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“Sense of” Resolutions and Provisions

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One or both houses of Congress may formally express opinions about subjects of current national interest through freestanding simple or concurrent resolutions (called generically "sense of the House," "sense of the Senate," or "sense of the Congress" resolutions).

These opinions expressing the views of one or both chambers may be included in other legislation upon introduction or subsequently added by amendment. This report identifies the various forms these expressions may take and the procedures governing such actions.

"Sense of" Resolutions

Sense of the House or Senate resolutions take the form of simple resolutions, because they require the approval of only one chamber. A sense of Congress resolution, on the other hand, must be a concurrent resolution, as both the House and Senate must approve such measures. Joint resolutions are not typically used for expressions of congressional opinion, because joint resolutions generally require presidential approval. A "sense of" resolution is not legally binding because it is not presented to the President for his signature. Even if a "sense of" provision is incorporated into a bill that becomes law, such provisions merely express the opinion of Congress or the relevant chamber. They have no formal effect on public policy and have no force of law.

"Sense of" resolutions are generally considered under the normal legislative processes of each chamber applicable to any other legislative vehicle. Because "sense of" resolutions do not involve the expenditure of public funds, such resolutions, if reported from House committees, are placed on the House calendar. Typically, the House has considered them under the suspension of the rules procedure, by unanimous consent request, and (rarely) under the terms of a special rule reported from the Committee on Rules and adopted by the House. As adopted in the 114th Congress (2015-2016), the rules of the House Republican Conference include language that limits the use of the suspension of the rules procedure for certain types of honorific or commemorative legislation. This rule could effectively preclude the consideration of some "sense of" legislation in the House.¹ Specifically, Conference Rule 28 states that the Republican leader "shall not schedule, or request to have scheduled, any bill or resolution for consideration under suspension of the Rules which ... expresses appreciation, commends, congratulates, celebrates, recognizes the accomplishments of, or celebrates the anniversary of, an entity, event, group, individual, institution, team or government program; or acknowledges or recognizes a period of time for such purposes."² The rule may be waived by a majority of the elected House Republican leadership.³ The House Republican leadership has also announced several "Legislative Protocols," one of which is intended to clarify the application of Conference Rule 28.⁴ Protocol 7 states that a "resolution of bereavement, or condemnation, *or which calls on others (such as a foreign government) to take a particular action* [emphasis added], but which does not otherwise violate the provisions of Rule 28 is eligible to be scheduled under suspension of the Rules."

The Senate normally takes up "sense of" resolutions by unanimous consent. In prior eras, such resolutions were sometimes automatically laid before the Senate under the "resolutions ... over,

¹ In addition to the House Republican Conference rule discussed here, clause 5 of House Rule XII precludes the introduction and consideration of a bill or resolution, or an amendment thereto, if it establishes or expresses a "commemoration." "Commemoration" is defined by the rule as a "remembrance, celebration, or recognition for any purpose through the designation of a specified period of time."

² U.S. Congress, House, *Rules of the House Republican Conference 114th Congress*, p. 25, <http://www.gop.gov/app/uploads/2014/11/114-Conference-Rules-113-Comp-Print1.pdf>.

³ *Ibid.*, p. 26.

⁴ <http://www.majorityleader.gov/protocols/>.

under the Rule" process (Senate Rule XIV), but this procedure is almost never used in modern practice.

"Sense of" Provisions

Besides expressing such views through simple or concurrent resolutions, Congress may include "sense of" language in an introduced measure or attach such provisions by way of floor or committee amendment. In the House, a "sense of" amendment must be germane to the overall measure and to the particular portion of the bill to which it is added. Violations of the germaneness rule can be overcome through motions to suspend the rules or by provisions in a special rule waiving certain points of order.

Senate rules generally offer wide latitude to Senators to offer "sense of" amendments to legislation in committee or on the floor. However, sense of the Senate amendments must be germane to language contained in an underlying general appropriations bill, as determined by the chair upon a point of order raised against the amendment, in order to comply with Rule XVI.⁵ Under Senate precedents, "sense of Congress" or "sense of the Senate" amendments are considered dilatory if offered post-cloture.⁶ The offering of such amendments to budget resolutions is generally discouraged.⁷ "Sense of" provisions have also been found to violate the rule barring the inclusion of "extraneous matter" in budget reconciliation legislation.⁸

Content of "Sense of" Resolutions and Provisions

"Sense of" resolutions and amendments expressing the sense of one or both houses of Congress have been offered on many subjects. An informal survey of "sense of" resolutions and amendments adopted during recent Congresses shows that many of them focused on foreign policy matters, particularly resolutions that express the sense of the Senate. However, "sense of" proposals were forwarded on a wide range of other subjects, including stressing a particular domestic policy priority; recognizing a historic milestone, figure, or location; and calling for certain federal agencies or officials to take, or refrain from taking, a specified action.

Although "sense of" proposals have no force in law, foreign governments pay close attention to them as evidence of shifts in U.S. foreign policy priorities. On domestic issues, agencies also monitor "sense of" provisions because they may serve as an early signal that Congress will alter statutory provisions if the informal nature of "sense of" provisions does not influence agency policy.

⁵ *Congressional Record*, daily edition, vol. 146, May 17, 2000, pp. S4062-S4065, (bound edition, pp. 8283-8286).

⁶ *Congressional Record*, daily edition, vol. 147, October 2, 2001, p. S10032, (bound edition, pp. 18220-18221).

⁷ The conference report on H.Con.Res. 290 (106th Congress), the FY2001 budget resolution, provided that amendments containing "predominately precatory language," such as "sense of" amendments, are not germane to budget resolutions. The enforceability of this provision is unclear, however. See CRS Report R40665, *Congressional Budget Resolutions: Consideration and Amending in the Senate*, by (name redacted).

⁸ For example, *Congressional Record*, daily edition, vol. 151, November 17, 2005, pp. S13123-S13124 (bound edition, pp. 27037-27038). For further information, see CRS Report RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule"*, by (name redacted).

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