

# Conferences Between the Houses

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#### **Research References**

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8 Cannon §§ 3209–3332

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## **I. Generally**

### **§ 1. In General; Purpose**

#### **Generally**

Before a measure can become law, both Houses must agree to the same bill—either a House bill or a Senate bill—and they must agree on each provision of the bill. 5 Hinds §§ 6233–6240. Although the two Houses may pass similar measures on the same subject, neither can become law unless both Houses pass the same numbered bill, with the identical text. 4 Hinds § 3386.

In many cases disagreements between the House and Senate over the provisions in a bill can be resolved through action on amendments that are messaged back and forth between the Houses. Such action is taken in the expectation that one House will eventually concur (or recede and concur)

with the amendments of the other House and pass the bill. (See SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES.) Another approach aimed at reconciliation is through a conference committee, consisting of managers from each Chamber, with authority to report on negotiated agreements. Sometimes these procedures are pursued simultaneously: one House will (1) concur as to certain amendments and (2) insist on disagreement as to other amendments and request a conference thereon. 5 Hinds §§ 6287, 6401. If a conference fails to reconcile the differences, and reports this fact back to the two Houses, motions to dispose of any amendments remaining in disagreement are permitted. §§ 36–38, *infra*.

The request for a conference is made by the House in possession of the papers. § 4, *infra*. The House receiving the request may accept or agree to the conference or it may disregard the request and act on the pending unresolved amendments. 5 Hinds §§ 6313–6315. Or it may simply recede from disagreement, thereby rendering a conference unnecessary if no further issues remain to be disposed of between the Houses. 5 Hinds §§ 6316–6318. It also has the option of postponing action on the request to a time certain or indefinitely. 5 Hinds § 6199.

## § 2. Questions Sent to Conference

It was Jefferson's view that a House-Senate conference may be sought "in all cases of difference of opinion between the two Houses on matters depending between them." *Manual* § 530. Conferences between the two Houses are usually held over differences as to amendments to a particular bill. 5 Hinds § 6254. On occasion, several different bills have been sent to a single conference. 92–1, Nov. 18, 1971, p 42046. Differences over a joint or concurrent resolution may also be sent to conference. 5 Hinds §§ 6258, 7063.

House-Senate conferences have sometimes been sought to resolve questions unrelated to any pending bill or other legislative proposition. Conference committees have on rare occasions been used to resolve differences as to:

- The prerogatives of the two Houses in the origination of revenue measures. 2 Hinds §§ 1487 *et seq.*
- The instructions given by one House to its managers. 5 Hinds § 6401.
- The procedures to be followed in an impeachment proceeding. 3 Hinds § 2304.
- The time for the convening of the next session of Congress. 5 Hinds §§ 6255 *et seq.*
- Papers in the nature of petitions. 5 Hinds § 6263.

### § 3. Sending to Conference

#### Generally; By Unanimous Consent

Amendments in disagreement between the Houses may be sent to conference by unanimous consent. The disagreement may relate to a Senate amendment (6 Cannon § 732) or to an insistence by the House on its own amendment. 97–2, Mar. 16, 1982, p 4227.

MEMBER: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill H.R. \_\_\_\_\_, with the Senate amendments thereto, disagree to the amendments, and ask a conference with the Senate [or agree to a conference asked by the Senate] on the disagreeing votes of the two Houses.

#### By Motion

A matter may be sent to conference pursuant to a motion permitted by House Rule XX clause 1 where the motion has been authorized by the committee (or committees) to which the bill was referred. *Manual* § 827. See 94–2, Aug. 26, 1976, p 27831; 95–1, Oct. 12, 1977, p 33433. The motion is privileged at any time the House is in possession of the papers if the appropriate committee has authorized the motion and if the Speaker in his discretion recognizes for that purpose. 94–1, Mar. 20, 1975, p 7646. These restraints are intended to prevent the use of that motion as a dilatory tactic. 92–2, Oct. 3, 1972, pp 33502, 33509.

Initial Senate amendments may be taken from the Speaker's table and sent to conference by motion under this rule. 91–2, July 9, 1970, pp 23518, 23524; 92–1, June 28, 1971, pp 22406–13, 22429. The motion permitted by the rule may also be raised at subsequent stages of the amendment process between the Houses, and include a motion to disagree to a Senate amendment to a House amendment to a Senate bill and request a conference (91–2, Dec. 17, 1970, p 42195; 92–2, Mar. 8, 1972, p 7540) or a motion to insist on a House amendment to a Senate amendment to a House bill and request a conference (*Manual* § 827).

A Member making a motion to send a bill to conference under this rule is recognized for one hour and is in control of the debate on the motion. 90–2, July 29, 1968, p 23935; 91–2, Mar. 3, 1970, p 5722; 92–2, Aug. 1, 1972, pp 26153, 26156. When the previous question is ordered on the motion, further debate may be had on it only by unanimous consent. 91–2, July 9, 1970, pp 23518, 23524.

The rule requires a separate committee authorization with respect to each particular bill to be sent to conference. Moreover, where a measure has

been reported by two or more committees, each committee must authorize the motion sending it to conference. 95–2, Sept. 26, 1978, p 31623.

Motions to send a measure to conference pursuant to Rule XX clause 1 are generally made by the chairman of the legislative committee with primary jurisdiction over the measure, acting by direction of that committee. 93–1, Mar. 28, 1973, pp 10032–34. See also 92–1, June 28, 1971, pp 22406–13; 93–1, June 5, 1973, p 18116. He rises and addresses the Chair:

Mr. Speaker, in accordance with rule XX of the House rules and by direction of the Committee on \_\_\_\_\_ I move to take from the Speaker's table the bill (H.R. \_\_\_\_\_) with Senate amendments thereto, disagree to the Senate amendments and agree to the conference asked by [or ask conference with] the Senate.

A motion to send a bill to conference may not be amended to include instructions to House conferees; instructions are properly offered by separate motion following the adoption of the motion to go to conference and before managers are appointed. 92–1, Oct. 19, 1971, pp 36832–35. Instructions, see §§ 11 *et seq.*, *infra*.

#### § 4. — When in Order; Stage of Disagreement

##### Generally

Under the former practice, it was customary to allow the House insisting on its amendment (the other House having disagreed thereto) to request a conference. 5 Hinds §§ 6278–6280. Under the modern practice, a conference may be requested as soon as one House has either disagreed to an amendment of the other or has insisted on its own amendment (5 Hinds §§ 6273–6277). In any event, the request for a conference must always be by the House which is in possession of the papers. *Manual* § 530.

##### Motions

A motion to disagree or insist and request a conference is in order (subject to preferential motions) before or after the Houses have reached the stage of disagreement if made pursuant to Rule XX clause 1. See *Manual* §§ 528, 535, 827. See also SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES. That rule was amended in 1965 to provide that such motion “shall always be in order” if the Speaker recognizes for that purpose and if the motion is made by direction of the committee with jurisdiction. *Manual* § 827. This provision has been held to supersede earlier precedents precluding the motion to go to conference until the stage of disagreement had been reached, the Speaker ruling them to be inapplicable to motions under clause

1 Rule XX to disagree or insist and go to an initial conference with the Senate. 92–2, Aug. 1, 1972, pp 26153, 26156.

Once a motion to request a conference has been rejected, its repetition at the same stage of the proceedings, no other motion to dispose of the matter in disagreement having been considered, has not been permitted. 5 Hinds § 6325. However, a motion under Rule XX clause 1 may be repeated, if again authorized by the committee concerned, and if the Speaker again agrees to recognize for that purpose, even though the House has once rejected a motion to send the same matter to conference. *Manual* § 535.

#### **Unanimous-consent Requests**

A unanimous-consent request to seek a conference is in order even though the House and Senate have not yet reached the stage of disagreement. Indeed, on rare occasions, the House by unanimous consent has “deemed” a House bill with *possible* Senate amendments sent to conference prior to Senate passage of the bill with amendments, in order to permit conferees to be appointed and to formally meet if the House is not in session. 97–2, Dec. 18, 1982, p 32137; 98–1, Mar. 23, 1983, p 6824.

#### **§ 5. Effect of Special Rules**

Amendments may be sent to conference pursuant to a special rule from the Committee on Rules. 4 Hinds §§ 3242–3249. The special rule may or may not preclude intervening motions, and may direct the Speaker to appoint the managers. 4 Hinds § 3242. The special rule may:

- Take a House bill with Senate amendments from the Speaker’s table and send it directly to conference. 7 Cannon § 826.
- Make in order a motion to take a bill with Senate amendments from the Speaker’s table, disagree to the amendments, and request a conference. 7 Cannon § 822.
- Provide for consideration of Senate amendments and for a motion to agree to a conference, and for appointment without instructions to the managers. 4 Hinds §§ 3243, 3244.
- Discharge a committee from consideration of a bill with Senate amendments and ask for, or agree to, a conference thereon. 7 Cannon §§ 820, 821.

## II. Conference Managers

### § 6. In General; Appointment of Managers

#### Generally

Appointments of Members to serve as managers on the part of the House at a conference are made by the Speaker pursuant to Rule X clause 6(f). *Manual* § 701e. (The terms “manager” and “conferee” are used synonymously in the modern precedents and are so used in this article.) The Speaker observes the guidelines set forth in Rule X as to the designation of managers. That rule requires the Speaker to appoint:

- A majority of Members who generally support the House position, as determined by the Speaker.
- Members who are primarily responsible for the legislation.
- To the fullest extent feasible the principal proponents of the major provisions of the bill as it passed the House.

These guidelines permit the exercise of broad discretionary powers by the Speaker in making appointments (95–1, Oct. 12, 1977, p 33434), and he may specify the legislative issues on which individual managers are to confer. 91–2, Mar. 3, 1970, p 5713; 92–1, Nov. 30, 1971, p 43422; 96–1, Sept. 14, 1979, p 24554.

#### Number of Managers

In the early practice of the House, three Members were usually appointed to a conference by the Speaker. 5 Hinds § 6336. Today, the number of Members to be designated is at the discretion of the Speaker (8 Cannon § 3221) and he may appoint as many as 60 or more conferees, depending on the complexity of the bill and the number of committees with jurisdiction. (See for example 99–2, Feb. 6, 1986, p 1943.) The number of conferees appointed by one House does not determine the number to be appointed by the other. A motion to instruct the Speaker as to the number of conferees to be appointed is not in order. 8 Cannon § 3221.

The fact that the managers on the part of one House outnumber those on the part of the other does not affect the conference outcome. There are only two votes in conference—a vote of House managers and, separately, a vote of Senate managers. Conference agreements are reached when a majority of House managers agree with a majority of Senate managers, the managers of one House having voted separately from those of the other. 5 Hinds § 6334. Conference meetings, see § 10, *infra*.

**Time of Appointment**

Conferees are usually appointed by the Speaker immediately after the request for a conference is granted, but they may be appointed on a subsequent day. 95–2, Sept. 27, 1978, p 32028; 95–2, Sept. 29, 1978, p 32699. In one instance, the Speaker did not announce his appointment of conferees until the second session on a bill on which the House had requested a conference in the first session. 99–2, Feb. 6, 1986, p 1943.

**§ 7. Committee Representation**

The Speaker in making his appointments to a conference normally consults with the chairman of the committee having jurisdiction over the bill. Members of that committee are ordinarily designated as managers. 89–2, Oct. 14, 1966, p 26996. The Speaker may make such appointments without regard to committee seniority. 99–2, July 16, 1986, p 16705. Where the matter falls within the jurisdiction of two committees of the House, the Speaker may name members from both committees as managers. 95–2, Oct. 4, 1978, p 33568; 96–1, July 27, 1979, p 20993. Where the measure falls within the jurisdiction of several committees and/or subcommittees, the Speaker has exercised his discretion to appoint Members in such a way as to represent the interests of the various committees involved. 99–1, July 11, 1985, p 18552. On a bill reauthorizing the so-called environmental “Superfund,” the Speaker’s appointments included more than 50 conferees from six standing committees, with most conferees being given designated areas of responsibility. 99–2, Feb. 6, 1986, p 1943.

The Speaker may appoint members from a nonreporting committee as conferees on a provision in a Senate measure within that committee’s jurisdiction. 99–2, July 24, 1986, p 17644. And the Speaker may, after appointing general conferees from the reporting committee on all Senate provisions, appoint additional conferees from a nonreporting committee on a specified section. 99–2, Oct. 8, 1986, p 29702.

**§ 8. Changing or Adding Managers; Removal or Resignation**

At any time after the appointment of a conference committee, the Speaker may remove a conferee or appoint additional conferees. Rule X clause 6(f). In making additional appointments, the Speaker may specify that a conferee be authorized to act only with respect to a certain provision (96–1, Aug. 2, 1979, p 22101), or that additional conferees from certain committees act solely on matters within those committees’ jurisdictions (99–1, Oct. 24, 1985, p 28743). Under clause 6(f), the Speaker may supplement an appointment of conferees by modifying the array of separate panels and by

further specifying the subject matter to be considered by such panels. 103–1, July 20, 1993, p \_\_\_\_.

Where several conferences are held on the same bill, managers may be reappointed or changed at the discretion of the Speaker. 5 Hinds §§ 6341–6368. Although reappointment is common under the modern practice (*Manual* § 537), sometimes a change is necessary to enable a developing sentiment of the House to be accurately represented. 5 Hinds § 6369. Motions to discharge and appoint new conferees, see § 14, *infra*.

Vacancies on a conference committee are filled through appointment by the Speaker. 5 Hinds § 6372; 8 Cannon § 3228. The Speaker may appoint a conferee to fill a vacancy caused by the death or ill health of another Member (93–1, Nov. 7, 1973, pp 36222, 36223; 98–2, Mar. 21, 1984, p 6249), or where a Member resigns as conference manager. However, House managers are excused from service only by action of the House. 91–1, Oct. 23, 1969, p 31198. Unanimous consent is required to excuse a Member from service as a conferee. 95–2, Sept. 25, 1978, p 31329. The Speaker may appoint the successor conferee with all or part of the authority of the original conferee. 98–2, Mar. 21, 1984, p 6249.

Usually a conferee resigns by sending a letter of resignation to the Speaker which is laid before the House. But a conferee may be excused by unanimous consent at the request of another Member, particularly where time is of the essence. 91–1, Oct. 23, 1969, p 31198; 92–2, July 24, 1972, p 24864; 93–1, Dec. 10, 1973, p 40500.

Managers have resigned from conference committees because of policy differences with other managers. In one instance, a Member declared that his resignation was based on the fact that other House conferees had agreed to a motion in conference limiting their participation to specified portions of the matters committed to conference, though originally all Members had been appointed without restriction. The Member's resignation was accepted by unanimous consent. 94–1, Nov. 11, 1975, pp 35980, 35981.

## § 9. Power and Discretion of Managers

### Generally

There are limitations on the authority of the managers with respect to the legislative matters they may address. The managers:

- May not change text that has already been agreed to by both Houses. 5 Hinds §§ 6417, 6418, 6420.
- May not address new items or a new subject not committed to the conference. 5 Hinds §§ 6407, 6408; 8 Cannon §§ 3254, 3255.
- Must confine themselves to matters that are within the scope of the difference between the House position on the one hand and the Senate position on the other. 94–2, Oct. 1, 1976, p 35102.

These limitations stem from the fundamental principal that when a bill is sent to conference, matters in disagreement between the Houses—and only matters in disagreement between the Houses—are before the conferees. See 86–1, June 23, 1959, pp 11599, 11615; 93–2, Dec. 20, 1974, p 41850. This is so notwithstanding House or Senate messages to the contrary. 8 Cannon § 3253. A matter not within the scope of the differences committed to the conference lies beyond the authority of the managers even though germane to the question at issue. 5 Hinds § 6419.

The conferees have slightly greater editorial latitude when the disagreement arises over an amendment in the nature of a substitute for the entire text of the bill of the other House. 5 Hinds § 6424; 8 Cannon §§ 3248, 3263. The managers may then draft an entirely new version—called a conference substitute—which replaces both the original proposition and the amendment in the nature of a substitute. See 5 Hinds § 6465. However, the authority of managers in such cases is subject to specified restrictions. A House rule permits a “germane modification” of the matter in disagreement, but proscribes the presentation of “specific additional” topics not committed to conference. The controlling rule further provides that the report of the managers must not include matter not committed to the conference by either House, nor may their report include a modification of any specific matter committed to the conference if that modification is beyond the scope thereof. Rule XXVIII clause 3. (*Manual* § 913a.) As grounds for points of order against the report, see § 22, *infra*. For the use of special rules to protect against a point of order for exceeding “scope,” see § 20, *infra*.

### Differences as to Time Periods

When the two Houses fix different periods of time for certain legislative action, the conferees have latitude to compromise only between the two time frames, and may not exceed the longer or go below the shorter. 8 Cannon

§ 3264. 90–1, Dec. 11, 1967, pp 35811–33, 35841. Likewise, where the Senate has amended a House-passed bill to change the effective date therein, the authority of the conferees on the bill is limited to the time frame between the dates in each version. And where the dates contained in both versions have since passed, the conferees must report the Senate amendment back in technical disagreement so that the effective day can be reconsidered. 91–2, Mar. 11, 1970, pp 6793, 6795.

#### **Differences as to Numbers or Amounts**

Where the legislative differences between the two Houses on a measure involve numerical figures, managers at conference are limited to the range between the highest figure proposed by one House and the lowest proposed by the other. If, for example, the House proposes a tariff rate of 30% for a certain product and the Senate proposes a 35% tariff, the managers may agree on 30% or 35% or any tariff falling within that range; but they may not agree on a tariff that is less than 30% or more than 35%. 8 Cannon § 3263. Similarly where sections of a conference report contain higher entitlements for certain veterans' benefits than those contained in either the House bill or in the Senate amendment, the conferees may be held to have exceeded their authority. 93–2, Aug. 22, 1974, pp 30050–52. By the same token, conferees may report back in total disagreement where the informal decisions reached by the conferees would have exceeded the scope of the differences committed to conference by *reducing* certain aggregate totals below those in either the House or the Senate version. 95–1, Sept. 13, 1977, p 29021.

#### **Amendments to Existing Law**

Where one House has amended an existing law and the other House has implicitly taken the position of existing law by remaining silent on the subject, the scope of differences committed to conference lies between those issues presented in the amending language on the one hand and the comparable provisions of existing law on the other. 95–2, Feb. 28, 1978, p 5010. In such cases, the Speaker may examine existing law to determine whether House conferees have remained within the scope of the differences committed to conference. 94–2, Apr. 13, 1976, p 10803.

#### **Extending Authority of Managers by Resolution**

The managers of a conference are sometimes permitted to take up a matter not in issue between the Houses pursuant to a concurrent resolution. 5 Hinds §§ 6437–6439. Concurrent resolutions permitting managers to consider matters not technically committed to conference are made in order by

unanimous consent. 93–2, Dec. 17, 1974, p 40472. This procedure has been used to permit the insertion of new matter in a Senate amendment to a House bill already sent to conference. 94–2, Sept. 2, 1976, p 28969.

## § 10. Meetings

### Generally; Voting

Due notification of appointments and a formal meeting of named managers should precede the issuance of their report. The Speaker may decline to allow House consideration of the report if these formalities are not observed. 5 Hinds § 6458.

The managers of the two Houses while in conference vote separately, the majority in each body determining the attitude to be taken toward the proposition(s) at issue. 5 Hinds § 6336. When the report is made, the signatures of a majority of the managers from each House are sufficient. § 18, *infra*.

### Meetings as Open or Closed

Rule XXVIII clause 6 was amended in 1977 to require all conference meetings to be open to the public except where the House by roll call vote determines otherwise. *Manual* § 913d; 95–1, Jan. 4, 1977, p 53. The rule permits a point of order in the House against the report if the House managers fail to meet in open session as required. See *Manual* § 548. If the point of order is sustained, it results in rejection of the report and in an automatic request for a new conference, and it permits the appointment of new conferees without intervening motion to instruct. 96–2, Mar. 25, 1980, p 6430. Thus, the conferees having failed to meet formally in open session after appointment, the report, though signed, is subject to automatic recomittal under the rule. 97–2, Dec. 20, 1982, p 32896.

### Motions to Close a Conference Meeting

A motion to close a conference meeting is privileged for consideration in the House after the House has agreed to go to conference and the Speaker has appointed conferees. The motion is debatable for one hour under the control of the Member making the motion, and must be voted on by a roll call vote. 95–1, July 21, 1977, p 24365; 95–2, Apr. 13, 1978, p 10128; 97–2, Aug. 3, 1982, p 18946. The motion may be modified by the Member offering the motion only by unanimous consent, and may be amended only if that Member yields for that purpose (or the previous question is rejected). 95–1, May 23, 1977, pp 15880, 15881. The motion may provide for exceptions or limitations, such as a stipulation that the meeting may be closed only when certain matters are under discussion or that any sitting Member

of Congress shall have the right to attend such meeting. 95–1, July 21, 1977, pp 24365, 24366; 95–2, July 14, 1978, p 20960.

### **Points of Order as to Meeting Irregularities**

There are no formal House rules that govern procedures to be followed in conducting a meeting of the conferees. The conferees offer motions or consider and debate propositions according to their own informal guidelines or ad hoc rules. The Speaker will not normally sustain a point of order against a conference report signed by a majority of House conferees based upon irregularities at the conference meeting. 96–2, Mar. 25, 1980, p 6430. Nor will the Speaker look behind the signatures to determine whether the report has incorporated all the agreements informally made in conference. 93–1, Dec. 17, 1973, pp 42034, 42035. In one instance, the Speaker overruled a point of order against a conference report signed by a majority of the conferees, although the Member raising the point of order alleged that the form of the report was inconsistent with a motion agreed to in the conference meeting. 94–2, Sept. 28, 1976, p 33019.

## **III. Instructions to Managers; Motions**

### **§ 11. In General**

#### **Generally**

Instructions are used primarily to indicate priorities considered important to the House or to identify positions or amendments it would support or oppose. The House may instruct its conferees to:

- Insist on a conference report achieving four broadly worded goals. 99–2, July 16, 1986, pp 16703, 16705.
- Insist on a portion of a House amendment to a Senate bill. 93–1, July 24, 1973, pp 25539–41.
- Agree to a numbered Senate amendment with an amendment. 97–2, June 9, 1982, p 13039.
- Adhere to certain provisions in a House-passed bill. 96–1, July 30, 1979, p 21302; 96–1, Dec. 19, 1979, p 36895.
- Disagree to one of several Senate amendments (notwithstanding that the House has just disagreed to all Senate amendments in toto). 91–1, Oct. 9, 1969, p 29315.
- Insist on holding conference sessions under just and fair conditions. 74–1, Aug. 1, 1935, p 12272.

One House has no jurisdiction over conferees appointed by the other. Instructions to conferees apply only to managers on the part of the House giving the instructions. 8 Cannon §§ 3241, 3242.

### **Limitations on Instructions**

Instructions may not direct conference managers to do that which they might not otherwise do (5 Hinds §§ 6386, 6387; 8 Cannon §§ 3235, 3244), such as to change a part of a bill not in disagreement (5 Hinds §§ 6391–6394). Instructions may not:

- Change the text to which both Houses have agreed. 5 Hinds § 6388.
- Direct the conferees to agree to something not committed to conference. 96–2, Feb. 28, 1980, p 4305.
- Include appropriations on a legislative bill. Rule XXI clause 2.
- Include matter outside the scope of the conferees' authority (Rule XXVIII clause 3). 93–1, Nov. 13, 1973, pp 36835, 36847.
- Agree to the deletion of certain language committed to conference if the effect of such deletion results in broadening the scope of the matter in disagreement. See 92–1, Dec. 14, 1971, pp 46779–80.
- Direct conferees to concur in a Senate amendment with an amendment not germane thereto. 8 Cannon § 3235.

## **§ 12. Motions to Instruct**

### **Generally**

The opportunity for the House to instruct conferees arises at three distinct stages of the legislative process: (1) at the time the House votes to go to conference, (2) after the expiration of 20 calendar days, the conferees having failed to report (§ 14, *infra*), and (3) when a conference report is re-committed to conference (§ 15, *infra*).

### **On Going to Conference**

After the House has voted to go to conference with the Senate the House may consider a timely motion to instruct its managers. A motion to instruct the House managers at a conference is in order after the House has agreed to a conference and before the appointment of the conferees. 5 Hinds §§ 6379–6382; 93–2, Dec. 16, 1974, pp 40174, 40175; 97–1, Nov. 4, 1981, pp 26582, 26586; 98–1, Oct. 25, 1983, p 29229. The motion is not in order until the House has voted to ask for or agree to a conference. 91–2, Mar. 3, 1970, p 5722. Only one motion to instruct conferees is in order at this stage. 8 Cannon § 3236. 90–2, May 29, 1968, p 15499; 96–1, Dec. 18, 1979, p 36763.

**Tabling of Motion**

A motion to instruct House managers at a conference is subject to the motion to table. 91-1, Oct. 9, 1969, p 29315; 92-1, July 27, 1971, pp 27305-08, 27311; 92-2, Oct. 11, 1972, p 34948. The motion to lay the motion to instruct on the table is in order after the motion to instruct has been read or after debate thereon. If the motion to table is voted down, the question next occurs on ordering the previous question on the motion to instruct. 87-1, Aug. 8, 1961, pp 14957, 15001; 91-1, Dec. 18, 1969, pp 39826-30; 91-2, July 9, 1970, pp 23325-28.

**Withdrawal or Postponement of Motion**

A motion to instruct the House managers at a conference has been withdrawn after debate thereon. 91-1, Dec. 11, 1969, pp 38543-45. And the postponement of consideration of such a motion is permitted by unanimous consent. 95-1, June 16, 1977, pp 19414, 19415.

**§ 13. — Debate on Motion; Recognition and Amendments****Generally**

A motion to instruct the managers on the part of the House at a conference is debatable under the hour rule. 91-1, Dec. 11, 1969, p 38543; 98-1, Nov. 15, 1983, p 32686. The time is equally divided or allotted pursuant to Rule XXVIII clause 1(b). No additional debate thereon is in order unless the previous question is rejected or unless the Member having the floor yields for amendment. 98-1, Nov. 15, 1983, p 32686.

The hour of debate time on a motion to instruct is inapplicable where a motion to lay that motion on the table is adopted prior to debate. 94-2, Aug. 26, 1976, p 27832.

Recognition to offer a motion to instruct House conferees is the prerogative of the minority, and the Speaker recognizes the ranking minority member of the committee reporting the bill when that member seeks recognition to offer the motion. 92-1, Oct. 19, 1971, pp 36832-35; 93-2, Dec. 16, 1974, pp 40174, 40175.

**Amendments to Motion**

No amendment to a motion to instruct is in order unless the previous question is rejected or unless the Member having the floor yields for amendment. 98-1, Nov. 15, 1983, p 32686. While the previous question takes precedence over the motion to amend a motion to instruct conferees (93-1, July 24, 1973, pp 25539-41), the motion to instruct is subject to amend-

ment if the previous question is rejected. 92–1, Oct. 19, 1971, pp 36832–35; 96–1, Dec. 18, 1979, p 36774; *Manual* § 541.

#### **§ 14. Motions After Failure of Managers to Report**

Where conferees have been appointed for 20 calendar days (or for 36 hours during the last six days of a session) and have failed to file a report, motions to instruct the House managers—or discharge and appoint new ones—are in order. Rule XXVIII clause 1(c). The Member making such a motion must give a day’s notice under the rule. *Manual* § 910. The privilege of the motion to instruct conferees under this clause is equal to that of the motion to suspend the rules on a suspension day. 100–2, Mar. 1, 1988, pp 2749, 2751, 2754. The 20-day period runs from the time that the conference committee has been formed by appointment in both Houses. See 97–1, May 20, 1981, p 10319.

The practice which precludes more than one motion in the House to instruct conferees prior to their appointment (§ 12, *supra*) is not applicable to motions to instruct (or discharge and appoint new) conferees who have failed to report to the House within the 20-day period. 93–2, July 22, 1974, pp 24448, 24449. Indeed, a motion to instruct House conferees who have failed to report for 20 days is in order even though its instructions are the same as those given to the conferees at the time the bill was sent to conference. 92–2, May 11, 1972, pp 16838–42.

#### **§ 15. Instructions in Motions to Recommit**

A motion to recommit a conference report (§ 35, *infra*) may include instructions to the House conferees. 8 Cannon § 3241. A report may be recommitted with instructions to insist on disagreement (90–1, Oct. 4, 1967, pp 27727–30, 27734–38) or take other action on an amendment contained in the report (94–2, Sept. 28, 1976, p 33034). But the motion may not instruct House conferees to include matter which is beyond the scope of differences committed to conference (97–1, Nov. 22, 1981, p 28747) or which would be inadmissible if offered as an amendment in the House (see 93–1, Dec. 19, 1973, p 42565).

#### **§ 16. Instructions as Binding on the Managers**

Instructions by the House to its conferees are advisory in nature and are not binding as a limitation on their authority. 90–2, May 29, 1968, p 15499. A failure of conferees to adhere to such instructions does not render their report subject to a point of order. 5 Hinds § 6395; 8 Cannon §§ 3246–3248; 97–1, Oct. 29, 1981, p 26049. There is no rule of the House requiring

conferees to seek further guidance if they are unable to comply with instructions suggested to them. 92–2, June 8, 1972, p 20282. For these reasons, the Speaker may not rule a report out of order because it is in contravention of instructions imposed on House conferees; it is for the House to determine by its vote on the report whether to accept or reject it, or to recommit it. 92–2, June 8, 1972, p 20282. Voting on the report, see § 36, *infra*.

## IV. Conference Reports

### A. Generally; Form

#### § 17. In General; Preparation and Filing

##### Generally; Partial Reports

A conference report contains the recommendations of the conference committee to the two Houses as to the disposition of the matter in disagreement. The report may recommend, for example, that the House (or Senate) recede from disagreement to a certain numbered amendment, or that it agree to a certain amendment with an amendment. The report will normally identify those amendments on which the committee has been unable to agree. Managers may report an agreement as to a portion of the numbered amendments in disagreement, leaving the remainder to be disposed of by subsequent House action. 5 Hinds §§ 6460–6464. Disposition of amendments remaining in disagreement between the Houses, see SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES.

Under certain circumstances managers may develop an entirely new bill on a subject in disagreement, in which case the adoption of the report completes action on the bill. 5 Hinds §§ 6465–6467; *Manual* § 543.

A conference report is jointly prepared by the managers from the House and those from the Senate. The report must be signed by a majority of the managers of the House and a majority of the managers on the part of the Senate. § 18, *infra*. Minority views are not in order. 90–1, Dec. 4, 6, 1967, pp 34721, 35135–37. The managers in the minority have no authority to make a formal report concerning the conference. 5 Hinds § 6406.

A conference report must be filed and printed in the Record. See *Manual* § 911. Filing is necessary to initiate the three-day waiting period that must precede the consideration of the report on the floor of the House. § 30, *infra*. Errors in the text appearing in the Record may subject consideration of the report to a point of order. 8 Cannon § 3298. The filing of the report while the House is in session is privileged. 90–2, Aug. 1, 2, 1968, pp

25027–43. Permission to file and print a report when the House is not in session is frequently given by unanimous consent. 86–1, July 30, 1959, p 14742; 87–1, Aug. 3, 1961, p 14544; 87–2, July 26, 1962, p 14841.

Subsequent conference reports on the same subject must adhere to these same formalities. Notwithstanding recommitment of a conference report to a committee of conference, the subsequent conference report is filed as privileged, given a new number and otherwise treated as a new and separate report. 88–1, May 14, 1963, p 8502.

### **Explanatory Statements**

Conference reports are to be accompanied by an explanatory statement prepared jointly by the conferees on the part of the House and the conferees on the part of the Senate. This statement must inform the House as to the effect which the matter contained in the report will have upon the pending measure. Rule XXVIII clause 1(d). *Manual* § 911. This statement is signed by a majority of the managers of each House. 91–2, May 12, 1970, pp 15202–17; 92–1, Dec. 14, 1971, pp 46791–801.

A report may not be received without the accompanying statement. *Manual* § 911. The Speaker may require the statement to be in proper form (5 Hinds § 6513), but it is for the House and not the Speaker to determine its sufficiency (5 Hinds §§ 6511, 6512).

Although minority views are not in order on a conference report, the majority of the managers may, in the statement accompanying the report, indicate exceptions taken or objections raised by certain conferees who signed with the majority. 90–1, Dec. 4, 6, 1967, pp 34721, 35135–37; 94–1, Dec. 8, 1975, p 39097.

### **§ 18. Signing and Signatures**

Conference reports must be signed by a majority of the managers of the House and by a majority of the managers of the Senate. 5 Hinds §§ 6497–6502. Reports containing insufficient signatures are subject to a point of order and will not be received. 5 Hinds § 6497; 8 Cannon § 3295. In the modern practice reports are made in duplicate for the two Houses, the House managers signing first the report for their House and the Senate managers signing the other report first. 5 Hinds §§ 6246, 6499, 5000, 6504. The name of an absent manager may not be affixed to a conference report; but the House and Senate may by concurrent action authorize him to sign the report after it has been acted on. 5 Hinds § 6488.

**Signatures With Qualifications**

Managers have been permitted to sign a conference report with a conditional approval or dissent. 5 Hinds §§ 6489–96, 6538. But recent precedents weigh against allowing such signatures to be counted with the majority in support of the report. This is consistent with the general rule that conferees may not file separate or minority views. Managers on the part of the House must act on a conference report as a whole, either by signing it to indicate their support for all that is included in the report or by declining to sign it to indicate their opposition to any part thereof. See 8 Cannon § 3302; see also 102–1, Nov. 18, 1991, p \_\_\_\_.

**§ 19. Correction of Errors**

A technical correction appearing in a conference report may be made by the Clerk in the enrollment of the bill if authorized by concurrent resolution. 92–2, Oct. 10, 1972, p 34643. In one instance, a conference report and concurrent resolution making changes therein (by correcting the enrollment) were simultaneously adopted under a motion to suspend the rules. 98–1, Aug. 1, 1983, p 21925.

The inadvertence of the conferees in failing to dispose of an amendment to a title does not prevent the amendment from coming back to the House for disposition by motion or unanimous consent following adoption of the conference report. 94–2, Apr. 28, 1976, p 11598; 94–2, Sept. 10, 1976, p 29759.

**B. Limitations on Reports; Points of Order****§ 20. In General**

A conference report is subject to a point of order for failure to comply with one or more rules of the House when the report is called up for consideration in the House and before debate on it begins. 95–2, Oct. 12, 1978, p 36459. If the point of order is timely and the report is not protected by special rule or other House order, the report may be ruled out of order. 94–2, Sept. 23, 1976, p 32099. Raising points of order, see § 27, *infra*.

**§ 21. Reports Exceeding Authority of Managers**

A point of order will lie against a conference report on the ground that the conferees have agreed to a provision which was beyond the limits of their authority. 90–1, Dec. 11, 1967, p 35811. If the point of order is sus-

tained the entire report may be ruled out. 8 Cannon § 3256; *Manual* § 547. The report:

- Must not change text that has already been agreed to (5 Hinds §§ 6417, 6418, 6420).
- Must not address new items or a new subject not committed to conference (5 Hinds §§ 6407, 6408; 8 Cannon §§ 3254, 3255).
- Must be confined to matters that are within the scope of the differences committed to conference (94–2, Oct. 1, 1976, p 35102).

A matter not within the scope of the differences committed to the conference may not be included in the report even though germane to the question at issue. 5 Hinds § 6419.

The ruling out of a conference report on the ground that it contains a provision subject to a point of order because beyond the range of differences may not preclude subsequent consideration of the same provision in the House by motion. The bill and amendments are again before the House and, the stage of disagreement having been reached, motions relating to amendments and a further conference are in order. 94–2, Sept. 30, 1976, p 34085; 95–1, Oct. 14, 1977, p 33772. A matter ruled out as “beyond scope” may yet qualify as a germane amendment to a Senate amendment remaining in disagreement.

## § 22. — Conference Substitutes or Modifications

A conference report containing a substitute agreed to by the managers may not include matter not committed to the conference by either House. Clause 3 Rule XXVIII. (*Manual* § 913a.) Points of order under the rule are confined to language in the conference report and do not extend to expressions of intent in the joint statement. 94–2, Sept. 28, 1976, p 33023. The rule prohibits the inclusion in the report of additional topics not committed to conference by either House or which are beyond the scope of the differences committed to conference. 94–2, Sept. 27, 1976, pp 32719–21. Even a modification of a proposition will give rise to a point of order if it is beyond the scope of either the bill or the amendment as committed to conference. 92–1, Dec. 13, 14, 1971, pp 46596–602. The deletion of provisions “not committed to conference” because the text has been agreed to by both Houses or is identical in the bill and the amendment may also sustain a point of order. *Manual* § 527. The managers may eliminate specific words or phrases contained in either version and add words or phrases not included in either version only if they remain within the scope of their differences and do not incorporate additional topics, issues or propositions. 94–2, Sept. 28, 1976, pp 33020–23.

**§ 23. Nongermane Senate Matter**

A House rule permits a Member to raise a point of order against certain language in a conference report if such matter originated in the Senate but would have been considered as not germane if offered to the text when under consideration in the House. The same rule permits the House to vote on the question of whether such matter should be rejected or retained. Rule XXVIII clauses 4(a)–4(d). *Manual* § 913b. The point of order may be raised with respect to a Senate amendment, a conference substitute, or a provision in a Senate bill (if not included in the House-passed version). The point of order is in order before the report itself is read or debated. Clause 4(a).

If the Chair sustains a point of order that conferees have agreed to a nongermane Senate provision, a motion to reject that provision is in order pursuant to clause 4(b). This motion is debatable for 40 minutes, equally divided between the Member making the motion and a Member opposed. 98–2, Oct. 11, 1984, p 32219. Recognition is not based on party affiliation. 94–2, Jan. 29, 1976, p 1582. Other points of order cannot be made until after disposition of the motion to reject. 94–1, Dec. 15, 1975, p 40677.

If the motion to reject is not agreed to, the nongermane Senate matter is retained, and debate commences on the conference report itself. 98–2, Oct. 11, 1984, p 32219.

If the House votes in favor of the motion to reject the nongermane matter, the report itself is considered as rejected. Clause 4(d). Since a conference report must be acted on as a whole, and either agreed to or disagreed to in its entirety, rejection of a portion of a conference report as not germane results in the rejection of the entire report. 92–1, Nov. 10, 1971, pp 40479, 40481. The House then automatically proceeds to consider a motion to recede and concur with an amendment (consisting of that portion of the report not rejected) or to insist on its own amendment. Clause 4(d). *Manual* § 913b.

**§ 24. Senate Appropriations on House Legislative Bill**

The House managers may not agree to a Senate amendment providing for an appropriation on any bill other than a general appropriation bill unless specific authority to agree to such amendment is first given by the House. Rule XX clause 2. *Manual* § 829. Under this rule, where a House legislative measure has been committed to conference, and the conferees agree to a Senate amendment appropriating funds, the conference report thereon is sub-

ject to a point of order and may be ruled out. 87–2, Oct. 4, 1962, p 22332. This point of order:

- Applies only to Senate amendments which are reported from conference and not to appropriations reported in Senate legislative bills. 94–2, June 30, 1976, p 21633.
- Does not apply if House conferees were authorized to agree to the amendment by separate House vote. *Manual* § 829.
- Will not lie against a provision permitted by the House to remain in its own bill. 94–1, May 1, 1975, pp 12752, 12753.
- May be waived by special rule. § 28, *infra*.

### § 25. Senate Legislation on House Appropriation Bill

Language changing existing law in violation of Rule XXI clause 2(c)—often referred to as “legislation on an appropriation bill”—may give rise to a point of order if it appears in a Senate amendment agreed to by the conference managers. The House managers may not agree to such an amendment unless specific authority to agree to the amendment is first given by the House by a separate vote. *Manual* §§ 829, 834. The purpose of this restriction is to prevent conference committees from using appropriation bills to legislate without the permission of the House. 7 Cannon § 1574.

Points of order arising under this requirement may be waived by a special rule from the Committee on Rules (§ 28, *infra*) or by unanimous consent (99–1, Dec. 16, 1985, p 36559).

Because of the point of order that will lie against the conferees’ agreement to a Senate legislative amendment to an appropriation bill under the rules, it has become a customary practice to report such amendments in technical disagreement. The House first considers a partial report consisting of the matter agreed to in conference and not in conflict with Rule XXI, and then considers separately those amendments reported in real or technical disagreement. *Manual* § 829. Such Senate amendments are not subject to a point of order when reported from conference in disagreement, and may be called up for disposition by separate motion. 94–1, Dec. 4, 1975, p 38714. Under a rules’ change adopted in 1993, one preferential motion to insist on disagreement to the Senate amendment is in order if offered by the House committee having jurisdiction thereof (Rule XXVIII clause 2(b)), if the original motion to dispose of the Senate legislative amendment offered by the House manager proposes to amend existing law.

### § 26. Budget Act Violations

Congressional action on legislation reported from a conference committee is subject to the Congressional Budget Act of 1974. *Manual* § 1007.

Points of order in the House against a conference report are in order under the 1974 Budget Act (as amended) where the Act restricts or prohibits:

- Consideration of spending, revenue, or debt-limit legislation for a fiscal year before a budget resolution for that year has been adopted. § 303(a).
- Consideration of measures within the jurisdiction of the House and Senate Budget Committees but not reported by those committees. § 306.
- Consideration of reconciliation legislation that recommends changes in Social Security. § 310(g).
- Consideration of measures providing new contract or borrowing authority not limited to amounts provided in appropriations acts. § 402(a).

A point of order under the Budget Act may also be in order where the conference report contains provisions in conflict with Budget Act requirements relating to:

- The allocation—to each committee with jurisdiction—of appropriate levels of budgetary spending authority. § 302(f).
- Measures that would cause certain budgetary levels to vary from those set forth in the applicable concurrent resolution on the budget. § 311(a).
- Authorization of funds beyond those provided for in advance in appropriation acts. § 401(a).
- Increases in the costs of federal intergovernmental mandates by amounts that exceed specified thresholds. § 425.

A conference report may be ruled out by the Speaker if he sustains a point of order against it under the Congressional Budget Act. 94–2, Sept. 30, 1976, pp 34074, 34075.

## § 27. Raising Points of Order

### Generally

A point of order against a conference report comes too late after debate has been had on the report. 92–2, Oct. 18, 1972, p 37067. The point of order should be made when the report is called up for consideration and before debate thereon. 95–2, Oct. 12, 1978, p 36459. Where a reading is required, a point of order against the report is not entertained until after the report has been read, and cannot be reserved during a reading of the report. 94–1, Dec. 15, 1975, p 40671. If the report is “considered as read” because it has met the requirements for three-day availability and has been printed in the Record on the day filed, the report is considered as read. See *Manual* § 912d.

A point of order against a conference report must be reserved before the reading of the joint statement of the managers (86–1, June 23, 1959, pp 11599, 11615; 92–1, Dec. 13, 1971, p 46596), even if by unanimous

consent the joint statement is read in lieu of the report. 92–2, Jan. 25, 1972, p 1076; 92–2, June 8, 1972, p 20278.

### **Multiple Points of Order**

The Chair may rule on all points of order raised against a conference report, whether they are made separately or at one time. 92–2, June 8, 1972, pp 20278–80. But the Chair entertains and rules on points of order which, if sustained, will vitiate the entire conference report before entertaining points of order merely against certain portions of the report. 94–2, Sept. 23, 1976, p 32099.

Where a point of order against a conference report is overruled, a second point of order may be pressed against the report providing that debate on the report has not intervened. 91–1, Dec. 19, 20, 1969, pp 40262, 40445–48.

### **Points of Order and the Question of Consideration**

The question of consideration may be raised against a conference report before the Chair entertains points of order against the report. Ordinarily, the question of consideration should be put first on the ground that it is useless to argue points of order if the House is not going to consider the report; but a point of order should be decided before the question of consideration where the point of order is directed to the issue of whether the matter is privileged to come up for consideration in the first instance. See 94–2, Sept. 28, 1976, p 33018.

Under § 426 of the Budget Act, relating to enforcement in the House of points of order relating to unfunded or underfunded federal mandates, a question of consideration can be raised against a provision in a conference report which increases the costs of such mandates above levels specified in § 424. If the provision is precisely identified in the point of order, the House can then, by voting on the question of consideration, determine whether or not to allow the provision to remain in the conference report. See *Manual* § 1007 and § 426 of the Budget Act.

## **§ 28. Waiving Points of Order**

### **By Special Rule**

Points of order against a conference report—or against the consideration of a conference report—may be waived pursuant to a resolution reported by the Committee on Rules and adopted by the House. 99–1, Oct. 29, 1985, p 29328; 99–2, Oct. 15, 1986, p 31497. The resolution may waive all points of order or merely one or more specific points of order. Such a resolution may waive points of order against a conference report which has not been

filed for three days prior to its consideration, in violation of Rule XXVIII clause 2 (94-1, Dec. 17, 1975, pp 41325, 41328; 95-2, Oct. 14, 1978, p 38623). Other points of order that may be waived include :

- A provision not committed to conference as not included in either the pending Senate bill or the House amendment. 92-2, Jan. 25, 1972, p 1076.
- Matters beyond the scope of the differences committed to conference in violation of clause 3 of Rule XXVIII (relating to conference substitutes). 97-2, Aug. 11, 1982, pp 20481, 20482; 99-2, July 24, 1986, p 17599.
- Nongermane Senate amendments which would be subject to a separate vote under Rule XXVIII clause 4. 93-2, Oct. 9, 1974, p 34758-63; 94-2, Apr. 13, 1976, p 10811; 94-2, Aug. 10, 1976, p 26722.
- An appropriation in a Senate amendment. 7 Cannon § 1577; 92-2, July 27, 1972, pp 25822-24.
- An amendment which would otherwise be subject to a point of order that the language proposed is legislation on an appropriation bill. 88-1, Dec. 23, 1963, p 25495.

A resolution reported from the Committee on Rules may be drafted in such a way as to waive all points of order against a conference report *except* against certain provisions, *i.e.*, sections therein which contain matter beyond the House conferees' scope of authority in violation of Rule XXVIII clause 3. 93-2, Feb. 27, 1974, p 4397.

Resolutions waiving certain points of order against a conference report are subject to germane amendment if the previous question on the resolution is voted down. 93-2, Feb. 27, 1974, pp 4397, 4407, 4408.

### **By Unanimous Consent**

By unanimous consent the House may waive some or all of the points of order that would otherwise lie against a conference report, and may take such action before the report has been filed or even before the conferees have reached agreement. 98-2, June 18, 1984, p 16841; 99-1, Dec. 16, 1985, p 26559. By unanimous consent, the House has waived points of order against:

- The three-day layover requirements of clause 2(a) of Rule XXVIII to permit the consideration of a report and amendments in disagreement. 98-1, Sept. 29, 1983, p 26497.
- The midnight filing of a new report on a bill recommitted to conference, and the consideration of the report on the following day. 97-2, Aug. 17, 1982, pp 21397, 21398.
- The consideration of a report (on a bill on which conferees had just been appointed) on that same day or any day thereafter (if filed). 99-1, Aug. 1, 1985, p 22640.

## § 29

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- The consideration of a report not yet filed and amendments reported in disagreement, subject to one-hour availability to Members. 97–2, Dec. 19, 1982, p 32401.
- The requirements of clause 3 (relating to scope of conference substitutes) and clause 4 (nongermane Senate amendments) of Rule XXVIII. 98–2, Mar. 27, 1984, p 6576.
- The consideration of a report containing no joint statement of the managers. 98–2, June 29, 1984, p 20206.

### **By Motion to Suspend the Rules**

A conference report may be adopted pursuant to a motion to suspend the rules. 91–2, Dec. 31, 1970, pp 44282, 44291. Thus, the Speaker may recognize a Member to move to suspend the rules and agree to a conference report which has been ruled out of order because the conferees exceeded their authority in violation of Rule XXVIII clause 3. 93–2, Dec. 20, 1974, pp 41860, 41861.

## **C. Consideration and Disposition of Reports**

### **§ 29. In General; Custody of Official Papers**

Both Houses of Congress must agree to a conference report, and they do so seriatim. Either House must be in possession of the official papers before it can act. *Manual* § 549. 89–1, Oct. 20, 1965, pp 27698–708. Under a practice suggested by Jefferson (*Manual* § 555), at the close of an effective conference, the official papers change hands from the House asking the conference to the House agreeing to the conference. The managers on the part of the House agreeing to the conference take possession of the papers and submit them and the report to their House, which acts first on the report. 8 Cannon § 3330; 88–1, Dec. 19, 1963, p 25249. But the managers for the agreeing House may nevertheless surrender the papers to the asking House so that it may act first on the report. 8 Cannon § 3330. And the asking House will sometimes retain the official papers at the successful conclusion of the conference (instead of following the customary practice of surrendering them to the agreeing body) and act first on the report. 89–1, Oct. 20, 1965, pp 27698–708.

Where a conference breaks up without reaching any agreement, the managers for the House which (having the papers) asked the conference, are justified in retaining them and carrying them back to their House. 5 Hinds §§ 6254, 6571–6584; 8 Cannon § 3332. However, in the event that the matter in disagreement is an amendment of the House which requested the conference, the papers may be surrendered to the other House to permit it to

act first on, and respond to, that amendment. 94–1, Oct. 7, 1975, pp 31510, 32064.

### § 30. Layover and Availability Requirements

#### Generally

The floor consideration of conference reports is subject to the layover and availability requirements of the House rules. Rule XXVIII clause 2. *Manual* § 912a. They require that conference reports:

- Be printed in the Record on the day filed and be available for three calendar days (excluding Saturday, Sunday, and legal holidays unless the House is in session).
- Be available to Members on the floor for at least two hours before consideration thereof.

The three-day layover requirement does not apply during the last six days of a session. *Manual* § 912a. This is construed to mean that, during the last six calendar days, a conference report may be called up on the same day it is filed. 91–2, Dec. 29, 1970, pp 43804–08, 43813–15.

Rule XXVIII was amended in 1972 to clarify the manner of counting the three days for the layover period; it forbids consideration of conference reports, including reports in complete disagreement, until the third calendar day *following* printing in the Record. 92–2, Oct. 13, 1972, pp 36013–15, 36021–23.

#### Waivers

The three-day layover rule may be waived by unanimous consent (§ 31, *infra*), by suspension of the rules on suspension days (93–1, June 29, 1973, pp 22381 *et seq.*), or, more commonly, by adoption of a special rule or resolution from the Rules Committee. 92–2, Feb. 24, 1972, p 5495; 92–2, Aug. 18, 1972, p 29128. Such a resolution permits consideration of a report on the same day as filed, and sometimes permits a waiver of the three-day layover requirement for the entire remainder of a session. 92–1, Dec. 9, 1971, p 45873; 93–2, Dec. 18, 1974, pp 40846, 40847.

Even if the three-day layover requirement is waived, the conference report is still to be available at least two hours before the matter is taken up for consideration, though the two-hour requirement may likewise be waived pursuant to a report from the Committee on Rules. 94–2, Feb. 26, 1976, p 4625. The two-hour requirement may also be waived pursuant to a unanimous-consent agreement providing for consideration “immediately” after filing. 96–1, Sept. 28, 1979, p 26852.

## § 31. Calling Up Report; Reading

### Generally; Precedence

A conference report may be called up in the House for floor consideration as privileged business after the report has been filed and is in compliance with the three-day layover and two-hour availability requirements of Rule XXVIII, discussed above (§ 30, supra). Unanimous consent is not required. 86–1, Sept. 2, 1959, p 17769.

Because of its potential value in settling House-Senate differences and as a parliamentary courtesy, a conference report is considered as a matter of high privilege (5 Hinds § 6443), its presentation taking precedence over:

- Unfinished business. 95–2, Oct. 4, 1978, p 33473.
- The reading of a bill. 5 Hinds § 6448.
- A Member occupying the floor in debate. 5 Hinds § 6451.
- The ordering of (or demand for) the previous question. 5 Hinds §§ 6449, 6450.
- The question of ordering a recorded vote. 5 Hinds § 6447.
- A motion to refer a Senate bill. 5 Hinds § 6457.
- A motion to reconsider. 5 Hinds § 5605.

But the consideration of a veto message from the President is a matter of higher privilege, and may interrupt consideration of a conference report and amendments in disagreement if the previous question has not been ordered. 95–2, Oct. 5, 1978, p 33704.

### Who May Call Up

A conference report may be called up for consideration in the House by the senior manager on the part of the House at the conference, and he may be recognized to do so even though he did not sign the report and was in fact opposed to it. 90–1, Dec. 6, 1967, pp 35144–51. If the senior House manager is unable to be present on the floor to call up the report, the Speaker may recognize another member of the conference committee. 91–1, Dec. 23, 1969, pp 40982–84.

### Reading

A conference report that meets the layover and availability requirements of Rule XXVIII need not be read when called up for consideration in the House. 96–1, Mar. 27, 1979, p 6301. If it has not been available for the three-day period, it must be read in full when called up for consideration (96–1, May 23, 1979, p 12469), unless dispensed with by unanimous consent (95–1, Aug. 3, 1977, p 26532) or by special rule. 95–1, Aug. 2, 1977, p 26103; 95–1, Aug. 4, 1977, p 27067. The statement of the managers ac-

companying a conference report may by unanimous consent be read in lieu of the report. 95–1, July 18, 1977, p 23460.

#### **Withdrawal; Postponement**

A conference report may be withdrawn from consideration in the House by the Member calling it up at any time before action thereon. 95–1, July 18, 1977, p 23460.

A motion to postpone the consideration of a conference report to a time certain is permitted until the question is put on the report; thereafter postponement is permitted only by unanimous consent. 93–2, Oct. 15, 1974, p 35640.

### **§ 32. En Bloc Consideration**

#### **Reports**

Ordinarily, it is not permissible to consider several conference reports en bloc; each conference report should be considered and voted upon separately. 91–2, June 29, 1970, p 21833. However, pursuant to a resolution from the Committee on Rules, the House may consider and vote on two or more conference reports en bloc. 95–2, Oct. 14, 1978, p 38350.

#### **Amendments in Disagreement**

Where two or more amendments have emerged from conference in disagreement, they may by unanimous consent be considered en bloc where the same motion is to be applied to each amendment. 96–1, Nov. 29, 1979, p 34115. In one instance, for example, the House disposed of some 47 Senate amendments by a single motion to recede and concur. 95–2, Sept. 28, 1978, p 32449. Disposition of Senate amendments generally, see SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES.

In a few instances, the Chair has entertained a unanimous-consent request for en bloc consideration even where the proposed motions to dispose of the amendments were not all the same, as where they proposed to recede and concur with different amendments changing section numbers in the report. 102–1, Nov. 6, 1991, p \_\_\_\_; 102–2, Sept. 25, 1992, p \_\_\_\_; 102–2, Oct. 1, 1992, p \_\_\_\_\_. Compare 96–1, Nov. 9, 1979, p 31797.

### **§ 33. Debate**

#### **Generally; Extending Time**

Debate on a conference report is under the hour rule. (See Rule XIV clause 2; *Manual* § 758.) Such debate may be extended by unanimous consent but not by motion. 92–2, June 8, 1972, pp 20278–80; 98–2, June 27,

1984, p 19018. The one hour of debate could also be continued if the motion for the previous question were rejected and may also be extended by adoption of a special rule reported by the Committee on Rules. 93–2, Feb. 27, 1974, p 4397; 94–1, Mar. 26, 1975, p 8916.

### **Division of Time**

The time for debate on a conference report or an amendment emerging from conference in disagreement is equally divided between the majority and minority parties, pursuant to Rule XXVIII clause 2. *Manual* §912. The rule has been interpreted to require an equal allocation of time on a motion to dispose of an amendment in disagreement following rejection of a conference report by the House (94–1, Dec. 15, 1975, p 40714; 95–1, Sept. 16, 1977, p 29599) or following the sustaining of a point of order against a conference report (94–2, Sept. 27, 1976, p 32704; 94–2, Sept. 30, 1976, p 34085). Indeed, it has become the practice of the House to equally divide the time on all motions to dispose of amendments emerging from conference in disagreement, whether the amendment has been reported in disagreement or has come before the House at some other stage for disposition. See *Manual* §912. See also 99–2, Oct. 15, 1986, p 31506.

### **Three-way Division of Debate**

Rule XXVIII clause 2 was amended in the 99th Congress to provide that if both the floor manager for the majority and the floor manager for the minority support a conference report the hour of debate thereon may be divided three ways—among the two managers and a Member who is opposed. *Manual* §912a. 99–1, Aug. 1, 1985, p 22640. This allocation may not be claimed if the minority manager states that he or she is opposed to the report. 99–2, Oct. 15, 1986, p 31515. Recognition of a Member to control the 20 minutes of debate in opposition does not depend upon party affiliation. 99–1, Dec. 11, 1985, p 36069; 99–1, Dec. 16, 1985, p 36717. Priority in such recognition is accorded to a member of the conference committee. 100–1, Dec. 21, 1987, p 37516.

To open debate, the Chair recognizes first the majority manager, then the minority manager, then the Member in opposition. The right to close the debate where the time is divided three ways falls to the manager offering the motion. 101–1, Nov. 21, 1989, p 30814. A similar three-way division of time applies to the motion offered by the floor manager to dispose of an amendment remaining in disagreement if the floor managers for the majority and minority favor the motion. *Manual* §912b.

**§ 34. — Recognition; Control of Debate Time****Generally**

When a conference report is called up and a Senate amendment in disagreement is pending, the hour of debate time is equally controlled by the majority and minority parties. 95–1, Oct. 12, 1977, p 33445; 95–1, Sept. 15, 1977, p 29425. Where the Member calling up the report does not seek recognition as a majority member to offer a motion to dispose of the matter reported in disagreement, another majority member may be recognized to offer such a motion and to control one-half of the time thereon. 95–1, Nov. 3, 1977, pp 36959, 36966. And where conferees have been appointed from two committees of the House, the Speaker may recognize the chairman of one committee to control 30 minutes and a minority member of another committee to control 30 minutes. 92–2, Jan. 19, 1972, pp 319–324. By unanimous consent, the time allocated to the majority and minority may be reallocated to other Members, with the right of those Members to yield time to other Members. 99–2, Oct. 8, 1986, p 29714.

Debate in the House on a Senate amendment reported from conference in disagreement having been divided, the minority member in charge controls 30 minutes for debate only and can yield to other Members only for debate. 94–1, Dec. 4, 1975, p 38717; 95–1, Aug. 2, 1977, p 26209. Another minority member, merely by offering a preferential motion, does not thereby control one-half of the time under the original motion. 98–2, Oct. 10, 1984, p 31694.

But if the original motion is defeated, a second motion to dispose of the amendment may be offered; and if the second motion is offered by a minority member, the Chair may allocate the hour of debate between him and a majority member, although neither controlled time on the initial motion. 96–2, July 2, 1980, pp 18357–60.

**Debate Following Division of the Question**

Where a preferential motion to recede and concur in an amendment reported from conference in disagreement has been divided, one hour of debate, equally divided between the majority and minority, is permitted on the motion to recede; and if the previous question is ordered only on the motion to recede and if the House then recedes and a preferential motion to concur with an amendment is offered, another hour of debate equally divided is permitted. 95–1, Aug. 2, 1977, p 26206; 95–2, Oct. 5, 1978, p 33698. The Chair may put the question on receding without debate if the majority and minority floor managers do not seek recognition to debate that portion of the original motion, since the subsequent question of concurring, or concur-

ring with an amendment, is debatable for one hour, equally divided between the managers. 98–2, Oct. 10, 1984, p 31694.

### § 35. Recommittal of Report

#### Generally; By Motion

A motion to recommit a conference report is in order if the other House has not acted on the report and thereby discharged its managers. See Rule XVII clause 1. 88–1, Dec. 19, 1963, p 25249; 90–2, June 5, 1968, p 16058. After one House has acted on a report, thus discharging its managers, the other House has only the option of accepting or rejecting it. 89–1, Oct. 20, 1965, pp 27698–708. After both Houses have acted on the report, it can be recommitted to conference only by concurrent resolution. 8 Cannon § 3316.

The motion to recommit is said to be the prerogative of the minority. See REFER AND RECOMMIT. But the Speaker has recognized a majority member to offer a motion to recommit a conference report in the absence of a minority member seeking recognition to offer the motion. 91–2, July 23, 1970, p 25616.

A motion to recommit a conference report is not in order until the previous question has been ordered on the report. 91–2, Dec. 15, 1970, p 41502. Thereafter, a motion to recommit the report is in order. 87–1, Sept. 21, 1961, p 20533; 88–1, Dec. 21, 1963, p 25409. Only one valid motion is permitted, so if the motion is voted down, the question before the House is on the adoption of the report. 87–2, Sept. 20, 1962, pp 20094, 20105. However, if a recommittal motion with instructions is ruled out on a point of order, a valid motion can still be offered. A motion to recommit comes too late after the report has been agreed to. 90–2, May 22, 1968, pp 14402–05.

Where a conference report is recommitted to conference, the House managers carry the original papers back to conference. 92–1, Dec. 1, 1971, p 43835. The same conferees remain appointed. 97–2, Aug. 17, 1982, pp 21397, 21398. If a second report is then filed by the conferees, it is numbered and otherwise treated as a new and separate report. 87–2, June 29, 1962, pp 12135, 12297, 12355.

Instructions in motion to recommit, see § 15, *supra*.

### Recommittal by Unanimous Consent

Conference reports are sometimes recommitted by unanimous consent. 89–1, June 30, 1965, p 15212; 90–1, June 28, 1967, p 17738; 93–2, July 9, 1974, p 22319. This procedure may be used:

- To recommit a report in which an error has been discovered. 89–1, June 30, 1965, p 15212.
- To permit the conferees to make certain changes and to file a new report. 93–1, Nov. 7, 1973, p 36222.
- Where the conferees have exceeded their authority in reporting a matter not in disagreement. 90–1, June 28, 1967, p 17738.

## § 36. Final Disposition of Report; Voting

### Generally

As a general rule, when a conference report has been debated and its final disposition is pending only three courses of action to dispose of the report are available to the Members: (1) agree, (2) disagree, or (3) recommit to conference. See 5 Hinds §§ 6546, 6558. (Recommittal, see § 35, supra.) Conference reports may not be:

- Disposed of by the motion to table. 5 Hinds §§ 6538–6544.
- Referred to a standing committee. 5 Hinds § 6558.
- Amended (5 Hinds §§ 6534, 6535), except by concurrent resolution (5 Hinds § 6536).
- Sent to Committee of the Whole. 5 Hinds §§ 6559–6561.

A report having been presented, the motion to agree to the report is regarded as pending. The Speaker may put the question on the report without motion from the floor. 5 Hinds § 6517; 8 Cannon § 3300. While most reports are agreed to by majority vote, a two-thirds vote is required on a report relating to a constitutional amendment (5 Hinds § 7036) and under Rule XXI clause 5(c), a three-fifths vote is required on a conference report carrying a federal income tax vote increase. Speaker's discretion to postpone a vote on a conference report, see Rule I clause 5(b). *Manual* § 631. Postponement by unanimous consent, see § 31, supra.

### Partial Reports

A conference report must generally be acted on as a whole, and either agreed to or disagreed to in its entirety. Rejection of a portion of a conference report under a House rule permitting such a separate vote results in the rejection of the entire report. 92–1, Nov. 10, 1971, pp 40479, 40481. And until the report has been acted on no motion to deal with individual amendments is in order. 5 Hinds §§ 6323, 6389, 6390. In some cases, how-

ever, the managers return to the House with a partial conference report dealing with the amendments on which they have reached agreement, but specifying one or more amendments that remain in disagreement. 5 Hinds §§ 5460–5464. In such cases, the vote first occurs on agreeing to the conference report on those matters on which agreement has been reached; the amendments reported therein in disagreement are reported and acted on seriatim thereafter. 88–1, Dec. 24, 1963, p 25532. Amendments reported in total disagreement, see § 39, *infra*.

#### **Motions to Reconsider the Vote**

After disposition of the report and amendments reported from conference in disagreement, it is in order to move to reconsider the vote on a motion disposing of one of the amendments. 97–1, Nov. 22, 1981, p 28754; 98–1, Oct. 5, 1983, p 27323. But the Speaker may put from the Chair as one question reconsideration of all those votes (subject to demand for a separate vote on reconsideration of any question) and a Member may then move to lay all motions to reconsider on the table. 95–2, Oct. 4, 1978, p 33480.

#### **§ 37. Effect of Rejection of Report; Further Conferences**

When either House disagrees to a conference report the matter is left in the position it was in before the conference was asked. 5 Hinds § 6525. Motions for the disposition of amendments in disagreement or to send the matter to further conference are again in order. 8 Cannon § 3303. See also 87–1, Sept. 13, 1961, pp 19219–21. Thus, the House may reject a conference report, insist on disagreement to a Senate amendment, and ask for a further conference. 87–1, Sept. 26, 1961, pp 21427–40; 88–2, Aug. 18, 1964, pp 20121, 20127; 95–2, Feb. 28, 1978, p 5018. However, a motion to instruct House managers at a new conference is not in order until the motion to go to further conference has been agreed to. 94–1, May 1, 1975, p 12761.

### **D. Disposition Where Conferees Report in Total Disagreement**

#### **§ 38. In General**

Where the managers at a conference are unable to come to any agreement on the matters committed to them, they must prepare a written report to that effect and must sign the report. Compare 5 Hinds §§ 6565–6570. The report must be filed and ordered printed. *Manual* § 545. Under the former

practice, amendments reported in total disagreement could be taken up for immediate consideration in the House. 8 Cannon §§ 3299, 3332. Today the matter in disagreement is subject to the three-day layover requirement of Rule XXVIII clause 2(b). 97-1, Nov. 12, 1981, p 27226.

House action on amendments reported in total disagreement differs from that of the Senate. In the Senate, a conference report in total disagreement is considered before disposition of the reported amendments. 96-1, May 23, 1979, p 12399. In the House, after the report is called up, action is taken on the amendment in disagreement but not on the report. 99-1, Nov. 1, 1985, pp 30126-68. Thus, where conferees report in disagreement, and the Senate then recedes and concurs in the House amendments with an amendment, the conference report is not acted on in the House; the Speaker merely directs the Clerk to report the Senate amendment to the House amendments for disposition by motion. 90-1, Sept. 19, 1967, p 26040; 95-2, May 17, 1978, p 14116. Debate (including possible three-way debate) and voting proceeds in the same manner as on amendments reported from conference in partial disagreement. See §§ 33 *et seq.*, *supra*. Motions to dispose of amendments in disagreement, see SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES.