

LEGISLATIVE PROCEDURE OF THE UNITED STATES CONGRESS

I. OVERVIEW

This document explains the legislative procedures of the United States Congress. The information may be useful to NGOs seeking to inform Members of Congress about issues and understand the legislative process. The material is drawn from the House web site¹ as well as the observations of a former Legislative Director for the House.

√ **The best way to become involved in the legislative process is at the committee or subcommittee level, particularly during the markup (amendment process).** The committee members with the most influence are the chairmen (majority party) or ranking members (the most senior member of the minority party).² They are in the best position to move and influence legislation. With respect to the appropriations process, the same is true: each subject area is the responsibility of a appropriations subcommittee chairman, who has vast influence over the process.³

√ **It is important to have an appreciation of the political dynamics of each house, including which party is in the majority and which is in the minority.**⁴ The majority can tightly control the agenda of the floor and the committees, particularly in the House.

√ **It is also helpful to appreciate the importance of issue politics, ethnic voting blocks, and district constituencies in the United States.** A member of Congress may be more willing to listen on an issue if approached by a trade association, civic group, or interest group from his district.

Many international issues have their best appeal as “local issues,” for example, a member of Congress with a strong Hispanic voting population may be more interested in issues that affect Latin America. Often these interests manifest themselves in caucuses⁵ of

¹ Much of the procedural information in this summary is condensed from “HOW OUR LAWS ARE MADE, Revised and Updated January 31, 2000 by Charles W. Johnson, Parliamentarian, U.S. House of Representatives. <http://thomas.loc.gov/home/holam.txt>.

²For a list of committees of the House, see <http://www.house.gov/house/CommitteeWWW.html>.

For committees of the Senate, see <http://www.senate.gov/committees/index.cfm>

³See <http://www.house.gov/appropriations/sub.htm> for a description of House appropriations subcommittees. See <http://appropriations.senate.gov/> for Senate appropriations subcommittees.

⁴ As of the writing of this memo, the Senate is controlled by the Democrats, the House and Executive branch by the Republicans. The margins of control in each house are thin.

⁵ For a list of caucuses of the House, see:

http://www.house.gov/search97cgi/s97_cgi?action=View&VdkVgwKey=http%3A%2F%2Fwww%2Ehouse%2Egov%2Fcha%2Fpublications%2Fbody%5Fpublications%2Ehtml&DocOffset=1&DocsFound=6696&QueryZip=caucus&SourceQueryZip=&Collection=comms&Collection=members&Collection=other&Collection=coxreport&ViewTemplate=memberview%2Ehtml&

the Congress, for example, the Congressional Hispanic caucus, the Congressional Andean Region Caucus, and the Congressional Caucus on Brazil, which could be interested in taking the lead on an issue.

√ **It is helpful to appreciate the resources of organizations with a national presence**, for example national chambers of commerce, criminal justice organizations (district attorneys), judges associations, and others who may have an established presence and access to Capitol Hill.

√ **It is important to see linkages of common interests**, for example, national and international trade associations may have an interest in promoting justice reform in Latin America to the extent that it makes international business transactions smoother and more predictable.

II. COMPOSITION OF THE CONGRESS

Article I, Section 1, of the United States Constitution provides that the legislative powers exist in the Congress of the United States, which consists of a Senate and a House of Representatives. The United States has a bicameral system, meaning that a proposal cannot become a law without consideration and approval by both Houses. A Congress lasts for two years, divided into two sessions.

The Senate has 100 Members-two from each state, elected every six years. The Senate has the power to confirm the President's appointment of judges, and to consent to treaties signed by the President.

The House of Representatives has 435 Members elected every two years from among the 50 states, depending on the population of each state. A majority of laws originate in the House of Representatives, but some originate in the Senate. The Constitution provides that only the House of Representatives originates revenue bills (tax legislation). By tradition, the House also originates appropriation bills (bills allocating federal money).

III. FORMS OF CONGRESSIONAL ACTION

The work of Congress is initiated by the introduction of a proposal in one of four forms: the bill, the joint resolution, the concurrent resolution, and the simple resolution. The most customary form used in both Houses is the bill.

BILLS:

With the exceptions noted above (revenue and appropriations bills), bills may originate in either the House of Representatives or the Senate.

A bill originating in the House of Representatives is designated by the letters "H.R." followed by a number that it retains throughout all its parliamentary stages. The letters

signify "House of Representatives."

A Senate bill is designated by the letter "S." followed by its number.

The term "companion bill" is used to describe a bill introduced in one House of Congress that is similar or identical to a bill introduced in the other House of Congress.

A bill that has been agreed to in identical form by both bodies becomes the law of the land only after-

- (1) Presidential approval; or
- (2) failure by the President to return it with objections to the House in which it originated within 10 days while Congress is in session; or
- (3) the overriding of a presidential veto by a two-thirds vote in each House.

It does not become law without the President's signature if Congress by its final adjournment prevents its return with objections. This is known as a "**pocket veto**."

JOINT RESOLUTIONS:

Joint resolutions may originate either in the House of Representatives or in the Senate. There is little practical difference between a bill and a joint resolution and the two forms are often used interchangeably.

CONCURRENT RESOLUTIONS:

A matter affecting the operations of both Houses is usually initiated by a concurrent resolution, which is used merely for expressing facts, principles, opinions, and purposes of the two Houses, and does not have the force of law.

A concurrent resolution originating in the House of Representatives is designated "H. Con. Res." followed by its individual number, while a Senate concurrent resolution is designated "S. Con. Res." together with its number. On approval by both Houses, they are signed by the Clerk of the House and the Secretary of the Senate and transmitted to the Archivist of the United States for publication in a special part of the Statutes at Large volume covering that session of Congress.

SIMPLE RESOLUTIONS:

A matter concerning the rules, the operation, or the opinion of either House alone is initiated by a simple resolution, which does not have the force of law. A resolution affecting the House of Representatives is designated "H. Res." followed by its number, while a Senate resolution is designated "S. Res." together with its number. Simple resolutions are considered only by the body in which they were introduced. Upon adoption, simple resolutions are attested to by the Clerk of the House of Representatives or the Secretary of the Senate and are published in the Congressional Record.

IV. INTRODUCTION AND REFERRAL TO COMMITTEE

Any Member may introduce a bill, on the floor of the chamber. Permission is not required. The Member introducing the bill is known as the sponsor. An unlimited number of Members may co-sponsor a bill.

A bill is assigned its legislative number by the Clerk. The bill is then referred to the appropriate **committee or committees**.

The most important phase of the legislative process is the action by committees. The committees provide the most intensive consideration to a proposed measure as well as the forum where the public is given their opportunity to be heard. **Bills can live or die based on the will of committee and subcommittee chairmen.**

Each committee's jurisdiction is divided into certain subject matters under the rules of each House and all measures affecting a particular area of the law are referred to the committee with jurisdiction over the particular subject matter. For example, the **Committee on the Judiciary** in the House has jurisdiction over measures relating to **judicial proceedings** generally, and 17 other categories, including **constitutional amendments, immigration and naturalization, bankruptcy, patents, copyrights, and trademarks.**

In addition to considering bills, committees (and subcommittees) also exercise an **oversight function** of executive branch agencies, by holding hearings on different subjects. For example, the judiciary committee might hold hearings in which the Immigration and Naturalization Service (INS) is requested to testify on its successes and failures in enforcing immigration laws. These hearings often result in the chair introducing a bill to remedy a perceived problem.

V. CONSIDERATION BY COMMITTEE

A committee may seek the input of the relevant departments and agencies, as well as comment from the public in evaluating a bill. Much of this is done at the **subcommittee** level.

Few proposals referred to subcommittee are considered or acted upon, unless the chair of the subcommittee decides that they are of substantial importance and interest. Sometimes an author of a bill seeks to generate interest in a bill by obtaining as many **co-sponsors** as possible, but this is often not sufficient to get a bill considered in committee.

Sometimes proposals are ultimately placed into a larger piece of legislation authored by the chair. Success in advancing a legislative proposal can often depend upon party affiliation and seniority.

The subcommittee will hold hearings, in which proposals are **marked up** (considered and amended), and successful proposals are considered by the **full committee**, which may report a bill to the **House floor**.

If the committee votes to report the bill to the House floor, the committee staff writes the **committee report**. The report describes the purpose and scope of the bill and the reasons for its recommended approval.

VI. CONSIDERATION ON THE FLOOR

When a bill is favorably reported by all committees to which referred, it is assigned a calendar number on either the Union Calendar or the House Calendar, the two principal calendars of business.

"RULE"

In the House, a bill reported by committee needs a “rule” from the Rules Committee to be considered on the floor. The rule determines time limits for debate, whether the bill may be amended on the floor, and general guidelines for debate. **The Rules Committee is very powerful because it can literally rewrite or kill legislation or amendments based on the rule it adopts.** And if the Rules Committee does not issue a rule, the bill cannot be considered on the floor at all, absent extraordinary circumstances. **This is a mechanism by which the majority party asserts its will in the Congress.**

MOTION TO SUSPEND THE RULES

By 2/3 vote of the House, a bill may be considered without a rule (“suspension of the rules”). This is often used for uncontroversial bills. It can also be used to consider a bill that has not yet been reported by a committee. Typical bills considered this way include those naming courthouses and post offices or commemorating some occasion. However, it is also possible for quite substantive bills to be considered this way, if they are not controversial. **Often the political parties will negotiate with each other which bills are heard “on suspension.”** Since the normal consideration of bills is a time consuming process, with debate that can take hours, suspension provides a way to streamline the process. **The majority party exercises great control over the suspension procedure.**

UNANIMOUS CONSENT

Reported or unreported measures may also be considered by the unanimous agreement of all Members in the Chamber. This is often the case with noncontroversial bills.

DISCHARGE PETITION

In extraordinary circumstances, a bill may leave a committee and be considered on the floor of the House through a “discharge petition,” a petition signed by a majority of the members of the body (e.g. the House). This is a means to bypass the committee system and the Rules Committee, but it is **rarely successful, since the majority party exerts leadership over its members not to sign such a petition.**

MOTION TO RECOMMIT

After debate has ceased on a measure on the floor of the House, a motion to recommit may be made to send the bill back to committee, to be amended in a certain way. Such motions

are rarely successful, but provide an **opportunity for the minority party to explain its views to the public, and demonstrate its discontent with the majority party.**

VOTING

Voting may be by voice vote, or if there is dispute about the outcome, by recorded vote.

VII. CONSIDERATION BY THE OTHER CHAMBER

A bill that has been passed by one chamber (e.g. the House of Representatives) is sent to the other chamber (e.g. the Senate), where it is referred to the appropriate committee for consideration.

The rules of procedure in the Senate differ to a large extent from those in the House. The Senate relies heavily on the practice of obtaining unanimous consent for actions to be taken.

At the time that a bill is reported from committee, the Majority Leader may ask unanimous consent for the immediate consideration of the bill. If the bill is of a noncontroversial nature and there is no objection, the Senate may pass the bill with little or no debate and with only a brief explanation of its purpose and effect.

Even in this instance, the bill is subject to amendment by any Senator. A simple majority vote is necessary to carry an amendment as well as to pass the bill.

On occasion, Senators opposed to a measure may extend debate by making lengthy speeches intended to prevent or defeat action on the measure. This is the tactic known as "**filibustering.**" Debate, however, may be closed if 16 Senators sign a motion to that effect and the motion is carried by three-fifths of the Senators duly chosen and sworn.

When adopted by the Senate, the original engrossed House bill, together with the engrossed Senate amendments, if any, is then returned to the House with a message stating the action taken by the Senate. Where the Senate has adopted amendments, the message requests that the House concur in them.

VIII. FINAL ACTION ON AMENDED BILL

If the Senate amendments are of a minor or noncontroversial nature, any Members, usually the chairman of the committee that reported the bill, may, at the direction of the committee, ask unanimous consent to agree to the Senate amendments. If unanimous consent is not obtainable, the amendments may be debated by the full House.

If the amendments by the other chamber are substantial or controversial, the bill may be referred to a **conference committee** made up of members of each chamber, for the purpose of resolving differences between the two chambers. The conference report of the conference committee must be approved by both chambers to be adopted.

A bill cannot become a law of the land until it has been approved in identical form by both Houses of Congress. When the bill has finally been approved by both Houses, all the original papers are transmitted to the enrolling clerk of the body in which the bill originated.

IX. PRESIDENTIAL ACTION

PRESENTMENT:

Article I, Section 7, of the Constitution provides in part that every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, **be presented to the President of the United States**. Delivery to a White House clerk has customarily been regarded as presentation to the President and as commencing the 10-day constitutional period for presidential action.

Copies of the enrolled bill usually are transmitted by the White House to the various departments interested in the subject matter so that they may advise the President on the issues surrounding the bill.

APPROVAL

If the President approves the bill, he signs it and usually writes the word "approved" and the date. However, the Constitution requires only that the President sign it.

The bill may become law without the President's signature by virtue of the constitutional provision that if the President does not return a bill with objections within 10 days (excluding Sundays) after it has been presented to the President, it become law as if the President had signed it. However, if Congress by its adjournment prevents its return, it does not become law. This is known as a "pocket veto"; that is, the bill does not become law even though the President has not sent his objections to the Congress.

Notice of the signing of a bill by the President is sent by message to the House in which it originated and that House informs the other, although this action is not necessary for the act to be valid. The action is also noted in the Congressional Record.

A bill becomes law on the date of approval or passage over the President's veto, unless it expressly provides a different effective date.

VETO MESSAGE

By the terms of the Constitution, if the President does not approve the bill "he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it." The President's veto may be overridden by a vote of 2/3 of each chamber.

PUBLICATION

Bills that are signed into law are published, and many can be found in the United States Code Annotated (USCA).

