

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue cap at the top. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The text is centered within the hourglass.

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Markup in Senate Committee: Choosing a Text

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September 10, 2007

Abstract. Although a bill may be subsequently amended on the Senate floor, committees have the prerogative of shaping legislation before consideration by the full chamber. Shaping legislation in committee formally occurs during a markup, when committee members meet to consider a text and change it through amendment. The chair of a committee usually takes the lead in scheduling and managing markups.

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Although a bill may be subsequently amended on the Senate floor, committees have the prerogative of shaping legislation before consideration by the full chamber. Shaping legislation in committee formally occurs during a markup, when committee members meet to consider a text and recommend amendments. This report explores the options committees typically exercise in choosing the markup text.¹ For more information on legislative process, see <http://www.crs.gov/products/guides/guidehome.shtml>.

Prior to a markup, a committee may hold hearings on an issue, a measure, or several related measures. For markup, the committee chooses one text as the basis for consideration. This could be a measure that has been formally introduced, or a draft text that has not yet been introduced.

Chairman's Authority

In leading a markup, the committee chair generally chooses the legislative vehicle and presents it for consideration and amendment. Although it is generally the prerogative of the chair to choose the text for markup, a chair often increases committee backing by selecting a measure, or developing a draft that includes provisions that other Senators support. If consulted on the development of a vehicle, Senators might develop a greater stake in the legislation. And although Senators always have the option of offering amendments during markup, it is generally regarded as easier to retain something already in the vehicle than to add it by way of amendment in markup. Committee support of the vehicle and amendments to it are critical, because it takes a majority vote, with a majority of the committee physically present, to report a measure to the Senate.

Any measure introduced in the Senate, or a House-passed measure received in the Senate, generally gets referred to committee. Committees may receive multiple measures on a particular legislative subject, and a committee might receive dozens of proposals in a "hot" area. A committee may select one of these proposals as the basis of its markup. Particularly in the Senate, measures are shaped exclusively by a full committee, rather than initially in a subcommittee. Reasons for this may include a decision to avoid duplication of effort between a subcommittee and the full committee; or scheduling conflicts, which increase the difficulty of obtaining quorums for subcommittee markups.

Subcommittee Consideration

Alternatively, a committee may choose an introduced measure that was first considered by a subcommittee. Senate committees sometimes send measures to subcommittee for initial examination, although such action is not required. Initial markup by subcommittee may be desirable due to the specialized expertise of subcommittee members, a perceived need to refine the choices for the full committee, or the crowded nature of full committee schedules.

When a subcommittee finishes considering a measure, it typically reports it back to the full committee. The subcommittee may report back the introduced bill, with any amendments, and the full committee could then use this measure as the basis of its deliberations. The subcommittee

¹ This report was written by Thomas P. Carr, formerly an Analyst at the Congressional Research Service. The listed author is available to respond to inquiries on the subject.

also may report back a new bill that incorporates the changes made during its markup; this new bill may then be marked up by the full committee.

Committee or Staff Drafts

Instead of an introduced measure, a committee may opt to mark up a draft text that has not yet been introduced. The draft may have a variety of different origins. Committee staff sometimes meet to discuss and suggest revisions to an introduced measure, or to consider issues and to develop legislative language, and then develop a staff draft that committee members use as the basis of the markup. This staff draft may have been developed primarily by majority-party staff, or it may be a bipartisan document.

In other cases the draft text is a chairman's mark, which consists of the recommendations of the committee chair. The chair's mark may have been prepared with significant input from other committee members, especially majority-party Senators. Another option is for the committee to mark up a plan submitted by a Senator on behalf of the administration, which reflects the President's initiative in a policy area.

Informal Consideration

Official markups may be preceded by unofficial ones to develop a consensus on legislation, or to choose, revise, or draft a measure. Markup vehicles often develop from these informal and private sessions. For instance, Senators on a committee sometimes meet in small groups or by party to discuss topics and suggest language for a text. The chair then prepares a draft that serves as the basis of the markup, and the markup itself might focus on outstanding issues and final changes to the language.

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