E. CONSIDERATION AND DISPOSITION OF REPORT

§ 21. In General

Conference reports embody the compromises negotiated by the managers of both Houses and must be acted on in both Houses.[1] Each report must be voted on as a whole and adopted or rejected in its entirety,[2] although the House rules now permit separate votes on nongermane matter contained in a conference report.[3] In accordance with Jefferson's Manual, conference reports may not be amended or altered by either House acting alone[4] although the two Houses may do so by concurrent resolution.[5] A report may also be amended by recommittal with instructions to the conference committee who may then file a new report.[6]

Parliamentarian's Note: The question of consideration as provided for in Rule XVI clause 3,[7] may be raised against a conference report, and this is a proper way to avoid immediate consideration of a report. On Sept. 28, 1976, Speaker Carl Albert, of Oklahoma, entertained the question of consideration before recognizing Members wishing to press points of order against the substance of the report.[8] A conference report cannot be tabled,[9] referred,[10] or amended.[11] There is no direct

1. *House Rules and Manual* § 549 (1997); see §§ 21.2, 21.3, infra.
2. §§ 30.4, 30.5, infra.
3. H. Res. 1153, 92d Cong. 2d Sess., Oct. 13, 1972, added clause 4 to Rule XXVIII, *House Rules and Manual* § 913(b) (1997). This clause provides that the House may vote separately on portions of conference reports containing nongermane material if offered in the House. However, in conformity with the principle set forth in § 542 of Jefferson's Manual, rejection of a portion of a conference report results in the rejection of the entire report. See §§ 30.10–30.12, infra.
4. Jefferson's Manual, *House Rules and Manual* § 542 (1997); see § 30.6, infra.
5. 8 Cannon's Precedents § 3308; and 5 Hinds' Precedents §§ 6536, 6537.
6. 8 Cannon's Precedents § 3317. See generally, § 32, infra.
7. *House Rules and Manual* § 781 (1997). See also 8 Cannon's Precedents § 2439.
8. 122 CONG. REC. 33018, 33019, 94th Cong. 2d Sess.
9. 5 Cannon's Precedents §§ 6538–6544.
10. *Id.* at § 6558.
11. *Id.* at §§ 6534, 6535.

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precedent on the applicability of the motion to postpone.

Conference Report Not Subject to Motion To Lay on the Table

§ 21.1 While the practice of the House is not to allow a motion to table a conference report, the Senate has taken such action and informed the House, by message, that it insisted on its amendments to a House bill. The House then acted on the bill and amendments thereto by privileged motion, the stage of disagreement being in effect.

The practice of the House is not to apply the motion to lay on the table a conference report. This practice has been followed at least since the 42d Congress when Speaker Blaine refused to entertain the motion, and his decision was sustained on appeal.(12)

In the 93d Congress, the Senate did table a conference report on a House bill and the Senate amendments in disagreement, informed the House of this action together with a message further insisting on its amendments.

The message and the proceedings of July 16, 1974,(13) in the House are carried here.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had tabled the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7824) entitled "An act to establish a Legal Services Corporation, and for other purposes."

And that the Senate further insists upon its amendments to the above-entitled bill, disagreed to by the House. . . .

LEGAL SERVICES CORPORATION ACT

MOTION OFFERED BY MR. PERKINS

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Perkins moves that the House take from the Speaker's table the bill H.R. 7824, with the Senate amendments thereto, recede from its disagreement to the Senate amendment to the text of the bill and concur therein with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Legal Services Corporation Act of 1974".

SEC. 2. The Economic Opportunity Act of 1964 is amended by adding at

12. 5 Hinds' Precedents §§ 6539, 6540.

13. 120 CONG. REC. 23348, 23349, 23353, 23354, 93d Cong. 2d Sess.

the end thereof the following new title:

"TITLE X—LEGAL SERVICES CORPORATION ACT . . .

THE SPEAKER:[14] The gentleman from Kentucky (Mr. Perkins) will be recognized for 1 hour.

PARLIAMENTARY INQUIRY

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. GROSS: Mr. Speaker, when was this matter brought to the floor of the House.

THE SPEAKER: The Chair will state that the Senate had just messaged this matter over to the House; the Chair received the message a few minutes ago, informing the House that the Senate insists on its amendments to the House bill.

MR. GROSS: Mr. Speaker, is there any information available to the Members of the House concerning the action taken by the other body on this matter?

THE SPEAKER: The Chair will state that that is not a parliamentary inquiry.

MR. PERKINS: If the gentleman will yield, yes, there happens to be.

MOTION TO LAY THE MOTION ON THE TABLE OFFERED BY MR. GROSS

MR. GROSS: Mr. Speaker, I move to lay the motion on the table.

THE SPEAKER: The question is on the motion offered by the gentleman from Iowa.

The question was taken; and the Speaker announced that the noes appeared to have it.

MR. GROSS: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: The Chair will count; 162 Members are present, not a quorum.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device; and there were—yeas 136, nays 269, not voting 29. . . .

So the motion to table was rejected.

The result of the vote was announced as above recorded.

MR. PERKINS: Mr. Speaker, on May 16 we sent the Legal Services conference report, after it was adopted, over to the Senate. As I recall, the House acted first. Over there, the conference report was tabled. I do not know the reasons why, but I presume they received word that in all probability the conference report as passed by the House and agreed to by the Senate may not be acceptable to the President of the United States.

Receiving Senate Message During Adjournment

§ 21.2 The Speaker laid before the House a communication from the Clerk advising that pursuant to authority granted, he had, during adjournment, received a message from the Senate an-

14. Carl Albert (Okla.).

nouncing agreement to a conference report.

On June 30, 1958,[15] Speaker Sam Rayburn, of Texas, laid before the House the following communication from the Clerk of the House:

June 30, 1958.

THE HONORABLE THE SPEAKER,
House of Representatives.

SIR: Pursuant to authority granted on June 27, 1958, the Clerk received from the Secretary of the Senate on Friday, June 27, 1958, the following message:

That the Senate agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 12181) entitled "An act to amend further the Mutual Security Act of 1954, as amended, and for other purposes."

Respectfully yours,
RALPH R. ROBERTS,
Clerk, United States House of Representatives.

Senate Has "Deemed" Adoption of Conference Report When Message Received From House

§ 21.3 The Senate stipulated, by unanimous consent, that a conference report already agreed to by the House be deemed to have been adopted by the Senate, on receipt of a message from the House informing the Senate of the adoption of a Senate concurrent resolution correcting the enrollment of the bill in question, changing a proviso included in the conference agreement.

The unanimous-consent request propounded in the Senate not only deemed the adoption of the report but disposed of the motion to reconsider and provided for the insertion of comments by Senators into the *Congressional Record*.

The request, made on Oct. 21, 1993,[16] is included here. The House agreed to the concurrent resolution on Oct. 26, 1993,[17] and this is the date shown in the House Calendar for the adoption of the conference report in the Senate.

MR. [GEORGE J.] MITCHELL [of Maine]: Mr. President, I ask unanimous consent that when the Senate receives a message from the House that the House has agreed to Senate Con-

15. 104 CONG. REC. 12671, 85th Cong. 2d Sess.

16. 139 CONG. REC. 25876, 103d Cong. 1st Sess.

17. For the House action and the text of the concurrent resolution, see 139 CONG. REC. 25876, 103d Cong. 1st Sess.

current Resolution 48, as passed the Senate, that the conference report accompanying H.R. 2403, the Treasury, Postal Service appropriations bills shall be deemed to have been adopted, and the motion to reconsider shall be deemed to have been laid on the table, with the above occurring without any intervening action or debate; and that any statements relating to that conference report be placed in the Record at the appropriate place.

THE ACTING PRESIDENT PRO TEMPORE: Without objection, it is so ordered.

So the conference report was deemed to have been agreed to, as follows:

H.R. 2403

That the Senate recede from certain of its amendments.

That the House recede from its disagreement to certain amendments of the Senate and agree to the same.

That the House recede from its disagreement to certain amendments of the Senate and agree to the same with an amendment; and the Senate agree to the same.

Signed by a majority of the conferees on the part of both Houses.

Consideration of Report Before Amendments in Disagreement

§ 21.4 In the consideration of conference reports the report itself is considered and voted up or down before action is taken on amendments in disagreement.

On Mar. 16, 1942,[18] after Mr. Hatton W. Sumners, of Texas, called up the conference report on S. 2208, to further expedite the prosecution of the war, he raised a parliamentary inquiry:

Amendment No. 32 is highly controversial. I understand it is my duty to move that the House further insist upon this amendment. May I ask unanimous consent that the consideration of that amendment be postponed for the moment?

THE SPEAKER:[19] The Chair suggests to the gentleman from Texas that the first thing to do is to adopt the conference report, leaving out, of course, those matters that are in disagreement.

MR. SUMNERS of Texas: Then, Mr. Speaker, I make that motion at this time.

Mr. Wright Patman, of Texas, then posed an inquiry concerning the disposal of another amendment reported from the conference in disagreement. The Speaker replied,

The parliamentary situation is this: Insofar as the amendments in disagreement are concerned, the conference report must first be voted up or down.

Recognition for Question of Privilege of the House During Consideration of Report

18. 88 CONG. REC. 2502–04, 77th Cong. 2d Sess.
19. Sam Rayburn (Tex.).

§ 21.5 During the consideration of a conference report the Speaker declined to recognize a Member on a question of privilege of the House.

On Oct. 3, 1949,[20] the House was considering the conference report on S. 1407, to promote the rehabilitation of the Hopi and Navaho Indian tribes and the better utilization of resources on their respective reservations. Mr. Clare E. Hoffman, of Michigan, then sought the floor:

> Mr. Speaker, will the gentleman yield?
>
> MR. [TOBY] MORRIS [of Oklahoma]: I yield to the gentleman from Michigan.
>
> MR. HOFFMAN of Michigan: Mr. Speaker, I rise to a question of privilege of the House.
>
> THE SPEAKER:[1] What is the gentleman's question of privilege?
>
> MR. HOFFMAN of Michigan: The question of privilege is that, although we have been in session here something like 9 months, ever since we came back it has been almost impossible, in spite of the efforts of the Speaker, for the Members to hear what is going on. And I have a resolution which I want to offer, and which is as follows:
>
> > *Be it resolved*, That the legislative business of the House be suspended until order in the House is obtained so that Members may be informed as to the measures which are being considered.
>
> THE SPEAKER: The Chair cannot recognize the gentleman for that purpose inasmuch as there is another matter pending before the House.

Speaker's Discretion as To Scheduling of Conference Report

§ 21.6 The Speaker announced from the Chair that he would not recognize Members for unanimous-consent requests until disposition of a conference report on a bill making appropriations for foreign assistance.

On Oct. 6, 1962,[2] Speaker John W. McCormack, of Massachusetts, made the following statement regarding the consideration of the conference report on H.R. 13175:

> The Chair desires to make a brief statement that the Chair will not recognize any Member for unanimous-consent requests until after the foreign assistance appropriations conference report is disposed of.
>
> In order that Members may understand the reason why the Chair is doing this, last night our dear friend and distinguished colleague, the gentleman from Louisiana [Mr. Passman] had an accident. He was sent to the Naval

20. 95 CONG. REC. 13662, 81st Cong. 1st Sess.

1. Sam Rayburn (Tex.).

2. 108 CONG. REC. 22709, 87th Cong. 2d Sess.

Hospital. He is in his office. He is going to handle the conference report this morning. . . .

The Chair, and I know the Members, will all agree with the thoughts and the action of the Chair to have the conference report disposed of as quickly as possible so that the gentleman from Louisiana may go back to the hospital for further treatment.

Withdrawal of Report After Filing

§ 21.7 A conference report has been withdrawn by unanimous consent.

On June 8, 1942,[3] the following occurred in the House:

MR. [R. EWING] THOMASON [of Texas]: Mr. Speaker, I ask unanimous consent to withdraw the conference report which I filed this morning on the bill S. 2025, to readjust the pay and allowances of personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service.

THE SPEAKER:[4] Without objection, it is so ordered.

There was no objection.

Special Consideration of a Conference Report Established by Special Order

§ 21.8 A special order providing for the consideration in the House of a conference report on a major budget reconciliation bill may contain many elements. In 1993, the resolution included: a blanket waiver of points of order; the allocation of extended debate time among the 14 committees involved; a clause self-executing another resolution providing new procedures to implement budget enforcement procedures; special procedures to follow in the House if the conference report were rejected; and finally, specifying that the previous question be considered as ordered without any intervening motion except one motion to recommit which could not contain instructions.

House Resolution 240 was called up in the House on Aug. 5, 1993. Following its adoption, the conference report itself was considered and adopted by the narrowest of margins. The resolution from the Committee on Rules, a portion of the debate, and the consideration of the conference report as ex-

3. 88 CONG. REC. 5031, 77th Cong. 2d Sess.
4. Sam Rayburn (Tex.).

cerpted from the Record of Aug. 5,[5] are noted below.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 2264, OMNIBUS BUDGET RECONCILIATION ACT OF 1993

MR. [ANTHONY C.] BEILENSON [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 240 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 240

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. The conference report shall be debatable for six hours, with one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Natural Resources; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Veterans' Affairs; and one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget. The previous question shall be considered as ordered on the conference report to final adoption without intervening motion except one motion to recommit, which may not contain instructions and on which the previous question shall be considered as adopted. After disposition of the conference report, no further consideration of the bill shall be in order except pursuant to a subsequent order of the House.

5. 139 CONG. REC. 19309, 19310, 19321, 19476, 103d Cong. 1st Sess.

SEC. 2. House Resolution 235 is hereby adopted.

THE SPEAKER PRO TEMPORE:[6] The gentleman from California [Mr. Beilenson] is recognized for 1 hour.

MR. BEILENSON: . . . Mr. Speaker, House Resolution 240 provides for 6 hours of general debate on the reconciliation conference report, with the time allocated among the committees instructed to report deficit reduction legislation, and the time for each committee equally divided and controlled between the chairman and ranking minority member of each. The conference report will be considered as read. All points of order against the conference report and against its consideration are waived.

The conference report needs a waiver of the three-day layover requirement. The report also exceeds the scope of the conference; for example, the section providing an income tax credit for employees who pay Social Security taxes on their employees' tip income was in neither the House nor Senate bill. To meet the conferees' ambitious deficit reduction target, it was necessary for conferees to exceed scope in order to reach agreement between the Houses.

Mr. Speaker, the rule provides one motion to recommit which may not contain instructions. No further action on this reconciliation measure is in order except by subsequent order of the House. Finally, the rule provides that House Resolution 235 is adopted.

At this point, Mr. Speaker, I would like to explain House Resolution 235. First, the intent is to put in place, in conjunction with the executive order that the President issued yesterday, the entitlement review procedures dropped from the conference report because of the Byrd rule in the Senate. The Executive order directs the Office of Management and Budget to set targets for entitlement spending. . . .

Finally, under House Resolution 235, it would not be in order to consider any general appropriation bill until Congress, if required, adopts a budget resolution including the entitlement review problem. The point of order could be waived only by adoption of a single resolution covering all general appropriation bills. . . .

H. RES. 235

Resolved, That, for fiscal years 1994 through 1997—

(1) the provisions of, and the procedures and points of order set forth in, sections 16004(c)(2), 16005, and 16009 of H.R. 2264, as passed the House (One Hundred Third Congress), shall, with respect to the House of Representatives, apply to any special direct spending message the President submits pursuant to a presidential order as if that message were submitted pursuant to section 16004(c)(1) of that bill; and

(2) for purposes of this application, any reference in section 16004(c)(2) to paragraph (1) or in section 16005 or 16009 to section 16004 shall be deemed to be to the appropriate provisions of that presidential order. . . .

MR. [MARTIN O.] SABO [of Minnesota]: Mr. Speaker, pursuant to House Resolution 240, I call up the conference report on the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994.

6. Gerald D. Kleczka (Wis.).

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:[7] Pursuant to House Resolution 240, the conference report is considered as having been read. . . .

Pursuant to the rule, the Committee on Ways and Means and the Committee on the Budget will each control 1 hour of debate, equally divided and controlled by the chairman and ranking minority member; and the following committees will each control 20 minutes of debate, equally divided and controlled by the chairman and ranking minority member: The Committee on Agriculture; the Committee on Armed Services; the Committee on Banking, Finance and Urban Affairs; the Committee on Education and Labor; the Committee on Energy and Commerce; the Committee on Foreign Affairs; the Committee on the Judiciary; the Committee on Merchant Marine and Fisheries; the Committee on Natural Resources; the Committee on Post Office and Civil Service; the Committee on Public Works and Transportation; and the Committee on Veterans' Affairs.

At this time, the gentleman from Minnesota [Mr. Sabo], will be recognized for 30 minutes and the gentleman from Ohio [Mr. Kasich] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. Sabo]. . . .

MR. SABO: Mr. Speaker, I yield the balance of my time to the distinguished Speaker of the House, the gentleman from Washington [Mr. Foley].

MR. [THOMAS S.] FOLEY [of Washington]: Mr. Speaker, one important thing has happened today, and important as it was, a more important thing is about to happen.

The important thing that has already happened was not a reconciliation but an engagement, and all of us wish our two colleagues on the Republican side, Susan Molinari and Bill Paxon, the best of futures and the warmest of best wishes. . . .

Whether we decide at long last, after many years of indulgence and avoidance and delay and excuse, take a hard road back to fiscal responsibility and a sound economic future for all of our people. . . .

THE SPEAKER PRO TEMPORE: Pursuant to House Resolution 240, the previous question is ordered on the conference report.

The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

MR. [JOHN R.] KASICH [of Ohio]: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 218, noes 216, not voting 0.

§ 22. Calling Up as Privileged

Prior to 1902, a conference report could be considered as soon as it was filed in the House. Therefore, no distinction was then made

7. John P. Murtha (Pa.).