

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

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*Senate Unanimous Consent Agreements: Potential Effects on
the Amendment Process*

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April 11, 2007

Abstract. The Senate frequently approves unanimous consent agreements relating to the process of amending a bill that the Senate is considering or soon will consider. These agreements can affect one or more individual amendments or they can regulate floor consideration of all amendments to the bill. There are no restrictions on what these agreements can provide.

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Senate Unanimous Consent Agreements: Potential Effects on the Amendment Process

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Summary

The Senate frequently enters into unanimous consent agreements (also called “UC agreements”) that establish procedure on a bill that the Senate is considering or soon will consider. There are few restrictions on what these agreements can provide, and once agreed to, they can be altered only by a further unanimous consent action. In recent practice, the Senate often begins by adopting a general UC agreement, then adds elements in piecemeal fashion as debate continues. UC agreements often contain provisions affecting the floor amending process, most often in one or more of the ways detailed below. For additional information on legislative process, see <http://www.crs.gov/products/guides/guidehome.shtml>.

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The Senate frequently enters into unanimous consent agreements (also called “UC agreements”) that establish procedure on a bill that the Senate is considering or soon will consider.¹ There are few restrictions on what these agreements can provide, and once agreed to, they can be altered only by a further unanimous consent action. In recent practice, the Senate often begins by adopting a general UC agreement, then adds elements in piecemeal fashion as debate continues. UC agreements often contain provisions affecting the floor amending process, most often in one or more of the ways detailed below. For additional information on legislative process, see <http://www.crs.gov/products/guides/guidehome.shtml>.

Amendments in Order and Adoption Thereof

Under Senate rules, amendments may be offered to a bill until the bill has been amended in its entirety (but not thereafter). A UC agreement can limit the amendments that are in order. For example, the agreement may include a list of the only (or only additional) amendments that Senators may offer to the bill; these amendments may be identified by some combination of number, sponsor, and subject.² The UC agreement may also provide that, by agreeing to it, the Senate also be deemed to have adopted a specified amendment; for example, the agreement may provide for the adoption of a committee substitute (and may also treat it as original text for the purpose of further amendment).

The Order in Which Senators Offer Amendments

Under Senate rules, once committee amendments to a bill are acted upon, Senators may offer amendments to the bill in the order in which they seek and receive recognition from the presiding officer. While the parties’ floor leaders—and, to a lesser extent, the bill’s majority and minority floor managers—receive priority in recognition, Senate rules and precedents do not otherwise specify a sequence in which amendments to a bill are to be offered.³ A UC agreement can provide the order in which Senators are to offer certain amendments to a bill. For example, an agreement may specify which amendment the Senate will consider after disposing of the pending amendment. A more encompassing agreement may specify the sequence in which a list of amendments will be considered.

The Right to Offer Second-degree Amendments

Under Senate rules, Senators usually may propose second-degree amendments to a first-degree amendment while it is pending, and may continue doing so until the first-degree amendment has been completely amended. A UC agreement can prohibit all second-degree amendments, or all second-degree amendments on a certain subject. It can also allow Senators to offer only specified second-degree amendments.

¹ This report was originally prepared by Stanley Bach, former Senior Specialist in the Legislative Process at CRS. The listed author has updated the report and can respond to inquiries on the subject. For a broader overview of UC agreements, see CRS Report 98-225, *Unanimous Consent Agreements in the Senate*, by Walter J. Oleszek.

² Inclusion of an amendment in an adopted UC agreement constitutes action on the amendment. Until the Senate has taken some action in relation to an amendment, the Senator offering it may modify or withdraw it at will, but cannot offer an amendment to it.

³ For example, Senators may offer amendments to any unamended section of the bill at any time.

The Time Available for Considering Amendments

Under Senate rules, the debate on an amendment can continue (unless cloture has been invoked) until no Senator seeks recognition to speak on it, or until the amendment has been disposed of in some way. A UC agreement can limit the time available for debating a particular amendment, each of several specific amendments, or all amendments to the bill. The agreement can provide different amounts of time for debating individual first-degree amendments, and it can provide more time for debating first-degree amendments than for debating second-degree amendments. UC agreements often divide control of the time for debating an amendment between the Senator offering it and another opposing it (often the minority manager of the bill, or alternatively, the minority leader). In addition, a UC agreement can limit the total time devoted to acting and voting on all (or all further) amendments to a bill. For example, the agreement may specify that consideration of amendments shall end at a time specified. Increasingly, UC agreements provide that each of a series of amendments be considered and then temporarily laid aside rather than voted on, and that votes then be “stacked” to occur in immediate succession on all of them at some later point (often just before a final vote on the measure).

The Subjects of Amendments

Under Senate rules, amendments offered to a bill need not be germane to that bill, except for amendments to general appropriations and budget reconciliation bills or unless the Senate has invoked cloture. A UC agreement may require that certain or all amendments to a bill be germane or, more often today, that they meet the less strict standard of relevancy.⁴ Either standard may also be applied to second-degree amendments.

Points of Order Against Amendments

Under Senate rules, an individual amendment may be subject to procedural points of order—for example, to enforce the congressional budget process—that, if raised and allowed to stand, would prevent consideration of the amendment. A UC agreement may waive points of order against certain or all amendments, thereby protecting consideration of certain amendments that Senators may offer.

UC agreements can limit the amending process on the Senate floor in ways not mentioned above.⁵ For an explanation of how these agreements can affect other aspects of Senate floor proceedings, see CRS Report RS20594, *How Unanimous Consent Agreements Regulate Senate Floor Action*, by Richard S. Beth.

Two UC agreements from the 109th Congress follow below. Each illustrates several dimensions on which an agreement may affect the amending process. Order No. 191 first proposes that the Senate amend S. 1566 by virtue of agreeing to the UC agreement. It then allows for only the listed first-degree amendments, setting time limitations for the consideration of each. Order No.

⁴ See Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure*, 101st Cong., 2nd sess., S.Doc. 101-28 (Washington: GPO, 1992), pp. 1344-1353 for precedents on germaneness under UC agreements, and pp. 1362-1363 for those relating to relevancy.

⁵ See Riddick and Frumin, *Senate Procedure*, pp. 1314-1328 for precedents affecting the amending process under a UC agreement. For example, if the agreement specifies a time for specific votes or time limitations on debate, a number of precedents specify the circumstances under which further amendments may be in order but not subject to debate.

235 provides that, upon adoption of the agreement, a new “manager’s amendment” be considered as the original text of S. 1516 for amendment and an additional named amendment be deemed agreed to, followed by a list of the only other permitted amendments (with attendant debate limitations).

S. 1566 (ORDER NO. 191)

Ordered, That at a time to be determined by the Majority Leader with concurrence of the Democratic Leader, the Senate proceed to the immediate consideration of S. 1566, an original bill to reauthorize the Commodity Exchange Act, and for other purposes; provided that the amendment at the desk offered by the Senator from Georgia (Mr. Chambliss) be agreed to; further, that the only other amendments in order be the following four amendments, the text of which are at the desk, with no second degree amendments in order:

Smith/Stevens—Petroleum prices (1 hour equally divided)

Cantwell—Petroleum prices (1 hour equally divided)

Feinstein—Electronic energy transactions (4 hours equally divided with 30 minutes of the Minority time under the control of the Senator from Michigan (Mr. Levin))

Conrad—CFTC’s authority (1 hour equally divided)

Ordered further, That in addition to the time specified on the amendments, there be 30 minutes of debate equally divided on the bill and that following the use or yielding back of time and the disposition of amendments, the bill as amended, be read a third time; further, that the Senate then proceed to H.R. 4473, the House companion, and that all after enacting clause be stricken and the text of S. 1566, as amended, be inserted in lieu thereof; further, that the bill as amended, be read a third time and the Senate proceed to a vote on passage and that S. 1566, as amended, be returned to the Senate calendar. (Aug. 1, 2006.)

S. 1516 (ORDER NO. 235)

Ordered, That at a time to be determined by the Majority Leader with concurrence of the Democratic Leader, the Senate proceed to the immediate consideration of S. 1516, a bill to reauthorize Amtrak, and for other purposes; provided that the committee-reported substitute be withdrawn and the Managers amendment at the desk be agreed to as original text for the purposes of further amendment, the amendment offered by the Senator from Iowa (Mr. Harkin) at the desk be agreed to and that the only other amendments in order be the following, the text of which is at the desk:

McCain—Rail Security

Sununu—Long Distance Trains

Sununu—Competition

Sessions—Amtrak Debt

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

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