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Instructing House Conferees

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The House and Senate often create conference committees to propose the final versions of bills that the two houses have passed in different forms. When one house amends and passes a bill that the other house already has passed, the two houses then must agree on the same final version of the bill before it can be presented to the President for his approval or veto. There are two ways in which this process of reaching final agreement can take place: either by the formal exchange of amendments between the House and Senate, or through negotiations among conferees that the two houses appoint.

Because a conference committee is a negotiating forum, the two houses impose few rules governing its work, leaving it to the conferees themselves to decide how they can conduct their negotiations most productively. Also, the House and Senate give their conferees considerable latitude regarding the content of the agreements they can reach. The House requires that its conferees limit themselves to the matters on which the two houses have disagreed and that they resolve each such matter within the scope of the differences between the House and Senate positions on it. The Senate imposes even fewer constraints on the policy agreements that its conferees can make.

Nonetheless, there are two circumstances under which the House can vote to give instructions to its conferees: first, before the conferees are appointed; and second, after they have been appointed for 20 days and have not yet filed a report. At either time, the House may vote to instruct its conferees to insist on a certain House position in conference, or to accept a certain Senate position, or to attempt to negotiate a compromise position with the Senate that satisfies certain conditions or requirements. Whenever the instructions are given and whatever form they may take, there are two points to bear in mind about instructions to conferees:

first, it is not in order to instruct House conferees to reach some agreement that is not within their authority as conferees; and

second, instructions to conferees are never binding; no point of order can ever be sustained against a conference report because it is not consistent with instructions that the House gave its conferees.

Instructions before conferees are appointed. The House takes three steps in the process of arranging a conference with the Senate. First the House usually either disagrees



to the Senate's amendments to a bill the House has passed, or the House insists on its amendments to a bill the Senate has passed. Second, the House either requests a conference with the Senate or agrees to the conference that the Senate already has requested. And third, the Speaker then appoints the House conferees to meet and negotiate with their Senate counterparts.

These three stages usually occur quickly, routinely, and one right after the other. However, between the second and third stages--after the House decides to go to conference but before the Speaker appoints the House conferees--a motion to instruct the conferees is in order.

Only one valid motion to instruct is in order at this time. (If one motion is made and a point of order is sustained against it, a second motion is in order.) The House debates this motion under the one-hour rule. Under clause 7(b) of Rule XXII, the time for debate is to be equally divided between the majority and minority parties; in practice, the time usually is controlled by the chairman and ranking minority member of the House committee with jurisdiction over the bill. However, if both of those Members support the motion, another Member who opposes the motion may claim and control one-third of the time for debating it. The instructions may be amended only if the majority floor manager does not move the previous question on the motion during or at the end of the first hour of debate, or if this motion is made and the House rejects it.

Under well-established House precedents, *recognition to propose this motion to instruct is a prerogative of the minority party*. The Speaker will recognize even the most junior member of the minority party for this purpose before recognizing even the most senior majority-party leader. The Speaker is likely to give first preference in recognition to the minority party or committee leader. If neither of these Members seeks recognition, the Speaker is likely to recognize a minority-party committee member before a minority-party member who does not serve on the committee of jurisdiction.

Instructions after conferees have been appointed. Motions to instruct House conferees also are in order beginning 20 calendar days after conferees were appointed, if the conferees have not yet filed a conference report. On the twentieth day and on any day thereafter, motions to instruct are privileged under Rule XXII, clause 7(c). More than one motion to instruct is in order, and members of both parties are entitled to recognition to make such motions. However, the Speaker temporarily defers consideration of a motion to instruct that is made under clause 7(c). When a Member announces to the House his or her intention to make such a motion and presents the text of the motion, the Speaker designates a time or place in the legislative schedule for considering the motion on the next calendar day the House meets.

Such motions to instruct also are in order during the last six days of a session if the House's conferees have been appointed for at least 36 hours without presenting their report. However, this opportunity only arises after the House has fixed the date of adjournment *sine die* which, in current practice, it often does only hours before the end of the session.