

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

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Senate Amendment Process: General Conditions and Principles

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May 19, 2008

Abstract. The amending process in the Senate provides lawmakers an opportunity to make changes in the text of a measure (or pending amendment) during its consideration. Senators generally have wide freedom to offer as many amendments as they want, including nongermane changes. In fact, an important feature of the Senate is that it lacks a general germaneness rule. This absence grants any Senator an opportunity to raise issues and to offer extraneous "riders" to pending legislation. However, Senators' freedom to amend and to offer nongermane amendments can be restricted in certain circumstances, such as when the Senate invokes cloture (which limits further debate on a measure) or agrees by unanimous consent to impose restrictions on the offering of amendments.

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The amending process in the Senate provides lawmakers an opportunity to make changes in the text of a measure (or pending amendment) during its consideration. Senators generally have wide freedom to offer as many amendments as they want, including nonrelevant changes. In fact, an important feature of the Senate is that it lacks a general germaneness rule. This absence grants any Senator an opportunity to raise issues and to offer extraneous “riders” to pending legislation. However, Senators’ freedom to amend and to offer nonrelevant amendments can be restricted in certain circumstances, such as when the Senate invokes cloture (which limits further debate on a measure and imposes a germaneness requirement on amendments) or agrees by unanimous consent to restrict the offering of amendments.

The Senate’s amending process can be complex, but it is subject to certain conditions and principles. Whether these conditions and principles apply in all circumstances may be problematic, because the Senate might waive them by the unanimous consent of the membership. The point to remember is that sometimes there may be a gap between amendment theory and senatorial practice. (For discussion of details associated with the *types* (perfecting and substitute), *degrees* (first degree and second degree), and *forms* (motions to strike, to insert, or to strike and insert) of amendments, see CRS Report 98-614, *Amendments in the Senate: Types and Forms* and CRS Report 98-853, *The Amending Process in the Senate*.)

General Conditions

A variety of general conditions influence the amending process. Three merit some mention. First, there are certain factors which affect any Senator’s eligibility to offer floor amendments. One factor is *spatial*. Are there any “limbs” (or places) left on the amendment tree? An “amendment tree” is one of several charts in *Senate Procedure: Precedents and Practices* that depict the number and effect of amendments that may be pending at the same time. Another factor involves *time*. Is the amending process regulated by a time-limitation agreement that may specify when or in what order amendments are to be offered and which limits debate on each one? Still another factor is *contextual*. For instance, are there formal (the imposition of cloture, for instance) or informal (the floor managers want to pre-approve changes to the pending measure) circumstances that impinge on the amending process?

Second, when a measure is the pending business on the floor, several amending practices are typically in play right at the outset. For example, (a) amendments are to be read unless the reading is dispensed with by unanimous consent. (b) Committee amendments, and amendments thereto, take priority over floor amendments to the bill. (c) The measure is open to amendment at any point (unless the Senate by unanimous consent decides to do it another way). Unlike the House, the Senate does not proceed section-by-section or title-by-title when it amends legislation. (d) Amendments may be debated at length subject to the invocation of cloture or the motion to table. Third, under Senate Rule XIX, the presiding officer is obligated to recognize the first Senator who addresses the chair. Senate precedents modify this stricture by granting priority recognition first to the majority leader, then to the minority leader, and then, respectively, to the majority and minority floor managers of the legislation. These preferential recognition precedents grant the majority leader the option to control the floor and to fill the amendment tree.

Principles

Senate Procedure outlines a number of principles that guide the amending process. Some of them include the following:

- The original text of a measure is amendable in two degrees. (A first degree amendment is a change to the text of the bill; a second degree amendment proposes to change the first degree amendment.)
- Senators are free to modify or withdraw their amendments until the Senate takes “action” on them. Precedents stipulate, for instance, that action includes ordering the yeas and nays on the amendment. Sometimes Senators immediately get “action” on their amendment. The result: they may lose their right to modify their proposal but they gain the right to amend it. Under cloture, it requires unanimous consent for a Senator to modify his or her amendment.
- Any Senator may demand the division of an amendment if it contains separate and distinct parts that can stand on their own. However, under Senate Rule XV, any amendment to strike out and insert is not divisible. Under cloture, an amendment may not be divided by a Senator as a matter of right.

Worth another mention is the Senate’s principle of germaneness. There are four instances when the Senate may function with a germaneness requirement for amendments. They are as follows: Senate Rule XVI requires the germaneness of amendments to general (but not special) appropriations bills; when cloture has been invoked; if the Senate enters into a unanimous consent agreement that stipulates that amendments are to be either germane or relevant, or both; and when statutes such as the Congressional Budget Act of 1974 require that amendments be germane, in this case to concurrent budget resolutions and reconciliation bills.

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