§ 24. Custody of the Official Papers

Neither House may consider a conference report until it has possession of the official papers,[15] which consist of the original bill and any amendments thereto.[16] Copies of the conference report itself and the statement of the managers must also be available on the floor.[17]

It is customary for the managers of the House which had requested a conference to carry the official papers with them to the conference. If the conferees reach an agreement (even a partial agreement), the papers change hands, and the managers of the House which had agreed to the conference take possession thereof and their House acts first on the report.[18] However, if the managers of the agreeing House fail to take possession of the papers at the close of a successful conference, the managers of the asking House may retain the papers and that House acts first on the report.[19] When the conferees report in total disagreement the papers do not change hands.[20]

Possession of Official Papers

§ 24.1 It is not in order to consider a conference report in the House until the original (official) papers are in possession of the House.

On Aug. 20, 1937,[1] Mr. Andrew J. May, of Kentucky, submitted the conference report and statement of the managers on H.R. 7985, providing for the enlargement of Washington Airport. After Mr. May sought unanimous consent for the immediate consideration of the conference report, the following occurred:

> THE SPEAKER:[2] The gentleman from Kentucky has filed a conference report. Has the gentleman from Kentucky the original papers in the case? The only papers available are copies of the conference report and the official papers do

15. § 24.1, infra.
16. § 24.2, infra.
17. Rule XXVIII clause 2(a), *House Rules and Manual* § 912a (1997), as amended by the Legislative Reorganization Act of 1970, 84 Stat. 1140, Pub. L. No. 91–510, § 125(b)(2) (Oct. 26, 1970).
18. § 24.3, infra.
19. §§ 24.4, 24.5, infra.
20. § 24.13, infra.
1. 81 CONG. REC. 9515, 75th Cong. 1st Sess.
2. William B. Bankhead (Ala.).

not seem to have been returned from the Senate.

MR. MAY: The report is signed by the Senate conferees and by the House conferees.

THE SPEAKER: But the Chair cannot permit the consideration of a conference report on a bill while the original papers are in the possession of the other body, which seems to be the case in this instance. The Chair is of the opinion the gentleman will have to withhold his request for consideration until the papers are sent over from the Senate. The Chair has had a diligent search made and the records do not show that the papers have been messaged over.

§ 24.2 When a conference report is called up for consideration it is not necessary that copies of the bill to which the conference report relates be available for all Members of the House; it is sufficient that the official papers—the House bill and the Senate amendment thereto—are before the House.

On July 28, 1954,[3] after the House consented to dispensing with the reading of the conference report on H.R. 8300, the Internal Revenue Code of 1954, Mr. Herman P. Eberharter, of Pennsylvania, raised several points of order:

Mr. Speaker, the first point of order I wish to offer to the conference report is that a copy of the House bill is not before the House.

THE SPEAKER:[4] A copy of the report is not before the House?

MR. EBERHARTER: A copy of the House bill, H.R. 8300, is not before the House. Members cannot obtain a copy of the House bill.

THE SPEAKER: The subject matter before the House is the conference report, rather than the bill as such.

MR. EBERHARTER: Mr. Speaker, if I may discuss the matter, under section 6518, chapter 527, I think it is, volume 5 of Cannon's Precedents, it is stated that the House bill with the Senate amendments must be on the floor of the House for consideration. As I see it, the Members are unable to obtain copies of the House bill.

THE SPEAKER: The Chair will say that both the bill and the conference report are here. The precedent in volume 5, section 6518, of Hinds' Precedents requires the official papers—the House bill and the Senate amendment—to be here. They are here at the desk at this moment, and there is no requirement that each Member have a copy. The point of order is overruled.

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3. 100 CONG. REC. 12399, 12425, 83d Cong. 2d Sess. See Rule XXVIII clause 2(a), *House Rules and Manual* § 912a (1997) which requires that such reports be printed in the Record, and thus affords Members the opportunity to examine a report prior to its consideration.

4. Joseph W. Martin, Jr. (Mass.).

Agreeing House To Take Custody of Papers

§ 24.3 The House agreeing to a conference normally takes possession of the original papers at the conclusion of the conference and acts first on the report.

On Dec. 19, 1963,[5] several Members were discussing the possibility of prompt action on the conference report anticipated on the foreign aid appropriations bill of 1964.

> MR. [CHARLES A.] HALLECK [of Indiana]: As I understand it, the other body having asked for the conference, if the conferees are able to agree on a conference report then we would get the papers first.
>
> MR. [OTTO E.] PASSMAN [of Louisiana]: That is my understanding. . . .
>
> MR. HALLECK: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER:[6] The gentleman will state it.
>
> MR. HALLECK: Mr. Speaker, in the event that the conference report is acted on first in the House, as we now understand it will be, would a motion to recommit with instructions be in order?
>
> THE SPEAKER: A proper motion would be.

5. 109 CONG. REC. 25249, 88th Cong. 1st Sess.
6. John W. McCormack (Mass.).

Failure of Managers To Take Possession of the Papers

§ 24.4 If the managers on the part of the House which agrees to a conference fail to take possession of the papers at the close of a conference, the other House may, since it has the papers before it, act first on the conference report.

On July 4, 1952,[7] after the House had completed debate on the conference report on S. 3066, to amend the defense housing laws, the following occurred:

> MR. [BRENT] SPENCE [of Kentucky]: Mr. Speaker, I move the previous question on the conference report.
>
> The previous question was ordered.
>
> MR. [ABRAHAM J.] MULTER [of New York]: Mr. Speaker, I offer a motion to recommit.
>
> THE SPEAKER:[8] The Chair will state to the gentleman from New York that a motion to recommit is not in order, the Senate having acted on the conference report.[9]
>
> MR. MULTER: Mr. Speaker, if they did, they acted improperly, because

7. 98 CONG. REC. 9379, 9380, 82d Cong. 2d Sess.
8. Sam Rayburn (Tex.).
9. 98 CONG. REC. 9216, 82d Cong. 2d Sess., July 3, 1952.

this should have been acted on in the House first.[10]

THE SPEAKER: The Chair is not aware that the Senate has acted improperly. We have received a message that they agreed to the conference report.

Order of Acting on a Conference Report and Course of Official Papers; Effect on Motion To Recommit

§ 24.5 While the House agreeing to the request for a conference normally acts first on the report, if conferees reach an agreement, an exchange of the official papers in conference can change the normal order of action on the report.

Where the managers on the part of the House had signed a conference report before their formal appointment, thus making the report, if called up, vulnerable to a point of order under Rule XXVIII clause 6,[11] the report was recommitted to the conference, by unanimous consent, so that an open meeting of the conferees could take place before signatures were affixed to the report. Discussion about the course of conference papers and the options available to the House acting first to recommit or instruct are excerpted from the proceedings of Mar. 25, 1980,[12] and are carried here.

RECOMMITTAL TO CONFERENCE OF S. 662, INTERNATIONAL DEVELOPMENT BANKS AUTHORIZATION

MR. [HENRY S.] REUSS [of Wisconsin]: Mr. Speaker, I ask unanimous consent to recommit the Senate bill, S. 662, to conference.

THE SPEAKER PRO TEMPORE:[13] Is there objection to the request of the gentleman from Wisconsin? . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Further reserving the right to object, Mr. Speaker, I would like to make a further parliamentary inquiry.

If this request is granted, the House is then asking the other body for a conference. At that point it allows the other body to act first under the rules, and that would preclude a motion to recommit with instructions on the part of any Member of the House. Is that correct?

THE SPEAKER PRO TEMPORE: This request would not change the order of consideration of the new report. It merely asks for a recommital of the conference report to the same conference.

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10. The Senate requested the conference on this measure on July 3, *Id.* at pp. 9048, 9049, and the House agreed thereto on the same date, *Id.* at p. 9216.

11. See *House Rules and Manual* § 913d (1997).

12. 126 CONG. REC. 6429–31, 96th Cong. 2d Sess.

13. John P. Murtha (Pa.).

MR. BAUMAN: If the motion is granted, is a motion to recommit or a motion to instruct in order at this time?

THE SPEAKER PRO TEMPORE: The House would still act first on the conference report.

MR. BAUMAN: Further reserving the right to object, the gentleman from Maryland, knowing the outcome of the consideration of the conference, would very much like to make a motion to instruct but does not have one prepared at this time.

THE SPEAKER PRO TEMPORE: The Chair advises that would not be in order at this time in any event.

MR. BAUMAN: That was the question the gentleman put to the Chair, whether a motion to instruct would be in order at this time. The Chair says "No." If this request is not granted and a point of order is made against the consideration of the conference report, as the gentleman from Wisconsin suggested, it might be that no motion to instruct would be in order under rule XXVIII at that time, would it?

THE SPEAKER PRO TEMPORE: If a point of order were sustained under clause 6 to rule 28 a new conference would be considered as requested and conferees appointed without intervening motion and the Senate would probably agree to a new conference and would probably act first on the new conference report. . . .

If this request is granted to recommit the conference report, the motion to recommit would be protected for the minority.

MR. BAUMAN: But if the other body acts, Mr. Speaker, that precludes a motion to recommit with instructions; does it not?

THE SPEAKER PRO TEMPORE: If this goes back to the same conference the other body, of course, does not have to agree to a request for a new conference.

MR. BAUMAN: But the other body can act first, thereby precluding any motion to recommit?

THE SPEAKER PRO TEMPORE: If the papers are traded in conference, that is possible, but not the normal sequence. . . .

MR. BAUMAN: Mr. Speaker, further reserving the right to object, is it within the province of the senior conferee to return the papers to this House for action first, in order to protect a motion to recommit?

MR. REUSS: Mr. Speaker, if the gentleman will yield, that is absolutely right. That would be the normal course.

MR. BAUMAN: Mr. Speaker, further reserving the right to object, do I have the guarantee of the gentleman from Wisconsin that that will be his course of action?

MR. REUSS: Yes, the gentleman does. . . .

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

There was no objection.

Parliamentarian's Note: Under Rule XXVIII, if a point of order is sustained against a report under clause 6(b), the report is deemed to be rejected, and the Speaker appoints new conferees without intervening motion, thus precluding a motion to instruct.

Transmittal of Conference Papers

§ 24.6 In rare circumstances conference papers may be informally exchanged between the House and Senate, to accommodate a particularly tight legislative schedule; and on one occasion the House, which was scheduled to act first on a report, informally left the papers with the Senate at the conclusion of the conference and after the Senate acted on a motion to recommit (which was defeated) the papers were given (not messaged to) to the House which acted first on the report.

When papers are transferred in an informal fashion there is no indication in the Record of the transaction. The first message shown in the *Congressional Record* occurred when the House informed the Senate that it had adopted the conference report. After the Senate had rejected the motion to recommit, and relinquished the papers to the House, it continued to debate the conference report. The excerpt from the proceedings of July 14, 1988,[14] follows:

DEPARTMENT OF DEFENSE AUTHORIZATION ACT—CONFERENCE REPORT—FISCAL YEAR 1989

THE ACTING PRESIDENT PRO TEMPORE:[15] Under the previous order, the Senate will now proceed to the consideration of the conference report on H.R. 4264, which the clerk will report.

The legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4264) to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

THE ACTING PRESIDENT PRO TEMPORE: Without objection, the Senate will proceed to the consideration of the conference report.

Under the previous order, the Senator from Indiana, Mr. Quayle, is recognized to offer a motion to recommit. The Senator from Indiana.

MOTION TO RECOMMIT

MR. [DAN] QUAYLE [of Indiana]: Mr. President, I send a motion to recommit

14. 134 CONG. REC. 18277, 18281, 18286, 18411, 100th Cong. 2d Sess.
15. Richard C. Shelby (Ala.).

to the desk and ask for its immediate consideration.

THE ACTING PRESIDENT PRO TEMPORE: The clerk will report.

The legislative clerk read as follows:

> The Senator from Indiana [Mr. Quayle] moves to recommit the pending conference report with instructions that the Senate conferees insist on a position more favorable to the Senate position on ICBM modernization, SDI, Poseidon SSBNs, depressed trajectory missile testing, and nuclear testing, and that in addition the amendments authorized be changed to eliminate those items not requested nor estimated for in the President's budget, with the resulting savings to be apportioned to readiness and sustainability programs that will enhance conventional deterrence forces.

THE ACTING PRESIDENT PRO TEMPORE: The Senator from Indiana. . . .

Under the previous order, the question is on agreeing to the motion to recommit the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll. . . .

The motion to recommit was rejected. The Senate then informally relinquished possession of the papers to the House and continued to debate the report.(16)

Later, in the House:

> CONFERENCE REPORT ON H.R. 4264, NATIONAL DEFENSE AUTHORIZATION ACT, FISCAL YEAR 1989
>
> MR. [LES] ASPIN [of Wisconsin]: Mr. Speaker, pursuant to the provisions of House Resolution 492, I call up the conference report on the bill (H.R. 4264) to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.
>
> The Clerk read the title of the bill.

Where Transmittal of Conference Papers Does Not Follow Normal Practice

§ 24.7 It is customary, at the conclusion of a successful conference, for the asking House to surrender the original papers to the agreeing House, so that the latter may act first on the report; but failure to follow this usual order does not specifically violate a rule.

At the conclusion of the successful conference on H.R. 3982, the Omnibus Reconciliation Act of 1981, the Senate retained the original papers for a period of time, and did not give them to the House conferees to file them in the House with the conference report. They were later delivered separately to the House, by the Senate

16. 134 CONG. REC. 18411, 100th Cong. 2d Sess., July 14, 1988.

messenger, and were filed at the Speaker's table.

On July 31, 1981,[17] a parliamentary inquiry was addressed to the Speaker, as follows:

MR. [BRUCE F.] VENTO [of Minnesota]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[18] The gentleman will state it.

MR. VENTO: Mr. Speaker, I inquire of the Chair whether the papers of the reconciliation package, H.R. 3982, are in the possession of the House.

THE SPEAKER PRO TEMPORE: Yes, they are.

MR. VENTO: Mr. Speaker, I would further inquire, is it customary for these papers to remain in the possession of the House at the conclusion of a conference committee, and in this instance, were they retained at the conclusion of the conference committee, or were they more recently delivered to the House?

THE SPEAKER PRO TEMPORE: Yes, the Chair would say to the gentleman, it is customary for the papers to be transferred to the House which agree to the conference—and is to act first on the report—at the conclusion of a successful conference.

MR. VENTO: In this case, Mr. Speaker, were the papers retained by the House conferees on the matter of the reconciliation conference?

THE SPEAKER PRO TEMPORE: Evidently not, because they were brought back to the House this morning at about 9:15 by a messenger from the other body.

MR. VENTO: Mr. Speaker, in other words, this violated one of the tenets that we have in terms of consideration.

I thank the Chair.

THE SPEAKER PRO TEMPORE: The Chair would advise the gentleman that this deviated from custom but did not especially violate the rules of the House.

Parliamentarian's Note: Jefferson's Manual, in section 555, states that the conferees of the asking House are to surrender the original papers to the conferees of the other House at the conclusion of a successful conference. Of concern to some Members in the instance which generated the inquiry by Mr. Vento was the possibility that the Senate, by retaining the papers, could then, by motion, recede from its amendment to the House bill, clearing the Reconciliation Act for the President's signature and preventing the House from taking further action—a course advocated by some Members who wished to address the issue of Social Security minimum benefits as part of the reconciliation package.

Senate: Discharging a Matter in Conference

17. 127 CONG. REC. 18884, 18885, 97th Cong. 1st Sess.

18. Barney Frank (Mass.).

§ 24.8 The Senate having possession of the original papers on a House bill with Senate amendments on which it had earlier asked for and the House had agreed to a conference thereon, subsequently agreed to a motion that the Senate further insist on its amendment, thereby discharging its conferees and sending the papers back to the House for possible disposition by privileged motion, the stage of disagreement having been reached.

Instance where the Senate insisted on its amendment to a bill already "in conference," managers from both Houses having been appointed. The message from the House and the motion offered by the senior Senate conferee on Dec. 18, 1982,[19] are carried here as illustrative of a rarely used practice.

Parliamentarian's Note: In Senate practice, there is a difference between "receiving a message from the House" which occurred in this instance on Dec. 13, 1982,[20] and "laying before the Senate a message from the House," which was the incident that made the request of Mr. Strom Thurmond, of South Carolina, timely. Normally, when a matter is in conference, only the conferees can by a proper motion in the conference, make the official papers available for action.

[From the *Congressional Record* of the Senate proceedings on Dec. 13, 1982.]

MESSAGES FROM THE HOUSE

At 12:10 p.m. [on Dec. 13, 1982], a message from the House of Representatives, delivered by Mr. Gregory, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 3963) to amend the Contract Services for Drug Dependent Federal Offenders Act of 1978 to extend the periods for which funds are authorized to be appropriated; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. Rodino, Mr. Hughes, Mr. Kastenmeier, Mr. Conyers, Mr. Glickman, Mr. Sawyer, Mr. Fish, and Mr. Kindness as managers of the conference on the part of the House. . . .

On Dec. 18, 1982, the message was laid before the Senate.

CONTRACT SERVICES FOR DRUG DEPENDENT FEDERAL OFFENDERS ACT

MR. THURMOND: Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3963.

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19. 128 CONG. REC. 32270, 97th Cong. 2d Sess.

20. *Id.* at p. 30183.

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

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 3963) entitled "An act to amend the Contract Services for Drug Dependent Federal Offenders Act of 1978 to extend the periods for which funds are authorized to be appropriated," and agree to the conference asked by the Senate on the disagreeing votes of the two Houses thereon.

MR. THURMOND: Mr. President, this concerns the crime package. I move that the Senate further insist on its amendment to H.R. 3963.

THE PRESIDING OFFICER:[1] The question is on agreeing to the motion of the Senator from South Carolina (Mr. Thurmond).

The motion was agreed to.

MR. THURMOND: I move to reconsider the vote by which the motion was agreed to.

MR. [WILLIAM] PROXMIRE [of Wisconsin]: I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MR. THURMOND: Mr. President, I thank the Senator from Ohio for yielding.

House Action Where Senate Discharged Its Conferees and Insisted on Disagreement

§ 24.9 The Senate, having discharged its conferees by further insisting on disagreement to its amendment to a House bill in conference, messaged this action to the House; and there the original manager of the bill offered a privileged motion to recede and concur in the Senate amendment with an amendment.

On Dec. 20, 1982,[2] a motion was made in the House to take from the Speaker's table a House bill with a nongermane Senate amendment which had previously been sent to conference, and to recede from disagreement and concur with a further amendment. The Senate amendment—a "crime package" which had been added in the Senate to a bill dealing with drug offenders—was very long, and rather than face an arduous reading thereof, Mr. William J. Hughes, of New Jersey, withdrew his motion. The proceedings were as indicated below:

MR. HUGHES: Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 3963) to amend the Contract Services for Drug Dependent Federal Offenders Act of 1978 to extend the periods for which funds are authorized to be appropriated, with the Senate

1. David F. Durenberger (Minn.).

2. 128 CONG. REC. 32886, 97th Cong. 2d Sess.

amendment thereto, recede from disagreement to the Senate amendment, and agree to the Senate amendment with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment.

The Clerk proceeded to read the House amendment to the Senate amendment.

MR. HUGHES: Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE SPEAKER PRO TEMPORE:[3] Is there objection to the request of the gentleman from New Jersey?

MR. [ROBERT S.] WALKER [of Pennsylvania]: I reserve the right to object.

THE SPEAKER PRO TEMPORE: The gentleman from Michigan reserves the right to object to considering the amendment as being read and printed in the Record.

MR. WALKER: Mr. Speaker, I reserve the right to object. It is a little hard to tell in the House, with all the loud noise, just exactly what we are doing.

Is the gentleman considering to go to conference?

MR. HUGHES: No, if the gentleman will yield, I asked to take from the Speaker's table the bill (H.R. 3963) to amend the Contract Services for Drug Dependent Federal Offenders Act of 1978 to extend the periods for which funds are authorized to be appropriated, with the Senate amendment thereto, recede from disagreement to the Senate amendment, and agree to the Senate amendment with an amendment.

MR. WALKER: Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from New Jersey to consider the amendment as read and printed in the Record?

MR. CONYERS: Mr. Speaker, might the chairman of the Subcommittee on Crime explain what is involved in the Senate amendment or amendments from which he is receding?

MR. HUGHES: Mr. Speaker, if the gentleman will yield, I am going to explain that in the text of my remarks.

MR. [JOHN] CONYERS [Jr., of Michigan]: Mr. Speaker, I object.

MR. HUGHES: Will the gentleman let me explain, if I might?

MR. CONYERS: That is all right, I object.

THE SPEAKER PRO TEMPORE: Objection is heard.

The Clerk will continue to read the amendment.

The Clerk continued to read the House amendment to the Senate amendment.

MR. HUGHES (during the reading): Mr. Speaker, I withdraw the motion.

PARLIAMENTARY INQUIRY

MR. CONYERS: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. CONYERS: Mr. Speaker, does that request have to be made in the form of a motion?

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3. Thomas S. Foley (Wash.).

THE SPEAKER PRO TEMPORE: No, it does not.

MR. CONYERS: Further parliamentary inquiry, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. CONYERS: Does the request have to receive unanimous consent?

THE SPEAKER PRO TEMPORE: No. It is a matter of right to withdraw the motion in the House prior to action thereon.

Asking House May Retain Papers and Act First

§ 24.10 On one occasion the Senate, having asked for a conference, retained the official papers at the successful conclusion of the conference (instead of following the customary practice of surrendering them to the agreeing body) and acted first on the report.

On Oct. 20, 1965,[4] Mr. George H. Fallon, of Maryland, called up the conference report on S. 2300, the Rivers and Harbors Authorization Act of 1965. Although the Senate had requested this conference[5] and the House had agreed thereto,[6] the Senate conferees retained the official papers and the Senate acted first on the report, voting its approval on Oct. 19, 1965.[7] During the debate on the conference report, Mr. William C. Cramer, of Florida, made these remarks concerning the actions of the Senate:

> If we thus let them subvert the rules of this House, which are very clear, that the party asking for the conference, the other body has the right to act first on the conference report. . . .
>
> In conference a member of the conferees asked the chairman the question: "Is it not true that the other body, the Senate, having asked for this conference, we, the House, have a right to the papers and to act first?" The answer was "Yes" by the chairman of the conference, the distinguished Senator from Michigan, Mr. McNamara.

Action on Amendments in Disagreement While Conference Is in Progress

§ 24.11 Where a conference is in progress, the House which is in possession of the official papers may unilaterally discharge its conferees and act on the amendments in disagreement.

4. 111 CONG. REC. 27698–708, 89th Cong. 1st Sess.
5. 111 CONG. REC. 24841–49, 89th Cong. 1st Sess., Sept. 23, 1965.
6. 111 CONG. REC. 25074, 89th Cong. 1st Sess., Sept. 24, 1965.
7. *Id.* at pp. 27346, 27347, 27360.

The controversial issue of whether there should be a federal employee pay cap attached to the further continuing appropriation bill, fiscal 1981 (H.J. Res. 637) could not be resolved between the Houses as the adjournment of the 96th Congress, 2d Session approached. The sequence of events leading to this impasse are shown in the Calendar of the House of Representatives for the 96th Congress, as follows:

> . . . Senate agreed to House amendment to Senate amendment No. 7 with an amendment Dec. 13 (Legislative day of Nov. 20), 1980. Senate insisted on its amendment and asked for a further conference Dec. 13 (Legislative day of Nov. 20), 1980. House agreed to a further conference Dec. 13, 1980. Senate further insisted on its amendment to House amendment to Senate amendment No. 7 Dec. 15 (Legislative day of Nov. 20), 1980.

The unusual Senate action carried here as taken from the Record of Dec. 15, 1980,[8] was the last legislative act involving that bill.

> MR. [WILLIAM] PROXMIRE [of Wisconsin]: . . . Mr. President, I ask unanimous consent that the Senate further insist upon its amendment to the House amendment to the Senate amendment No. 7 to House Joint Resolution 637.
>
> THE PRESIDING OFFICER:[9] Is there objection?
>
> Without objection, it is so ordered.
>
> MR. [THEODORE F.] STEVENS [of Alaska]: Mr. President, that disposes of returning House Joint Resolution 637. It does not dispose of House Joint Resolution 644. I might state we have all been involved in negotiations concerning this bill. It is my understanding that the new resolution would continue the expenditure levels of the Federal Government at the 1980 level or the House level, whichever is lower . . .

Parliamentarian's Note: There are few precedents for the type of action taken by the Senate. The House has taken a similar action by the adoption of a rule on at least one occasion. See 5 Cannon's Precedents § 6526.

Version of Report of House Acting First

§ 24.12 *Parliamentarian's Note:* When the Senate acts first on a conference report, it is the Senate version of the report (the copy of the conference report signed first by the Senate managers) which is messaged to the House with the other original pa-

8. 126 CONG. REC. 34221, 96th Cong. 2d Sess.

9. George J. Mitchell (Maine).

pers and is before the House for action.[10]

Progression of Conference "Official Papers"

§ 24.13 Where conferees report in total disagreement, the papers are normally retained by the asking House so that it may act first on the matter in disagreement; but where the only matter remaining in disagreement is an amendment of the asking House, which cannot amend its own amendment, the papers may be transferred so that the agreeing House may address the disagreement by amending.

The conference agreement brought before the House on Oct. 7, 1975, was the second report dealing with amendments in disagreement on H.R. 8121, the State, Justice, Commerce, and the Judiciary appropriations for fiscal 1976. This second report dealt with the sole remaining Senate amendment in disagreement, and the conferees agreed to recommend a further amendment to that amendment. Since the Senate could not amend its own amendment, the report was filed in disagreement, the House retained the papers and acted first on the managers recommendation.

The form of the report, the Senate amendment in disagreement, and the House action thereon are shown in the *Congressional Record* excerpt and the relevant parts of the statement of the managers are carried here:[11]

CONFERENCE REPORT (H. REPT. NO. 94–527)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate numbered 8 to the bill (H.R. 8121) "making appropriations for the Departments of State, Justice, and Commerce, the judiciary, and related agencies for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, and for other purposes," having met, after further full and free conference, have been unable to agree.

JOHN M. SLACK . . .

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE . . .

TITLE I—DEPARTMENT OF STATE

General provisions—Department of State

Amendment No. 8: Reported in technical disagreement. The managers on the part of the House will offer a motion as follows:

10. *Deschler's Procedure* (93d Cong.), Ch. 33 § 18.3.

11. 121 CONG. REC. 31510, 94th Cong. 1st Sess., Oct. 2, 1975.

Restore the matter stricken by said amendment amended to read as follows:

"SEC. 104. It is the sense of the Congress that any new Panama Canal treaty or agreement must protect the vital interests of the United States in the Canal Zone and in the operation, maintenance, property and defense of the Panama Canal."

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

When the report was called up and read on Oct. 7, 1975, the Speaker[12] laid down the amendment in disagreement.[13]

The Clerk read the Senate amendment, as follows:

Senate amendment No. 8: Page 16, line 18, strike out:

"SEC. 104. None of the funds appropriated in this title shall be used for the purposes of negotiating the surrender or relinquishment of any U.S. rights in the Panama Canal Zone."

MOTION OFFERED BY MR. SLACK

MR. [JOHN M.] SLACK [of West Virginia]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Slack moves that the House recede from its disagreement to the amendment of the Senate numbered 8 and concur therein with an amendment, as follows: Restore the matter stricken by said amendment amended to read as follows:

"SEC. 104. It is the sense of the Congress that any new Panama Canal treaty or agreement must protect the vital interests of the United States in the Canal Zone and in the operation, maintenance, property and defense of the Panama Canal."

PARLIAMENTARY INQUIRY

MR. [JOHN J.] FLYNT [Jr., of Georgia]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. FLYNT: Mr. Speaker, is a division of the question in order?

THE SPEAKER: Yes, a request for a division of the question is in order.

MR. FLYNT: Mr. Speaker, I demand a division of the question.

THE SPEAKER: The question will be divided.

§ 25. Points of Order

Prior to 1979, points of order against conference reports were raised or reserved after the report was read[14] and before the joint statement of the managers was read.[15] It was too late to raise a point of order once debate had begun on a conference report.[16] When a point of order was reserved prior to the reading of the statement it could be raised after the statement is read.[17] However,

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12. Carl Albert (Okla.).

13. 121 CONG. REC. 32064, 94th Cong. 1st Sess.

14. §§ 25.5, 25.6, infra.

15. § 25.6, infra.

16. § 25.16, infra.

17. § 25.13, infra.