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Amendments in the Senate: Types and Forms

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Summary

The amending process is central to the consideration of legislation by the Senate, and the rules, practices, and precedents that underlie this process frequently depend on distinguishing among amendments based on their type and form. The way in which an amendment is crafted, and the circumstances in which it is offered, can have an impact on its consideration. When an amendment to a measure is offered in the Senate, and while the amendment is pending, it is normally in order for other amendments to be offered dealing with the same portion of the measure. The relative precedence of an amendment determines whether it can be offered while another amendment is pending and, if it can, that it be voted on first. Amending opportunities available in the Senate depend on what amendments have already been offered, and several different “amendment trees” can develop depending on circumstances. Precedence depends on the relationship between the degree, form, and scope of the pending amendments and the ones to be offered. Distinguishing among the types and forms of amendments therefore has implications for what alternatives the Senate may choose among and how many amendments may be pending at one time. For more detail on these implications, see CRS Report 98-853, *The Amending Process in the Senate*.

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Distinctions Among Amendments

The amending process is central to the consideration of legislation by the Senate, and the rules, practices, and precedents that underlie this process frequently depend on distinguishing among amendments based on their type and form. The way in which an amendment is crafted, and the circumstances in which it is offered, can have an impact on its consideration. When an amendment to a measure is offered in the Senate, and while the amendment is pending, it is normally in order for other amendments to be offered dealing with the same portion of the measure. The relative precedence of an amendment determines whether it can be offered while another amendment is pending and, if it can, that it be voted on first. Amending opportunities available in the Senate depend on what amendments have already been offered, and several different “amendment trees” can develop depending on circumstances. Precedence depends on the relationship between the degree, form, and scope of the pending amendments and the ones to be offered. Distinguishing among the types and forms of amendments therefore has implications for what alternatives the Senate may choose among and how many amendments may be pending at one time.¹

Degrees of Amendments

A fundamental aspect of the amending process in the Senate is that it is limited to two degrees. Generally amendments may be offered to the measure under consideration (first degree) and to amendments to the measure (second degree). Second-degree amendments have precedence over first-degree amendments. That means not only that second-degree amendments are offered while a first-degree amendment is pending but also that they must be disposed of before the Senate can vote on the first-degree amendment, as it may have been amended. Senate rules do not allow third-degree amendments.

Forms of Amendments

Amendments may also be distinguished by whether they are posed in the form of (1) a motion to strike out some existing text from a measure (or from a first-degree amendment); (2) a motion solely to insert some new text into a measure (or into a first-degree amendment); or (3) a motion to both strike out some existing text and insert something new (in either a measure or a first-degree amendment).

This distinction is integral in structuring the choices that the Senate may choose among, because the Senate allows different amendment trees to develop depending on the form of the first amendment offered. The Senate assigns higher precedence to amendments to insert and amendments to strike and insert than to amendments to strike out. Although an amendment to strike is not itself amendable, Senate procedure allows Senators to “go behind” an amendment to strike and first consider amendments to the portion of the measure proposed to be stricken. In this way, when one of the effects of an amendment is to eliminate some text from a measure, the Senate may first consider alternatives to that text.

¹ For more detail on these implications, see CRS Report 98-853, *The Amending Process in the Senate*, by Christopher M. Davis.

Scope of Amendments

A third way to distinguish among amendments is by their scope. The procedural scope of an amendment is defined in relation to the text the amendment would affect and is not indicative of any substantive policy changes that would result from the proposed amendment. Generally, the Senate considers an amendment to be a substitute if it would replace all of a pending text. A perfecting amendment is one that inserts text or replaces less than a complete text. An amendment drafted as a motion to strike out and insert may be treated as a substitute or as a perfecting amendment depending on what is being stricken and the procedural situation in which it is offered.

In certain circumstances, both a substitute and a perfecting amendment may be pending simultaneously. For example, when a first-degree amendment to insert new text in a measure is pending, a second-degree amendment that would be a substitute for the first-degree amendment could be offered. Moreover, a perfecting amendment has precedence over a substitute directed to the same text. Therefore, while the second-degree substitute (to a first-degree amendment) is pending, a second-degree perfecting amendment may also be offered and would be voted on first. The principle behind this is to allow alternatives to be “perfected” before the Senate must choose between them.

When a first-degree amendment to strike and insert is offered and no other amendment is pending, it is considered a substitute for a portion of the measure. However, a special case arises when it is offered in the form of a motion to strike out everything in a measure after the enacting clause (or the resolving clause in the case of a resolution) and insert a different text. Because committees frequently report their recommendations to the Senate in this form, which is known as an amendment in the nature of a substitute, Senators typically focus their consideration on this substitute, although amendments to the text of the measure itself would technically still be in order.² An amendment in the nature of a substitute is not treated as a first-degree amendment. Instead it is subject to two degrees of amendment, similar (but not identical) to the situation that would arise if it were the text of the measure.

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² Although the underlying bill remains open to amendment, rank-and-file Senators rarely offer amendments to this text because the eventual adoption of the amendment in the nature of a substitute will negate any changes made in the bill.