



## **CRS Report for Congress**

# **How Measures Are Brought to the Senate Floor: A Brief Introduction**

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### **Summary**

Two basic methods are used by the Senate to bring legislation to the floor for consideration. The Senate, at the majority leader's request, grants unanimous consent to take up a matter, or agrees to his motion to proceed to consider it. Because the motion to proceed is subject to debate in most circumstances, it is less frequently used. Both methods are derived from the basic premise that the Senate as a body may decide what matters it considers. The Senate may also use the same two methods to bring up executive business (nominations and treaties). This report will be updated to reflect changes in Senate practice.

### **Introduction**

Most measures considered by the Senate are taken from its Calendar of Business, which lists measures available for floor consideration under the heading "General Orders." Usually, measures are placed on the calendar under General Orders when they are reported by the committee to which they have been referred. If a committee reports an original measure that was not previously referred to it, that measure is read twice before then being placed on the calendar. A measure may also be placed on the Calendar of General Orders immediately upon introduction. Normally, introduced measures are immediately read twice and referred to a committee. If objection is heard to a second reading on the same day, the measure is held over until the next day.<sup>1</sup> After a second reading, if objection is heard to further proceedings, the measure is not referred, but is placed directly on the Calendar of General Orders. Conference reports do not come up for consideration from the calendar. Instead they may be called up at anytime when the conference papers are filed at the "desk" in the Senate.

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<sup>1</sup> The "day" in question is a legislative day. A legislative day begins when the Senate convenes after an adjournment. Often, the Senate recesses, rather than adjourning, at the end of a day's session, so that a legislative day may continue for many calendar days.

Over the course of the Senate's history, the majority leader has increasingly acquired responsibility for arranging the schedule of the Senate's business. Although the presiding officer of the Senate is required to recognize any Senator seeking recognition, the practice of the Senate is to allow the majority leader (or minority leader) to have priority for recognition if seeking recognition at the same time as another Senator. Likewise, the majority leader (or his designee) is, by custom, the one who offers motions or makes unanimous consent requests concerning the floor agenda and scheduling, including the consideration of legislation or the time for the Senate to meet, recess or adjourn.<sup>2</sup>

In general, the rules of the Senate place a strong emphasis on the prerogatives of individual Senators, even at the expense of the majority.<sup>3</sup> As a result, the Senate and its agenda are greatly influenced by the preferences of individual Senators. Senators may exercise their prerogatives at any time, but comity and compromise often lead Senators to relinquish the opportunity to exercise their prerogatives fully. In exchange they enable the Senate to conduct its business more efficiently, and receive corresponding concessions in relation to the measure they favor.

## Unanimous Consent

Most measures reach the floor of the Senate when the Senate accepts a unanimous consent request to proceed to consider them, made by the majority leader (or his designee). Normally, before a majority leader requests unanimous consent, he will consult with interested Senators to ensure that no objection will be made. Although the measures taken up are generally those that have been placed on the calendar, the Senate may, by unanimous consent, agree to take up any measure, whether it is already on the calendar, has been previously reported, or has even been introduced.

Unanimous consent agreements may provide for the Senate to immediately proceed to consider a measure or may be made in advance of actual consideration. The agreement may provide that the measure in question come up at a specific time in the future, or that the majority leader (usually in consultation with the minority leader) bring it up unilaterally at any time thereafter.

The request for consent to take up a measure is often made in a freestanding form, but sometimes it is part of a more extensive unanimous consent request that also sets terms for the measure's consideration. The majority leader often seeks to negotiate such terms in advance, placing limits on the ability of Senators to debate a measure or offer amendments, because the rules of the Senate place no general limits on such prerogatives. These negotiations are designed to produce unanimous consent agreements (sometimes

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<sup>2</sup> This custom was explicitly stated in the powersharing agreement at the beginning of the 107<sup>th</sup> Cong. (S.Res. 8), which observed that "in keeping with the present Senate precedents, a motion to proceed to any Legislative or Executive Calendar item shall continue to be considered the prerogative of the majority leader, although the Senate Rules do not prohibit the right of the Democratic leader, or any other Senator, to move to proceed to any item." For more information, see CRS Report RS21255, *Motions to Proceed to Consider in the Senate: Who Offers Them*, by Richard S. Beth.

<sup>3</sup> For more information, see CRS Report RL30850, *Minority Rights and Senate Procedures*, by Judy Schneider.

called “time agreements,” since one of their primary objectives is to limit the time available for debate) which govern consideration of a measure in place of the regular standing rules of the Senate.<sup>4</sup>

## Motions to Proceed

Alternately, the majority leader may instead offer a motion that the Senate proceed to consideration of a measure, particularly if he has been unable to negotiate a unanimous consent agreement to do so.<sup>5</sup> Although this motion requires only a simple majority for approval, in most situations it is debatable. As a result, the motion to proceed is itself susceptible to extended debate. Even before a measure can itself reach the Senate floor, there may be a filibuster on the question of whether the Senate should consider it at all.<sup>6</sup>

The majority leader may attempt to invoke cloture on the motion to proceed, but may still be faced with a filibuster against the underlying measure. Since 1959, the rules of the Senate have allowed cloture to be invoked on the motion to proceed regardless of the type of underlying measure.<sup>7</sup>

**Non-Debatable Motions to Proceed.** Under certain circumstances the motion to proceed is not debatable. In particular, the motion is non-debatable when offered on

- a conference report,<sup>8</sup> or amendments between the houses;<sup>9</sup>
- a measure considered pursuant to a rule making statute;<sup>10</sup> or

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<sup>4</sup> In the past, the majority leader would sometimes negotiate a time agreement in conjunction with a unanimous consent request to consider a measure, but this is no longer as common. For more on Senate procedure generally, see CRS Report 96-548, *The Legislative Process on the Senate Floor: An Introduction*, by Valerie Heitshusen.

<sup>5</sup> Under Rule XVII all reports of committees, including written reports accompanying bill and the bills themselves, must lie over one day before a motion to proceed to their consideration is in order. This does not apply to privileged measures, and can be superseded by unanimous consent or by two-thirds vote of the Senate.

<sup>6</sup> For more information, see CRS Report RL30360, *Filibusters and Cloture in the Senate*, by Richard S. Beth and Stanley Bach.

<sup>7</sup> From the time the cloture rule was first adopted in 1917 until 1949, the motion to proceed was not subject to cloture. From 1949 until 1959 cloture could be invoked on a motion to proceed except when the underlying measure would amend Senate rules.

<sup>8</sup> U.S. Congress, Senate, *Riddick's Senate Procedure*, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., S.Doc 101-28 (Washington: GPO, 1992), pp. 471, 731. (Hereafter referred to as *Riddick's Senate Procedure*.)

<sup>9</sup> *Ibid.*, pp. 1034-1035.

<sup>10</sup> Congress occasionally enacts legislation which provides special procedures for considering specific measures. One example is the Congressional Budget Act of 1974 which provides procedures for considering concurrent resolutions on the budget and reconciliations measures. These enactments are considered an exercise of the authority granted in Article I, Section 5 of the Constitution to each house to “determine the rules of its proceedings.” Some of these statutes specify that a motion to proceed to consider the measures they govern is non-debatable.

- during the morning hour.<sup>11</sup>

Although a non-debatable motion to proceed potentially could be made during the morning hour on a wide variety of measures, it is not a frequent occurrence. When the Senate adjourns it will routinely stipulate by unanimous consent that at the start of the next legislative day the morning hour be deemed to have expired, and thus, no motion to proceed be in order. Additionally, a motion made during legislative session to proceed to consider executive calendar business (described below) is also not debatable.

## **Holds<sup>12</sup>**

The practice of Senate majority leaders seeking advance clearance for unanimous consent to call up measures often serves to give them notice of potential objections to consideration from other Senators. A complex network of formal and informal avenues of information flows between the majority leader's office and those of all other Senators. This network is used to notify Senators of scheduling proposals from the majority leader's office, and in return to provide the majority leader's office with specific requests or objections of other Senators. Similar information flows through the minority leader's office.

Notifications of prospective objections to requests to take up a measure are referred to as holds. Senate rules provide a Senator placing a hold with at least two possible ways of enforcing it. First, if a unanimous consent request to consider a measure is made despite the hold, the Senator may object to the request. Because one objection suffices to defeat a unanimous consent request, the majority leader will frequently refrain from propounding the request on the floor when one or more Senators have made it known that they would object.

Second, if a request for unanimous consent meets objection, the majority leader may instead attempt to bring the measure up by offering a motion to proceed. Inasmuch as the motion to proceed is usually debatable, a Senator who wishes not to see the measure reach the floor may attempt to block its consideration by engaging in extended debate of this motion, a form of filibuster. Holds are given serious consideration by the majority leader when negotiating the Senate's floor agenda.

A hold is the prerogative of any Senator, and may be placed for any reason. In some cases, a hold may simply reflect a request by a Senator that he or she be given advance notice before a measure will be brought to the floor. In others, a hold may be part of a

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<sup>11</sup> Senate rules VII and VIII provide for a period of 2 hours known as "morning hour" at the beginning of each new legislative day. During the second hour, or if the routine business known as "morning business" is concluded before the end of the first hour, a non-debatable motion to proceed would be in order (although it may not be used to call up a the measure that would change Senate rules). If consideration of the measure called up by such a motion to proceed is not concluded before the end of morning hour it is returned to the Calendar and the previous unfinished business is laid before the Senate automatically. If there is no unfinished business, the Senate may continue to consider the measure taken up during morning hour.

<sup>12</sup> For more information, see CRS Report 98-712, "*Holds*" in the Senate, by Walter J. Oleszek.

complex negotiation over unanimous consent agreements covering consideration of one or more measures or even part of a deliberate plan to block consideration.

In recent years, there have been efforts to regulate or limit the use of holds. On September 14, 2007, President George W. Bush signed into law the Honest Leadership and Open Government Act.<sup>13</sup> Section 512 of the new law directs the majority and minority leaders of the Senate to recognize an anonymous hold only when procedures outlined in that section are followed by Senators.<sup>14</sup>

## Executive Business

Senate rules provide that executive business (i.e., treaties and nominations) be considered in executive session rather than in legislative session like other business of the Senate.

Under Rule XXV, treaties are referred to the Foreign Relations Committee, and, when they are reported, are placed on the executive business calendar. All treaties must lie over for one calendar day before any subsequent Senate consideration. Similarly, under Rule XXXI nominations must be referred to the appropriate committee, and cannot be voted on the same day they are received from the President, or on the same day they are reported, except by unanimous consent.

The majority leader will typically seek to obtain unanimous consent to go into executive session to consider specific executive business. However, a majority leader may alternatively make a motion to go into executive session which may specify a particular treaty or nomination to be considered. The motion to go into executive session is neither debatable nor amendable, and is highly privileged. It takes precedence over all motions except to adjourn or recess and is not subject to a motion to table. If the motion provides that the Senate go into executive session to consider a specific piece of executive business, the effect is to raise executive business for consideration by non-debatable motion.<sup>15</sup>

The Senate may agree to a request or motion to go into executive session without an item of executive business being specified. In that case, once the Senate is in executive session, it may proceed to specific executive business by unanimous consent or by motion, but the motion would be debatable.

Nominations are frequently considered *en bloc*, but only by unanimous consent. Upon objection by any Senator a nomination must be considered separately.

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<sup>13</sup> S. 1 (110<sup>th</sup> Congress), P.L. 110-81.

<sup>14</sup> For more on the provisions of section 512, see CRS Report RL34255, *Senate Policy on "Holds": Action in the 110<sup>th</sup> Congress*, by Walter Oleszek.

<sup>15</sup> Historically, the practice of the Senate was to consider all treaties or nominations in the order in which they appeared on the calendar of executive business, but more recent precedents have established that the Senate may consider these matters in any order it chooses. See *Riddick's Senate Procedure*, pp. 941-942, and U.S. Congress, Senate Committee on Foreign Relations, *Treaties and Other International Agreements: The Role of the United States Senate*, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., S. Prt. 106-71 (Washington: GPO, 2001), p. 137.