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Senate Unanimous Consent Agreements: Potential Effects on the Amendment Process

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May 17, 2017

Congressional Research Service

7-5700

www.crs.gov

98-310

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The Senate frequently enters into unanimous consent agreements (also called “UC agreements”) that establish procedure on a bill that the Senate is considering or soon will consider.¹ There are few restrictions on what these agreements can provide, and once agreed to, they can be altered only by a further unanimous consent action. In recent practice, the Senate often begins by adopting a general UC agreement, then adds elements in piecemeal fashion as debate continues. UC agreements often contain provisions affecting the floor amending process, most often in one or more of the ways detailed below.²

Amendments in Order and Adoption Thereof

Under Senate rules, amendments may be offered to a bill until the bill has been amended in its entirety (but not thereafter). A UC agreement can limit the amendments that are in order. For example, the agreement may include a list of the only (or only additional) amendments that Senators may offer to the bill; these amendments may be identified by some combination of number, sponsor, and subject.³ The UC agreement may also provide that, by agreeing to it, the Senate also be deemed to have adopted a specified amendment; for example, the agreement may provide for the adoption of a committee substitute (and may also treat it as original text for the purpose of further amendment). A UC agreement may also set a different vote threshold for agreeing to an amendment; for example, in recent years, the Senate has commonly adopted UC agreements requiring 60 affirmative votes for adoption of certain amendments.⁴

The Order in Which Senators Offer Amendments

Under Senate rules, once committee amendments to a bill are acted upon, Senators may offer amendments to the bill in the order in which they seek and receive recognition from the presiding officer. While the parties’ floor leaders and the bill’s majority and minority floor managers receive priority in recognition, Senate rules and precedents do not otherwise specify a sequence in which amendments to a bill are to be offered.⁵ A UC agreement can provide the order in which Senators are to offer certain amendments to a bill. For example, an agreement may specify which amendment the Senate will consider after disposing of the pending amendment. A more encompassing agreement may specify the sequence in which a list of amendments will be considered.

¹ For a broader overview of UC agreements, see CRS Report RL33939, *The Rise of Senate Unanimous Consent Agreements*, by Walter J. Oleszek.

² For an in-depth explanation of the Senate amending process, see CRS Report 98-853, *The Amending Process in the Senate*, by Christopher M. Davis.

³ Inclusion of an amendment in an adopted UC agreement constitutes action on the amendment. Until the Senate has taken some action in relation to an amendment, the Senator offering it may modify or withdraw it at will, but cannot offer an amendment to it.

⁴ The use of this supermajority threshold allows for a vote on the amendment, but it also protects the prerogatives of a minority who may be opposed without necessitating the use of cloture, which may require additional floor time. For more detail, see CRS Report RL34491, *Unanimous Consent Agreements Establishing a 60-Vote Threshold for Passage of Legislation in the Senate*, by Megan S. Lynch.

⁵ For example, Senators may offer amendments to any unamended section of the bill at any time.

The Right to Offer Second-degree Amendments

Under Senate rules, Senators usually may propose second-degree amendments to a first-degree amendment while it is pending, and may continue doing so until the first-degree amendment has been completely amended. A UC agreement can prohibit all second-degree amendments, or all second-degree amendments on a certain subject. It can also allow Senators to offer only specified second-degree amendments.

The Time Available for Considering Amendments

Under Senate rules, the debate on an amendment can continue (unless cloture has been invoked) until no Senator seeks recognition to speak on it, or until the amendment has been disposed of in some way. A UC agreement can limit the time available for debating a particular amendment, each of several specific amendments, or all amendments to the bill. The agreement can provide different amounts of time for debating individual first-degree amendments, and it can provide more time for debating first-degree amendments than for debating second-degree amendments. UC agreements often divide control of the time for debating an amendment between the Senator offering it and another opposing it (often the minority manager of the bill, or alternatively, the minority leader).⁶ In addition, a UC agreement can limit the total time devoted to acting and voting on all (or all further) amendments to a bill. For example, the agreement may specify that consideration of amendments shall end at a time specified. Increasingly, UC agreements provide that each of a series of amendments be considered and then temporarily laid aside rather than voted on, and that votes then be “stacked” to occur in immediate succession on all of them at some later point (often just before a final vote on the measure).

The Subjects of Amendments

Under Senate rules, amendments offered to a bill need not be germane to that bill, except for amendments to general appropriations and budget reconciliation bills or unless the Senate has invoked cloture. A UC agreement may require that certain or all amendments to a bill be germane or that they meet the less strict standard of relevancy.⁷ Either standard may also be applied to second-degree amendments.

Points of Order Against Amendments

Under Senate rules, an individual amendment may be subject to points of order⁸—for example, to enforce the congressional budget process—that, if raised and allowed to stand, would prevent consideration of the amendment. A UC agreement may waive points of order against certain or all amendments, thereby protecting consideration of certain amendments that Senators may offer. If a

⁶ When a UC agreement limits debate on an amendment, the amendment is not subject to a motion to table until all time has expired or been yielded back. See Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure*, 101st Cong., 2nd sess., S.Doc. 101-28 (Washington: GPO, 1992), p. 1287.

⁷ See Riddick and Frumin, *Senate Procedure*, pp. 1344-1353 for precedents on germaneness under UC agreements, and pp. 1362-1363 for those relating to relevancy.

⁸ See CRS Report 98-306, *Points of Order, Rulings, and Appeals in the Senate*, by Valerie Heitshusen.

UC agreement limits debate on an amendment, a point of order against the amendment is not in order until the time has expired or been yielded back.⁹

Example

One UC agreement from the 114th Congress follows below. It illustrates several dimensions on which an agreement may affect the amending process. Specifically, in providing for further consideration of S. 2012 in the 114th Congress, the Senate agreed to call up (that is, make pending for consideration) 28 amendments, en bloc (that is, all at once) and then proceed immediately to vote, en bloc, on those amendments (and another). The UC agreement provided that, after that vote, another seven amendments be made pending, en bloc, after which the Senate would concurrently debate those amendments for up to two hours (with time divided equally between and controlled by the bill's floor managers). The agreement provided for separate votes on each amendment after such debate but also established that agreeing to each amendment required 60 votes. Following those votes, the Senate would then vote on one additional amendment (which had been already pending at the time of the agreement). Its adoption was also subject to a 60-vote threshold. At that point, the Senate would be deemed to have agreed to the already-pending full-text substitute amendment (Amdt. 2853), as amended by any of the earlier votes taken by the Senate on amendments. This action ends the amendment process, as the bill would then be amended in its entirety. The agreement also addressed budget points of order, indicating that the agreement did not preclude such points of order from being made during consideration. The agreement also expedited several steps to conclude consideration of the bill and a vote on final passage.

⁹ Riddick and Frumin, *Senate Procedure*, p. 1356.

S. 2012 (ORDER NO. 218)

Ordered, That at a time to be determined by the Majority Leader in consultation with the Democratic Leader, the Senate proceed to the consideration of S. 2012, a bill to provide for the modernization of the energy policy of the United States, and for other purposes; provided, that it be in order to call up the following amendments en bloc and that the amendments be called up and reported by number:

- Cantwell Amdt. No. 3276;
- Klobuchar Amdt. No. 3302 as modified;
- Flake Amdt. No. 3055;
- Flake Amdt. No. 3050;
- Hatch Amdt. No. 3237;
- Murkowski Amdt. No. 3308;
- Heller Amdt. No. 3286 as modified;
- Vitter Amdt. No. 3075;
- Portman Amdt. No. 3168;
- Shaheen Amdt. No. 3292 as modified;
- Heinrich Amdt. No. 3155;
- Manchin Amdt. No. 3270;
- Cantwell Amdt. No. 3313 as modified;
- Cantwell Amdt. No. 3214;
- Vitter Amdt. No. 3266;
- Sullivan Amdt. No. 3310;
- Heinrich Amdt. No. 3317;
- Vitter Amdt. No. 3265 as modified;
- Kaine Amdt. No. 3012;
- Alexander Amdt. No. 3290;
- Gillibrand Amdt. No. 3004;
- Warner Amdt. No. 3233 as modified;
- Thune Amdt. No. 3239;
- Udall Amdt. No. 3221;
- Coons Amdt. No. 3203;
- Portman Amdt. No. 3309 as modified;
- Flake Amdt. No. 3229; and
- Inhofe Amdt. No. 3251;

provided further, that immediately following the reporting of the amendments, the Senate vote on the amendments en bloc, as well as Amdt. No. 2963, offered by the Senator from Alaska (Ms. Murkowski), with no intervening action or debate.

Ordered further, That it be in order to call up the following amendments en bloc and that the amendments be called up and reported by number:

- Murkowski Amdt. No. 3234 as modified;
- Isakson Amdt. No. 3302;
- Burr Amdt. No. 3175;
- Lankford Amdt. No. 3210;
- Boozman Amdt. No. 3311;
- Udall Amdt. No. 3312; and
- Paul Amdt. No. 3787;

provided further, that there will be 2 hours of debate, equally divided in the usual form, on the amendments concurrently and that no further amendments be in order; provided further, that following the use or yielding back of that time, the Senate vote on the amendments in the order listed with a 60 affirmative vote threshold for adoption of each of the amendments with no intervening action or debate.

Ordered further, That following disposition of Paul Amdt. No. 3787, the Senate vote on Amdt. No. 2954, offered by the Senator from Louisiana (Mr. Cassidy), with a 60 vote affirmative threshold for adoption; provided, that following the disposition of Amdt. No. 2954, the substitute Amdt. No. 2953, offered by the Senator from Alaska (Ms. Murkowski), as amended, be agreed to and that notwithstanding Rule XXII, the Senate vote on the motion to invoke cloture, upon reconsideration, on S. 2012, as amended; provided further, that if cloture is invoked, all post-cloture time be yielded back, the bill be read a third time and the Senate vote on passage of S. 2012, as amended; further, the budget points of order not be barred by virtue of this agreement.

Ordered further, That with respect to the motions to invoke cloture on Amdt. No. 2953 and S. 2012, the mandatory

quorum under Rule XXII be waived; provided, that the filing deadline for all first degree amendments to Amdt. No. 2953 and S. 2012 be at 1:00 p.m. on Wednesday, February 3, 2016. (Feb. 2, Apr. 13, 2016.)

UC agreements can limit the amending process on the Senate floor in ways not mentioned above.¹⁰ For an explanation of how these agreements can affect other aspects of Senate floor proceedings, see CRS Report RS20594, *How Unanimous Consent Agreements Regulate Senate Floor Action*, by Richard S. Beth.

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Acknowledgments

This report was originally prepared by Stanley Bach, former senior specialist in the Legislative Process at CRS. The listed author has updated the report and is available to respond to inquiries on the subject.

¹⁰ See Riddick and Frumin, *Senate Procedure*, pp. 1314-1328 for precedents affecting the amending process under a UC agreement. For example, if the agreement specifies a time for specific votes or time limitations on debate, a number of precedents specify the circumstances under which further amendments may be in order but not subject to debate.