

The Legislative Process¹: From Bill to Law.

Overview

The U.S. Constitution grants all legislative powers to Congress, the House of Representatives and the Senate. There are 435 House members elected for a two-year term. There are two Senators per state elected for a six-year term. One-third of the Senate is up for election every two years.

Both chambers have similar functions and roles, however only the House can originate revenue (tax) legislation, and only the Senate can confirm presidential nominations and approve treaties with other nations. The enactment of laws requires both chambers to separately agree to a bill in the exact same form and text before presenting it to the President.

The process by which a bill becomes law varies significantly from bill to bill and on each chamber. The House and Senate have different rules and practices for legislation action, with the House allowing a simple majority² to pass legislation relatively quickly and the Senate requiring a majority vote, which requires more deliberation and gives significant leverage to individual Senators.

Leaders plan and coordinate the activities in each chamber, and members choose the leaders. In the House, the majority party leaders set the policy agenda and decide which proposals will receive floor consideration. In the Senate, the majority party leader proposes items for consideration and typically negotiates with minority party leaders to conduct floor action.

In both chambers, much of the policy expertise resides in the committees, and members from those committees typically take the lead in developing and assessing related legislation. Members serve on a few committees for several years, allowing them to become highly knowledgeable in those areas. A member of the majority party chairs a committee and the ranking member is the most senior member of the minority party. The ratio of party membership on a committee roughly reflects the overall partisan ratio in each chamber.

Once a law is enacted, Congress has the responsibility to provide oversight of policy implementation. Both chambers provide their committees with significant powers for oversight and investigations into questions of public policy and its effects.

The President also has influence in the legislative process, usually through recommending an annual budget and suggesting legislation. The President has veto power, and it is unusual for law to be enacted over a presidential veto.

¹ <https://www.congress.gov/legislative-process>

DISCLOSURE: The original and full transcript is posted at U.S. Congress webpage. This manuscript is published for informative and educational purposes.

² Simple majority = 50 % + 1 vote.

Bills introduction and Referral

Bills and joint resolutions can become law if passed by both chambers and signed by the President within the two-year Congress when they were introduced. Simple resolutions and concurrent resolutions are the other options; these measures cannot become law, but may be used by either chamber to publicly express sentiments, and accomplish internal administrative or organizational tasks, such as establishing their rules for proceeding.

Members can exclusively introduce legislation, though occasionally a member introduces legislation by request of the President. Members and their staff typically consult with nonpartisan attorneys in each chamber's Legislative Counsel office for assistance drafting into legislative language. Members may circulate the bill and ask others in the chamber, often via "Dear Colleague" letters, to sign on a bill as original co-sponsors to demonstrate a solid base of support. In the House, a bill is introduced when dropped in the hopper (a wooden box on the House floor). In the Senate, the bill is introduced when it is given to clerks on the Senate floor. Upon introduction, the bill will receive a designation based on the chamber of introduction, H.R. or H.J.Res. for House-originated, and S. or S.J.Res. for Senate-originated bills or joint resolutions, followed by a number in sequence during that two-year Congress.

In the House, bills are referred by the Speaker, on the advice of parliamentarian, to all committees that have jurisdiction over the provisions in the bill. Most bills fall under the jurisdiction of one committee, and if multiple committees are involved and receive the bill, each committee may work only on the portion of the bill under its jurisdiction. One of those committees will be designated the primary committee of jurisdiction and will likely take the lead on any action.

In the Senate, bills are typically referred to committee in a similar process than the House, though the bill is referred to only the committee with jurisdiction over the predominant issue. Rarely, a bill might not be referred to a committee, and be placed directly on the Senate Calendar of Business through a series of procedural steps.

On average, there are over 10,000 bills introduced in each two-year Congress. Approximately 2/3 are House-originated, and less than 4 percent become law.

Committee Consideration

Each committee receives more referrals than they are capable to pursue in detail. The committee's chair has the authority to identify the bills or issues that they will formally act on through hearings and markup.

The first formal committee action on a bill or issue is often be a hearing in which committee members, the public and press hear about the strengths and weaknesses of a bill or spotlight legislation itself. At the hearing, invited witnesses provide short oral remarks to the committee, and they also submit a written statement as feedback on the bill. After the oral remarks, committee members ask questions to the witnesses in order of seniority, alternating between the majority and minority party.

While hearings provide feedback, committee members and staff engage in additional assessment through informal briefings and meeting with groups of interest. Hearings are not required from a procedural standpoint for a bill to receive further committee action.

A committee markup is the key formal step a committee takes action for the bill to advance to the floor. The chair chooses the bill that will be marked-up. They rarely hold a markup unless the majority support it. At a markup, members of the committee consider possible changes to the bill by offering and voting on amendments, possibly including a complete substitute for its text.

The committee may vote to report a bill that includes changes reflected by amendments. The committee may also report out an original or clean bill that was written in the markup process. A markup concludes when the committee agrees, by majority vote, to report the bill to the chamber.

Most House and Senate committees also establish subcommittees, which focus on specific elements of the policy area. The role of the subcommittees in policymaking varies by chamber and by committee tradition and practice. Subcommittees cannot markup and report legislation to the floor.

The Senate³ has 16 standing committees, 4 special committees and 4 joint committees with the House. The House⁴ has 20 standing committees. Each standing committee has subcommittees, for example, the Senate Committee on Agriculture, Nutrition and Forestry⁵ has five subcommittee and the House Committee on Agriculture⁶ has six subcommittees.

Calendar and Scheduling

Once a committee has reported a bill, it is placed on the respective chamber's calendar. Calendars are essentially a list of bills eligible for floor consideration; however, bills on the calendars are not guaranteed floor consideration. Many will never be brought up on the floor during the course of a two-year Congress. Rarely, a bill can go directly to the floor without being reported and placed on a calendar.

House Floor

The U.S. Constitution requires that any bill with revenue (tax) provisions must be a House bill. In the House, majority party leadership decides which bills will be considered, and in what order. After consulting with committee leaders, majority party leaders may decide to schedule a bill for expedited floor consideration. Alternatively, they may ask the Rules Committee to start the process of bringing a specific bill to the floor for longer consideration and give members the opportunity to propose amendments.

³ https://www.senate.gov/committees/committees_home.htm

⁴ <http://www.house.gov/committees/>

⁵ <https://www.agriculture.senate.gov/about/subcommittees>

⁶ <https://agriculture.house.gov/subcommittees/>

Most bills are considered under the suspension of the rules procedure, which limits debate to 40 minutes and does not allow amendments to be offered by members on the floor. A bill under suspension of the rules procedure requires two-thirds of votes in favor. Therefore, it is used for bills that have supermajority support.

The alternative is a tailored procedure for each bill. The House establishes these parameters on a case-by-case basis through the adoption of a simple House resolution called a special rule, which is reported by the House Rules Committee. This committee, referred to as the traffic cop of the House, is dominated by the majority party and works closely with leadership on the main elements of each special rule. Common provisions found in a special rule include selection of the text to be considered, limitations on debate and the amendments that can be offered on the floor. When the committee reports a rule that places few restrictions on amending, it can result in dozens of amendments being offered on the floor during consideration. In other cases, the special rule will allow only specific pre-determined amendments, or even preclude floor amendments all together.

Amendments offered must meet certain germaneness standards, meaning that they must be on the precise subject of the legislation being considered unless this restriction is waived.

After the Rules Committee reports rules for the bill consideration, the House first debates the special rule on the House floor for approximately one hour and then votes on adopting it. Only after adopting the rules, the House will proceed to consider the bill under the terms specified by the special rule.

In this situation, the House typically will consider the bill in a procedural setting called the Committee of the Whole, which allows an efficient way to consider and vote on amendments. After amendments are offered and debated, members vote on each amendment requiring a simple majority to pass.

After the amendment process is complete, the Committee of the Whole reports to the full House any recommended amendments, which are then usually approved by the House by voice vote. Just prior to voting on final passage, members briefly debate and vote on a motion to recommit, allowing the minority party to effectively propose its own amendment. In the House, some votes are taken by voice, but many votes are taken by an electronic device to record the individual position on the vote.

Senate Floor⁷

The Senate Leadership must first agree to bring a bill to the floor, and then utilize either unanimous consent or motions to proceed. The majority leader may offer a motion to proceed consideration if the leader has been unable to negotiate a unanimous consent agreement. Although this motion requires only a simple majority for approval, it is susceptible to extended debate. Anything that the Senate considers, from each amendment to the bill itself, is not subject to a debate limit. Senate rules provide no way for a simple majority to cut off or impose a debate limit and move to a final vote. As a result, a single Senator can effectively use or threaten the use

⁷ RS20668 – How Measures Are Brought to the Senate Floor: A Brief Introduction.

of a filibuster to extend debate in order to delay or prevent a final vote on most amendments, bills, or other motions.

Senate rules provide few options to comprehensively limit the amendments proposed to a bill. Unlike the House, usually amendments in the Senate need not be germane. This can lead to a more wide-ranging and less predictable floor debate than in the House.

Senate Rule XXII, called the cloture rule, does allow a supermajority to limit debate on a bill, amendment, or motion. In the case of a bill, cloture limits the amendments that can be offered. Supporters of a bill under floor consideration can file a cloture motion, signed by at least 16 Senators. Two days of session later, Senators vote on the cloture motion. If three-fifths, usually 60 favorable votes, then further consideration of the bill is limited to 30 hours, during which only amendments from a pre-specified list of germane ones can be offered. After this final period of consideration, the Senate takes a final vote on the bill. This final vote requires only a simple majority for approval. But because a cloture motion is often required to end debate on a bill, then the bill first must garner the support of a three-fifths supermajority. This process of reaching a final vote on a bill can take four days of Senate floor time to complete.

Rules and practices governing Senate floor debate and amendments provide significant leverage to each individual Senator. Alternatively, the Senate uses the unanimous consent agreement. This agreement is a structured plan for limiting debate and amending, a plan that can be tailored to each bill considered on the floor. Through the use of unanimous consent, the Senate can more efficiently process its business while protecting the procedural rights of each member.

A large majority of bills on the Senate floor is accepted under unanimous consent measure. The majority leader asks for unanimous consent on certain bills in advance and if no one objects, then the Senate can immediately begin consideration of the bill in question. If even one Senator objects, then that Senator has placed a hold on the bill, and the leader refrains from making such a request, and brings the bill with the motion to proceed measure.

While many votes are conducted by voice, a recorded vote is required in some cases and can be requested by Senators. Unlike the House, the Senate does not have an electronic voting system and records its votes through roll call.

Executive Business in the Senate

In addition to full legislative authority, the U.S. Constitution provides the Senate with two unique responsibilities: first, the power to confirm presidential nominees to the federal judiciary and executive branch positions; and second, the power to approve treaties. Treaties are treated as bills: they are referred to the Foreign Relations Committee, where they are marked-up and reported, and then considered on the floor under similar procedures used for legislation. The Constitution requires that two-thirds of voting Senators agree for a treaty to be ratified.

Most presidential nominations are referred to the relevant Senate committee of jurisdiction. The committee may hold a hearing in which a nominee answers questions from the committee's members. If a nominee is considered on the Senate floor, his or her confirmation requires only a

simple majority vote, but nominations are debatable. Therefore, supporters of a nominee may have to use the cloture process to reach a vote on the nominee. For the U.S. Supreme Court and for other nominees, the cloture vote is subject to a simple majority threshold. Using cloture to reach a vote on a pending nomination may take significant floor time.

Resolving Differences

A bill must be agreed upon by both chambers in the same form and text before it can be presented to the President. Once a chamber passes a bill, it is engrossed (prepared in official form) and then sent to the other chamber. In the majority of cases, the second chamber simply agrees to the exact text passed by the first chamber, in which case Congress has then completed its action on the bill. Once both chambers have agreed to the bill, the bill is enrolled and prepared in its final official form before it is presented to the President.

In some cases, the second chamber decides to amend the first chamber's bill. They then propose an alternative version of the bill, which may differ from the first bill in minor or substantial ways. Once the second chamber agrees to the proposed alternative, it sends the proposal back to the first chamber for consideration and a vote. The receiving chamber may also respond with a counterproposal, and so on. This back-and-forth trading of proposals by the House and Senate is called amendment exchange, or ping-pong. For the bill to become law, one chamber must eventually agree to the other chamber's proposal.

Sometimes, the resolution of differences between the House and Senate proposals may instead be accomplished through a conference committee: a temporary committee formed in relation to a specific bill to negotiate a proposal that can be agreed to by both chambers. Each conference committee is made up of members of the House and the Senate, called conferees, who are part of the committees with jurisdiction over the bill. Through a combination of informal negotiations and formal meetings, the conferees hammer out a compromise. If a proposal can garner the support of a majority of the House conferees and the Senate conferees, then the negotiated proposal is embodied in a conference report. Then, this conference report can be considered in one chamber, and if agreed to, it is considered in the other chamber. Regardless of which chamber goes first, the conference report is considered under sets of procedures used for other business. Reaching a vote on a conference report in the Senate may require a cloture process. Both chambers agree to the conference report without changes.

Presidential Actions

Once both chambers have passed the bill, it is enrolled and prepared in its official form and then presented to the President. Beginning at midnight on the closing of the day of presentment, the President has ten days, excluding Sundays, to sign or veto the bill. If the bill is signed in that period, it becomes law. If the president declines to either sign or veto the bill, then it becomes law without his signature, with exception when Congress has adjourned for over 10 days.

If the President vetoes the bill, it is returned to the chamber in which it originated. Both chambers can override the president's veto with the support of two-thirds of those voting. If the override vote of the first chamber is successful, then the second chamber decides whether to

attempt its own override vote. If both chambers vote to override and pass the bill, then it becomes law.

Bills that are ultimately enacted are delivered to the Office of the Federal Register at the National Archives, assigned a public law number, and included in the next edition of the United State Statutes at Large.