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Senate Unanimous Consent Agreements: Potential Effects on the Amendment Process

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Contents

Amendments in Order and Adoption Thereof	1
The Order in Which Senators Offer Amendments	1
The Right to Offer Second-degree Amendments	2
The Time Available for Considering Amendments	2
The Subjects of Amendments	2
Points of Order Against Amendments	2
Examples	3

Contacts

Author Contact Information	4
Acknowledgments	4

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.

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). A UC agreement may also set a different vote threshold for agreeing to an amendment; for example, in recent years, it is not uncommon for the Senate to adopt UC agreements requiring 60 affirmative votes for adoption of certain amendments.³

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.⁴ 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.

¹ For a broader overview of UC agreements, see CRS Report 98-225, *Unanimous Consent Agreements in the Senate*, by (name redacted).

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 The use of this supermajority threshold allows for a vote on the amendment, but it also protects the prerogatives of a minority who may be opposed without necessitating the use of cloture, which may require additional floor time. For more detail, see CRS Report RL34491, *Unanimous Consent Agreements Establishing a 60-Vote Threshold for Passage of Legislation in the Senate*, by (name redacted).

⁴ For example, Senators may offer amendments to any unamended section of the bill at any time.

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.

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).⁵ 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.⁶ 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

⁵ When a UC agreement limits debate on an amendment, the amendment is not subject to a motion to table until all time has expired or been yielded back. See Floyd M. Riddick and Alan S. Frumin, *Riddick’s Senate Procedure*, 101st Cong., 2nd sess., S.Doc. 101-28 (Washington: GPO, 1992), p. 1287.

⁶ See Riddick and Frumin, *Senate Procedure*, pp. 1344-1353 for precedents on germaneness under UC agreements, and pp. 1362-1363 for those relating to relevancy.

may offer. If a UC agreement limits debate on an amendment, a point of order against the amendment is not in order until the time has expired or been yielded back.⁷

Examples

Two UC agreements from recent Congresses follow below. Each illustrates several dimensions on which an agreement may affect the amending process. For instance, during consideration of H.R. 146 in the 111th Congress, the Senate agreed (pursuant to Order No. 27) to allow only certain first degree amendments, limit debate time on each to 60 minutes, prohibit second degree amendments, agree to the substitute amendment (as amended, if amended), and finally, provide for a 60-vote threshold for passage of the measure. In the second example (Order No. 139, from the 113th Congress), the Senate has agreed to bring up the bill for initial consideration and limit amendments to one specified first degree amendment and two second degree amendments. Up to an hour of debate is provided for each amendment; three hours is provided for general debate on the bill, with the time allocated among various Senators. The agreement provides for final votes on each of the specified amendments and the bill as amended (if amended), subjecting each vote to a 60-vote threshold.

H.R. 146 (ORDER NO. 27)

Ordered, That when the Senate resumes Legislative Session on Wednesday, March 18, 2009, the Senate resume consideration of H.R. 146, an act to establish a battlefield acquisition grant program for the acquisition and protection of nationally significant battlefields and associated sites of the Revolutionary War and the War of 1812, and for other purposes.

Ordered further, That the only first degree amendments in order be the following:

Coburn Amdt. No. 680 re: bar new construction,

Coburn Amdt. No. 679 re: strike provisions restricting alternative energy,

Coburn Amdt. No. 683 re: strike targeted provisions,

Coburn Amdt. No. 675 re: eminent domain,

Coburn Amdt. No. 677 re: annual report, and

Coburn Amdt. No. 682 re: Subtitle D clarification

Ordered further, That debate time prior to a vote in relation to each amendment be limited to 60 minutes equally divided and controlled in the usual form; provided, that no amendment be in order to any amendment prior to a vote in relation thereto; provided further, that if there is a sequence of votes in relation to the amendments, then prior to each vote in a sequence, there be 4 minutes of debate divided as specified above and that after the first vote in the sequence the remaining votes be 10 minutes in duration.

Ordered further, That upon disposition of the listed amendments the substitute amendment as amended, if amended, be agreed to, the bill as amended be read a third time and the Senate proceed to a vote on passage of the bill as amended; provided, that passage of the bill be subject to a 60 vote threshold and that if the bill passes, the motion to reconsider be considered made and laid upon the table and the title amendment be considered and agreed to. (*May 17, 2009.*)

⁷ Riddick and Frumin, *Senate Procedure*, p. 1356.

H.R. 1911 (ORDER NO. 139)

Ordered, That at a time to be determined by the Majority Leader, after consultation with the Republican Leader, the Senate proceed to the consideration of H.R. 1911, an Act to amend the Higher Education Act of 1965 to establish interest rates for new loans made on or after July 1, 2013, to direct the Secretary of Education to convene the Advisory Committee on Improving Postsecondary Education Data to conduct a study on improvements to postsecondary education transparency at the Federal level, and for other purposes; provided, that the only first degree amendment in order to the bill be a Manchin-Burr amendment, the text of which is at the desk; provided further, that the only second degree amendments in order to the Manchin-Burr amendment be a Reed-Warren amendment and a Sanders amendment, the texts of which are at the desk.

Ordered further, That there be up to one hour of debate, equally divided between the proponents and opponents, on each amendment; provided, that there be three hours of debate on the bill, equally divided between the Chair and Ranking Member, or their designees, with the Senator from California (Mrs. Boxer) controlling 30 minutes of the Democratic time and the Senator from Rhode Island (Mr. Reed) controlling 15 minutes of the Democratic time; provided further, that no points of order or motions be in order, other than the budget points of order and the applicable motions to waive.

Ordered further, That upon the use or yielding back of time, the Senate vote in relation to the second degree amendments in the order listed; provided, that upon disposition of the amendment offered by the Senator from Vermont (Mr. Sanders), the Senate vote in relation to the Manchin-Burr amendment, as amended, if amended; provided further, that upon disposition of the Manchin-Burr amendment, the bill, as amended, if amended, be read a third time and the Senate vote on passage of the bill, as amended, if amended; further, that all the amendments and passage of the bill be subject to a 60 affirmative vote threshold, that there be two minutes equally divided between the votes, and that all after the first vote be 10 minute votes. (*July 23, 2013.*)

UC agreements can limit the amending process on the Senate floor in ways not mentioned above.⁸ 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 (name redacted).

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⁸ 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.

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