



CRS Report for Congress

Conference Committee Deliberations

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The Constitution requires that proposed laws must pass the House and Senate in absolutely identical form before they can be sent to the White House for presidential consideration. Different procedural techniques are used to achieve “bicameral ignition,” but the one usually employed for controversial measures is to establish a conference committee. Composed of conferees chosen from each chamber — usually from the committee(s) that reported the legislation — the conference committee’s job is to iron out differences when the House and Senate pass dissimilar versions of the same bill. Because conference committees make significant policy decisions, it is little surprise that these bicameral units are sometimes called “the third house of Congress.”

To understand the work of conference committees, it is useful to discuss (1) several features common to inter-chamber negotiations, (2) how conferences are organized, and (3) the authority of conferees. Worth noting is that many lawmakers anticipate that certain legislation will eventually reach the conference committee stage, and they will take purposeful *pre-conference* actions to bolster their negotiating leverage with the other body. For instance, either chamber may adopt floor amendments that may be used as “bargaining material” in conference.

Common Features

Three features commonly influence conference bargaining. First, conferences typically operate in an agreement-oriented context. Conferees are accustomed to the give-and-take, bargains, and trade-offs that characterize inter-chamber negotiations. Second, the general objectives of the conferees are to uphold their chamber’s position in conference to the extent practicable, to fashion a compromise agreement that attracts the support of at least a majority of each house’s conferees, and, finally, to craft a conference report that will pass the House and Senate and be signed by the President. Third, the conferees from each chamber function under the “unit rule.” This means that the two houses each have one vote, with a majority in each conference delegation deciding how it is to be cast on the various issues in bicameral disagreement. Often, there is no need for formal votes because conferences may opt to make decisions informally by consensus or through “straw votes” on issues that might be revisited again during the conference. To be sure, the conference decision that is determinative is when at least a majority of the conferees from each chamber agree to sign the conference report.

Organization of a Conference

There are no formal rules that outline how conference meetings are to be organized. Routinely, the principals from each chamber or their respective staffs conduct pre-conference meetings so as to expedite the bargaining process when the conference formally convenes. Informal practice also determines who will be the overall conference chairman (each house has its own leader). Rotation is usually the practice when matched pairs of panels (the tax or appropriations panels, for example) convene in conference regularly. For standing committees that seldom meet in conference, the choice of who will chair the conference is generally resolved by the conference leaders from each chamber. The decision on when and where to meet and for how long are a few prerogatives of the chair, who consults on these matters with his or her counterpart from the other body.

Another organizational feature merits mention. The number of conferees selected from each chamber usually varies, with recent years witnessing an increase in the overall size of conference delegations. Big conferences may influence how the work of this bicameral panel is carried out. The conference may subdivide into smaller groups called “subconferences.”

Authority of Conferees

House Rule XXII and Senate Rules XXVIII and XLIV, as well as the respective precedents of each chamber, outline the authority and limitations of the conferees from each house. Few formal rules guide the bargaining process, and they only may be invoked through points of order when the conference report (the compromise accord) is submitted to the House and Senate for consideration. Conferees are not to reconsider provisions agreed to by both houses. They are to meet at least once in open session unless specific steps are taken to close sessions for reasons such as national security. (Needless to say, much conference bargaining occurs in secret as various conferees discuss in private how to iron out differences.) Conferees, too, are not to include new matter in their report. In brief, they are not to exceed the scope of differences committed to them by either chamber. “Scope” is a technical term that can be illustrated generally as follows:

Provision of 1st Chamber	Provision of 2nd Chamber	Contents Permitted in Conference Report
Nothing	Nothing	Nothing
A	A	A
A	B	A or B or In Between
A	Nothing	A or Current Law or In Between

The point to remember is that these few rules can be waived or not be invoked in either chamber. As one former Senate leader said: “Conferences are marvelous. They’re mystical. They’re alchemy. It’s absolutely dazzling what you can do.” Stated another way, if conferees have the votes, they have large discretionary authority in making bicameral adjustments.