insert additional matter, a second degree perfecting amendment to that amendment, and a second degree substitute amendment. After the Senate acts on the second degree perfecting amendment, Senators may offer other such amendments, one at a time, and the Senate acts on each of them before acting on the second degree substitute. By the same token, if the second degree substitute is rejected or tabled, another such substitute may be proposed and, while it is pending, additional second degree perfecting amendments may be offered. Neither of the second degree amendments is open to amendment because third degree amendments are prohibited.

In general, then, while there is pending a first degree amendment to insert additional matter, (1) a second degree substitute for that amendment is in order unless a second degree perfecting amendment already is pending, and (2) one or more second degree perfecting amendments may be offered and must be disposed of, one at a time, before the Senate acts on a pending second degree substitute.

With An Amendment To Strike Out And Insert Pending

If a Senator offers a first degree perfecting amendment that proposes to insert additional matter in a measure, no more than two additional amendments (both in the second degree) may be offered and pending at the same time. If, however, a Senator proposes a first degree amendment in the form of a motion to strike out and insert and does so when no other such amendment is pending, that motion to strike out and insert is considered to be a substitute amendment for part of the measure, and as many as four other amendments may be pending simultaneously, but only if the amendments are offered in a particular order. (See Chart 3 and Figure 2.)

Like a first degree perfecting amendment, a first degree substitute for part of the measure is open to an amendment in the second degree, and the second degree amendment may be either a perfecting amendment or a substitute amendment. If a second degree perfecting amendment is offered, no additional amendments to the first degree substitute are in order until the Senate acts on the second degree amendment. At that time, a second degree substitute amendment or another second degree perfecting amendment may be offered while the first degree substitute remains pending.

However, if a Senator offers a second degree substitute amendment for the pending first degree substitute, a second degree perfecting amendment also may be offered while the first and second degree substitute amendments are pending. This situation may arise if the second degree substitute is offered (1) before any second degree perfecting amendment has been offered, or (2) after one or more second degree perfecting amendments already have been offered and acted on. With a second degree substitute amendment pending, the Senate may consider and act on a series of second degree perfecting amendments before it votes the second degree substitute. Should the second degree substitute be rejected or tabled, another such substitute may be offered and, while it is pending, additional second degree perfecting amendments may be offered to the first degree substitute amendment.

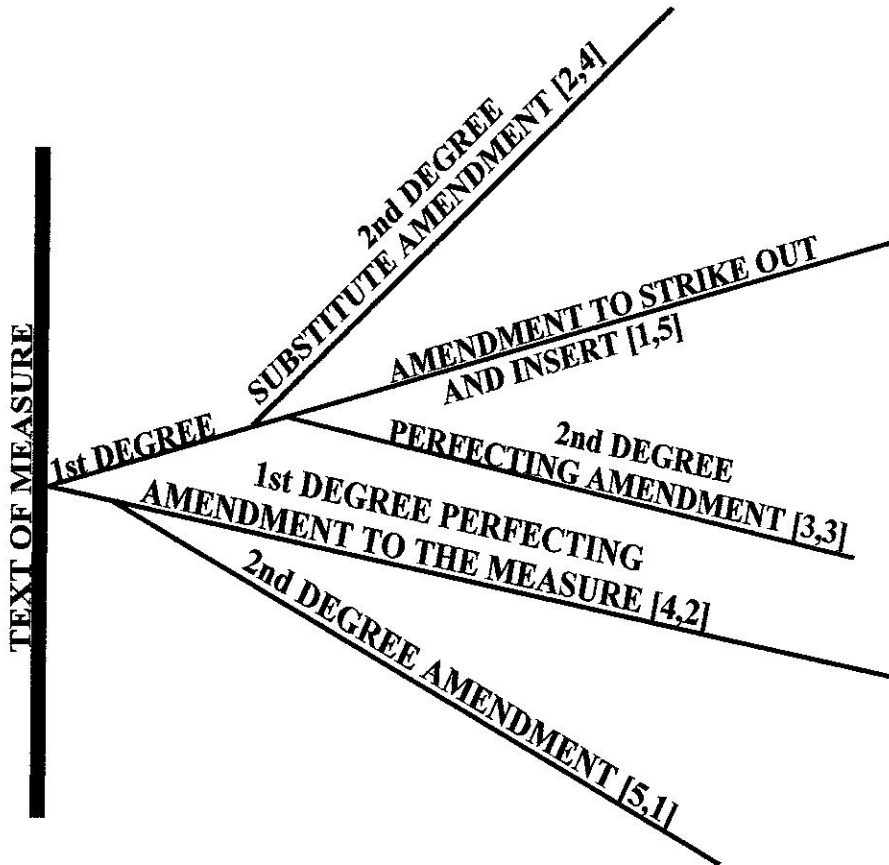
To this extent, the same number and types of amendments may be offered if the first degree amendment that is pending is a perfecting amendment in the form of a motion to insert or if it is a substitute amendment for part of the measure in the form of a motion to strike out and insert. However, additional amendments may be offered when a substitute amendment for part of the measure is the only first degree amendment pending—amendments that are not in order when a first degree perfecting amendment to insert has been offered.

A perfecting amendment has precedence over a substitute amendment that is directed to the same text, and the perfecting amendment also has precedence over an amendment to the substitute. As a result, while a substitute amendment for part of the measure is pending, and while a second degree perfecting amendment or a second degree substitute amendment, or both, is pending to the first degree substitute, it is also in order for a Senator to offer a perfecting amendment to the part of the measure that the first degree substitute would strike out and replace. Thus, first degree perfecting and substitute amendments may be pending to the same part of the measure at the same time. The perfecting amendment may take the form of an amendment to insert, to strike out, or to strike out and insert. Moreover, because the perfecting amendment to the measure is a first degree amendment, it is open to an amendment in the second degree.

With a substitute amendment pending for part of the measure, therefore, as many as four additional amendments may be pending simultaneously: (1) a second degree substitute amendment for the first degree substitute, (2) a second degree perfecting amendment to the first degree substitute, (3) a first degree perfecting amendment directed to the same part of the measure that the first degree substitute would strike out and replace, and (4) a second degree perfecting or substitute amendment directed to the first degree perfecting amendment.

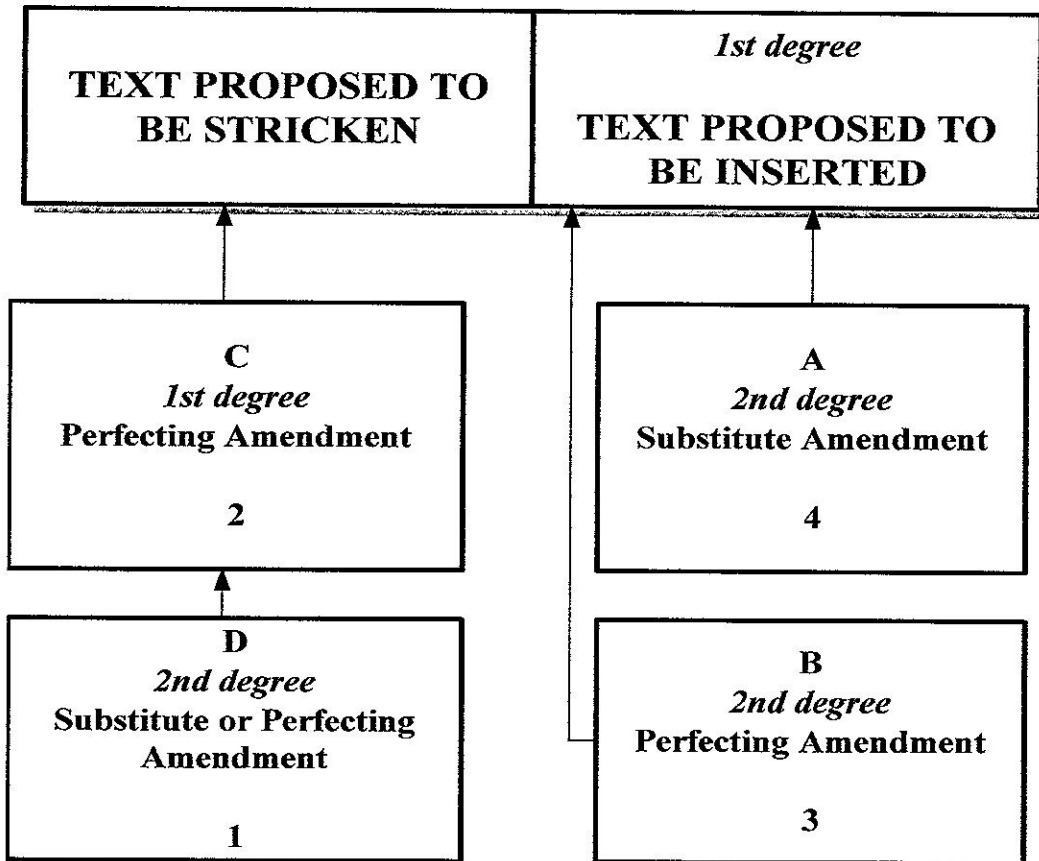
Figure 2.

With an amendment to strike out and insert pending



(x,y) = order of offering, order of voting

Chart 3. Amendment to Strike and Insert
(Substitute for Section of a Bill)



A through D = order of offering to get all the above amendments
before the Senate

1 through 4 = order of voting

(The logic of precedence suggests that a sixth amendment also would be in order: that second degree perfecting and substitute amendments could be pending at the same time to the first degree perfecting amendment. Under Senate precedents, however, either a second degree perfecting amendment or a second degree substitute amendment may be offered to the pending first degree perfecting amendment, but both second degree amendments may not be pending simultaneously. Whenever there appears to be a discrepancy between the logic of precedence and the amendment charts depicted in *Riddick's Senate Procedure*, the charts are controlling.)

In this situation, the first degree perfecting amendment to the measure may be a motion to strike out and insert, but if so, it proposes to replace less of the measure than the initial motion to strike out and insert. This is one situation in which a first degree amendment is considered to be a perfecting amendment even though it might be treated as a substitute amendment under other circumstances. For example, if the first degree substitute amendment (the first motion to strike out and insert to be offered) proposes to replace a title of the measure, the first degree perfecting amendment may propose to replace an entire section of that title. This latter amendment would be considered a substitute if no other amendments already were pending, but it is treated as a perfecting amendment if it is offered while a substitute amendment for a larger part of the measure is pending.

For all five amendments to be pending simultaneously, they must be offered in exactly the order in which they were listed earlier. Because a perfecting amendment to a measure has precedence over a substitute for part or all of the measure, and over second degree amendments to such a substitute, the first degree substitute and amendments to it must be offered before the first degree perfecting amendment (and any amendment to it). If the first two amendments offered were, in order, the first degree substitute amendment for part of the measure and then the first degree perfecting amendment to that same part of the measure, no second degree amendments could be offered to the substitute until after Senate action on the first degree perfecting amendment.

Of the possible amendments to the first degree substitute amendment, the second degree substitute must be offered before the second degree perfecting amendment if both are to be pending simultaneously. Naturally, second degree perfecting amendments may only be offered to first degree amendments that already are pending.

If the various amendments are not proposed in the specific order noted in Figure 2 and Chart 3, only part of the five-branched tree may develop.

If part or all of this tree does develop, the amendments are disposed of in accordance with the same principles of precedence. The Senate acts first on perfecting amendments to the measure; the first vote occurs on the second degree amendment (or on a tabling motion), after which the Senate disposes of the first degree perfecting amendment to the measure (as amended, if amended). The Senate then acts, in order, on the second degree perfecting amendment to the first degree substitute, the second substitute for the first degree substitute, and, finally, the first

degree substitute (as amended, if amended). This order of voting is the reverse of the order in which the amendments are offered.

The five amendments may not be disposed of in any other order (except by unanimous consent), but the Senate may consider and act on several amendments on one branch of the amendment tree before it turns to the amendment on the next branch in order. For example, if all five amendments have been offered, and the Senate has acted on the first and second degree perfecting amendments to the measure, Senators may offer additional such amendments, and they must be acted on before the Senate acts on the second degree amendments to the first degree substitute. Similarly, once the text of the measure has been perfected, a succession of second degree perfecting amendments to the first degree substitute may be proposed and acted on before a vote occurs on the second degree substitute. If the first degree substitute (as amended, if amended) finally is rejected by the Senate, another first degree substitute may be offered and this amendment tree may develop once again.

With An Amendment to Strike Out Pending

An amendment (or motion) to strike out is not amendable. However, the precedence among amendments permits Senators to offer amendments to the part of the measure that is proposed to be stricken. A motion to insert has precedence over a motion to strike out; therefore, an amendment may be offered to insert new matter in the text against which a motion to strike out is pending. By the same token, a motion to strike out and insert has precedence over a motion to strike out; while a motion is pending to strike out matter from a bill, therefore, amendments may be offered to replace some or all of that matter.

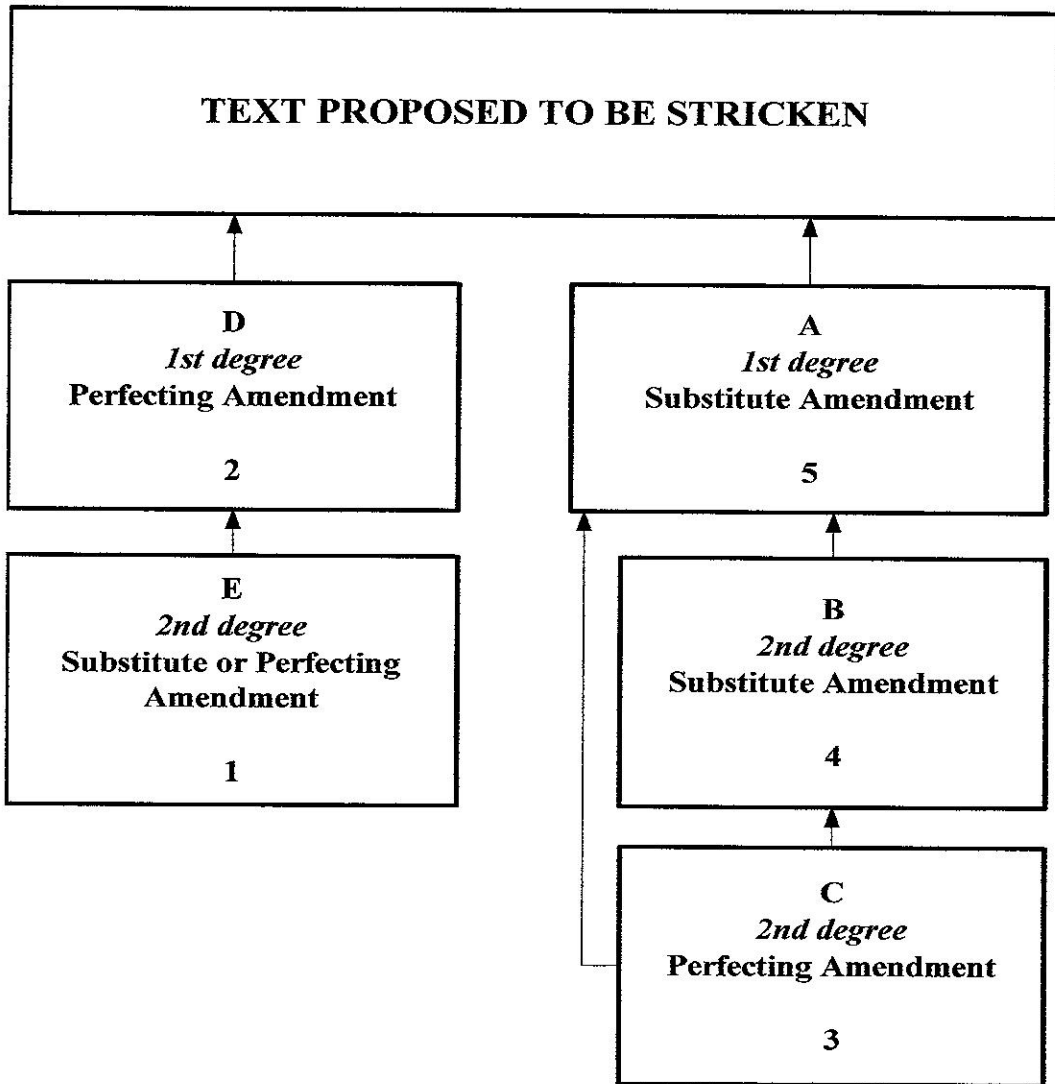
Finally, a perfecting amendment has precedence over a substitute amendment directed to the same text. Therefore, after one Senator has moved to strike out some matter from a measure, it also would be in order for another Senator to move to strike out only part of that matter. Under these circumstances, one may think of the first motion to strike out as akin to a substitute amendment—in that it proposes to substitute nothing for something—and the second motion to strike out as a perfecting amendment—proposing to strike out less than the first motion.

Senate precedents permit variations of the amendment trees in Figures 1 and 2 (Charts 1 and 3) to develop after a motion to strike out has been offered and before the Senate votes on it. Which of these amendments (and how many of them) may be offered while a motion to strike out is pending depends first on the next amendment that is called up—that is, whether or not it is an amendment to strike out and insert that would replace all of the text proposed to be stricken—and then on the other amendments that Senators seek recognition to offer.

The maximum number of amendments that Senators can offer with a motion to strike out pending is depicted in Chart 2 of *Riddick's Senate Procedure*. These five amendments to the text proposed to be stricken are the same five amendments shown in Figure 2. In other words, the amendment tree in Figure 2 may develop while a motion to strike out is pending if the first amendment offered after the motion to strike out is a complete substitute for the text proposed to be stricken. That motion to strike out and insert is amendable by a perfecting amendment or a substitute

amendment or both, and, while any or all of these amendments are pending, Senators may propose perfecting amendments in two degrees to the text that is proposed to be stricken or entirely replaced.

Chart 2. Amendment to Strike



A through E = order of offering to get all of the above amendments before the Senate

1 through 5 = order of voting

On the other hand, the motion to strike out may be followed by an amendment that is either (1) a motion to insert or (2) a motion to strike out and insert that would replace only part of the text proposed to be stricken. Either amendment is considered to be a perfecting amendment and it may be amended in the second degree. However, only one second degree amendment may be pending at a time; Senators may not offer both the second degree perfecting amendment and the second degree substitute amendment depicted in Figure 1 before either is voted on. Finally, if the motion to strike out is followed by a motion to strike out less of the text that is at issue, neither motion to strike out is amendable.

Since Figure 2 may develop with a motion to strike out pending, there can be as many as three amendments offered to change a section (or any part) of a measure before the Senate must act on any one of them—a motion to strike out the section, an amendment to strike out and insert that constitutes a complete substitute for the section, and an amendment to perfect the section (by inserting, striking out, or striking out and inserting).

The Senate acts on any and all of the amendments that “come behind” a motion to strike out before it then acts on that motion to strike out. If a Senator offers an amendment to perfect the text proposed to be stricken, the Senate votes on that amendment (as and if amended) and then it proceeds to vote on the motion to strike out. If that motion is agreed to, the effect is to remove the text at issue, as it has been perfected. On the other hand, if the Senate agrees to a complete substitute for the text proposed to be stricken, the motion to strike out falls automatically without being voted on. The entire text in question having been amended, the motion to strike out would constitute an attempt to re-amend that text and, therefore, is no longer in order.

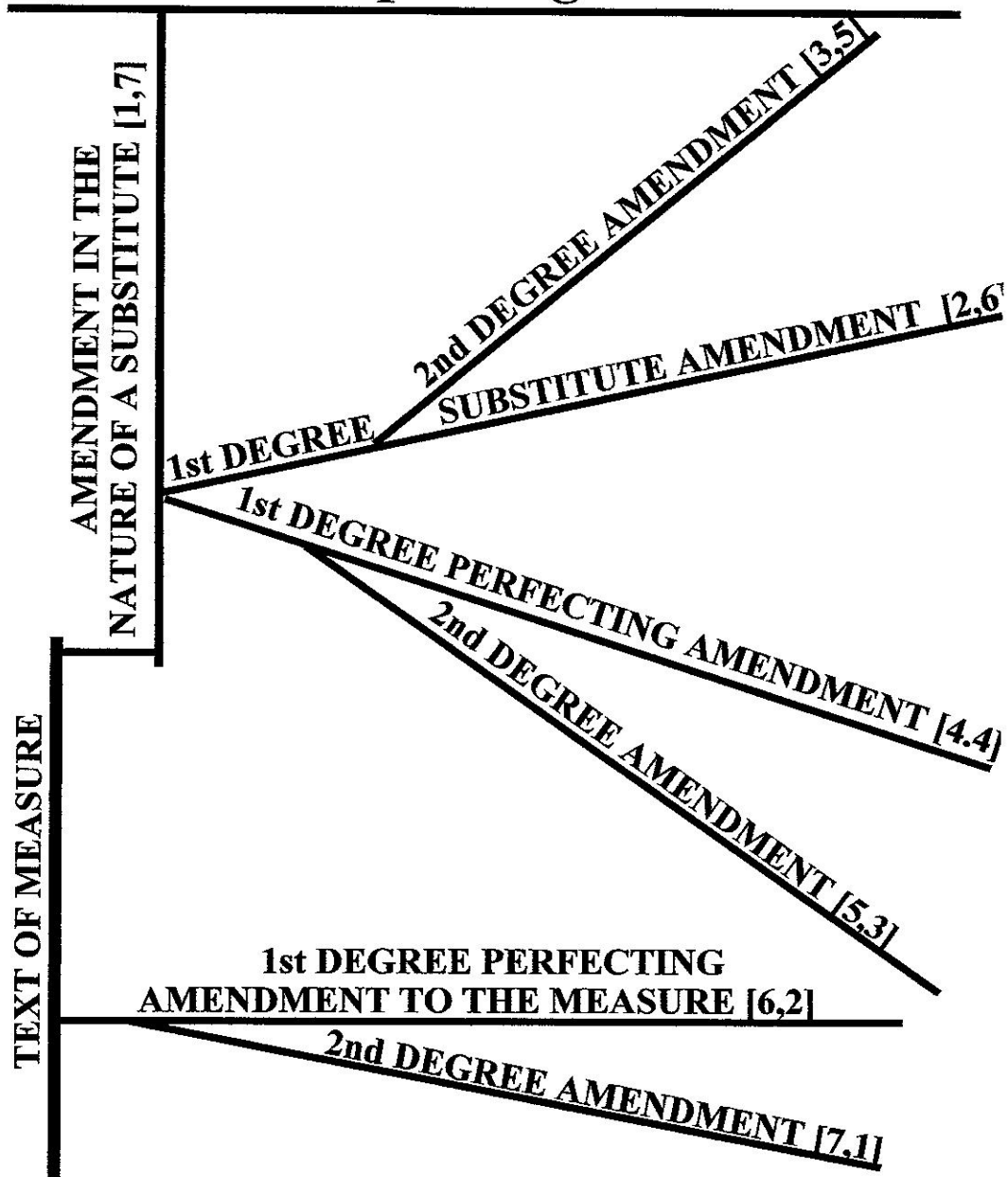
It should be noted that it would be highly unusual for all of the amendments depicted in Figure 2 to be proposed after an amendment to strike out is offered. Also, the opportunity to perfect or substitute for the text that a motion to strike out proposes to eliminate is only available when the motion to strike out is directed to a part of the text of a measure or to a part of a complete substitute for the text of the measure (which is treated as an original question for purposes of amendment). If a Senator offers a second degree perfecting amendment that proposes to strike out part of a first degree amendment, that part of the first degree amendment may not be perfected while the motion to strike out is pending.

With An Amendment in the Nature of A Substitute Pending

The most complex amendment tree may develop when a Senator or Senate committee proposes an amendment in the nature of a substitute for the full text of the measure—that is, a complete substitute that proposes to strike out all after the enacting (or resolving) clause of the measure and replace it with a completely different text. Individual Senators do not offer such amendments very often, but it is a common practice for Senate committees to report a House or Senate measure with an amendment in the nature of a substitute that preserves the original number of the bill or resolution while proposing to replace its entire text.

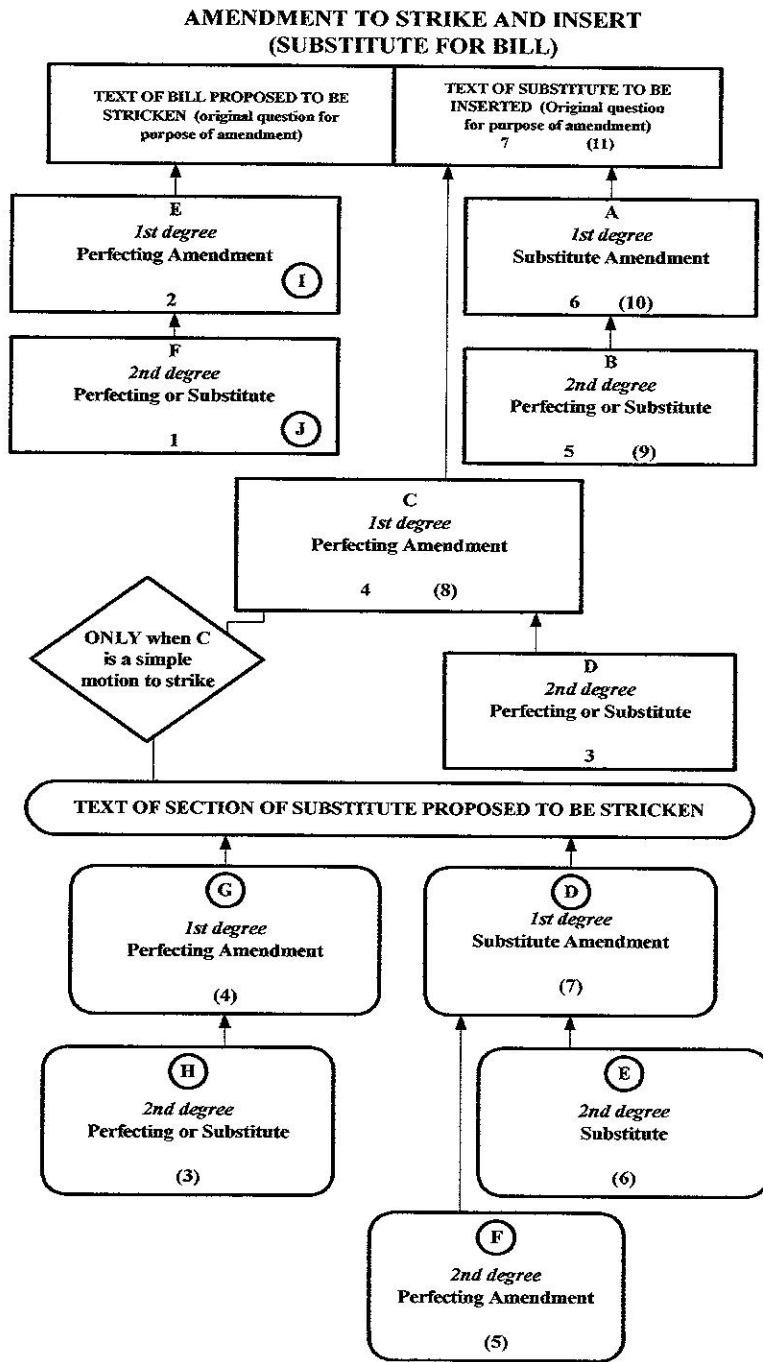
Figure 3.

With an amendment in the nature of a substitute pending



(x,y) = order of offering, order of voting

Chart 4.



A through J = order of offering to have all amendments pending at the same time
 I through 11 = order of voting
 Circled and parenthetical material apply only when C is a motion to strike

Under the precedents of the Senate, such an amendment is treated as an original question for purposes of amendment under either of two circumstances: (1) when it is a reported committee amendment that becomes pending automatically when the measure itself is called up, or (2) when an individual Senator offers it at a time that no other amendment of any kind is pending. As an original question for purposes of amendment, such a complete substitute is not considered to be a first degree amendment that may only be amended in one further degree. Instead, both the amendment in the nature of a substitute and the text of the measure itself may be amended in two degrees, creating the possibility of seven or even eleven amendments pending simultaneously. (See Figure 3 and Chart 4.)

To repeat, when an amendment in the nature of a substitute is considered as an original question, it is amendable in two degrees. A Senator may propose a first degree amendment that is a substitute for the amendment in the nature of the substitute for the measure; the effect of such an amendment is to propose a third version of the text of the bill or resolution. If so, it is then in order also to offer a first degree perfecting amendment to the text of the substitute for the measure that the first degree substitute would replace. Furthermore, both the first degree substitute amendment and the first degree perfecting amendment are open to amendments in the second degree.

This much is in accordance with the principles of precedence, in that a perfecting amendment (and an amendment to it) has precedence over a substitute amendment that is directed to the same text (and an amendment to that substitute). However, only one second degree amendment may be pending at a time to each of the first degree amendments. Second degree perfecting and substitute amendments may not be pending at the same time to either the first degree perfecting amendment or the first degree substitute amendment.

Although any or all of these amendments are pending to the amendment in the nature of a substitute, the text of the measure itself is amendable in two degrees. Any first degree amendment to the measure is considered to be a perfecting amendment, even though it might be a substitute under other circumstances, because it must affect less of the measure than the pending amendment in the nature of a substitute. Furthermore, this perfecting amendment to the text of the measure may be amended by either a perfecting amendment or a substitute amendment in the second degree, but second degree perfecting and substitute amendments may not both be pending simultaneously.

Once a perfecting amendment is offered to the text of the measure, no further amendments are in order to the amendment in the nature of a substitute until the Senate disposes of that perfecting amendment and any amendment proposed to it.

Thus, as many as seven amendments may be pending at the same time, but only if offered in the following order:

- 1) the amendment in the nature of a substitute, considered to be an original question for purposes of amendment;
- 2) the first degree substitute for the text of the amendment in the nature of a substitute;

- 3) the second degree perfecting or substitute amendment directed in the first degree substitute;
- 4) the first degree perfecting amendment to the amendment in the nature of a substitute;
- 5) the second degree perfecting or substitute amendment directed to the perfecting amendment to the amendment in the nature of a substitute;
- 6) the first degree perfecting amendment to the text of the measure; and
- 7) the second degree perfecting or substitute amendment directed to the first degree perfecting amendment to the measure.

The order in which these amendments must be offered if they are all to be pending is dictated by their relative precedence, and primarily by the principle that a perfecting amendment (and an amendment to it) has precedence over a substitute amendment (and an amendment to it). This principle applies to the amendments depicted in Figure 3, whether the substitute in question is the amendment in the nature of a substitute or the first degree substitute for that amendment.

Should all seven amendments be pending simultaneously, the order for acting on them is the reverse of the order for offering them. First, the Senate perfects the original text of the measure, considering and acting on any second degree amendments, one at a time, before acting on the first degree amendment, if and as amended. Other perfecting amendments to the measure then may be offered, amended, and acted on. Second, the Senate disposes of the perfecting amendments (and amendments to them) to the amendment in the nature of a substitute. Third, the Senate turns to the amendment to the first degree substitute, and then to the first degree substitute as it may have been amended.

Restrictions on Amendments

In General

In addition to the limitations on the amending process that already have been noted—for example, the general prohibition against third degree amendments—the Senate imposes a number of other restrictions on the amendments that its members may offer. Several of these restrictions are a matter of precedent and apply to all amendments. It is not in order, for instance, to offer an amendment that is substantially the same as an amendment that already has been offered and disposed of unfavorably (for example, an amendment that has been tabled). However, a Senator may offer part of a previously rejected or tabled amendment as a separate amendment, and an amendment that has been rejected or tabled may be re-offered as part of a later amendment that proposes other changes as well. An amendment that has been offered and withdrawn may be offered again without being substantially changed, except under cloture (see “Modification, Withdrawal and Division of Amendments”).

Under some circumstances, the substance of an amendment that has been offered and agreed to may be proposed a second time. For example, if the Senate has agreed to an amendment to a substitute for part or all of the measure, an amendment

with the same effect also may be proposed to the text of the measure that the substitute would replace. In this way, the effect of the amendment is certain to survive, regardless of the fate of the substitute.

Once the text of a measure or first degree amendment has been amended, it is not in order to propose an amendment that simply would re-amend the text already amended (with certain limited exceptions made by the Budget Act). However, a Senator may offer a second amendment that takes a “bigger bite” out of the measure or first degree amendment—that is, an amendment that re-amends text that already has been amended, but does so in the process of proposing a substantive change in a larger part of the text. For example, after the Senate has adopted an amendment that changes provisions within a section of a measure, a substitute for the whole section is in order. Similarly, after substitutes have been adopted for several sections of a title, a Senator may move to strike out the entire title. But once the Senate agrees to an amendment for the entire text of a measure (or first degree amendment), no further amendments to that text are in order because there is no part of the measure (or first degree amendment) that has not already been amended.

An amendment that would amend a measure in several different places is actually a series of amendments that may be considered *en bloc* without objection or by unanimous consent.

A second degree amendment should affect the same portion of the measure as the first degree amendment to which it is offered. By the same token, while a substitute is pending for part of a measure, any perfecting amendment to the measure should deal with the same part of the measure that the substitute would replace.

In the House, Representatives frequently offer “*pro forma*” amendments, proposing to strike out “the last word” or “the requisite number of words,” in order to secure time for debate. Because debate on amendments in the Senate is limited only by unanimous consent, cloture, or a successful motion to table, *pro forma* amendments are neither permitted nor necessary in the Senate.

Germaneness and Relevancy

The Standing Rules of the Senate require that first degree amendments be germane only when offered (1) to general appropriations measures or (2) under cloture. Rule-making statutes also may impose a germaneness requirement—for example, Section 305(b) of the Congressional Budget Act prohibits non-germane amendments to concurrent budget resolutions. Amendments to budget reconciliation bills also must be germane. Under all other circumstances, there is no rule limiting the subjects of amendments.

However, Senators often impose a germaneness requirement on themselves as part of unanimous consent agreements. An agreement that limits and divides control of the time for debating a measure and all amendments thereto may include an additional provision that “no amendment that is not germane to the provisions of the said bill shall be received.” This germaneness requirement is included routinely whenever the Senate accepts a unanimous consent agreement “in the usual form.” Senators who wish to protect their right to offer non-germane amendments may

object to the inclusion of the germaneness provision or request that their proposed amendments be specifically exempted under the terms of the agreement.

Alternatively, the Senate sometimes includes in unanimous consent agreements the requirement that amendments to a specific bill must be relevant. To be relevant, an amendment must not introduce a subject that the bill does not already address. It is possible for an amendment to be relevant but not germane—for example, if the amendment were to expand the applicability of the bill or the authority it grants. The parliamentarian advises the presiding officer and other Senators as to whether amendments qualify as germane or relevant.

In contrast to the Senate, the rules of the House require that all amendments be germane. This difference has been the cause of occasional controversy between the two chambers, and it should be noted that House rules also permit a separate vote on the House floor on a Senate amendment or conference report provision that would have been ruled non-germane if it had been offered as a floor amendment to the measure in the House.

On General Appropriations Measures

The Senate imposes certain special restrictions on the amendments that may be offered to *general* appropriations measures. In contrast to *special* appropriations bills, a general appropriations bill is a measure that appropriates funds for more than a single, specific purpose or program. In addition to the regular annual appropriations bills, some supplemental and deficiency appropriations bills and joint resolutions making continuing appropriations have been held by the Senate to be general appropriations bills, depending on their scope.

Rule XVI of the Senate is devoted to the subject of appropriations measures and amendments to them. Because of the longstanding practice that general appropriations are enacted into law as House bills, much of this rule concerns Senate amendments to House-passed appropriations bills. Recently, however, the Senate has considered more appropriations in the form of Senate bills. The text of a Senate appropriations bill that the Senate has debated and amended ultimately is adopted as an amendment in the nature of a substitute for the text of the companion House bill when the Senate receives it.

Paragraph 8 of Rule XVI states that no general appropriations bill, or amendment to such a bill, shall be considered if it would reappropriate unexpended balances of appropriations—that is, if it would continue the availability of appropriations that otherwise would lapse—unless “in continuation of appropriations for public works on which work has commenced.” The rationale underlying this prohibition is that money should be appropriated anew each year, so that Congress can accurately gauge the annual costs of federal activities. Paragraph 5 of the same rule prohibits amendments to general appropriations bills that would provide funds for a private claim unless the proposed amendment would carry out the provisions of some existing law or treaty.

Generally, the provisions of Rule XVI are designed to preserve a separation between the process of appropriating funds and the process of enacting substantive

legislation, including authorizations and re-authorizations. However, each of the restrictions in the rule is modified by exceptions, derived either from the rule itself or from precedents. In some respects, these exceptions are so major that the Senate cannot be said to enforce a strict separation between appropriations on the one hand and authorizations and other substantive legislation on the other. Certainly the restrictions on amendments to general appropriations measures are not nearly as severe in the Senate as they are in the House.

Paragraphs 1, 3, and 7 of Rule XVI address the relationship between authorizations and appropriations. Paragraph 2, 4, and 6 restrict the inclusion of other legislative provisions in general appropriations measures.

Paragraph 1 deals with appropriations amendments, whether recommended by a Senate committee or offered by a Senator in his or her individual capacity. Under the terms of this paragraph, no amendment may propose to add or increase an item of appropriation unless it meets one of four conditions. Such an amendment is in order (1) if it already has been authorized by law or treaty, (2) if it would carry out the provisions of a bill or joint resolution already passed by the Senate during that session, even if the measure has not yet been enacted into law, (3) if it is recommended by the Appropriations Committee or a Senate committee with legislative jurisdiction over the subject of the amendment, or (4) if the appropriation amendment is “proposed in pursuance of an estimate submitted in accordance with law.”

The rules of the House impose a flat prohibition on unauthorized appropriations except for public works already in progress (although this prohibition may be waived). By contrast, the requirements of Senate Rule XVI are far less demanding. The Senate may consider an amendment making an unauthorized appropriation if the authorization has passed the Senate alone or if the appropriation is recommended by the Committee on Appropriations. The Appropriations Committee is free to propose any appropriation it wishes, whether authorized or not. The existence of a statutory authorization is merely one of the conditions, and not a necessary one, by which an appropriation amendment is eligible for consideration in the Senate.

Paragraph 3 requires that, when an amendment to add or increase an appropriation is offered at the direction of any other Senate committee, the amendment is to be referred to the Appropriations Committee at least one day before it is offered on the floor. This procedure, which very rarely is invoked, is designed to give the Appropriations Committee an opportunity to examine the proposed amendment but not to prevent the Senate from considering it. Paragraph 3 also provides that the appropriation proposed in any such amendment may not be increased by a further amendment on the Senate floor.

Paragraph 7 of the rule requires that the reports of the Appropriations Committee on general appropriations bills must indicate all amendments it is proposing for appropriations that do not have prior Senate or statutory authorization.

Other provisions of Rule XVI address the inclusion of legislative amendments in general appropriations measures. Paragraph 2 deals with amendments recommended by the Appropriations Committee; legislative amendments proposed

by other committees or individual Senators are the subject of paragraph 4. Although these provisions of the rule remain in force, a 1995 decision by the Senate casts doubt as to whether, or the degree to which, they now are enforceable.³

Paragraph 2 prohibits the Appropriations Committee from reporting an appropriations measure “containing amendments proposing new or general legislation.” However, the rule implicitly acknowledges that legislative amendments are in order in the form of limitations—amendments that impose some restrictions on how appropriations may be expended without, for example, repealing or amending existing statutory authorities. No such limitation amendment is in order under paragraph 2 if its effect is dependent on some contingency, such as the subsequent enactment of an unrelated measure.

Paragraph 4 imposes similar restrictions on amendments to general appropriations bills other than those recommended by the Appropriations Committee. No such amendment may propose general legislation except in the form of a limitation, and no limitation may be tied to the occurrence of a contingency. In addition, this paragraph imposes a germaneness requirement on all amendments to general appropriations bills, even amendments recommended by the Appropriations Committee.

Although the precedents cited in *Riddick’s Senate Procedure* do not provide clear and explicit criteria for determining in all cases whether a particular limitation amendment is in order, paragraph 6 of Rule XVI directs that points of order against questionable limitations should be sustained. However, the Senate enjoys somewhat greater discretion when it amends a limitation that already has been passed by the House. If the House includes a limitation (or some other legislative provision) in a general appropriations bill, the limitation is subject to germane amendments in the Senate, even if the amendments would have the effect of changing existing law. If the House of Representatives “opens the door” by incorporating legislation in a general appropriations bill, the Senate allows itself the opportunity to walk through that door and perfect or replace the House’s language.

The Senate’s germaneness requirement and the prohibition against legislative amendments apply only to general appropriations measures. Amendments to special appropriations bills need not be germane and may be legislative in character and effect. Moreover, Senate rules and precedents do not prohibit legislative measures from including appropriations, but this asymmetry is more apparent than real because the House may well refuse to consider an appropriation originating in the Senate.

Points of Order Against Amendments

Under regular Senate procedure, a Senator who has the floor can make a point of order against an amendment at any time after the amendment is offered but before the Senate begins to act on it. However, when an amendment is being considered

³See the CRS memorandum on the “1995 Senate Decision Concerning Legislating on Appropriations Bills,” October 16, 1996, by Stanley Bach.

under a unanimous consent agreement limiting debate, no point of order may be made against the amendment until at least all of the proponent's time for debating it has expired or has been yielded back. In either case, a point of order may not be made against only part of an amendment; if a point of order is sustained against any portion of an amendment, the entire amendment is tainted and is out of order. However, the Senator offering an amendment may modify it even while a point of order is pending against it, so long as the Senate has not already taken some action on the amendment (see "Modification, Withdrawal and Division of Amendments").

Rule XX provides that most questions of order are to be decided by the Presiding Officer, but he or she may submit any question of order directly to the Senate instead. Some questions of order must be decided by a vote of the Senate itself, not by the presiding officer; for example, only the Senate as a whole may decide whether a measure or amendment is out of order on the ground that it is unconstitutional. Similarly, Rule XVI requires that questions of germaneness raised against proposed amendments to general appropriations bills shall be submitted directly to the Senate and decided without debate.

When a point of order is to be decided by the presiding officer, Senators have no right to debate it, although the chair may entertain as much or as little debate as he or she chooses. Points of order to be decided by the Senate generally are debatable unless a rule provides otherwise, as in the case of questions of germaneness on general appropriations bills. Time agreements on measures usually limit debate relating to points of order, and questions of order are not debatable when the Senate is operating under cloture.

In most cases, a proposed amendment may be ruled out of order without affecting the status of the measure to which it is offered. For example, if an amendment to add or increase appropriations on a general appropriations bill is ruled out of order, the Senate proceeds to consider other amendments to the bill. However, if the Appropriations Committee proposes an amendment to add new or general legislation to such a measure, a point of order may be made against the bill itself; if the point of order is sustained, the bill is recommitted to the committee. If a point of order is made against any amendment to a general appropriations bill on the ground that it is legislative in character, a Senator may raise the question of germaneness before the point of order is decided. If the Senate votes that the amendment is germane, the point of order falls automatically; the presiding officer does not rule on it.

The most frequent bases for points of order against amendments are those already mentioned: the germaneness or relevancy requirement when in force, and the restrictions on amendments to general appropriations bills under Rule XVI. In addition, points of order may be made against amendments for violating one of several provisions of the Congressional Budget Act of 1974, as amended. The points of order that can be made in the Senate under these increasingly complex procedures are identified and described in a separate CRS report by James V. Saturno on *Points of Order in the Congressional Budget Process* (Report 97-865).

If the measure itself would violate a provision of the Budget Act, the Senate may adopt a resolution waiving that provision. Such a resolution protects consideration

of the measure, but it does not protect amendments, including committee amendments, that may be offered to it. Under Section 904(b) of the Budget Act, an amendment (or provision of a measure) can be protected against certain point of orders if a majority of the Senate agrees to a motion to waive the applicable provision of the Act. Section 904(c) requires a vote of three-fifths of the entire Senate (not just the Senators present and voting) to waive other Budget Act and related statutory provisions.

Possible points of order against amendments also may be waived by unanimous consent agreements. If an agreement under which a measure is considered provides for a specific amendment, that amendment is protected against the general requirement imposed by the agreement that all amendments to the measure must be germane or relevant.

Any Senator may appeal the ruling of the presiding officer on a point of order, and such appeals are not unusual in the Senate. When a ruling is appealed, the Senate votes on whether it will sustain the ruling of the chair. There are no constraints, of course, on the criteria that Senators may apply in deciding how to vote on appeals.

Modification, Withdrawal, and Division of Amendments

Modification of Amendments

Under certain conditions, an amendment may be modified—that is, its text may be changed without the Senate acting on a second degree amendment to it.

Except under cloture, a Senator who has offered an amendment may modify it, without unanimous consent, at any time before the Senate takes some action on the amendment. Under Senate precedents, the Senate has taken action for this purpose if (1) the yeas and nays have been ordered on the amendment, (2) the Senate has entered into a unanimous consent agreement limiting debate on that specific amendment, (3) the Senate has amended the amendment, or (4) the amendment itself has been agreed to, rejected, or tabled. An amendment may be modified even while a tabling motion or a point of order against the amendment is pending.

After the Senate has taken some action on an amendment, it may be modified only by unanimous consent. However, a Senator who has lost the right to modify his or her own amendment has another recourse; that Senator may offer an amendment to his or her own amendment instead. This is the only condition under which a Senator may propose to amend his or her own amendment.

One Senator may modify an amendment offered by another Senator only by unanimous consent, and committee amendments may be modified only at the direction of the committee or by unanimous consent.

Withdrawal of Amendments

Even under cloture, a Senator who has offered an amendment may withdraw it from consideration, without unanimous consent, unless the Senate already has taken some action on it in one of the four ways listed above. The amendment may be withdrawn even while a point of order is pending against it. But after the Senate has taken some action on an amendment, it may be withdrawn only by unanimous consent. Withdrawing a first degree amendment also eliminates any second degree amendment that may be pending to it, even if the yeas and nays have been ordered on the second degree amendment. An amendment that has been withdrawn may be re-offered at a later time, except under cloture.

One Senator may withdraw another Senator's amendment only by unanimous consent, and committee amendments may be withdrawn only by unanimous consent or at the direction of the committee.

Division of Amendments

Rule XV permits any Senator to demand that an amendment containing several propositions be divided into its component parts. The presiding officer determines, subject to appeal to the Senate, whether an amendment is susceptible to division—that is, whether its parts can stand independently. When an amendment is divided, each part is considered as if it were a separate amendment. After the Senate disposes of one part (division), the next division is placed automatically before the Senate for consideration.

An amendment may be divided even after the yeas and nays have been ordered on it. In such a case, a rollcall vote occurs on each part unless the order for the yeas and nays is vitiated by unanimous consent. Amendments considered *en bloc* may be divided only by unanimous consent.

Rule XVIII also includes an important exception: motions to strike out and insert are not divisible. Consequently, the only amendments that typically are subject to demands for division are amendments to add new provisions to a measure or pending amendment.

Voting on Amendments

The Senate may act on an amendment either by voting on it directly or by voting on a motion to table the amendment. If an amendment is tabled, it is disposed of adversely and permanently (unless the Senate reconsiders the vote on the tabling motion). Tabling an amendment does not affect the status of the measure to which it was offered. Except under cloture or the provisions of certain rule-making statutes or by unanimous consent, the Senate may not vote on an amendment if there are Senators seeking recognition to debate it further (subject to the two-speech limit of Rule XIX). Under these circumstances, the motion to table offers two advantages: it may be offered by a Senator who has the floor at any time after debate on the

amendment has begun, and the motion is not debatable. So a tabling motion can be used to end debate on an amendment, but only if the Senate is prepared to reject the amendment. If a tabling motion is made and defeated, debate on the amendment may resume. Another motion to table the same amendment may not be made unless the amendment has been changed significantly or a substantial period of time has elapsed (normally three days in practice).

Under a unanimous consent agreement that limits and divides control of the time for debating an amendment, a motion to table is not in order until at least all the proponent's time on the amendment has expired or has been yielded back, at which point the Senate may be ready to vote on the amendment itself. As a result, tabling motions are somewhat less frequent and useful when amendments are being considered under the terms of unanimous consent agreements.

In practice, the Senate usually votes on amendments and motions to table amendments either by voice vote or by rollcall vote. Division votes occur infrequently. The Constitution provides that a rollcall vote may be demanded by one-fifth of the Senators present, a quorum being present. Since a quorum of the Senate is 51 Senators, the minimum number required for demanding a rollcall is 11 (unless the number of Senators actually present was ascertained shortly before the demand).

The yeas and nays may be demanded on an amendment at any time that it is pending before the Senate, but not before it is offered nor while an amendment that has precedence is pending (except by unanimous consent). A rollcall vote may be demanded even after a voice or division vote has occurred, but before the result has been announced. In practice, however, rollcall votes normally are ordered while debate on the amendment is still in progress. The yeas and nays must be ordered separately on a tabling motion, even if a rollcall already has been ordered on the amendment proposed to be tabled. The yeas and nays on a measure may be ordered at any time it is before the Senate, even while an amendment to the measure is pending.

The Senate acts on all amendments and tabling motions by majority vote of the Senators present and voting, even if offered during consideration of a measure or matter such as a constitutional amendment that requires a two-thirds vote for final action. The Constitution requires that a quorum (a majority of all Senators) must be present for the Senate to conduct business. But the Senate assumes that a quorum always is present unless a majority of Senators fail to respond to a quorum call or fail to participate in a rollcall vote. Consequently, a voice or division vote in which only a few Senators participate is still valid unless challenged.

Amendments Under Cloture

A decision by the Senate to invoke cloture, under the terms of Rule XXII, affects the amending process in a number of important respects.

First, the cloture rule imposes a time limit on the amending process. After the Senate has considered a matter under cloture for a total of thirty hours, no further

amendments may be called up for consideration and the Senate proceeds to vote on any pending amendments and then on the matter on which cloture was invoked. (The thirty hours for consideration may be increased by a three-fifths vote of all Senators.)

Second, no Senator may offer more than two amendments until every other Senator has had an opportunity to offer two amendments. This provision is intended to give every Senator a chance to offer some amendments during the thirty hours of consideration under cloture.

Third, to be in order under cloture, amendments must be submitted in writing to the Journal clerk by certain deadlines before the Senate votes on the cloture motion. Specifically, any first degree amendment must be submitted by 1:00 P.M. on the day after the cloture motion is filed; any second degree amendment must be received at least one hour before the Senate begins to vote on the cloture motion. The difference between these two deadlines is designed to give all Senators roughly one day to examine the first degree amendments that may be proposed and to frame any second degree amendments they may wish to offer.

Fourth, after cloture is invoked, all amendments must be germane to the matter under consideration. The presiding officer also is empowered in extreme circumstances to rule amendments out of order as being dilatory.

Fifth, the reading of an amendment is dispensed with automatically, not by unanimous consent, if it has been reproduced and available for at least 24 hours.

Sixth, unanimous consent is required to modify amendments, except for changes in page and line numbers that may be required if the matter under consideration is reprinted after cloture is invoked.

Finally, once an amendment has been submitted in writing, it may be called up by any Senator. Thus, any Senator may call up any amendment that is eligible for consideration under cloture. But once an amendment has been withdrawn under cloture, it may not be re-offered. Consequently, if one Senator offers and withdraws an amendment, another Senator may not bring the same amendment back before the Senate for a vote unless he or she also had submitted it in writing before cloture was invoked.