



Federal Legislative Process

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Agenda

- The Basics of Federal Legislative Procedure
- Detailed Federal Legislative Procedure Overview
- What Can (and does) Go Wrong
- Reading Federal Legislation



The Basics of Federal Legislative Procedure

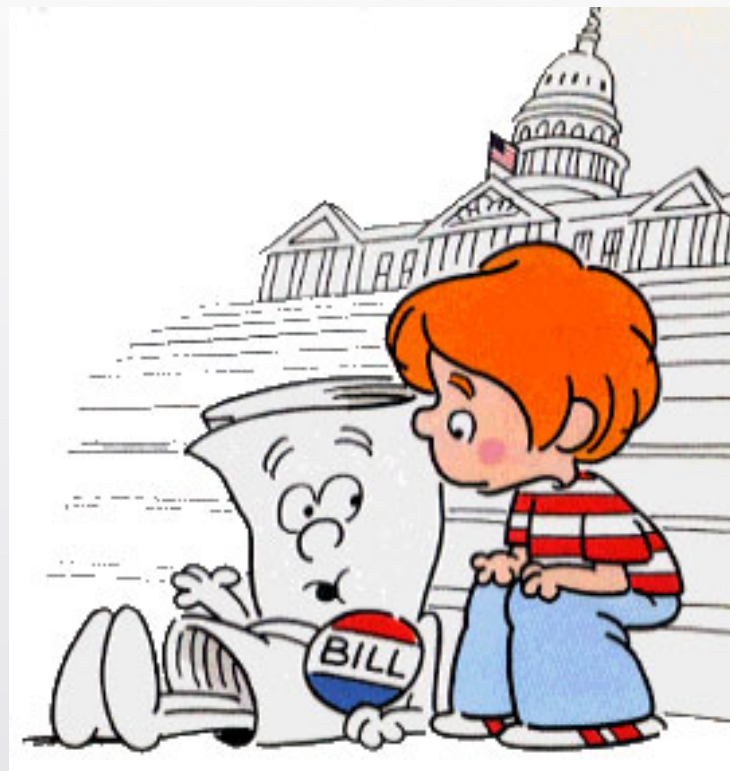


Sources of Congressional Procedure



- Jefferson's Manual
- Rules adopted at the beginning of each Congress
- Tradition, mostly

“I’m just a bill,
yes I’m only a bill,
And I’m sittin’ here
on Capitol Hill...”





Before a bill is introduced

- Outside groups have input through:
 - Hearings (organizations, administration officials, and private citizens may testify)
 - Open calls for information
 - Private meetings/advocacy
- Other members of the chamber have input through:
 - Private meetings
 - Meetings of Committee staff/members
 - Cooperative drafting of legislation
- Other sources of influence: current policy; previous drafts of legislation
- **This is the best time to influence a bill's structure / content!!!**



Before a bill is introduced

- Legislative language is drafted
 - Bulk of legislative language is drafted by Office of Legislative Counsel
 - Group of attorneys who draft legislation according to drafting conventions, instructions from offices
 - Some specific language may be drafted by members, staff, or outside groups
- May be drafted specifically to control legislative process (e.g. to get specific Committee referral or floor procedure)

When a bill is introduced

- Introduced by “dropping in the hopper”
- When introduced, it is given a number, entered in the journal, and printed in the Congressional record
- Co-sponsors may be added before or after introduction
- Legislation is then referred to standing Committee with jurisdiction over subject matter



The hopper

Not the hopper



When a bill is introduced

- CBO scoring
 - Bills must be “scored” by the Congressional Budget Office (CBO)
 - Exception for bills that are obviously budget neutral (e.g. expressing a sense of Congress, renaming a Post Office, etc.)
 - CBO Scoring must follow certain rules
 - Limit of 10 years
 - Only consider current law, no changes
 - Author of the bill can control CBO score through legislative language
 - Delay program beginning
 - Cap/limit total appropriations





In Committee

- Bills are referred to one or more standing Committees for consideration
 - E.g.: Every Student Succeeds Act was referred to:
 - Education and the Workforce in the House
 - Health, Education, Labor, and Pensions (HELP) in the Senate
 - Can be referred to multiple Committees
 - E.g. ACA
 - Committees can waive jurisdiction to speed consideration

In Committee



- Committee may:
 - Hold hearing with expert testimony
 - Refer legislation to subcommittee for more specific consideration
 - Hold markup to amend or approve legislation



More about Mark-ups

- Chair generally offers “manager’s amendment” to make wholesale changes
- Committee members negotiate with Chair to offer additional amendments
- If a bill is approved (“reported favorably”), Committee will write a report detailing approval, amendments approved, laws changed/repealed
- Bill will then be referred to Rules committee and placed on calendar for full House and Senate



Setting the Rules for Debate

- Before floor consideration, legislation is referred to the Rules Committee
- Non-controversial, budget-neutral legislation may also be considered under a “suspension of the rules”
 - Full House/Senate must have unanimous consent (usually voice vote) in order to consider under suspension
- The full House/Senate may debate/vote on Committee’s rule for debate
- Typical rules
 - Control length of debate
 - Control number of amendments to be debated
 - Can require Rules committee approval of all amendments offered

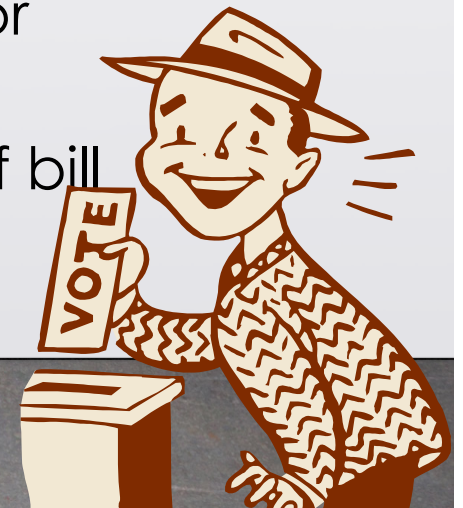


Floor Consideration

- Floor Debate
 - Generally, both sides given equal time, controlled by a “floor manager” (a member, usually a Committee chair or other high-ranking member) and a member of the opposite party
 - Members can offer amendments
 - Unless under closed rule
 - Usually “manager’s amendment” to offer bargained-for changes and technical amendments
 - Controversial amendments can slow legislative process
 - **Little room to make substantive policy changes**

Floor Votes

- Votes needed for passage of legislation
 - Senate: 60 votes needed to end filibuster/ invoke cloture
 - Suspension: 2/3 of those present (usually voice vote)
 - Overriding Presidential veto: requires 2/3 vote in both House AND Senate
 - House of Representatives: majority (218) for passage of bill
 - Senate: simple majority (51) for passage of bill
 - Senate may need tiebreaker





What Happens Next?

- If the bill has been passed by one chamber → goes to other chamber to start process anew
 - “textbook” procedure, but least common
- If there are similar bills passed but no will/time to conference → legislative “ping pong”
 - Least “standard” procedure, but becoming most common
 - Leadership negotiates compromise, amends one bill to meet terms
- If there are similar bills passed in each house → conference
 - Members are appointed to work out differences
 - Issues can only be considered if they appear in one of the bills (conference committee can’t bring in new, additional issues)
 - New bill must be passed by both chambers to become law



Signature by President

- SAPs
 - At any point in the legislative process, White House may issue a “Statement of Administrative Policy” (SAP) on the bill
- Veto
 - Congress can override with a 2/3 majority in both chambers
 - “Pocket veto” (if Congress adjourns in 10 days, does not become law; if 10 days pass without veto or signature automatically becomes law)
- Signing Ceremonies



What Can (and does) Go Wrong



Top Ten Ways a Bill Can Die

- 10: It's a message bill
 - "Message bills" are introduced to allow member to show support/opposition to a certain issue
 - Rarely intended to pass
- 9: Stuck in Committee
 - Lack of bipartisan support, lack of interest from Committee or party leadership
 - Usually happens to legislation introduced by the minority party
 - Most ESEA bills prior to 2015 died here
- 8: Passes Committee, but no floor action
 - Can be lack of interest, lack of time on legislative calendar
 - Agency takes steps that (temporarily) obviate need for bill (e.g. ESEA waivers?)

Top Ten Ways a Bill Can Die

- 7: Death by Christmas Tree
 - Too many amendments for successful passage
 - Contents prove too contentious to bring to a vote
- 6: Senate cloture vote failure
 - May involve filibuster
 - Doesn't rule out future consideration
- 5: Failure to pass House/Senate
 - Bill fails to get votes needed for passage
 - Or pulled at the last minute





Top Ten Ways a Bill Can Die

- 4: Lack of action after referral to opposite chamber
 - Especially common when House/Senate are controlled by different parties
 - Other chamber will refer bill to Committee (this happens automatically), but nothing else will happen
 - Lots of opportunity for outraged press conferences
- 3: Failure to find agreement in conference
 - Conference committee can fail to come to agreement
 - See also: sequestration
- 2: Failure to pass amended/committee-approved version of other chamber's legislation
 - Seen when House/Senate are controlled by different parties

Top Ten Ways a Bill Can Die

- 1: Presidential veto
 - Actual veto
 - Pocket veto
 - Rare!





Reading Federal Legislation



Bill Numbers

- Letter designation:
 - “H.R.” → bill originating in House
 - “S.” → bill originating in Senate
 - “H.Res.” / “S.Res.” simple resolution
 - “H.J.Res.” / “S.J.Res.” → joint resolution
 - “H.Con.Res.” / “S.Con.Res.” → concurrent resolution
 - “P.L.” → public laws (passed House/Senate, signed by President)



Bill Numbers

- Numerical Designation
 - Bill numbers are not assigned until after introduction
 - Bill numbers repeat each Congress
 - Currently in 114th Congress (new Congress every 2 years)
 - P.L. numbers refer to Congress and order of passage (e.g. P.L. 113-23)
- Why is it blank?
 - No number yet – version hasn't been introduced, or hasn't been given a number by the Clerk of the House



Sponsors

- Bill has a primary sponsor
 - E.g. “Mr. Franken of Minnesota, for himself and for...”
- Bill can have original co-sponsors
 - E.g. “...for himself, Ms. Murray of Washington, Mr. Alexander of Tennessee...”
- Additional co-sponsors can be added (but may not be listed)
 - Member shows support for legislation
 - Bill’s author can use sponsors to demonstrate bipartisan support



Versions of Bills

- IH → Introduced in House
- IS → Introduced in Senate
- RH → Reported in House
- RS → Reported in Senate
- EH → Engrossed in House (passed House)
- ES → Engrossed in Senate (passed Senate)
- RFS → Referred in Senate
- PCS → Placed on Calendar in Senate
- EAS → Engrossed Amendment Senate
- PP → Public Print
- ENR → Enrolled bill (passed in House and Senate)



Bill Titles

- Long Title
 - First words of legislative language
 - E.g.” “An Act to Reauthorize the Elementary and Secondary Education Act of 1965 to ensure that every child achieves. “
- Short Title
 - If there is one, in first section of legislative language
 - E.g.: “SECTION 1. SHORT TITLE. This Act may be cited as the “Every Student Succeeds Act.””



Legislative Conventions: Placement

- Usually first section after table of contents
- Bill will name the place it will take in law, or the law it amends, or other references:
 - E.g.: “Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the amendment or repeal shall be considered to be made to a section or other provision of the Elementary and Secondary Act of 1965 (20 U.S.C. 6301 et seq.).” (Example from ESSA)



Legislative Conventions: Effective Date

- Will come at either beginning/end of entire legislation, or beginning/end of relevant section
- E.g.: “Except as otherwise provided, this Act and the amendments made by this Act shall be effective upon the date of enactment of this act.”

(Example from ESSA)



Legislative Conventions: Definitions

- In short legislation, come at the beginning of the bill
- In longer pieces of legislation, definitions can comprise a whole separate section, or apply only to one title
 - Can either define a term uniquely
 - E.g.: “for the purposes of this legislation, the term “State” shall mean each of the fifty States”
 - Or in reference to earlier “landmark” legislation
 - E.g.: “for the purposes of this legislation, the term “State” shall have the same meaning as in Section 1123 of the Elementary and Secondary Education Act”
 - Changes as referenced definition changes
- Bonus question: what’s the difference?

Legislative Conventions: Appropriations

- “Such Sums”
 - E.g. “Authorized to be appropriated are such sums as may be necessary for fiscal years 1999 through 2003”
 - Leaves appropriations for program up to appropriators
- Specific (limited) appropriations:
 - E.g. “\$3,121,712,000 for [FY] 2014 and each of the 6 succeeding fiscal years”
 - Caps amount of money that can be spent (examples from H.R. 803)





Legislative Conventions: Education

- “Secretary” → Secretary of Education
- References to existing landmark legislation, most commonly:
 - ESEA
 - IDEA
 - HEA
 - Richard B. Russell National School Lunch Act
- Formula vs. Competitive
 - If distributed on basis of calculation, e.g. ESEA Title I or free- and reduced-price student lunch → formula
 - If Secretary can take “application,” competitive
 - Other hallmarks of competitive programs:
 - Secretary may outline priorities
 - Designees/ outside groups/ CBOs/ nonprofits eligible to apply

A Note on Timing...

- When must all these steps occur?
 - Anything goes!
- There are no deadlines for introduction of legislation, debate or markup in Committee, floor debate, or passage
 - Only “drop-dead” date is the end of the Congress
 - Which can be right up until the new Congress is sworn in
 - Exceptions:
 - Bills with expiration dates/ “sunsets” must be acted on or extended
 - Appropriation legislation must be passed before the previous bill expires
- All portions of the legislative process operate simultaneously





Questions?





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