AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

§ 520. Requests for information from the other House.

When bills passed in one House and sent to the other are ground on special facts requiring proof, it is usual, either by message or at a conference, to ask the grounds and evidence, and this evidence, whether arising out of papers or from the examination of witnesses, is immediately communicated. *3 Hats., 48.*

The Houses of Congress transmit with bills accompanying papers, which are returned when the bills pass or at final adjournment (V, 7259, footnote). Sometimes one House has asked, by resolution, for papers from the files of the other (V, 7263, 7264). Testimony is also requested (III, 1855).

SEC. XLV—AMENDMENTS BETWEEN THE HOUSES

§ 521. Parliamentary principles as to disagreeing, insisting, and adhering.

When either House, *e.g.*, the House of Commons, send a bill to the other, the other may pass it with amendments. The regular progression in this case is, that the Commons disagree to the amendment; the Lords insist on it; the Commons insist on their disagreement; the Lords adhere to their amendment; the Commons adhere to their disagreement. The term of insisting may be repeated as often as they choose to keep the question open. But the first adherence by either renders it necessary for the other to recede or adhere also; when the matter is usually suffered to fall. *10 Grey, 148.* Latterly, however, there are instances of their having gone to a second adherence. There must be an absolute conclusion of the subject somewhere, or otherwise transactions between the Houses would become endless. *3 Hats., 268, 270.* The term of insisting, we are told by Sir John Trevor, was then (1679)

newly introduced into parliamentary usage by the Lords. *7 Grey, 94.* It was certainly a happy innovation, as it multiplies the opportunities of trying modifications which may bring the Houses to a concurrence. Either House, however, is free to pass over the term of insisting, and to adhere in the first instance; *10 Grey, 146;* but it is not respectful to the other. In the ordinary parliamentary course there are two free conferences, at least, before an adherence. *10 Grey, 147.*

The House and the Senate follow the principles set forth in this paragraph of the parliamentary law, and sometimes dispose of differences without resorting to conferences (V, 6165).

§ 522. Insisting and adhering in the practice of the House.

Where both Houses insist and neither ask a conference nor recede, the bill fails (V, 6228). Where both Houses adhere, the bill fails (V, 6163, 6313, 6324, 6325) even though the difference may be over a very slight amendment (V, 6233–6240). In rare instances in Congress there have been immediate adherences on the first disagreement (V, 6303); but this does not preclude the granting of the request of the other House for a conference (V, 6241–6244). Sometimes the House recedes from its disagreement as to certain amendments and adheres as to others (V, 6229). A House having adhered may at the next stage vote to further adhere (V, 6251). Sometimes the House has receded from adherence (V, 6252, 6401) or reconsidered its action of adherence (V, 6253), after which it has agreed to the amendment with or without amendment (V, 6253, 6401).

§ 523. Parliamentary law as to receding.

Either House may recede from its amendment and agree to the bill; or recede from their disagreement to the amendment, and agree to the same absolutely, or with an amendment; for here the disagreement and receding destroy one another, and the subject stands as before the disagreement. *Elysnge, 23, 27; 9 Grey, 476.*

§ 524. Practice of the House as to receding from its own amendment to a bill of the other House.

In the practice of the two Houses of Congress the motion is to recede from the amendment without at the same time agreeing to the bill, for the bill has already been passed with the amendment, and receding from the amendment leaves the bill passed (V, 6312). But where the House has previously concurred in a Senate amendment with an amendment, the House does not by receding from its amendment agree to the Senate amendment, since the House may then (1) concur in the Senate amendment or (2) concur in the Senate amendment with another amendment (VIII, 3199; Oct. 12, 1977, pp. 33448–54). The House may not through one motion, however, recede from its amendment with an amendment (V, 6212; see § 526, *infra*). A motion in the House to recede from a House amendment to a Senate amendment, and concur in the Senate amendment, is divisible (VIII, 3199). One House has receded from its own amendment after the other House had returned it concurred in with an amendment (V, 6226). However, this has been held insufficient to pass the bill without further action by the House that concurred with an amendment (VIII, 3177; June 26, 1984, p. 18733).

Where one House has receded from an amendment, it may not at a subsequent stage recall its action in order to form a new basis for a conference (V, 6251). Sometimes one House has receded from its amendment although it had previously insisted and asked a conference which had been agreed to (V, 6319). After the Senate has amended a House amendment it is not proper for the House to recede from its amendment directly, but the Senate may recede from its amendment and then the House recede from its amendment (Speaker Reed, June 12, 1890, p. 5981). The motion to recede takes precedence over the motion to insist and ask a conference (V, 6270).

§ 525. Practice of the House as to receding from disagreement to amendment of the other House.

By receding from its disagreement to an amendment of the Senate the House does not thereby agree to it (V, 6215); but the Senate amendment is then open to amendment precisely as before the original disagreement (V, 6212–6214). The stage of disagreement having been reached, the motion to recede and concur takes precedence of the motion to recede and concur with an amendment (V, 6219–6223; VIII, 3198, 3200, 3202); but a motion to recede and concur is divisible (VIII, 3199) and being divided and the House having receded, a motion to amend has precedence of the motion to concur (V, 6209–6211; VIII, 3198), even after the previous question is ordered on both motions before being divided (Feb. 12, 1923, p. 3512).

The motion to recede and concur in a Senate amendment with an amendment takes precedence of a motion to insist further on the House's disagreement to the Senate amendment (V, 6224; VIII, 3204), and a motion to lay certain amendments on the table (Speaker Longworth, Jan. 24, 1927, p. 2165). It has been held that after the previous question has been moved on a motion to adhere, a motion to recede may not be made (V, 6310); and after the previous question is demanded or ordered on a motion to

concur, a motion to amend is not in order (V, 5488); but where the previous question has been demanded on a motion to insist, a motion to recede and concur has been admitted (V, 6208, 6321a).

§ 526. One House not to recede from its own amendment with an amendment; or depart from form fixed by adherence.

But the House can not recede from or insist on its own amendment, with an amendment; for the same reason that it can not send to the other House an amendment to its own act after it has passed the act. They may modify an amendment from the other House by ingrafting an amendment on it, because they have never assented to it; but they can not amend their own amendment, because they have, on the question, passed it in that form. *9 Grey, 363; 10 Grey, 240.* In Senate, March 29, 1798. Nor where one House has adhered to their amendment, and the other agrees with an amendment, can the first House depart from the form which they have fixed by an adherence.

In the case of a money bill, the Lord's proposed amendments become, by delay, confessedly necessary. The Commons, however, refused them as infringing on their privilege as to money bills; but they offered themselves to add to the bill a proviso to the same effect, which had no coherence with the Lords' amendments; and urged that it was an expedient warranted by precedent, and not unparliamentary in a case become impracticable, and irremediable in any other way. *3 Hats., 256, 266, 270, 271.* But the Lords refused, and the bill was lost. *1 Chand., 288.* A like case, *1 Chand., 311.* * * *

In the House it is a recognized principle that the House may not recede from its own amendments with an amendment (V, 6216–6218). The House may not amend its own amendment to a Senate amendment to a House bill (Mar. 16, 1934, p. 4685). However, the stage of disagreement having been reached on a House amendment to a Senate amendment to a House proposition, the House may first recede from its amendment and, having receded, may then concur in the Senate amendment with a different amendment without violating this paragraph (Speaker O'Neill, Oct. 12, 1977, pp. 33448–54).

§ 527. Text to which both Houses have agreed not to be changed.

* * * So the Commons resolved that it is unparliamentary to strike out, at a conference, anything in a bill which hath been agreed and passed by both Houses, *6 Grey, 274; 1 Chand., 312.*

The practice of the two Houses has confirmed this principle of the parliamentary law and established the rule that managers of a conference may not change the text to which both Houses have agreed (V, 6417, 6418, 6420; VIII, 3257; see clause 9 of rule XXII), and neither House, alone, may empower the managers by instruction to make such a change (V, 6388). In the earlier practice, when it was necessary to change text already agreed to, the managers appended a supplementary paragraph to their report, and this was agreed to by unanimous consent in the two Houses (V, 6433–6436); or the two Houses agreed to a concurrent resolution giving the managers the necessary powers (V, 6437–6439; Dec. 17, 1974, p. 40472). Under the current practice the House considers a conference report that changes text already agreed to by unanimous consent, under suspension of the rules, or by report from the Committee on Rules waiving clause 9 of rule XXII.

To change text finally agreed to by both Houses, each House may adopt a concurrent resolution directing the Clerk of the House or the Secretary of the Senate to correct the enrollment. Such a concurrent resolution may be considered by unanimous consent, under suspension of the rules, or by report from the Committee on Rules.

The further principle has been established in practice of the House that it may not, even by unanimous consent (V, 6179), change in the slightest particular (V, 6181) the text to which both Houses have agreed (V, 6180; VIII, 3257). And this prohibition extends, also, to a case wherein it is proposed to add a new section at the end of a bill which has passed both Houses (V, 6182).

§ 528. Consideration of Senate and House amendments; precedence of motions.

A motion to amend an amendment from the other House takes precedence of a motion to agree or disagree.

This is the rule of the House where the stage of disagreement has not been reached (V, 6164, 6169–71; VIII, 3202), or when the House has receded from its disagreement to the amendment in question (VIII, 3196, 3197, 3203). The following discussion summarizes the precedence and consideration of motions to dispose of Senate or House amendments in contemporary practice.

§ 528a. Consideration of Senate or House amendments.

When Senate amendments are before the House for the first time, or when the Senate has returned a bill with House amendments to which it has disagreed (and on which the House has not insisted), no privileged motion is in order in the House except a motion pursuant to clause 1 of rule XXII, made by direction of the committee with subject-matter jurisdiction, to disagree to the Senate amendments or insist on the House amendment and request or agree to a conference with the Senate (see Oct. 11, 1984, p. 32308). Other motions to dispose of amendments between the Houses are not privileged until the stage of disagreement has been reached on a bill with amendments of the other House (clause 4 of rule XXII; IV, 3149, 3150; VI, 756; VIII, 3185, 3194). The stage of disagreement is not reached until the House has either disagreed to Senate amendments or has insisted on its own amendments to a Senate bill, and has notified the Senate. Further House action can only occur when the House has received the papers back from the Senate (Sept. 16, 1976, p. 30868).

Prior to the stage of disagreement, an amendment to a Senate amendment to a House-passed measure on the Speaker's table is not in order until an order is entered for consideration of the Senate amendment in the House (Speaker O'Neill, June 19, 1986, pp. 14638–40).

If the House does agree to consider a bill with Senate amendment before the stage of disagreement has been reached, by unanimous consent or special order of business, a motion to amend takes precedence over the motion to agree. However, the usual practice in such a situation is to consider a request, either by unanimous consent, suspension of the rules, or special order of business reported by the Committee on Rules, simultaneously providing for consideration and disposition of the Senate amendment (thus precluding the consideration of other requests to dispose of the amendment (see Deschler-Brown, ch. 32, § 5)).

It should be noted that a small category of Senate amendments, those not requiring consideration in the Committee of the Whole, may be taken from the Speaker's table and disposed of by motion pursuant to clause 2 of rule XXII before the stage of disagreement has been reached, but

the vast majority of legislation does affect the Treasury (as described in clause 1 of rule XIII) and requires consideration in Committee of the Whole.

§ 528b. Precedence of motions before the stage of disagreement.

Should the House consider Senate amendments before the stage of disagreement, the precedence of nonprivileged motions is as follows (disregarding the privileged motion to disagree and send to conference by direction of the committee): (1) to concur with amendment; (2) to concur; (3) to disagree and request or agree to a conference; and (4) to disagree. With respect to consideration of House amendments before the stage of disagreement, the precedence of motions is (1) to recede; (2) to insist and request or agree to a conference; and (3) to insist. While the House may adhere, adherence is seldom utilized (since it precludes a conference unless receded from) and is extremely rare on first disagreement (see § 522, *supra*; see also the discussion of adherence in Deschler-Brown, ch. 32, § 12). A motion to adhere is the least privileged motion.

It was formerly held that a motion to send to conference yielded to the simple motion to disagree, or to insist (see Cannon's Procedure in the House of Representatives, p. 120). In current practice, however, the compound motion to disagree to Senate amendments and request or agree to a conference, or to insist on House amendments and request or agree to a conference, has replaced the two-step procedure for getting to conference and, since it brings the two Houses together, takes precedence over simple motions to insist or disagree (or to adhere).

Notwithstanding the foregoing precedence of motions, the ordinary motions applicable to any question which is under debate—to table, to postpone to a day certain, and to refer—remain available under clause 4 of rule XVI. A motion to table Senate amendments brings the bill to the table (V, 5424, 6201–6203; Sept. 28, 1978, p. 32334). It must also be noted that before consideration of any motions to dispose of Senate amendments, the Speaker has the discretionary authority, under clause 2 of rule XIV, to refer such amendments to the appropriate committee, with or without a time limitation for committee consideration. It has been held that before the stage of disagreement, the motion to table the Senate amendment or amendments (V, 6201–6203) or the motion to refer the Senate amendment or amendments (V, 5301, 6172, 6174) take precedence (in that order) over motions to amend, agree, or disagree. And if the previous question has been ordered on another motion to dispose of the Senate amendment, a motion to refer is in order (V, 5575).

§ 528c. Reaching the stage of disagreement.

The House has reached the stage of disagreement on a bill when it is again in possession of the papers thereon, having previously disagreed to Senate amendments or insisted on House amendments (with or without requesting or agreeing to a conference). Only previous insistence or disagreement by the House itself places the House in disagreement (and not merely disagreement, insistence, or amendment by the Senate). For example, where the House has concurred in a Senate amendment to a House bill with

an amendment, insisted on the House amendment and requested a conference, and the Senate has then concurred in the House amendment with a further amendment, the matter is privileged for further disposition in the House since the House has communicated to the Senate its insistence and request for a conference (Sept. 16, 1976, p. 20868). Of course, if the Senate has agreed to a House request for a conference, the bill is committed to conference and motions are not in order for its disposition until after the conferees have reported (the House may unilaterally discharge its conferees and consider the bill, where in possession of the papers, only by unanimous consent, special order, or suspension of the rules, and not by motion).

Once the stage of disagreement has been reached on a bill with amendments, the House remains in the stage of disagreement until the matter is finally disposed of and motions for its disposition are privileged whenever the House is in possession of the papers. This principle applies both where the stage of disagreement is reached without a conference, and where matters remain in disagreement after conferees have reported. It is possible, therefore, for motions to be privileged since the House is in disagreement on the bill, but for the House to have receded from its disagreement or insistence on a particular amendment or to have received a new Senate amendment for the first time. In those cases motions remain privileged, but the precedence of motions on the amendment in question reverts to the precedence of motions before the stage of disagreement, as set forth in § 528b, *supra* (see discussion below of the effect of the House's receding). The two Houses having permitted the amendment process to go beyond the second degree, a motion to concur in a Senate amendment (in the 4th degree), the stage of disagreement having been reached, is privileged but is subject to the motion to lay on the table (Mar. 18, 1986, p. 5217).

§ 528d. Precedence of motions after the stage of disagreement.

Generally, after the stage of disagreement has been reached on a Senate amendment, the precedence of motions is as follows: (1) to recede and concur; (2) to recede and concur with an amendment or amendments; (3) to insist on disagreement and request a (further) conference; (4) to insist on disagreement; and (5) to adhere. The Chair may examine the substance of a pending motion to determine the precedence thereof in relation to another motion, even though in form it may appear preferential. Thus, a proper motion to concur with an amendment to a Senate amendment reported from conference in disagreement (the House having receded) has been offered and voted on before a pending motion drafted as one to concur with an amendment but in actual effect a motion to insist on disagreement to the Senate amendment, because simply reinserting the original House text without change (Deschler-Brown, ch. 31, § 8.12). The ordinary motion to table under clause 4 of rule XVI may be applied to a Senate amendment but carries the bill to the table. When applied to a motion to dispose of a Senate amendment, the motion to table carries to the table only the motion to dispose and not the amendment or bill (see Deschler-Brown,

ch. 32, § 7.27). With respect to the motion to refer (or recommit), a simple motion to refer or recommit only takes precedence over a motion to adhere, after the stage of disagreement has been reached on the bill. After the previous question is ordered on a pending motion to dispose of a Senate amendment, a motion to recommit (pursuant to clause 2 of rule XIX) may only be offered if it constitutes, in effect, a motion which takes precedence over the pending motion to dispose of a Senate amendment. Thus, after the stage of disagreement has been reached on a Senate amendment, a motion to recommit with instructions to report back forthwith with an amendment may not be offered after the previous question has been ordered on a motion to recede and concur, a motion of higher privilege (see Deschler-Brown, ch. 32, § 7.5). However, after the House has receded from disagreement to a Senate amendment, a motion to amend is preferential over a motion to agree, and thus after the previous question is ordered on a motion to concur, the House having already receded, a motion to recommit with instructions to amend would be in order (VIII, 2744). Motions to postpone, either to a day certain or indefinitely, have the lowest privilege with respect to a Senate amendment after the stage of disagreement has been reached. For old examples where the House postponed indefinitely consideration of Senate amendments, see V, 6199, 6200 (in the latter case the Senate had adhered). Clause 8(b)(3) of rule XXII makes preferential and separately debatable a motion to insist on disagreement to a Senate amendment to a general appropriation bill, if: (1) the Senate amendment has been reported from conference in disagreement; (2) the original motion to dispose of the Senate amendment proposes to change existing law; and (3) the motion to insist is timely offered by the chairman of a committee of jurisdiction or a designee.

Where the matter in question is a House amendment or amendments after the stage of disagreement has been reached, the precedence of motions is (1) to recede; (2) to further insist on the amendment and request a (further) conference; and (3) to adhere. For discussion of possible options of the House, having receded from its amendment or amendments, see § 524, *supra,* and Deschler-Brown, ch. 32, § 7. If the House recedes from its amendment to a Senate bill, the bill is passed unless otherwise specified. If the House recedes from its amendment to a Senate amendment, the bill is not passed unless the House takes another step, either to concur in the Senate amendment or amend it. The House having receded from its amendment to a Senate amendment, it is no longer in disagreement on the amendment (although it is on the bill if the stage of disagreement has previously been reached), and the motion to amend the Senate amendment takes precedence over the motion to concur therein. Until the House recedes, however, a motion to recede from the House amendment and concur in the Senate amendment is preferential. A conference report held to violate clause 9 of rule XXII was vitiated, after which a privileged motion to recede and concur in a Senate amendment with an amendment incor-

porating by reference the text of an introduced House bill was offered (Nov. 14, 2002, p. ——).

The same principle as to the precedence of motions after a division of the question applies to a motion to recede and concur in a Senate amendment, the stage of disagreement having been reached. While the motion to recede and concur takes precedence over the motion to recede and concur with an amendment, the former motion may be divided on the demand of any Member. If the House agrees to recede, a motion to concur with an amendment then takes precedence over the motion to concur, is considered as pending if part of the original motion, and is voted on first (Sept. 30, 1988, pp. 27265–74; Oct. 11, 1989, p. 24097). As indicated in Deschler-Brown, ch. 32, § 8.2, a Member offering a preferential motion does not thereby gain control of the debate, which remains in the control of the floor manager recognized to offer the original motion to dispose of amendments between the Houses (and which is divided equally between the majority and minority floor managers with respect to amendments reported from conference in disagreement under clause 7(b) of rule XXII). Recognition to offer a preferential motion goes to the senior committee member seeking the floor who is not the offeror of a displaced motion of lesser privilege (Nov. 16, 1989, p. 29565). Although the manager of a conference report is entitled to prior recognition to offer motions to dispose of amendments in disagreement, he should not be entitled to offer two motions, one preferential to the other, to be pending at the same time. However, where his first motion to insist on disagreement has been superseded by the House's voting to recede from disagreement, then his initial motion is no longer pending; and he may be recognized to offer another motion to concur with an amendment, which would be preferential to the remaining portion of another Member's divided motion to concur (Deschler-Brown, ch 32, § 8.2). This is to be contrasted with the situation where the bill manager offers a motion to dispose of a Senate amendment which is rejected by the House, in which case recognition to offer a subsequent motion to dispose of the pending Senate amendment shifts to another Member who led the opposition to the rejected motion (see § 954, *infra*).

§ 529. Degree of amendments between the Houses.

A bill originating in one House is passed by the other with an amendment.

The originating House agrees to their amendment with an amendment. The other may agree to their amendment with an amendment, that being only in the 2d and not the 3d degree; for, as to the amending House, the first amendment with which they passed the bill is a part of its text. It is the only

text they have agreed to. The amendment to that text by the originating House therefore is only in the 1st degree, and the amendment to that again by the amending House is only in the 2d, to wit, an amendment to an amendment, and so admissible. Just so, when, on a bill from the originating House, the other, at its second reading, makes an amendment; on the third reading this amendment is become the text of the bill, and if an amendment to it be moved an amendment to that amendment may also be moved, as being only in the 2d degree.

This principle is followed in the practice of the House (V, 6176, 6177, 6178). For a discussion of the attitude of the Senate on this topic, see October 31, 1991 (p. 29494).

SEC. XLVI—CONFERENCES

§ 530. Parliamentary law as to asking conferences.

It is on the occasion of amendments between the Houses that conferences are usually asked; but they may be asked in all cases of difference of opinion between the two Houses on matters depending between them. The request of a conference, however, must always be by the House which is possessed of the papers. *3 Hats., 31; 1 Grey, 425.*

The House follows the principles set forth in this paragraph of the parliamentary law. A conference may be asked on only a portion of the amendments in disagreement, leaving the differences as to the remainder to be settled by the action of the two Houses themselves (V, 6401). In very rare instances conferences have been asked by one House after the other has absolutely rejected a main proposition (IV, 3442; V, 6258). A difference over an amendment to a proposed constitutional amendment may be committed to a conference (V, 7037).