# *House-Senate Conferences*

## A. INTRODUCTORY

### § 1. In General

This chapter examines House-Senate conferences, the procedures by which the two Houses arrive at conference, the appointment and instruction of the conference managers (conferees), and the contents and consideration of conference reports.[1] The reader is urged to consult chapter 32, supra, for a discussion of messages between the Houses and the various motions for the disposal of amendments between the Houses.

All matters in disagreement between the two Houses must be resolved before a bill can proceed to enrollment and presentation to the President. Both Houses must agree to the same text, no matter how trivial the discrepancy.[2]

Differences between the two Houses which are unresolved through the regular exchange of amendments between the Houses may be reconciled at a conference to which both send managers (conferees).[3] Although conferences are usually asked on disagreements concerning legislative amendments, they may be sought on any matter on which a difference of opinion exists between the Houses.[4] Matters brought to conference have included differences over an amendment to a proposed amendment to the Con-

1. For comparable precedents that occurred prior to 1935, consult 5 Hinds' Precedents §§ 6254–6589, 7 Cannon's Precedents §§ 1571–1578, and 8 Cannon's Precedents §§ 3209–3332.
2. See §§ 1.4, 1.5, infra.
3. The words "managers" and "conferees" will be used interchangeably here, although a technical distinction may be drawn. Thus the word managers refers to the representatives of either the House or Senate and applies to them severally in their capacity as agents of their respective Houses. The term conferees refers to the managers on the part of both Houses acting jointly at a conference.
4. *House Rules and Manual,* Jefferson's Manual § 530 (1997).

stitution[5] as well as differences regarding the respective prerogatives of the two Houses.[6] In one instance a conference was held concerning the instructions to House conferees at an existing conference.[7] In another instance a conference was held on the issue of the proper procedure in an impeachment proceeding.[8]

A conference may be requested only by the House that possesses the official papers;[9] and although in the past the House which disagreed to the amendments of the other usually left it to the other House to request a conference,[10] an accepted practice in recent years has been for the disagreeing House to request the conference.

The House that requests a conference does so by messaging such request, together with the official papers, to the other House. The House agreeing to conference likewise conveys this response and the papers by message to the requesting House. The managers on the part of the requesting House then bring the papers to conference. At the close of a successful conference the papers change hands and the managers on the part of the agreeing House take the papers[11] and this House acts first on the conference report.[12] Where there is one amendment in disagreement between the Houses, that is the only matter in conference. Where there are multiple amendments to be reconciled, the conferees may reach agreement on some—and state their compromise in a conference report. If they reconcile their differences on some, but not all, they may file a report encompassing those on which they

5. *House Rules and Manual* § 530 (1997); and 5 Hinds' Precedents § 7037.
6. *House Rules and Manual* § 531 (1997); and 2 Hinds' Precedents §§ 1485, 1487, 1488, 1491, 1495.
7. 5 Hinds' Precedents § 6401.
8. *House Rules and Manual* § 531 (1997); and 3 Hinds' Precedents § 2304.
9. See § 1.1, infra. The official papers consist of the engrossed copy of the bill attested by either the Clerk of the House or the Secretary of the Senate, all engrossed amendments, all special acts concurring in amendments with amendments, all messages transmitting the foregoing between the Houses (all similarly attested), and finally the conference report and joint statement signed by the managers on the part of both Houses.
10. *House Rules and Manual* § 533 (1997); and 5 Hinds' Precedents §§ 6278–6285.
11. See § 24.3, infra.
12. See §§ 24.3, 24.5, infra.

agree and report to their respective Houses that they remain in disagreement on others. When this happens, the House acts first on the "partial" conference report and then addresses separately, by motion, those that yet require reconciliation amendments. When a conference ends in total disagreement the papers do not change hands, but remain with the managers of the House that requested the conference, and that House therefore acts first on the amendments in disagreement.[13]

Conferences are but one means to the desired end of bringing the two Houses into agreement on a particular matter. When a disagreement ceases to exist, a conference becomes unnecessary. Thus, where one House had requested a conference to which the second House had agreed, and the requesting House receded from its position before the conference could occur, such action passed the bill and allowed its enrollment and transmission to the President.[14]

On rare occasions requests for conferences have been denied.[15] Sometimes one House will reject a request for a conference, and recede from its disagreement or from the amendment causing the disagreement, thereby rendering such conference unnecessary.[16]

Prior to the 89th Congress motions to request or agree to a conference were not privileged in the House before the stage of disagreement had been reached between the two Houses.[17] However, in 1965, the rules of the House were amended to expedite the process whereby legislation could be sent to conference.[18] Rule XX clause 1, now gives the Speaker discretion to recognize a Member at any time[19] to offer a motion to disagree to Senate amendments and request or agree to a conference, or to insist on House amendments and request or agree to a conference, if such motion is authorized by the commit-

**13.** See § 24.13, infra.

**14.** 5 Hinds' Precedents § 6319.

**15.** See § 1.10, infra; and 5 Hinds' Precedents §§ 6313–6315.

**16.** See 5 Hinds' Precedents §§ 6316–6318.

**17.** The "stage of disagreement" is reached when one House informs the other of its disagreement concerning a particular matter. See 6 Cannon's Precedents §§ 756, 757.

**18.** Rule XX clause 1, *House Rules and Manual* §§ 827, 828 (1997), as amended by H. Res. 8, 111 CONG. REC. 21, 89th Cong. 1st Sess., Jan. 4, 1965. See § 2.1, infra.

**19.** See §§ 3.2, 3.3, infra.

tee (or committees) having jurisdiction over the subject matter of the bill or resolution at issue. Thus, it is no longer necessary for the two Houses to reach a formal stage of disagreement before such motion for conferences becomes privileged. Before this change in the rules, bills and resolutions were usually sent to conference by unanimous consent,[20] pursuant to resolutions reported from the Committee on Rules,[1] or by motions to suspend the rules.[2]

### *Possession of Official Papers as Basis for Request*

**§ 1.1 A conference may be requested only by the House in possession of the papers.**

On Sept. 1, 1960,[3] Senator John J. Williams, of Delaware, alluded to reports in the press that attempts would be made in the House to block consideration of Senate amendments to H.R. 13062, to amend the Sugar Act of 1948. He then posed this parliamentary inquiry:

Under the rules, in the present situation, could the Senate request a conference at this moment if it wished?

THE PRESIDING OFFICER:[4] In the absence of the papers being before the Senate, there would be no power in the Senate to request a conference. For the Senate to have the power to act, the papers would have to be before the Senate.

### *Replacing Lost Official Papers*

**§ 1.2 Where the official papers are lost or destroyed, the House and Senate can authorize their recreation by the Clerk of the House and Secretary of the Senate.**

The concurrent resolution carried here was considered by unanimous consent, adopted by the House (and later by the Senate); it authorized the preparation of duplicate original "official papers" where the original ones had been misplaced in the Senate.[5]

MR. [NORMAN Y.] MINETA [of California]: Mr. Speaker, I ask unanimous consent for the immediate consideration of the concurrent resolution (H. Con. Res. 414) directing the preparation of duplicate conference papers on H.R. 5930.

The Clerk read the title of the concurrent resolution.

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20. See generally §§ 2.36–2.39, infra.
1. See generally §§ 2.29–2.33, infra.
2. See §§ 2.34, 2.35, infra.
3. 106 CONG. REC. 18980, 86th Cong. 2d Sess. See § 3.1, infra.
4. Gale W. McGee (Wyo.).
5. 128 CONG. REC. 26058, 97th Cong. 2d Sess., Sept. 29, 1982.

THE SPEAKER PRO TEMPORE:[6] Is there objection to the request of the gentleman from California?

MR. [ELLIOTT H.] LEVITAS [of Georgia]: Mr. Speaker, reserving the right to object, I do so for the purpose of asking the gentleman from California if he would explain the effect of the concurrent resolution.

MR. MINETA: Mr. Speaker, will the gentleman yield?

MR. LEVITAS: I yield to the gentleman from California.

MR. MINETA: Mr. Speaker, this concurrent resolution merely recreates papers which apparently have been lost. It does not approve or constitute approval of the conference report.

I expect the bring that conference report before the House tomorrow.

MR. LEVITAS: Further reserving the right to object, and I will not object, I wanted to make certain that it did not constitute approval of the conference report by the adoption of the concurrent resolution.

Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 414

*Resolved by the House of Representatives (the Senate concurring),* That the Secretary of the Senate and the Clerk of the House of Representatives are authorized and directed to prepare and sign official duplicates of the conference papers on the bill (H.R. 5930) to extend the aviation insurance program for five years.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

### *Amendments Remaining in Disagreement After Adoption of Conference Report*

**§ 1.3 Where both Houses have adopted a conference report on a bill and amendments thereto, but certain amendments are still in disagreement between them, a further conference may be asked on the remaining amendments.**

On Sept. 24, 1962,[7] Mr. Albert Thomas, of Texas, asked unanimous consent that the House agree to a further conference requested by the Senate.

Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 12711) making appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, and offices, for the fiscal year ending June 30, 1963, and for other purposes, further insist on disagreement to the Senate amendments and agree to the further conference asked by the Senate.

6. John P. Murtha, Jr. (Pa.).

7. 108 CONG. REC. 20489, 87th Cong. 2d Sess.

May I explain that the other body adopted all of the conference report on the independent offices appropriation bill except three items, and we are asking unanimous consent to go back to conference on those three items.

The Speaker, John W. McCormack, of Massachusetts, hearing no objection to the unanimous-consent request, appointed five House conferees.

### *All Matters in Disagreement Must Be Reconciled Before Bill Can Become Law*

**§ 1.4 Pending a motion in the Senate to recede from its one amendment remaining in disagreement with the House following adoption of the conference report in both Houses and disposition of all other amendments, the Presiding Officer stated: (1) that if the motion were rejected, a motion to further insist upon the amendment and to request a further conference on that one amendment would be in order; but (2) that action on the entire bill would remain incomplete and the bill could not proceed to enrollment until the remaining amendment in disagreement was resolved.**

Before a bill can be presented to the President as an enactment, both Houses must agree to the same text and must, through the amendment process and conference procedures, reach concurrence on each item therein.[8]

On May 22, 1975,[9] H.R. 5899, supplemental appropriations for fiscal year 1975, which had been sent to conference with 58 amendments in disagreement, was again on the Senate floor, the House having messaged to the Senate its insistence on disagreement to one remaining Senate amendment which had not been reconciled. When a motion in the Senate to recede from that last Senate amendment was offered, the following inquiry was directed to the Chair:

MR. [JOHN L.] MCCLELLAN [of Arkansas]: Mr. President, I move that the Senate recede from its amendment No. 107.

THE PRESIDING OFFICER:[10] First, the Chair will lay before the Senate the House amendment in disagreement to Senate amendment No. 107, which the clerk will report.

The legislative clerk read as follows:

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8. See 5 Hinds' Precedents §§ 6233–6240.
9. 121 CONG. REC. 16127–29, 94th Cong. 1st Sess.
10. Theodore F. Stevens (Alaska).

The House insists on its disagreement to Amendment No. 107.

THE PRESIDING OFFICER: The question is on agreeing to the motion of the Senator from Arkansas. . . .

MR. [JACOB K.] JAVITS [of New York]: Mr. President, a parliamentary inquiry.

THE PRESIDING OFFICER: The Senator will state it.

MR. JAVITS: If the motion is rejected, will a motion to refuse to recede and to request the conferees to return to conference be in order?

THE PRESIDING OFFICER: A motion to insist and ask for a further conference would then be in order.

MR. JAVITS: I thank my colleague.

Have the conferees been discharged by the Senate?

THE PRESIDING OFFICER: The conferees have been discharged in the House and a new conference would have to be appointed. The conference would be on one issue.

MR. JAVITS: I thank the Chair. . . .

THE PRESIDING OFFICER: Does the Chair understand the inquiry is whether or not the bill will be delayed until the one item that is in conference is determined? Is that the inquiry?

MR. MCCLELLAN: State the parliamentary inquiry.

MR. [JAMES B.] ALLEN [of Alabama]: I asked the question, though I think it is pretty well known, since at this stage of the proceeding both Houses have agreed to more than $14 billion in appropriations, if the motion made by the Senator from Arkansas that the Senate recede from its amendment does not carry, then these $14 billion in appropriations will, at least for the time, fall. Is that correct?

THE PRESIDING OFFICER: The action on the bill would not be complete. The Chair does not recognize the reference to the appropriations falling. They would not be complete. The bill would not be prepared to be sent to the President.

MR. ALLEN: A new conference would have to be appointed and delay would take place?

THE PRESIDING OFFICER: The whole bill would be delayed until that one item was resolved. That is correct. . . .

So the motion was rejected.

MR. JAVITS: Mr. President, I move that the Senate further insist on its amendment.

THE PRESIDING OFFICER: The question is on agreeing to the motion.

The motion was agreed to. . . .

MR. ROBERT C. BYRD [of West Virginia]: Mr. President, I shall shortly move to stand in recess awaiting the call of the Chair, pending whatever action the House may wish to take in view of the action that has just been taken by the Senate. The House may further insist upon its disagreement and ask for a conference, or it may concur. Therefore, until we hear further from the House, I move that the Senate stand in recess awaiting the call of the Chair.

The motion was agreed to, and at 4:50 p.m., the Senate took a recess subject to the call of the Chair.

### *Failure To Address Title Amendment in Conference*

**§ 1.5 Every House amendment to a Senate bill must be reconciled before the Senate can enroll one of its bills sent to conference; and where conferees had neglected to address a House amendment to the title of a Senate bill, the House receded from its title amendment after the adoption of the conference report.**

The proceedings relating to the consideration of the conference report on S. 327 in the 94th Congress are carried below:[11]

MR. [ROY A.] TAYLOR of North Carolina: Mr. Speaker, I call up the conference report on the Senate bill (S. 327) to amend the Land and Water Conservation Fund Act of 1965, as amended, to establish the National Historic Preservation Fund, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:[12] Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 2, 1976.) . . .

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MR. TAYLOR of North Carolina: Mr. Speaker, I ask unanimous consent that the House recede from its amendment to the title of the Senate bill.

THE SPEAKER:[13] Is there objection to the request of the gentleman from North Carolina?

There was no objection.

### *Rejection of Conference Report After Concurrence in Amendments*

**§ 1.6 Where one House adopts a conference report and concurs in certain amendments of the other House reported back from conference in disagreement, and the latter House then rejects the conference report, action on the amendments to which both Houses have agreed is nevertheless completed, and only those amendments which remain in disagreement are properly the subjects of a**

11. 122 CONG. REC. 29753, 29758, 29759, 94th Cong. 2d Sess., Sept. 10, 1976.
12. Lucien N. Nedzi (Mich.).
13. Carl Albert (Okla.).

**further conference between the two Houses.**

On Dec. 29, 1970,[14] the managers on the part of the House on the Defense Department appropriations bill (H.R. 19590) submitted the following statement:

> The managers on the part of the House at the further conference on the disagreeing votes of the two Houses on certain of the amendments of the Senate to the bill (H.R. 19590) making appropriations for the Department of Defense for the fiscal year ending June 30, 1971, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon and recommended in the accompanying conference report as to each of such amendments, namely:
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> The House, on December 16, 1970, adopted the first conference report on the bill (H. Report 91–1759) and then adopted motions relating to amendments reported in technical disagreement. Four amendments of the Senate which had been reported in technical disagreement—Nos. 15, 18, 29, and 48—were concurred in by the House without change. Thus, those four amendments are not at issue in the accompanying conference report or amendments in disagreement.

### *Joint Nature of Conference Committee*

**§ 1.7 A committee of conference is a joint committee composed of managers on the part of each House.**

On July 31, 1935,[15] Mr. George Huddleston, of Alabama, presented to the House a report signed only by the managers on the part of the House on S. 2796, the Public Utilities Act of 1935. The report explained that the desired conference never occurred because the Senate managers were accompanied by an employee of the Public Works Administration. The House managers requested an executive session, the Senate managers refused, and the conference was prevented. Mr. Sam Rayburn, of Texas, raised a point of order.

> MR. RAYBURN: Mr. Speaker, I make the point of order that the paper read is not a report of the conference committee; that a conference report or a disagreement must be signed by a majority of the Members of the House conference committee and of the Senate conference committee and that this statement or paper has no standing in the House.
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> THE SPEAKER:[16] The Chair will hear the gentleman from Alabama.

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**14.** 116 CONG. REC. 43804–07, 91st Cong. 2d Sess.

**15.** 79 CONG. REC. 12237–39, 74th Cong. 1st Sess.

**16.** Joseph W. Byrns (Tenn.).

Mr. Huddleston, responding to the point of order, explained that the report was intended to forestall a motion to discharge under what is now Rule XXVIII clause 1(c).[17]

> Mr. Speaker, this is submitted as a report so that the House conferees cannot be charged on tomorrow, which will be the next day after the twentieth day on which they were appointed, with default and failure to make a report within 20 days. . . .
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> THE SPEAKER: The gentleman from Alabama [Mr. Huddleston] has presented a paper which purports to be a report signed by three of the House conferees on S. 2796, from which it appears that the conferees have not been able up to this time to reach an agreement. The gentleman from Texas [Mr. Rayburn] makes the point of order that this paper cannot be considered as a report, inasmuch as the Senate conferees have not affixed their signatures. The gentleman from Alabama frankly states that he has filed this statement for the purpose of forestalling any action that may be taken under rule XXVIII, which rule authorizes any Member as a matter of the highest privilege to move to discharge and appoint conferees or to instruct conferees after a period of 20 days has elapsed from the time of their appointment when they have failed to make a report on the matter committed to them. The Chair does not think that the rules of the House can be circumvented in that manner. . . .
>
> A committee of conference is a joint committee composed of managers appointed on the part of each House. The managers of each House vote the sentiment of the House which they represent. In casting their votes they do so as separate committees and nothing may be agreed upon without the concurrent action of the two committees composing this joint committee, commonly called the "conference committee."
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> In instant case, the gentleman from Alabama admits that this purported report which he has presented has not been agreed to by the managers on the part of the Senate. Under such circumstances, the Chair does not believe that it is a report within the meaning of our parliamentary practice, and the Chair, therefore, sustains the point of order.

### *Actions of Senate Managers at Conference*

**§ 1.8 A resolution alleging that the Senate managers of a conference committee had insisted upon having experts and counsel present at a committee meeting over the objections of the managers of the House, and that such Senate conferees had refused to consider the matter of differences committed to them unless they were permitted to have present their experts and counsel and instructing**

17. *House Rules and Manual* § 910 (1997).

**conferees to insist on the exclusion of outside advisors, was held not to involve a question of the privilege of the House.**

On July 29, 1935,[18] Mr. George Huddleston, of Alabama, presented to the House House Resolution 311 which he contended rectified an alleged violation of the privileges of the House, to wit: the insistence of the managers on the part of the Senate to bring with them to a conference on S. 2796 (the Public Utilities Act of 1935) certain counsel and advisors. The resolution provided that the House managers be instructed to insist that a conference be held with only the conferees of the two Houses in attendance. Mr. John E. Rankin, of Mississippi, made a point of order against the resolution on the ground that it did not state a question of a privilege of the House. He explained:

> MR. RANKIN: . . . We have appointed conferees on the part of the House. They have a right to say whom they shall take into the conference. They have a right to say what advisers they shall select. If a question arose on that proposition, it might furnish a question of privilege or a question that would go to the integrity of the proceedings of the House.
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> That is the point, Mr. Speaker, on which this privilege hinges—whether or not it involves a question that goes directly to the integrity of the proceedings of the House of Representatives. To say that the Senate committee, when it brings its experts to advise them and to assist them in working out the parliamentary or the legislative problems involved, is a matter that goes to the integrity of the proceedings of the House of Representatives I submit does not meet the requirement; and therefore the resolution is not privileged.

Mr. Thomas L. Blanton, of Texas, also made a point of order against the resolution:

> I make the point of order that under rule XXVIII of the House of Representatives, after the Speaker appoints conferees, until the conferees make a report and file their report and statement here and have it printed, or unless 20 days have elapsed, and a proper motion is made under rule XXVIII[19] to discharge the conferees, the House loses jurisdiction entirely over the conferees until one of those two events happen.

Speaker Joseph W. Byrns, of Tennessee, also referred to what is now Rule XXVIII clause 1(c), in making his ruling.

> THE SPEAKER: . . . That clause was adopted on December 8, 1931, in the

18. 79 CONG. REC. 12007, 12008, 12012, 12013, 74th Cong. 1st Sess.

19. Rule XXVIII clause 1(c), *House Rules and Manual* § 910 (1997).

first session of the Seventy-second Congress. Of course, the House had an object in adopting that rule. It was to preserve to the House the right to exercise authority, as the Chair construes it, in a matter pending between the House and Senate, insofar as its own conferees were concerned. . . .

Now, it must be assumed that the House had an object in providing that 20 days must elapse before the motion may be made, and the Chair assumes that that object was to give the conferees that length of time in which to come to an agreement, if possible. . . .

Now, there were two courses which the conferees could have pursued: One was to report a disagreement, which has not been done. The other was to wait for 20 days, under this rule, and then to proceed under its provisions as a matter of the highest privilege. If the conferees had reported a disagreement, it would be in order for the House to take such action as it pleased, either with reference to instructions or to sending them back for further consideration.

. . . The Chair thinks that that is a matter of procedure that should be determined by the conferees. In the event that the conferees are unable to agree, it seems to the Chair that the remedy is provided in rule XXVIII. The Chair does not believe that under the facts stated a question of privilege is involved. The Chair, therefore, sustains the point of order.

**§ 1.9 It is in order in debate while discussing a question of privilege of the House involving the procedure of a conference committee to state what occurred in the conference committee session but such license does not permit a Member to refer to a Senator by name.**

On July 29, 1935,[20] the House was considering a point of order raised by Mr. John E. Rankin, of Mississippi, against a resolution offered by Mr. George Huddleston, of Alabama, which purported to raise a question of a privilege of the House. Mr. Huddleston had contended that the insistence of the Senate managers on the attendance at the conference on S. 2796, the Public Utilities Act of 1935, of Mr. Ben Cohen, who had counseled the Senate on the drafting of the bill, prevented the conferees from meeting in a free and fair conference. During the ensuing debate, Mr. John G. Cooper, of Ohio, one of the House managers stated:

. . . After all that hard work are we going to sit in the conference committee with Mr. Cohen there, with all his suggested changes and amendments that he would like to have incorporated in the bill? Senator Wheeler is the man——

20. 79 CONG. REC. 12011, 74th Cong. 1st Sess.

MR. RANKIN: Mr. Speaker, the gentleman from Ohio has no right to speak about a Senator by name on the floor of the House.

MR. COOPER of Ohio: Mr. Speaker, I apologize, but I will say that the Senator, who is chairman of the conference committee, stated to us that if Mr. Cohen could not sit in at the conference there would be no conference. . . .

MR. RANKIN: Mr. Speaker, I make the point of order that the gentleman has no right to criticize Members of the Senate on the floor of the House, whether he calls them by name or not. This tirade against the Senate is in violation of the rules of the House.

THE SPEAKER:[1] The rule provides that Members shall not criticize a Member of the other body in a discussion on the floor. As the Chair understands the gentleman, he is not referring to a Senator by name, but stating what occurred in the conference committee.

### *Conference Refused*

**§ 1.10 The Senate may insist (as opposed to adhere) upon its amendment and disagree to a conference asked by the House.**

On Mar. 20, 1951,[2] the House, with Speaker Sam Rayburn, of Texas, presiding, received a message from the Senate:

A message from the Senate by Mr. Woodruff, its enrolling clerk, announced that the Senate insists upon its amendment to the bill (H.R. 2615) entitled "An act to amend the Agricultural Adjustment Act of 1938, as amended," disagreed to by the House, and disagrees to the conference asked by the House on the disagreeing votes of the two Houses thereon.

### *Senate Rejection of Conference Report Before Official Papers Were Received*

**§ 1.11 Instance where the Senate, by unanimous consent, deemed a conference report "rejected" even though the official papers thereon had not been received from the House.**

On Nov. 19, 1989,[3] by unanimous consent, the Senate agreed that if a conference report then under debate in the House were accepted by the House, it would be considered as rejected when received in the Senate. The unusual request is carried here as one more example of how the course of business sometimes can be expedited by abnormal procedures.

1. Joseph W. Byrns (Tenn.).
2. 97 CONG. REC. 2683, 82d Cong. 1st Sess.
3. 135 CONG. REC. 30156, 30157, 30159, 101st Cong. 1st Sess.

UNANIMOUS-CONSENT REQUEST—H.R. 3607

MEDICARE CATASTROPHIC COVERAGE REPEAL

MR. [GEORGE J.] MITCHELL [of Maine]: Mr. President, in a moment I am going to ask for unanimous consent that the conference report on H.R. 3607, the catastrophic health care legislation, be rejected by the Senate when that report is received by the Senate, which we expect to be shortly this evening.

Prior to presenting the request, I would like to describe for the information of Senators the status of that matter and the purpose of this request.

The two bodies have enacted legislation on this matter which are not identical. By an overwhelming vote, the House passed legislation to repeal the program. By unanimous vote, the Senate passed legislation to substantially modify the legislation.

The conferees have been unable to agree on a compromise between those two positions, despite days of effort.

The conference report in effect accepts the House position on repeal. It will be approved by the House, and it is the purpose of this unanimous-consent request to have that rejected by the Senate for the purpose of enabling this matter to be returned to conference, in the hopes that a final good-faith effort on both sides can be made to achieve a compromise which will be acceptable to both bodies.

There are many Senators who favor repeal, among them the distinguished Senator from Florida [Mr. Graham]; both distinguished Senators from Nevada [Mr. Reid and Mr. Bryan], and others. . . .

THE PRESIDING OFFICER: Is there objection?

MR. [BOB] GRAHAM [of Florida]: Mr. President, will the Senator yield for a question?

MR. MITCHELL: Certainly.

MR. GRAHAM: Am I correct that there has been a conference committee report issued on this matter, which the House is preparing to consider?

MR. MITCHELL: Yes.

MR. GRAHAM: And that conference committee has the approval of the conferees from both the House and the Senate?

MR. MITCHELL: A majority of the conferees, yes.

MR. GRAHAM: If the House passes the conference report and it then comes to the Senate, if the Senate were to also agree to the conference report, would that not be disposition of the matter?

MR. MITCHELL: That would be. . . .

THE PRESIDING OFFICER: Is there objection to the unanimous-consent request propounded by the majority leader? If not, that will be the order of the Senate.

### *Where House "Blue-slips" Senate Request for Conference*

**§ 1.12 Where the Senate had amended a House-passed general appropriation bill, insisted on its amendments and requested a conference, and the House thereafter returned the measure to the Senate ("blue-slipped" the**

**bill) because one of the Senate amendments violated the constitutional authority of the House to originate revenue measures, the Senate proceeded to modify the offending amendment, again insisted, requested a "new" conference with the House, and again appointed the same managers.**

On Aug. 12, 1994,[4] the Senate amended a paragraph of the agricultural appropriation bill for fiscal year 1995 by adding a "user fee" amendment which permitted the Federal Food and Drug Administration to charge fees for services in excess of the cost of the services provided. In the House, the Committee on Ways and Means—and ultimately the House—viewed the Senate amendment as one "raising revenue." Members of the Committee on Appropriations, fearing a protracted delay if the bill was "blue-slipped," lobbied to let the matter go to conference where the managers pledged they would be successful in dropping the amendment; and if the House managers were not successful in this opposition, they would support an effort in the House to return the conference report to the Senate to protect the House's constitutional authority.

The resolution adopted by the House returning the bill to the Senate, a portion of the House debate, and the proceedings in the Senate to modify the amendment are carried.

PRIVILEGES OF THE HOUSE—RETURNING TO THE SENATE THE SENATE AMENDMENTS TO H.R. 4554

MR. [SAM] GIBBONS [of Florida]: Mr. Speaker, I rise to a question of the privileges of the House, and I offer a privileged resolution (H. Res. 518) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 518

*Resolved*, That Senate amendment No. 83 to the bill H.R. 4554 making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1995, and for other purposes, in the opinion of this House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this house and that such bill with the Senate amendments thereto be respectfully returned to the Senate with a message communicating this resolution.

4. 140 CONG. REC. 21655, 21656, 103d Cong. 2d Sess.

THE SPEAKER PRO TEMPORE:[5] The resolution constitutes a question of privileges of the House.

The gentleman from Florida [Mr. Gibbons] will be recognized for 30 minutes, and the gentleman from California [Mr. Thomas] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. Gibbons].

MR. GIBBONS: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 518 is a simple resolution returning to the Senate the bill, H.R. 4554, because it contravenes the constitutional requirements that revenue measures originate only in the House of Representatives.

Specifically, the Senate amendments to H.R. 4554 provide that amounts are to be credited to the appropriations for the Food and Drug Administration "from fees established and collected to cover the costs of regulation of products under the jurisdiction of the Food and Drug Administration." These fees are not limited to cover only the costs of providing specified regulatory activities. Further, the FDA would not be required to change the fees, in appropriate amounts, only to those persons who benefit from such regulatory activities. Instead, the Senate amendments would allow the FDA to charge a broad cross-section of the public in order to fund the costs of its activities in general. Thus, these fees are not true regulatory fees, but constitute revenues which would fund the Government generally. . . .

I yield to the gentleman from Wisconsin.

MR. [DAVID R.] OBEY [of Wisconsin]: Let me simply say that what is at issue here is whether or not the House will take an action which is called blue-slipping the appropriation bill for agriculture for the coming fiscal year. The reason the Committee on Ways and Means wants to do that is because the Senate inappropriately adopted an amendment which is clearly an effort simply to legislate more spending in the agriculture appropriation bill above the amount that would be allowed for the budget caps, and the way they do that is to inappropriately use a revenue device. I grant that. As chairman of the Committee on Appropriations, I fully appreciate the need for the Senate to cease and desist on items like this. But there are a number of ways that it can be done it seems to me. The committee can, if it chooses, pursue its right today. . . .

An alternative manner in which to proceed would still preserve the rights of the Committee on Ways and Means to blue-slip this bill when it comes back from conference if the offending provision has not been removed. I have made it quite clear, both orally and in a letter to the chairman of the committee, that our committee will not come back from conference with that offending provision. We reject it outright and would insist that it not be included.

After further debate, the privileged motion offered by Mr. Gibbons was agreed to.

5. Jim McDermott (Wash.).

The pertinent proceedings in the Senate were as follows:[6]

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT—MESSAGE FROM THE HOUSE

MR. [WENDELL H.] FORD [of Kentucky]: I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 4554.

The Presiding Officer laid before the Senate the following message from the House of Representatives:

> *Resolved,* That Senate amendment No. 83 to the bill H.R. 4554 making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1995, and for other purposes, in the opinion of this House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this House and that such bill with the Senate amendments thereto be respectfully returned to the Senate with a message communicating this resolution.

MR. FORD: Madam President, I ask unanimous consent the Chair lay before the Senate a message on H.R. 4554, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for fiscal year 1995, which was returned to the Senate by the House; that Senate amendment 83 be modified with the amendment I now send to the desk; that the Senate insist on its amendments, request a new conference with the House, and that those Senators currently serving as conferees on this bill be reappointed.

THE PRESIDING OFFICER: Without objection, the amendment will be modified.

The amendment is as follows:

> In lieu of Senate amendment No. 83, insert the following: "On page 70 of the bill insert the following after line 6: *Notwithstanding any other provision of law, no employee of the United States Department of Agriculture shall be preemptorily removed without a hearing from his or her position because of remarks made during personal time regarding Departmental policies or proposed policies.*"

MR. FORD: I yield the floor, Madam President.

THE PRESIDING OFFICER: The Senator from Nebraska is recognized for 15 minutes.

*Parliamentarian's Note:* On July 15, 1994, where a similar conflict over a "revenue" amendment on an appropriation bill had resulted in a "blue-slip" action by the House,[7] the Senate[8] authorized the reengrossment of its amendments, striking the one to which the House objected.

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**6.** 140 CONG. REC. 22127, 22128, 103d Cong. 2d Sess., Aug. 12, 1994.

**7.** See 140 CONG. REC. 16593, 16594, 103d Cong. 2d Sess., July 14, 1994 (H.R. 4539).

**8.** 140 CONG. REC. 16832, 16840, 103d Cong. 2d Sess.