

# CRS Report for Congress

## Unanimous Consent Agreements Establishing a 60-Vote Threshold for Passage of Legislation in the Senate

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# Unanimous Consent Agreements Establishing a 60-Vote Threshold for Passage of Legislation in the Senate

## Summary

The Senate frequently enters into unanimous consent agreements (sometimes referred to as “UC agreements” or “time agreements”) that establish procedures for the consideration of legislation that the Senate is considering or will soon consider. In recent practice, such unanimous consent agreements have sometimes included a provision that would require a 60-vote threshold to be met for amendments or legislation to be considered agreed to, rather than the simple majority ordinarily required. These amendments or measures may be of a controversial nature with the potential for causing a filibuster. By incorporating a 60-vote threshold, such UC agreements avoid the multiple requirements imposed by Senate Rule XXII for invoking cloture, while preserving the same requirement for super-majority support.

This report will be updated each session of Congress.

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# Unanimous Consent Agreements Establishing a 60-Vote Threshold for Passage of Legislation in the Senate

## Introduction

The Senate's emphasis on individual and minority rights, reflected in both its standing rules and chamber custom,<sup>1</sup> can make it challenging for the chamber to achieve its various goals in a timely manner. For this reason, the Senate routinely chooses to set aside its standing rules by unanimous consent.<sup>2</sup> This is done formally through UC agreements, which in many cases outline the terms under which specific legislation will be considered. Under recent practice, these UC agreements sometimes include a provision imposing a 60-vote requirement for approval of amendments or legislation, instead of the simple majority vote<sup>3</sup> ordinarily required in the Senate.<sup>4</sup> These amendments or measures are sometimes of a controversial nature with potential to be subjected to extended consideration or even a filibuster. By incorporating a 60-vote threshold, such UC agreements avoid the multiple requirements associated with Senate Rule XXII, both for invoking cloture and for consideration under cloture. Such UC agreements ensure that a measure will not be successful without the same level of super-majority support that would be required for cloture by stipulating that if the 60-vote threshold is not reached, the matter will be disposed of. As with all UC agreements, once agreed to, they can be altered only by the adoption of a further UC agreement.

## Function and Effects of Adopting a 60-Vote Requirement

Several possible effects could result from the Senate choosing to impose a 60-vote threshold for the passage of legislation. First, for cases in which a large majority

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<sup>1</sup> For information, see CRS Report RL30850, *Minority Rights and Senate Procedures*, by Judy Schneider.

<sup>2</sup> For information on UC agreements, see CRS Report RS20594, *How Unanimous Consent Agreements Regulate Senate Floor Action*, by Richard S. Beth.

<sup>3</sup> One half-plus-one of the members voting, assuming a quorum. Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure: Precedents and Practices*, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., S.Doc. 101-28 (Washington: GPO, 1992), p. 912.

<sup>4</sup> In the Senate, super-majority support is required, among other things, to suspend the rules, waive certain provisions of the Congressional Budget Act, make a bill a special order, postpone treaty consideration indefinitely, and invoke cloture. For information, see CRS Report 98-779, *Super-Majority Votes in the Senate*, by Walter Oleszek.

of Senators is in favor of or opposed to the question, the time that would ordinarily be required to invoke cloture can be avoided. Once a cloture petition has been submitted, it must lay over until the second calendar day that the Senate is in session before a vote on cloture occurs. For a cloture vote to be successful, in most cases three-fifths of all Senators must vote in the affirmative (i.e., 60 votes if there are no vacancies).<sup>5</sup> If the cloture vote is successful, another 30 hours of consideration are in order before a vote on the underlying business must occur. Incorporating the 60-vote threshold into a UC agreement allows the Senate to bypass these time consuming requirements.

Second, for cases in which a large majority either in favor of or against the question cannot be assumed, the 60-vote threshold accomplishes the same purpose as a filibuster by preventing or delaying passage, but without requiring the Senate to engage in extended debate. Thus, surrendering the right to filibuster may be more palatable if Senators are confident a measure will not pass without super-majority support.

Another reason that a 60-vote threshold might be included in a UC agreement is that it presents Senators with an opportunity to vote directly on the underlying policy issue. Votes on cloture often fail and consequently a vote on the actual measure or amendment may never occur. The 60-vote threshold in a UC agreement has the effect of bypassing the procedural vote to grant Senators a direct vote on the policy issue at hand.

Lastly, in many of these 60-vote threshold UC agreements, it is a pair (or group) of amendments or measures that are jointly held to the 60-vote requirement. Many of the pairs (or groups) are competing options for the same policy issue. This allows the Senate to debate and choose between contending alternatives in a timely and controlled manner.

## Language and Recent Increase in Frequency

Although examples of UC agreements placing a similar 60-vote threshold provisions can be found dating from at least the early 1990s, the practice has increased in frequency over the last four years.

Unanimous consent agreements that impose a 60-vote threshold may be agreed to at any time, either in advance, or during consideration. It is notable that unlike Senate rules requiring super majorities, which typically are framed in terms of a fraction either of the membership or those voting (e.g., two-thirds, three-fifths), these UC agreements explicitly state the number of votes required. Given that practices do not generally specify disposition for a question that achieves a majority vote, but not a super-majority vote imposed by unanimous consent, the language of these UC agreements typically provides for disposition of the amendment or measure if it fails

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<sup>5</sup> For amendments to the standing rules of the Senate, two-thirds of Senators present and voting must agree. Senate Rule XXII. For information on cloture, see CRS Report 98-425, *Invoking Cloture in the Senate*, by Christopher M. Davis.

to achieve the required 60 votes. Typically, the matter is withdrawn, but it could alternately be laid on the table or returned to the calendar. For example, in one UC agreement, the Senate agreed that "... two amendments be subject to a 60 affirmative vote threshold, and that if neither achieves that threshold, then it be withdrawn."<sup>6</sup>

Thus far in the 110<sup>th</sup> Congress (2007-2008), 30 amendments have been held to the 60-vote threshold as a result of a provision in a UC agreement: seven were adopted, 22 failed and one was withdrawn. Also in the 110<sup>th</sup> Congress, seven measures have been held to the 60-vote threshold as a result of a UC agreement. Of these, five passed and two failed. Lastly, in the 110<sup>th</sup> Congress, two motions to concur with House amendments with a Senate amendment were held to the 60-vote threshold by a UC agreement, one passed and one failed.

In the 109<sup>th</sup> Congress (2005-2006), eight amendments were held to the 60-vote threshold as a result of a provision in a UC agreement. Of these, six failed and two were ruled out of order. Also in the 109<sup>th</sup> Congress, three measures were held to the threshold, all of which passed. No amendments or measures held to a 60-vote threshold as the result of a UC agreement were identified in the 108<sup>th</sup> (2003-2004), 107<sup>th</sup> (2001-2002) or 106<sup>th</sup> (1999-2000) Congresses.

Of the 50 amendments, motions, and measures held to the 60-vote threshold since the 106<sup>th</sup> Congress, an additional 13 (26%) would have been successful had only a simple majority been required for passage.

## Method and Sources

**Table 1**, as of May 8, 2008, shows all matters identified as having been subject to a 60-vote requirement as the result of a provision in a UC agreement, from the beginning of the 106<sup>th</sup> Congress in 1999 through the current 110<sup>th</sup> Congress. The *Congressional Record* pages on which the specified consent agreements appear are also included.

No source provides an explicit comprehensive list or index of consent agreements having specific features such as the 60-vote threshold. Instead, the instances presented were results of an electronic search done by CRS analysts of the text of the *Congressional Record* in the Legislative Information System (LIS) of the U.S. Congress for the phrase "60 votes" "60-vote threshold" or "60 votes in the affirmative" or variants. The information obtained through this search was supplemented as necessary by an examination of bill status information in the LIS. This broad search captured many proceedings that referred to other forms of 60-vote requirement, which were eliminated from the results presented.

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<sup>6</sup> Sen. Barbara Boxer, remarks in the Senate, *Congressional Record*, daily edition, vol.154, April 17, 2008, p. S3109.

**Table 1. Identified Senate-Adopted Unanimous Consent Agreements Establishing a 60-Vote Threshold for Passage of Legislation: 1999-2008**

(as of May 8, 2008)

Legislation	Sponsor	Related Bill Number (in cases of amendments)	Congressional Record Citation for UC Agreement	Final Senate Disposition
<b>110<sup>th</sup> Congress (2007-2008)</b>				
S.Amdt. 4539	Boxer (D-CA)	H.R. 1195 Highway Technical Corrections Act of 2007	04/17/2008 p. S3109	S.Amdt. 4539 agreed to in Senate by Yea-Nay Vote 64-28. Record Vote # 105 (4/17/2008).
S.Amdt. 4538	Coburn (R-OK)			S.Amdt. 4538 not agreed to in Senate by Yea-Nay Vote 49-43. Record Vote # 106 (4/17/2008). <sup>a</sup>
S.Amdt. 3920	Whitehouse (D-RI)	S. 2248 FISA Amendments Act of 2008	02/11/2008 p. S845	S.Amdt. 3920 agreed to in Senate by Voice Vote. <sup>b</sup>
S.Amdt. 3910	Feinstein (D-CA)			S.Amdt. 3910 not agreed to in Senate by Yea-Nay Vote 57-41. Record Vote # 13 (2/12/2008). <sup>a</sup>
S.Amdt. 3919	Feinstein (D-CA)			S.Amdt. 3919 not agreed to in Senate by Yea-Nay Vote 41-57. Record Vote # 18 (2/12/2008).

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Legislation	Sponsor	Related Bill Number (in cases of amendments)	<i>Congressional Record</i> Citation for UC Agreement	Final Senate Disposition
S.Amdt. 3919 <sup>c</sup>	Feinstein (D-CA)	S. 2248 FISA Amendments Act of 2008	01/31/2008 p. S536	S.Amdt. 3919 not agreed to in Senate by Yea-Nay Vote 41-57. Record Vote # 18 (2/12/2008).
S.Amdt. 3930	Cardin (D-MD)			S.Amdt. 3930 not agreed to in Senate by Yea-Nay Vote 49-46. Record Vote # 7 (2/6/2008). <sup>a</sup>
S.Amdt. 3920 <sup>c</sup>	Whitehouse (D-RI)			S.Amdt. 3920 agreed to in Senate by Voice Vote. <sup>b</sup>



Legislation	Sponsor	Related Bill Number (in cases of amendments)	<i>Congressional Record</i> Citation for UC Agreement	Final Senate Disposition
<p>S.Amdt. 3876</p> <p>S.Amdt. 3875</p> <p>Motion to concur in House Amdt. No. 2 to the Senate Amdt. to H.R. 2764, with an Amdt. No. 3874</p> <p>Motion to concur in House Amdt. No. 1 to Senate Amdt. To H.R. 2764, with an Amdt. No. 3877</p>	<p>Levin (D-MI)</p> <p>Feingold (D-WI)</p> <p>McConnell (R-KY)</p> <p>Reid (D-NV)</p>	<p>H.R. 2764 Department of State, Foreign Operations and Related Programs Appropriations Act, 2008<sup>d</sup></p>	<p>12/18/2007 p. S15828</p>	<p>S.Amdt. 3876 not agreed to in Senate by Yea-Nay Vote 50-45. Recorded Vote # 438 (12/18/2007).<sup>a</sup></p> <p>S.Amdt. 3875 not agreed to in Senate by Yea-Nay Vote 24-71. Record Vote # 43 (12/18/2007).</p> <p>Motion agreed to in Senate by Yea-Nay Vote 70-25. Recorded Vote # 439 (12/18/2007).</p> <p>Motion not agreed to in Senate by Yea Nay Vote 48-46. Record Vote # 440 (12/18/2007).<sup>a</sup></p>
<p>S.Amdt. 3640</p>	<p>Craig (R-ID)</p>	<p>H.R. 2419 Food and Energy Security Act of 2007</p>	<p>12/13/2007 p. 15417</p>	<p>S.Amdt. 3640 not agreed to in Senate by Yea-Nay Vote 37-58. Record Vote # 429 (12/13/2007).</p>

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<b>Legislation</b>	<b>Sponsor</b>	<b>Related Bill Number (in cases of amendments)</b>	<b><i>Congressional Record</i> Citation for UC Agreement</b>	<b>Final Senate Disposition</b>
S.Amdt. 3530	Coburn (R-OK)	H.R. 2419 Food and Energy Security Act of 2007	12/13/2007 p. S15412	S.Amdt. 3530 as modified agreed to in Senate by Unanimous Consent (12/13/2007). <sup>e</sup>
S.Amdt. 3666	Tester (D-MT)			S.Amdt. 3666 not agreed to in Senate by Yea-Nay Vote 40-55. Record Vote # 427 (12/13/2007).
S.Amdt. 3819	Brown (D-OH)			S.Amdt. 3819 not agreed to in Senate by Yea-Nay Vote 32-63. Record Vote # 428 (12/13/2007).
S.Amdt. 3695	Dorgan (D-ND)	H.R. 2419 Food and Energy Security Act of 2007	12/11/2007 p. S15128	S.Amdt. 3695 as not agreed to in Senate by Yea-Nay Vote 56-43. Record Vote # 424 (12/13/2007). <sup>a</sup>
S.Amdt. 3673	Gregg (R-NH)			S.Amdt. 3673 not agreed to in Senate by Yea-Nay Vote 41-53. Record Vote # 422 (12/12/2007).
S.Amdt. 3810	Klobuchar (D-MN)			S.Amdt. 3810 not agreed to in Senate by Yea-Nay Vote 48-47. Record Vote # 426 (12/13/2007). <sup>a</sup>
S.Amdt. 2997	Biden (D-DE)	H.R. 1585 National Defense Authorization Act for Fiscal Year 2008	09/26/2007 p. S12093	S.Amdt. 2997 agreed to in Senate by Yea-Nay Vote 75-23. Record Vote # 348 (9/26/2007).
S.Amdt. 3017	Kyl (R-AZ)			S.Amdt. 2997 agreed to in Senate by Yea-Nay Vote 76-22. Record Vote # 349 (9/26/2007).

Legislation	Sponsor	Related Bill Number (in cases of amendments)	<i>Congressional Record</i> Citation for UC Agreement	Final Senate Disposition
S.Amdt. 2924	Feingold (D-WI)	H.R. 1585 National Defense Authorization Act for Fiscal Year 2008	09/20/2007 p. S11787	S.Amdt. 2924 not agreed to in Senate by Yea-Nay Vote 28 - 70. Record Vote # 345 (9/20/2007).
S.Amdt. 2947  S.Amdt. 2934	Boxer (D-CA)  Cornyn (R-TX)	H.R. 1585 National Defense Authorization Act for Fiscal Year 2008	09/20/2007 p. S11782	S.Amdt. 2947 not agreed to in the Senate by Yea-Nay Vote 50-47. Record Vote # 343 (09/20/2007). <sup>a</sup>  S.Amdt. 2934 agreed to in Senate by Yea-Nay Vote 72 - 25. Record Vote # 344 (09/20/2007).
S.Amdt. 2898	Levin (D-MI)	H.R. 1585 National Defense Authorization Act for Fiscal Year 2008	09/20/2007 p. S11801	S.Amdt. 2898 not agreed to in Senate by Yea-Nay Vote 47-47. Record Vote # 346 (09/21/2007).
S.Amdt. 2909  S.Amdt. 2918	Webb (D-VA)  McCain (R-AZ)	H.R. 1585 National Defense Authorization Act for Fiscal Year 2008	09/19/ 2007 p. S11731	S.Amdt. 2909 not agreed to in Senate by Yea-Nay Vote 56-44. Record Vote # 341 (09/21/2007). <sup>a</sup>  S.Amdt. 2918 not agreed to in Senate by Yea-Nay Vote 55-45. Record Vote # 342 (09/19/2007). <sup>a</sup>

Legislation	Sponsor	Related Bill Number (in cases of amendments)	<i>Congressional Record</i> Citation for UC Agreement	Final Senate Disposition
S. 2011 The Protect America Act of 2007	Levin (D-MI)		08/03/2007 p. S10861	S. 2011 not agreed to in Senate by Yea-Nay Vote 43 - 45. Record Vote # 310 (08/03/2007).
S. 1927 Protect America Act of 2007	McConnell (R-KY)			S. 1927 agreed to in the Senate with an amendment Senate with an amendment by Yea-Nay Vote 60 - 28. Record Vote # 309 (08/03/2007).
S.Amdt. 2032	Hagel (R-NE)	H.R. 1585 National Defense Authorization Act for Fiscal Year 2008	07/11/07 p. S9005	S.Amdt. 2032 not agreed to in Senate by Yea-Nay Vote 52-45. Record Vote #243 (7/11/2007). <sup>a</sup>
S.Amdt. 2078	Graham (R-SC)			S.Amdt. 2078 not agreed to in Senate by Yea-Nay Vote 41-55. Record Vote #244 (7/11/2007).
S.Amdt. 1566	Warner (R-VA)	H.R. 6 Energy Independence and Security Act of 2007	06/14/07 p. S7712	S.Amdt. 1566 not agreed to in Senate by Yea-Nay Vote 43-44. Record Vote # 212 (6/14/2007).
S.Amdt. 1578	Menendez (D-NJ)			S.Amdt. 1578, amendment S.Amdt. 1566 having failed to achieve the 60 votes required for adoption, withdrawn in Senate (6/14/2007).

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<b>Legislation</b>	<b>Sponsor</b>	<b>Related Bill Number (in cases of amendments)</b>	<b><i>Congressional Record</i> Citation for UC Agreement</b>	<b>Final Senate Disposition</b>
S.Amdt. 1176	Feingold (D-WI)	S. 1248 Water Resources Development Act of 2007	06/5/07 p. S7058	S.Amdt. 1176 agreed to in Senate by Yea-Nay Vote 67-26. Record Vote # 185 (6/5/2007).
S.Amdt. 1170	McConnell (R-KY)			S.Amdt. 1170 not agreed to in Senate by Yea-Nay Vote 41-52. Record Vote # 184 (6/5/2007).
S.Amdt. 1094	Kerry (D-MA)	H.R. 1495 Water Resources Development Act of 2007	05/15/07 p. S6098	S.Amdt. 1094 not agreed to in Senate by Yea-Nay Vote 51-42. Record Vote # 166 (5/15/2007). <sup>a</sup>
S. 5 Stem Cell Research Enhancement Act of 2007	Reid (D-NV)		03/29/07 p. S4221	S. 5 agreed to in Senate by Yea-Nay Vote 63-34. Record Vote # 127 (4/11/2007).
S. 30 HOPE Act	Coleman (R-MN)			S. 30 agreed to in Senate by Yea-Nay Vote 70-28. Record Vote # 128 (4/11/2007).
S.J.Res. 9 United States Policy in Iraq Resolution of 2007	Reid (D-NV)		03/15/07 p. S3161	S.J.Res. 9 not agreed to in Senate by Yea-Nay Vote 48-50. Record Vote # 75 (3/15/2007).

Legislation	Sponsor	Related Bill Number (in cases of amendments)	<i>Congressional Record</i> Citation for UC Agreement	Final Senate Disposition
<p>S.Res. 107 A resolution expressing the sense of the Senate that no action should be taken to undermine the safety of the Armed Forces of the United States or impact their ability to complete their assigned or future missions.</p>	Murray (D-WA)			S.Res. 107 agreed to in Senate by Yea-Nay Vote 96-2. Record Vote # 76 (3/15/2007).
<p>S.Con.Res. 20 A concurrent resolution expressing the sense of Congress that no</p>	Gregg (R-NH)			S.Con.Res. 20 agreed to in Senate by Yea-Nay Vote 82-16. Record Vote # 77 (3/16/07).

<b>Legislation</b>	<b>Sponsor</b>	<b>Related Bill Number (in cases of amendments)</b>	<b><i>Congressional Record</i> Citation for UC Agreement</b>	<b>Final Senate Disposition</b>
funds should be cut off or reduced for American troops in the field which would result in undermining their safety or their ability to complete their assigned mission.				

Legislation	Sponsor	Related Bill Number (in cases of amendments)	<i>Congressional Record</i> Citation for UC Agreement	Final Senate Disposition
<b>109<sup>th</sup> Congress (2005-2006)</b>				
S. 3504 Fetus Farming Prohibition Act of 2006	Santorum (R-PA)		6/29/2006 pp. S7169-S7170	S. 3504 agreed to in Senate by Yea-Nay Vote 100-0. Record Vote # 204 (7/18/2006).
S. 2754 Alternative Pluripotent Stem Cell Therapies Enhancement Act	Santorum (R-PA)			S. 2754 agreed to in Senate by Yea-Nay Vote 100-0. Record Vote # 205 (7/18/2006).
H.R. 810 Stem Cell Research Enhancement Act of 2005	Rep. Castle (R-DE)			H.R. 810 agreed to in Senate by Yea-Nay Vote 63-37. Record Vote # 206 (7/18/2006).
S.Amdt. 4322	Kennedy (D-MA)	S. 2766 John Warner National Defense Authorization Act for Fiscal Year 2007	6/20/2006 p. S6137	S.Amdt. 4322 not agreed to in the Senate by Yea-Nay Vote 52-46. Record Vote # 179 (6/21/2006). <sup>a</sup>
S.Amdt. 4376	Enzi (R-WY)			S.Amdt. 4376 not agreed to in the Senate by Yea-Nay Vote 45-53. Record Vote # 180 (6/21/2006).



Legislation	Sponsor	Related Bill Number (in cases of amendments)	<i>Congressional Record</i> Citation for UC Agreement	Final Senate Disposition
S.Amdt. 2165  S.Amdt. 2181	Coburn (R-OK)  Stevens (R-AK)	H.R. 3058 Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006	10/20/2005 p. S11636	S.Amdt. 2165 not agreed to in the Senate by Yea-Nay Vote 15-82. Record Vote # 262 (10/20/2005).  S.Amdt. 2181 not agreed to in the Senate by Yea-Nay Vote 33-61. Record Vote # 263 (10/20/2005).
S.Amdt. 2063  S.Amdt. 2115	Kennedy (D-MA)  Enzi (R-WY)	H.R. 3058 Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006	10/19/2005 p. S11526	S.Amdt. 2063 ruled out of order after motion to waive section 425(a)(2) of the Congressional Budget Act (unfunded mandate) not agreed to, 47-51. Record Vote # 257 (10/19/2005).  S.Amdt. 2115 ruled out of order after motion to waive section 425(a)(2) of the Congressional Budget Act (unfunded mandate) not agreed to, 42-57. Record Vote # 258 (10/19/2005). <sup>f</sup>
S.Amdt. 44  S.Amdt. 128	Kennedy (D-MA)  Santorum (R-PA)	S. 256 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005	3/3/2005 pp. S2050-S2051	S.Amdt. 44 not agreed to in the Senate by Yea-Nay Vote 46-49. Record Vote # 26 (3/7/2005).  S.Amdt. 128 not agreed to in the Senate by Yea-Nay Vote 38-61. Record Vote # 27 (3/7/2005).

Legislation	Sponsor	Related Bill Number (in cases of amendments)	Congressional Record Citation for UC Agreement	Final Senate Disposition
<b>108<sup>th</sup> Congress (2003-2004)</b>				
None identified				
<b>107<sup>th</sup> Congress (2001-2002)</b>				
None identified				
<b>106<sup>th</sup> Congress (1999-2000)</b>				
None identified				

**Sources:** *Congressional Record* and Legislative Information System (LIS) of the United States Congress.

**Notes:**

- a. Unsuccessful amendments or measures that would have passed if only the standard majority vote had been required.
- b. A subsequent unanimous consent agreement was agreed to (p. S881) allowing the amendment to be adopted by voice vote.
- c. Amendment indicated as being held to 60-vote threshold again in later UC agreement dated 02/11/2008, p S845, also shown in table.
- d. Later changed to Consolidated Appropriations Act, 2008.
- e. A subsequent unanimous consent agreement was agreed to (p. S15417) allowing the amendment to pass by unanimous consent.
- f. The consent agreement provided that “if either amendment does not have 60 votes in the affirmative, that amendment then be automatically withdrawn or fall to the point of order, if applicable.” In the 109th Congress, 60 votes were required to waive the unfunded mandate point of order.