Congressional Research Service

Memorandum October 4, 2007

TO: Released with the permission of the requester

FROM: Valerie Heitshusen
Analyst on Congress and Legislative Process
Government & Finance Division

SUBJECT: Alteration and Correction of Legislation in Engrossment and Enrollment

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This memorandum responds to your request for information on engrossment and enrollment procedures in the House and Senate. After a brief description of each process, it discusses the circumstances and procedures under which legislation can be altered at each stage, including identification of the officers that are involved in this process and the recourse available if changes are made that do not accurately reflect chamber or congressional action.

In order to help illustrate the potential remedies available when an enactment is contested based on changes during enrollment, I have also attached a CRS Congressional Distribution Memorandum, *Constitutionality of the Deficit Reduction Act of 2005*, by Thomas J. Nicola (Legislative Attorney in the CRS American Law Division). This memo provides the relevant legal background and precedent for federal court decisions on a recent enactment, the constitutionality of which has been contested based on changes made during the enrollment process.

Engrossment and Enrollment: Definitions and Personnel

Engrossment is the printing of a bill (or resolution) in the form passed by the chamber of origin or of the amendments adopted to it in the second chamber. Once prepared, the engrossed measure is messaged to the other chamber to await action there. Enrollment, on the other hand, is the printing of a measure in the form finally agreed to by both chambers. Once signed by the Speaker of the House, and then by the President of the Senate — or their designees — an enrolled bill is presented to the President.[1]

Both engrossment and enrollment are carried out by House and Senate enrolling clerks, who are, respectively, overseen by the Clerk of the House and the Secretary of the Senate.

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[1] Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure*, 101st Cong., 2nd sess., S. Doc. 101-28 (Washington: GPO, 1992), p. 830.

These offices are empowered to make technical changes in measures during the engrossment and enrollment processes to ensure that the actions of the chamber are accurately reflected. They are authorized to make other changes only if directed to do so by their respective chamber. Enrollment occurs in the chamber in which the measure originated.

In regard to initial engrossment, current practice in the Senate involves a unanimous consent request by the majority leader — typically on the first day of a new Congress — that the Secretary of the Senate "be authorized to make technical and clerical corrections in the engrossments of all Senate passed bills and resolutions, Senate amendments to House bills and resolutions, Senate amendments to House amendments to Senate bills and resolutions, and Senate amendments to House amendments to Senate amendments to House bills or resolutions" for the duration of the Congress.[2] In the House, the floor manager of a bill often asks unanimous consent that in the engrossment of a bill, the "Clerk be authorized to correct section numbers, punctuation, cross-references, and the table of contents, and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending the bill."[3] No other House or Senate officers or congressional staff have the authority to make changes during this process.

The signature of the House Clerk or the Secretary of the Senate, as appropriate, is required on an engrossed bill to attest to its accuracy. For enrolled measures, the Speaker of the House and the Senate's presiding officer must sign each enrolled bill to confirm that the text reflects that which was passed by the House and Senate, respectively.[4]

Errors or Changes in Engrossment

If an error or a deliberate change occurs during the initial engrossment of a measure that has not yet been messaged to the other chamber, the chamber that has agreed to the measure may direct its appropriate officer (House Clerk or Secretary of the Senate) to re-engross the measure with technical corrections, but only by unanimous consent.[5] In addition, by

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[2] *Riddick's Senate Procedure*, p. 820. See, for example, *Congressional Record,* daily edition, vol. 153 (January 4, 2007), p. S8.

[3] See, for example, *Congressional Record,* daily edition, vol. 153 (May 17, 2007), p. H5355.

[4] Section 106 of Title 1 of the United States Code requires the signature of the House Clerk or Secretary of the Senate on, respectively, a House or Senate engrossed bill and the signature of each chamber's presiding officer on each enrolled bill. House Rule II, clause 2(d)(2), provides the House Clerk responsibility for the enrollment process in that chamber, and Senate Rule XIV, paragraph 5, gives the Secretary of the Senate express authority over the Senate's enrollment process. Each chamber may also designate someone other than the Speaker or President *pro tempore* to sign enrolled bills. (See, e.g., Senate Rule I, paragraph 3, and *Riddick's Senate Procedure*, p. 823.) Each chamber may also provide the presiding officer (or his or her designee) the authority to sign enrolled bills during recesses or adjournments. For example, see *Congressional Record* (daily edition), vol. 153, (January 4, 2007), p. S8, when the Senate grants, by unanimous consent, a request that the President of the Senate, the President *pro tempore*, and the Acting President *pro tempore* be authorized to sign enrolled measures when the Senate is in recess or adjournment. In the House, the Speaker may designate a Member to sign enrolled bills for a limited time, subject to House approval. *House Practice: A Guide to the Rules, Precedents and Procedures of the House*, by Wm. Holmes Brown and Charles W. Johnson (Washington: GPO, 2003), p. 760.

[5] *Riddick's Senate Procedure*, p. 820; *House Practice*, p. 760. This process for corrections also

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unanimous consent, the House may allow the Clerk to make designated substantive changes, but the Chair may require that the changes be read by the Clerk.[6]

If an engrossed bill (or resolution) does not accurately reflect the text agreed to by the chamber, but it has already been messaged to the other chamber, the chamber that agreed to it must request its return from the other chamber for re-engrossment. House practice is to do this by passing a resolution.[7] Senate practice is to request the return of papers from the House (and sometimes directing the Secretary of the Senate to make changes) via unanimous consent.[8] In the House, a Senate request for return of the papers is privileged, and, if the error is simply of preparation, it can be agreed to by majority vote. If, however, the Senate is requesting the papers to make a substantive change, the House must agree to the request by unanimous consent.[9]

Errors or Changes in Enrollment

If, in the initial enrollment of a measure, an error or change appears that does not accurately reflect congressional action on the measure, both chambers must agree to a concurrent resolution that directs the appropriate official to re-enroll the bill with specified changes. If the measure has already been presented to the President, the concurrent resolution must also request the President to return the bill to the chamber of origin.[10] The correction is made by the officer (House Clerk or Secretary of the Senate) of the chamber in which the measure originated, but the concurrent resolution directing that officer to make the specified changes can originate in either chamber.[11] Such a resolution is typically agreed to by unanimous consent.[12] The concurrent resolution may authorize substantive changes, but practice dictates that these changes may only be agreed to by unanimous consent.[13] If the

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[5] (...continued)
applies to an engrossed House amendment to a Senate measure (or vice versa) that has not yet been messaged to the other chamber.

[6] *House Practice*, p. 760.

[7] See, for example, H.Res. 1011 in the 109th Congress, that requested the return of H.R.503.

[8] See, for example, *Congressional Record,* daily edition, vol. 153 (June 27, 2007), p. S8368.

[9] *House Practice,* p. 761. If an error is a result of a Government Printing Office printing mistake, and as long as both chambers have not yet acted on the measure, a new "star print" may be printed that reflects the actual text passed by the chamber in question (*ibid*).

[10] *House Practice*, p. 764; *Riddick's Senate Procedure*, pp. 824, 446-447.

[11] *House Practice*, p.763. In the 109th Congress, for example, S.Con.Res.123 directed the House Clerk to correct H.R.5946, but S.Con.Res.112 directed the Secretary of the Senate to correct S.3693. Similarly, H.Con.Res.324 directed the Secretary of the Senate to correct S.1281, and H.Con.Res.502 directed the House Clerk to correct H.R.5682. A concurrent resolution for this purpose can be agreed to by one chamber before the measure in question has passed the other chamber (*ibid*).

[12] Unanimous consent is the typical method for agreeing to the resolution in the House, but it may also be agreed to under suspension of the rules or under the provisions of a special rule reported by the Rules Committee (*House Practice*, p. 764).

[13] *Riddick's Senate Procedure*, pp. 825-826. A House concurrent resolution to make changes is privileged in the Senate, but a Senate concurrent resolution to make changes is privileged in the Senate only if the changes are technical in nature. A Senate concurrent resolution making
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enrolled bill has been signed by the presiding officers, the resolution cancels their signatures.[14]

If an enrolled bill subsequently becomes law, any changes — to correct either an error in enrollment or an alteration of the measure between congressional passage and enactment — must be made in a new enactment. In this case, Congress could pass new legislation for the purposes of making "technical corrections" to a law that did not accurately reflect congressional intent due to clerical errors or other changes in the enrollment process.

In some circumstances, however, allegations have been made that irregularities in enrollment resulted in the enactment of a measure not in the form agreed to by both chambers. If Congress does not address the problem with a subsequent new enactment, the constitutionality of the measure may be challenged in federal court. The disposition of these cases may hinge on a variety of factors (including, for example, whether or not the party challenging the law has standing to do so). When the courts have addressed such issues in the past, they have frequently relied on a 1892 Supreme Court ruling, announced in *Marshall Field & Co. v. Clark*, 143 U.S. 649, called the enrolled bill rule. This rule provides that the courts do not "look behind" the enrollment process (i.e., examine other legislative documents and records) to determine if Congress properly enrolled the text of a measure as passed, so long as each chamber's presiding officer signed the enrolled bill, thereby attesting that it accurately reflected final congressional action. If a court were to rely on the enrolled bill rule in its refusal to review the pre-enactment process, it would presumably permit the law to stand. If, however, a court agreed that the constitutional requirements for enactment were not fulfilled, the court could invalidate the entire text or alternatively, strike down only the portion of the law that is alleged to have been incorrectly or improperly enrolled.

One recent such instance was S.1932 in the 109th Congress, the Deficit Reduction Act of 2005 (P.L. 109-171). The attached memo by CRS Legislative Attorney Thomas J. Nicola explains the allegations that the text signed by the President did not reflect the text agreed to by both chambers.[15] Several parties have challenged the constitutionality of the law on these grounds in federal court; to date, no court has invalidated the law or any portion of it, and those decisions issued thus far have relied, at least in part, on the enrolled bill rule to reject the claims of unconstitutionality. A recent report by Nicola, CRS Report RS22507, *Constitutionality of the Deficit Reduction Act of 2005: Litigation*, discusses the status or outcome of each of these cases.

I trust this information meets your needs in regard to this issue. Please let me know if I can be of further assistance on this matter or others relating to legislative processes. My direct line is ext 7-8635; my email address is vheitshusen@crs.loc.gov.

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[13] (...continued)
substantive changes would not be privileged and, if any Senator objected to its consideration, would need to be referred to committee or go over under the rule. Senate precedents specify that concurrent resolutions used for correcting enrollment are subject to amendment, but not of a legislative or general nature, except by unanimous consent (*Riddick's Senate Procedure*, pp. 825-826).

[14] *Riddick's Senate Procedure*, pp. 824, 828-829. *House Practice*, p. 764.

[15] Nicola's memo explains in more detail (on pages 4-6) the enrolled bill rule referenced earlier. Pages 7-10 summarize more recent court decisions that rely on the enrolled bill rule, and pages 16-17 provide an overview of possible outcomes of court consideration of these challenges.