



Fact Sheet on U.S. Senate Legislative Procedures

December 10, 2007

Editor's Note: Since 2000, HIMSS has advanced efforts to educate Members of Congress and their staff on key issues that are part of the on-going healthcare transformation. HIMSS members have begun to appreciate the somewhat unique methods that are used at the federal government level to either pass or hold up key legislation. Recently, some of these methods have been used to hinder progress on the Wired for Healthcare Quality Act of 2007. The purpose of this HIMSS Fact Sheet is to educate our members on these unique tools so that we can continue to successful support the on-going healthcare transformation.

The U.S. Senate has several methods to bring legislation to a floor vote as well as methods to stop a floor vote. Two methods, hotlines and holds, have received more attention in recent months. Much of the attention has come from U.S. Senator Tom Coburn, MD (R-OK) and the media. In fact, neither of these terms or practices appears in the U.S. Senate's official rules, but they are standard procedures that are utilized nearly every day the Senate is in session.

On September 14, 2007, President George W. Bush signed into law the Honest Leadership and Open Government Act (S. 1, 110th Congress). The bill addressed a wide variety of topics such as ethics, campaign finance, and lobbying. S. 1 also made a number of procedural revisions affecting the U.S. Senate. Section 512 of Title V of the new law (P.L. 110-81) specifically dealt with the issue of "holds." Holds are an informal custom of the Senate that, until enactment of S. 1, was mentioned neither in chamber rules or precedents nor in any statute.

A hold is a notice by a U.S. Senator to his or her party leader of an intention to object to bringing a bill or nomination to the floor for consideration. Their potency as a blocking, delaying, or bargaining device is linked to Senators' ability to conduct filibusters or object to unanimous consent (UC) agreements or requests. To be sure, it is ultimately up to the Majority Leader of the United States Senate—who sets the chamber's agenda after consulting various people—to decide whether, or for how long, he will honor a colleague's hold.

If the Majority Leader cannot get unanimous consent to bring up a measure or matter, then he can make a motion to call it up. That motion is subject to extended debate, but no Senator can, under the practices of the U.S. Senate, prevent the Majority Leader from

making that motion. The controversy that precipitated enactment of Section 512 involved secret or anonymous holds.

A “hotline” is an informal term for a request to members of the Senate to agree to allow a bill or resolution to be approved by the Senate without debate or amendment. A measure that is “hotlined” is recorded in the Congressional Record as a being agreed to by UC. Some hotlines can include amendments but limit debate and discussion and do not require individual votes on the amendment or the underlying bill.

During the 109th Congress (2005-2006), 341 bills and joint resolutions were passed by the Senate. According to the Congressional Research Service, only 21 of those bills received a roll call vote on the Senate floor. That means 94 percent of law making measures that were passed through the Senate were passed by UC or by voice vote. A large majority of these were hotlined and therefore excluded from full and open debate and the amendment process. In the 109th Congress, 1,408 bills, resolutions, or nominations were attempted to be hotlined, with as many as 40 measures being hotlined in a single day.

According to the Congressional Research Service, two Senators in particular worked for years to end the practice of lawmakers placing secret holds on measures or matters. Their goal was not to eliminate holds, but to infuse the custom with transparency and accountability so Senators would know which of their colleagues had holds on various bills or nominations. Knowing which Senator(s) has a hold on a measure or matter enables senatorial advocates of those proposals to meet with the “holder” to discuss whether, or under what circumstances, the hold might be lifted.

In 2006, for example, these two proponents of ending secret holds succeeded in winning adoption of an amendment to an ethics, lobbying, and rules reform package (S. 2349) that would end the practice by establishing a new standing order of the Senate. Like Section 512 of S. 1, their amendment required the majority and minority leaders to recognize a hold — called a “notice of intent to object to proceeding” — only if it was provided in writing by a Member of their caucus.

Holds do not have to be made public for six Senate session days following an objection to proceeding to a measure or matter. Therefore, there might be a surge of secret holds during the final few days of a legislative session.

Source:

Senate Policy on “Holds”: Action in the 110th Congress, Congressional Research Service Report for Congress.