

CRS Report for Congress

Congressional Budget Resolutions: Motions to Instruct Conferees

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Summary

Both the House and the Senate have procedures whereby the full bodies may issue instructions to conferees on budget resolutions. Such instructions usually are issued in the form of a motion, but in at least one instance the Senate adopted a simple resolution containing such instructions. If a motion or resolution instructing conferees is agreed to, however, the instructions are not binding on the conferees and no point of order would lie against the conference report on the ground that the instructions had been violated.

The practices of the House and Senate regarding such motions differ markedly in key respects, including in terms of the frequency and number of motions and the prerogative to offer such motions

First, the House resorts to such motions regularly, having considered 17 such motions in 14 of the past 18 years (covering FY1991-FY2008). The House regularly used such motions in earlier years as well. During this period, the Senate instructed its conferees on only two budget resolutions, for FY2000 and FY2008. For earlier years, the Senate precedents only cite one instance when budget resolution conferees were instructed (for FY1979, when a simple Senate resolution was used).

Second, with a single exception, the House has considered only one motion per budget resolution, while the Senate considered five motions each during consideration of the FY2002 and FY2008 budget resolutions. The House considered multiple motions in connection with the FY2005 budget resolution.

Finally, the House regards the motion to instruct conferees strictly as a prerogative of the minority party, while the Senate does not. Seven of the 10 motions considered in the Senate were offered by Members of the minority, but two were offered by the chairman of the Senate Budget Committee and one by another Member of the majority.

In both chambers, the content of a motion may range from a broad statement of policy to a position focused more narrowly on one or a few issues. The nature of budget resolutions (i.e., largely broad statements of fiscal policy), nevertheless, tends to focus the content of motions to instruct conferees on broader issues.

Motions to instruct conferees are amendable in each chamber. During the 18-year period covered in this report, one motion was amended in the House (for FY1992) and an amendment to one motion in the Senate was withdrawn (for FY2000).

There is no clear pattern of acceptance or rejection of such motions in the House (eight were agreed to, eight were rejected, and one was vitiated after consideration); in the Senate, in each of the two years involved, four of the five motions were agreed to. This report will be updated as developments warrant.

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Congressional Budget Resolutions: Motions to Instruct Conferees

Background

The Congressional Budget Act of 1974 requires the House and Senate to reach agreement on at least one budget resolution each year.¹ In most years, the House and Senate initially pass separate versions of a budget resolution and then resolve their differences through regular conference procedures, but sometimes the differences have been resolved by means of the two chambers formally exchanging amendments.

When a conference procedure is used, both the House and the Senate have procedures whereby the full bodies may issue instructions to conferees on legislation.² Conferees are expected generally to uphold the positions reflected in the legislation that was passed by the chamber they represent. Motions to instruct the conferees usually urge them to support particular positions taken by their chamber, or urge them to oppose particular positions taken by the other chamber. It is not uncommon, however, for instructions to urge conferees of one chamber to recede to one or more positions of the other chamber.

If a motion (or resolution) instructing conferees is agreed to, the instructions are not binding on the conferees and no point of order would lie against the conference report on the ground that the instructions had been violated.³ As one scholar has noted:

...conferees may disregard the instructions, particularly when they feel the need for room to maneuver or compromise. The full House and Senate still have an opportunity to accept or reject the conference committee report on the bill, and

¹ For detailed information regarding the record of experience with budget resolutions, see CRS Report RL30297, *Congressional Budget Resolutions: Selected Statistics and Information Guide*, by Bill Heniff Jr. and Justin Murray. The House and Senate have adopted at least one budget resolution every year since 1975, except in 1998 (for FY1999), 2002 (for FY2003), 2004 (for FY2005), and 2006 (for FY2007).

² For information on these procedures generally, see CRS Report RS20209, *Instructing Senate Conferees*, by Richard S. Beth; and CRS Report 98-381, *Instructing House Conferees*, by Elizabeth Rybicki.

³ See *House Practice: A Guide to the Rules, Precedents and Procedures of the House* (108th Cong., 1st sess.) 2003, Chapter 13, Sec. 16, p. 344; and *Riddick's Senate Procedure: Precedents and Practices* (101st Cong., 2nd sess.), S.Doc. 101-28, 1992, p. 480.

a new conference may be requested if either house feels that its conferees have grossly violated their instructions or authority.⁴

Instructions to conferees on a budget resolution usually are issued in the form of a motion, but in at least one instance the Senate adopted a simple resolution containing such instructions.

House and Senate Practices

The practices of the House and Senate regarding motions to instruct budget resolution conferees differ markedly in key respects. Some of these differences are discussed below in terms of the frequency and number of motions and the prerogative to offer such motions. Several additional procedural issues also are discussed.

Frequency of Motions. The House resorts to such motions regularly while the Senate seldom uses them. As **Table 1** shows, the House considered 17 such motions in 14 of the last 18 years, covering FY1991-FY2008. (The table lists another motion, for FY2005, that a Member announced he would offer, but the House vitiated the motion before it was considered; accordingly, it is not reflected in the count.) The House regularly used such motions in earlier years as well.

During this period, the Senate instructed its conferees on only two budget resolution (for FY2000 and FY2008), as discussed in more detail below. For earlier years, the Senate precedents cite only one instance when budget resolution conferees were instructed (for FY1979, when a simple Senate resolution was used).⁵

Number of Motions. The House has considered only one motion per budget resolution, except for FY2005, when four different motions were considered. With regard to FY2005, three of the motions were rejected and the fourth was vitiated after consideration. (As indicated previously, one Member announced his intention to offer a fifth motion to instruct conferees on the budget resolution, but that motion was vitiated before it could be considered.)

On the two occasions that the Senate considered motions to instruct conferees on a budget resolution, five such motions were considered in each instance (see **Table 2**).

Prerogative to Offer Motion. The House regards the motion to instruct conferees strictly as a prerogative of the minority party. In 12 of the 13 instances identified in **Table 1** when only one motion was considered, the motion was made by the ranking minority member of the House Budget Committee; in the remaining

⁴ Oleszek, Walter J. *Congressional Procedures and the Policy Process* (7th ed.). CQ Press (Washington, DC: 2007), p. 267.

⁵ The Senate adopted S.Res. 562 on September 14, 1978, by a vote of 63-21. The measure instructed the Senate conferees on the second budget resolution for FY1979 to insist on the Senate position not to add \$2 billion for public works spending. See the remarks of Senator Edmund Muskie and others in the *Congressional Record* of September 13 and 14, 1978, at pages 29157-29158 and 29391-29403, respectively.

instance, the motion was made by another member of the minority party. With regard to the FY2005 budget resolution, all four of the motions considered were offered by Members of the minority party, two of them serving on the House Budget Committee. (The fifth motion, which was not considered by the House, also was offered by a member of the minority party.) A motion to instruct conferees, however, is subject to amendments offered by members of the majority party, as discussed below.

Seven of the 10 motions considered in the Senate were offered by Members of the minority, but two were offered by the chairman of the Senate Budget Committee and one by another Member of the majority.

Other Procedural Issues. In both chambers, the content of a motion may range from a broad statement of policy to a position focused more narrowly on one or a few issues. The nature of budget resolutions (i.e., largely broad statements of fiscal policy), nevertheless, tends to focus the content of motions to instruct conferees on broader issues.

A broadly-worded motion offered by Representative John Kasich to the FY1994 budget resolution, for example, instructed the conferees, “to agree to the highest level of deficit reduction, the lowest levels of budget outlays, and the lowest level of revenues within the scope on the conference without resorting to higher taxes on Social Security beneficiaries.”

A more narrowly drawn motion, offered by Representative Willis Gradison to the FY1990 budget resolution, instructed the conferees “to agree to Senate provision relating to the adoption of a joint resolution to amend the U.S. Constitution to require a balanced budget.”

While motions to instruct usually are briefly stated, they may involve more lengthy and complex instructions. A motion to instruct conferees on the FY2006 budget resolution offered in the House by Representative Stephanie Herseth, for example, contained several components dealing with the Medicaid program. Under the motion, the conferees were instructed:

- (1) to recede to the following findings of the Senate: (A) Medicaid provides essential health care and long-term care services to more than 50 million low-income children, pregnant women, parents, individuals with disabilities, and senior citizens; and (B) Medicaid is a Federal guarantee that ensures the most vulnerable will have access to needed medical services;
- (2) to strike reconciliation instructions to the Committee on Energy and Commerce and recede to the Senate by including language declaring that a reconciliation bill shall not be reported that achieves spending reductions that would (A) undermine the role the Medicaid program plays as a critical component of the health care system of the United States; (B) cap Federal Medicaid spending, or otherwise shift Medicaid cost burdens to State or local governments and their taxpayers and health providers; or (C) undermine the Federal guarantee of health insurance coverage Medicaid provides, which would threaten not only the health care safety net of the United States, but the entire health care system;
- (3) to recede to the Senate on section 310 (entitled “Reserve Fund for the Bipartisan Medicaid Commission”) of the Senate amendment; and
- (4) to make adjustments necessary

to offset the cost of these instructions without resulting in any increase in the deficit for any fiscal year covered by the resolution.⁶

Further, motions to instruct conferees are amendable in each chamber. During the 18-year period covered in this report, one motion was amended in the House (for FY1992) and an amendment to one motion in the Senate was withdrawn (for FY2000). In the House, a motion offered by Representative Willis Gradison (the ranking minority member of the House Budget Committee) regarding the FY1992 budget resolution was amended by a substitute offered by Representative Leon Panetta (the chairman of the House Budget Committee). In the Senate, Senator Pete Domenici (the chairman of the Senate Budget Committee) offered an amendment to a motion offered by Senator Edward Kennedy, but then withdrew it.

Finally, the pattern of acceptance or rejection of such motions differs by chamber.⁷ Of the 16 motions decided by a vote in the House, eight were approved and eight were rejected. The eight motions approved were decided either by a voice vote or a strong affirmative vote (the smallest margin of victory was 256 votes). The eight motions that failed were decided by closer margins, averaging 14 votes (the closest vote failed on a 209-209 tie).

In the Senate, in each of the two years involved, four of the five motions were agreed to. In total, five of the eight motions agreed to were decided by rollcall vote, but the margin of victory ranged from as few as seven votes to as many as 98 votes; the other three were agreed to by voice vote. With regard to the two motions that failed, the margins were relatively close: one was rejected by a vote of 44-51 and the other was tabled by a vote of 54-45.

⁶ See the *Congressional Record*, daily ed., vol. 151, April 26, 2005, p. H2509.

⁷ For commentary on how Members sometimes perceive acceptance or rejection of a motion to instruct conferees, see (1) Mark Wegner and Bill Ghent, "House Lawmakers Spin on Budget Vote to Instruct Conferees," *National Journal's CongressDaily AM*, April 2, 2003; and (2) Bud Newman and Brett Ferguson, "Budget Conference to Begin April 2 Amid Differences on Taxes, Spending," *BNA Daily Report for Executives*, April 2, 2003, page G-7.

Table 1. Motions to Instruct House Conferees on Budget Resolutions: FY1991-FY2008

Fiscal Year	Congress/ Session	H. Con. Res.	Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
1991	101 st , 2 nd	310	—	[none]	—	—	—
1992	102 nd , 1 st	121	Gradison ^a	To ensure that within the reserve fund areas specified in the Senate amendment, pay-as-you-go legislation will not harm working families and Medicare beneficiaries, and will adhere to the 1990 budget process agreement between President Bush and the Congress. ^a	Agreed to	Voice	05-09-91
1993	102 nd , 2 nd	287	Gradison	To agree to Senate provision relating to the adoption of a joint resolution to amend the U.S. Constitution to require a balanced budget.	Agreed to	322-66	05-06-92
1994	103 rd , 1 st	64	Kasich	To agree to the highest level of deficit reduction, the lowest levels of budget outlays, and the lowest level of revenues within the scope on the conference without resorting to higher taxes on Social Security beneficiaries.	Agreed to	413-0	03-25-93
1995	103 rd , 2 nd	218	Kasich	To agree to Senate provisions: reflecting a \$26 billion five-year deficit reduction by agreeing to reduce the total spending levels specified in the House-passed resolution by specified amounts; and providing no further cuts in defense spending if the President's defense budget request is approved.	Rejected	202-216	04-14-94

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Fiscal Year	Congress/ Session	H. Con. Res.	Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
1996	104 th , 1 st	67	Sabo	To agree to revenue levels (within the scope of the conference) that exclude the revenue effects of the Contract With America Tax Relief Act and insist on House position regarding the Earned Income Tax Credit.	Rejected	183-233	06-08-95
1997	104 th , 2 nd	178	Sabo	To agree to Senate provisions on: levels of discretionary spending; “balance billing” of Medicare patients by health care providers; federal nursing home quality standards; and protection under the Medicaid program against spousal impoverishment.	Rejected	187-205	05-30-96
1998	105 th , 1 st	84	Spratt	To agree to Senate provisions on limiting 10-year net cost of tax cuts to \$250 billion and fair distribution of tax cuts.	Agreed to	Voice	06-03-97
1999	105 th , 2 nd	284	—	[none]	—	—	—
2000	106 th , 1 st	68	Spratt	To insist that tax cuts set forth in the reconciliation directives in the concurrent resolution be reported at the latest possible date within the scope of the conference and to require that the reconciliation legislation implementing these tax cuts not be reported any earlier to provide Congress with time to first enact legislation extending the solvency of the Social Security and Medicare trust funds.	Agreed to	349-44	04-12-99

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Fiscal Year	Congress/ Session	H. Con. Res.	Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
2001	106 th , 2 nd	290	Spratt	To insist that reconciliation legislation implementing tax cuts be reported no earlier than September 22, 2000, thereby allowing time to enact legislation establishing a universal prescription drug benefit, and that the House recede to the lower tax cuts in the Senate amendment.	Rejected	198-210	04-10-00
2002	107 th , 1 st	83	Spratt	To increase the funding for education in the House resolution to provide for the maximum feasible funding, provide that the costs for coverage of prescription drugs under Medicare not be taken from the surplus of the Federal Hospital Insurance Trust Fund, increase the funding provided for Medicare prescription drug coverage to the level set by the Senate amendment, and insist that the on-budget surplus set forth in the budget resolution for any fiscal year not be less than the surplus of the Federal Hospital Insurance Trust Fund for that year.	Rejected	200-207	04-24-01
2003	107 th , 2 nd	353	— ^b	[none] ^b	—	—	—
2004	108 th , 1 st	95	Spratt	To (1) eliminate the reconciliation instruction to the Committees on Agriculture, Education and the Workforce, Energy and Commerce, Transportation and Infrastructure, Veterans' Affairs, and Ways and Means contained in section 201(b) of the House resolution; (2) recede	Agreed to	399-22	04-01-03

Fiscal Year	Congress/ Session	H. Con. Res.	Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
				to the Senate on section 319 (entitled “Reserve Fund to Strengthen Social Security”) of the Senate amendment; and (3) adjust the revenue levels by the amounts needed to offset the cost of the instructions set forth in (1) and (2), without resulting in any increase in the deficit or reduction in surplus for any fiscal year covered by the resolution.			

Fiscal Year	Congress/ Session	H. Con. Res.	Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
2005	108 th , 2 nd	95 (S.Con. Res.)	Thompson (CA)	To recede to the Senate on the provisions contained in section 408 of the Senate concurrent resolution (relating to the pay-as-you-go point of order made applicable to all legislation increasing the deficit as a result of direct spending increases or tax cuts).	Rejected	209-209	03-30-04
			Moore	[same as above]	Rejected	208-215	05-05-04
			Pomeroy	[same as above]	Rejected	207-211	05-12-04
			Stenholm	To reject provisions that provide for an increase in the statutory debt limit.	Considered but vitiated ^c	—	05-19-04
			Price	[same as Thompson, Moore, and Pomeroy motions]	Vitiated ^d (not considered)	—	05-19-04
2006	109 th , 1 st	95	Herseth	To (1) recede to certain findings of the Senate with regard to the Medicaid program; (2) strike reconciliation instructions to the Committee on Energy and Commerce and recede to the Senate by including language declaring that a reconciliation bill shall not be reported that achieves spending reductions that would (A) undermine the role the Medicaid program plays as a critical component of the health care system of the United States; (B) cap Federal Medicaid spending, or otherwise shift Medicaid cost burdens to State or local	Agreed to	348-72	04-26-05

Fiscal Year	Congress/ Session	H. Con. Res.	Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
				<p>governments and their taxpayers and health providers; or (C) undermine the Federal guarantee of health insurance coverage Medicaid provides, which would threaten not only the health care safety net of the United States, but the entire health care system; (3) recede to the Senate on section 310 (entitled “Reserve Fund for the Bipartisan Medicaid Commission”) of the Senate amendment; and (4) make adjustments necessary to offset the cost of these instructions without resulting in any increase in the deficit for any fiscal year covered by the resolution.</p>			

Fiscal Year	Congress/ Session	H. Con. Res.	Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
2007	109 th , 2 nd	376	— ^b	[none] ^b	—	—	—
2008	110 th , 1 st	99	Ryan	To (A) recede from the revenue levels set forth in the House amendment; insist on the policy statement in section 401 of the House amendment to support the extension of such tax provisions as the child tax credit, extension of marriage penalty relief, extension of the 10 percent individual income tax bracket, extension of the research and experimentation tax credit, extension of the deduction for State and local sales taxes; and recede to section 210 of the Senate resolution which prohibits consideration of an increase in Federal income tax rates; (B) insist on the lowest possible levels of revenue within the scope of the conference in fiscal years 2011 and 2012; and make any commensurate adjustments in outlay levels; and (C) set forth a unified surplus of at least \$96 billion in FY2012 in resolving the differences between section 101(4) of the House amendment and section 101(4) of the Senate resolution.	Agreed to	364-57	05-08-07

Source: Prepared by the Congressional Research Service using data from the Legislative Information System.

a. The Gradison motion was amended by a Panetta substitute. The House failed, by a vote of 132-284, to move the previous question on the original Gradison motion.

- b. The House and Senate did not reach the conference stage during consideration of the FY2003 or the FY2007 budget resolutions.
- c. On May 19, 2004, the Speaker announced that the motion to instruct conferees offered by Representative Stenholm and debated by the House the previous day was vitiated; see the *Congressional Record* (daily ed.), vol. 150, May 19, 2004, p. H3259.
- d. On May 18, 2004, Representative Price, pursuant to House Rule XXII, Clause 7(c), announced his intention to offer a motion to instruct conferees on the budget resolution. The next day, the Speaker announced that the motion (which the House had not considered) was vitiated; see the *Congressional Record* (daily ed.), vol. 150, May 19, 2004, p. H3259.

Table 2. Motions to Instruct Senate Conferees on Budget Resolutions: FY2000 and FY2008

Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
FY2000 Budget Resolution (H.Con.Res. 68, 106th Cong., 1st sess.)				
Lautenberg	To include in the conference report provisions that would reserve all Social Security surpluses only for Social Security, and not for other programs (including other retirement programs) or tax cuts.	Agreed to	98-0	04-13-99
Domenici	To include in the conference report a Roth/Breaux modified amendment regarding Medicare reform and a section of the Senate-passed budget resolution regarding the use of on-budget surpluses for a prescription drug benefit.	Agreed to	57-42	04-13-99
Dodd	To include in the conference report a Dodd/Jeffords modified amendment to provide for an increase in the mandatory spending in the Child Care and Development Block Grant.	Agreed to	66-33	04-13-99
Dorgan	To include in the conference report provisions that would provide additional funding for income assistance for family farmers above the level provided in the Senate-passed resolution.	Agreed to	Voice vote	04-13-99
Kennedy	To include in the conference report provisions that would allow targeted tax relief for low- and middle-income working families, and reserve a sufficient portion of projected non-Social Security surpluses to extend significantly the solvency of the Medicare Hospital Insurance Trust Fund and modernize and strengthen the program. ^a	Rejected (tabled)	54-45	04-13-99

Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
FY2008 Budget Resolution (S.Con.Res. 21, 110th Cong., 1st sess.)				
Kyl	To insist that the final conference report include the Senate position to provide for a reduction in revenues, sufficient to accommodate legislation to provide for permanent death tax relief, with a top marginal rate of no higher than 35%, a lower rate for smaller estates, and with a meaningful exemption that shields smaller estates from having to file estate tax returns, and to permanently extend other family tax relief, so that American families, including farmers and small business owners, can continue to enjoy higher after-tax levels of income, increasing standards of living, and a growing economy, as contained in the recommended levels and amounts of Title I of S.Con.Res. 21, as passed by the Senate.	Agreed to	54-41	05-09-07
Gregg	To reject the House amendment that assumes a \$916 billion tax increase, the largest tax increase in U.S. history, and insist that the final conference report include in the recommend levels and amounts in Title I of S.Con.Res. 21, reductions in revenues commensurate with extending the existing tax policy: \$1,000 child tax credit; marriage penalty relief; 10% income tax bracket—so those earning \$15,000 or less continue to benefit from low tax rate; lower marginal rates for American families and small businesses (15%, 25%, 28%, 33%, and 35%); Earned Income Tax Credit relief for military families; adoption tax credit; dependent care tax credit; college tuition deduction; deduction for student loan interest; \$2,000 Coverdell Education IRA; 15% rate on capital gains and dividends; and death tax repeal.	Rejected	44-51	05-09-07
Conrad	To (A) insist on the Senate amendment with regard to to relief, which cuts taxes in the resolution by \$180 billion to provide for extension of the child tax credit, marriage penalty relief, and ten-percent bracket; reform of the estate tax to protect small businesses and family farms; extension of the adoption tax credit, dependent care tax credit, treatment of combat pay for purposes of EITC; and other tax relief; (B) insist on Section 303 of the Senate resolution that provides for tax relief, including extensions of expiring tax relief and refundable tax relief, provided that such legislation would not increase the deficit over the total of the period of fiscal years 2007-2012; and (C) insist on the Senate position that any additional revenues to	Agreed to	51-44	05-09-07

Sponsor of Motion	Nature of Instruction	Disposition	Vote	Date of Action
	meet these tax policies are achieved by closing the tax gap, shutting down abusive tax shelters, addressing offshore tax havens, and without raising taxes.			
Stabenow	To insist on including the Deficit-Neutral Reserve Fund for Energy Legislation in Section 307 of S.Con.Res. 21, as passed by the Senate.	Agreed to	Voice vote	05-09-07
Cornyn	To insist that the final conference report include the supermajority point of order against consideration of any bill, resolution, amendment, amendment between Houses, motion, or conference report that includes a Federal income tax rate increase, in order to protect the pocketbooks of working and middle-class families, college students, seniors, farmers, small business owners and entrepreneurs, and to promote the elimination of government waste, fraud, and abuse to reduce the deficit and offset new spending, as contained in section 210 of S.Con.Res. 21, as passed by the Senate.	Agreed to	Voice vote	05-09-07

Source: Prepared by the Congressional Research Service using data from the Legislative Information System.

a. A Domenici amendment to this motion was withdrawn