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Eight Mechanisms to Enact Procedural Change in the U.S. Senate

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In the past year, individuals both inside and outside of Congress have called for an examination of the U.S. Senate's procedural rules with an eye toward changing them. This *Insight* highlights eight parliamentary mechanisms that might be used to implement procedural change in the Senate and links to additional reading material on the subject.

The work of the U.S. Senate is regulated not just by its 44 standing rules but by multiple, sometimes overlapping, procedural authorities. At any given time, unanimous consent agreements, standing orders, statute, precedent, and provisions of the U.S. Constitution may also regulate the Senate as it processes its legislative and executive business. It is perhaps natural for those seeking changes to Senate procedures to think in terms of "amending Senate rules," but directly amending the standing rules of the Senate is only one way to affect chamber procedures. Because some Senate actions are, or may be, controlled by multiple authorities, it is sometimes possible to achieve the same procedural outcome using more than one parliamentary mechanism. While each mechanism may achieve identical ends, each may also have procedural advantages and disadvantages that make it a more or less desirable path for action in a given instance. Here are eight such mechanisms:

1. **Amend the standing rules.** Because the Senate is a "continuing body," its standing rules remain in force from Congress to Congress unless changed. A motion to proceed to consider a resolution (S.Res.) reported by a committee directly amending the Senate's standing rules is always debatable and requires one day's written notice. If a unanimous consent request for the immediate consideration of a resolution amending the standing rules is objected to, the resolution "goes over, under the rule" and is placed in a parliamentary status from which it is difficult to retrieve. Although agreeing to a rules change resolution requires only a majority vote, invoking cloture on such a resolution (which is fully debatable and subject to amendment) requires a vote of two-thirds of Senators present and voting, with a quorum present—67 if all Senators vote. It appears the same cloture threshold would likely apply to the motion to proceed to such a resolution. Direct amendments to the standing rules are also occasionally made by statute.
2. **Create or amend a standing order.** The Senate sometimes instead establishes chamber procedures by standing order. Standing orders have the same force as standing rules but are not codified in the rules. The *Senate Manual* lists major standing orders now in force.

Standing orders continue in effect until changed, unless the order specifies otherwise. They are frequently established by resolution but can also be ordered by unanimous consent. A motion to proceed to consider a reported resolution establishing a standing order is debatable, and invoking cloture on that motion, and on the measure itself, requires a three-fifths vote of the Senate—60 votes if there is not more than one vacancy—a lower threshold than required for cloture on resolutions proposing direct amendments to the standing rules.

3. **Unanimous consent.** More than any other parliamentary mechanism, the Senate uses unanimous consent (UC) agreements to process and establish the terms for considering floor business. Senate Rule V provides that any rule may be suspended without notice by unanimous consent unless the rules specify otherwise. Any Senator present on the floor when a consent request is propounded can object, including on another Senator's behalf, blocking the request. Once agreed to, a UC agreement may be subsequently altered in whole or in part by another such consent agreement.
4. **Establish a new precedent.** Senate procedural actions are also regulated by parliamentary precedent. Rulings of the presiding officer on the application of chamber rules are generally subject to an appeal to the full Senate. In most procedural circumstances, appeals are debatable. This fact operates as a significant bar to creating new precedent by appeal. When appeals are made in procedural circumstances which render them nondebatable, however—for example, after cloture has been invoked or when the appeal is made in relation to a nondebatable motion—no supermajority to limit debate is needed, and a majority can overrule the chair and establish a new understanding of what a Senate rule means or how it is applied.
5. **Enact a rulemaking statute.** The Senate sometimes enacts parliamentary rules in law, such as the Congressional Review Act and the Trade Act of 1974. Doing so requires two-chamber passage of a bill or joint resolution and presidential approval (or veto override). Rules changes might appear in a bill as introduced or be added by amendment. Calling up and reaching a final vote on legislation may each require a three-fifths vote for cloture, except if the measure directly amends the Senate's standing rules, in which case a two-thirds vote is necessary.
6. **Suspend the rules.** Rule V also makes in order a motion to suspend Senate rules, including rules in law, such as the Congressional Budget Act. A motion to suspend the rules does not permanently change Senate rules; it suspends them only in the specific case and in the exact manner specified in the motion. The motion to suspend requires one day's written notice before consideration, and its adoption is by a two-thirds vote, a quorum being present. Such motions are debatable, and a three-fifths cloture vote may be necessary to reach a final vote. Under a 2011 precedent, motions to suspend the rules are not in order postcloture.
7. **Amend the Constitution.** The Constitution establishes certain parliamentary rules for the Senate, including its business quorum and the requirement to maintain a journal. A constitutional amendment may be proposed by Congress by a two-thirds vote of each chamber or by a constitutional convention called for by two-thirds of the state legislatures. Such an amendment becomes part of the Constitution once ratified by three-fourths of the states. Joint resolutions proposing constitutional amendments are debatable and amendable. Successfully calling up such a measure and reaching a vote on it in the Senate could both require three-fifths vote for cloture.
8. **Voluntary action.** Significant procedural change can sometimes occur as a result of voluntary action undertaken by Senate leaders or groups of Senators acting collectively. In 2011, for example, Senate leaders entered into a voluntary informal agreement related

to extended debate and the offering of floor amendments. Such "gentlemen's agreements" are not procedurally enforceable, however.

For additional reading on mechanisms to change Senate procedures and recent related actions, see

- CRS Report R42929, *Procedures for Considering Changes in Senate Rules*;
- CRS Report R41342, *Proposals to Change the Operation of Cloture in the Senate*;
- CRS Report RL32843, *"Entrenchment" of Senate Procedure and the "Nuclear Option" for Change: Possible Proceedings and Their Implications*;
- CRS Report R42996, *Changes to Senate Procedures at the Start of the 113th Congress Affecting the Operation of Cloture (S.Res. 15 and S.Res. 16)*; and
- CRS Report R43331, *Majority Cloture for Nominations: Implications and the "Nuclear" Proceedings of November 21, 2013*.