

BIPARTISAN PROPOSAL TO REFORM SENATE PROCEDURES

December 28, 2012

We propose the Senate adopt a Standing Order at the beginning of the next Congress, which would provide two additional alternatives to the existing rules for the Majority Leader to proceed to the consideration of a measure on the Senate Calendar. It also streamlines procedures relative to going to conference and consideration of nominations. The two additional methods for the Majority Leader to proceed, at his option, would sunset at the end of the 113th Congress. The current rule relative to proceeding to a bill would remain an option. We also propose a number of recommendations relative to current practices and comity including that the Leaders inform their conferences that existing rules which require Senators to come to the floor to debate or object to a matter will be enforced.

Highlights:

Two Additional Methods for the Majority Leader to Proceed, at his option

- 1) No filibuster of the motion to proceed (debate on the motion would be limited to 4 hours, equally divided.) The amendment tree could not be filled at the time the Senate proceeds to the consideration of such bills where this option is used. The process by which this option would be implemented is in attachment A. It includes a guaranteed amendment at the beginning of the bill's consideration for each of the following in the order indicated: the Minority Manager, the Majority Manager, the Minority Leader and the Majority Leader. (Those amendments would not be subject to amendment or division.)
- 2) When a cloture motion is filed that is signed by both the Majority Leader and the Minority Leader on a motion to proceed, and where the cloture motion is signed by at least five additional Senators from each caucus, the motion ripens after two hours of debate, equally

divided and, if cloture is invoked by three-fifths affirmative vote, there will be no post-cloture debate.

Going to Conference

3) All three initial motions relative to going to conference (insist, request, appoint) would be collapsed into one nondivisible motion. Cloture on such a motion would ripen after up to two hours of debate, equally divided, with no post-cloture debate if cloture is invoked.

Nominations

4) The list of nominees subject to the current expedited process of putting nominations directly on the Calendar (S. Res. 116, 112th Congress) unless a nomination is objected to by any Senator would be expanded by 531 nominations leaving 448 nominations to go through the traditional committee review process. Committee Chairs and Ranking Members would be able to strike nominations from the list of 531 before the Standing Order is put to a vote.

5) A cloture motion on nominations would ripen after up to two hours of debate, equally divided, with no post-cloture debate if cloture is invoked. This change would not apply to Cabinet Officers, Cabinet-level Officers, or Article III judges. However, relative to district court nominations, post-cloture consideration would be limited to 2 hours.

ATTACHMENT A

- 1) The first amendments in order to any measure shall be one amendment for each of the two Leaders and two Managers. Such amendments shall be offered in the following order: Minority Manager, Majority Manager, Minority Leader, Majority Leader. If an amendment is not offered in its designated order, the right to offer the amendment is forfeited.
- 2) Each paragraph 1 amendment must be disposed of before the next amendment may be offered.
- 3) Paragraph 1 amendments are not subject to amendment or division.
- 4) Each paragraph 1 amendment, if adopted, would be considered original text for purpose of further amendment.
- 5) No points of order would be waived by virtue of this procedure.
- 6) No motion to recommit shall be in order during the pendency of any amendment offered pursuant to paragraph 1.
- 7) Notwithstanding Rule XXII, if cloture is invoked before all paragraph 1 amendments are disposed of, any amendment in order under paragraph 1 but not considered upon the expiration of post-cloture time may be offered and is guaranteed up to 1 hour of debate, equally divided.

Current Practices and Comity

In addition to the adoption of the Standing Order, the leaders, at their respective conference meetings, should address changing some practices to make the Senate operate more efficiently. They should notify their members about the following:

- Leaders and bill managers should not honor requests to object or threats to filibuster on behalf of another Senator unless, after reasonable notice, that Senator comes to the floor and exercises his or her rights himself or herself. This also applies to all objections to unanimous consent requests. Members should be required to come to the floor and participate in the legislative process - to voice objections, engage in debate, or offer amendments.
- When the two cloakrooms send out hotlines agreed to by the two leaders, any Senator may object, but the Senator should lose his or her objection if, after appropriate notice, the Senator fails to object to the request on the floor the next session day.
- Rule XXII makes provision for 30 hours of debate after cloture is invoked. Within the 30 hours, Senators have strict limitations on the amount of time each Senator is allowed to speak. These limits should be enforced by the leaders and bill managers. Rule XXII further says, “After no more than thirty hours of debate...”, so 30 hours will be considered the outside limit of post-cloture debate time.
- When the Majority Leader or bill manager has reasonably alerted the body of the intention to do so and the Senate is not in a quorum call and there is no order of the Senate to the contrary, the Presiding Officer may ask if there is further debate, and if no Senator seeks recognition, the Presiding Officer may put the question to a vote. This is consistent with precedent of the Senate and with Riddick’s Senate Procedure, 1992. (See p. 716; see also footnotes 385 and 386 on p. 764) This can be done pre-cloture or post-cloture on any amendment, bill, resolution or nomination.