

WILLAMETTE LAW REVIEW

VOLUME 36

NUMBER 2

SPRING 2000

HOW AN IDEA REALLY BECOMES LAW: WHAT ONLY JACQUES COUSTEAU CAN KNOW

Gregory Chaimov

Reprinted from
WILLAMETTE LAW REVIEW
Volume 36, Number 2
Copyright © 2000 by WILLAMETTE LAW REVIEW



HOW AN IDEA REALLY BECOMES LAW: WHAT ONLY JACQUES COUSTEAU CAN KNOW

GREGORY CHAIMOV*

*They didn't think much to the Ocean;
The waves, they were fiddlin' and small,
There was no wrecks and nobody drowneded,
Fact, nothing to laugh at at all¹*

A smooth surface does not mean that an ocean is calm. Debris on the seashore, perhaps blasted mollusks or the carcass of a tern, may alert a beachcomber to the turbulence beneath even a gentle "painted ocean."² To appreciate the ocean, an observer must imagine the scene that is invisible from the shore: the eel, the stingray, the crab with colossal pincers scuttling

* Legislative Counsel, Oregon Legislative Assembly; J.D., Northwestern School of Law of Lewis and Clark College, 1982; B.A., Carleton College, 1978.

1. MARRIOTT EDGAR, *The Lion and Albert*, in ALBERT, 'ARNOLD AND OTHERS' (1937), reprinted in A DICTIONARY OF QUOTATIONS 235-36 (Norman Jeffares & Martin Gray eds., 1997).

2. SAMUEL TAYLOR COLERIDGE, *Rime of the Ancient Mariner* (1834), reprinted in THE ANNOTATED ANCIENT MARINER, pt. 2, stanza 8, line 4 (Martin Gardner ann. 1965).

across the rocky floor.³

The same is true of a session of the Oregon Legislative Assembly: To understand how an idea becomes law, a person must witness the whole of the formal legislative process, not just the parts that create the best political theater.

Each session the Legislative Administrator, the public official who coordinates the state's legislative operations,⁴ distributes a booklet to guide citizens through the legislative process. This guidebook includes "How An Idea Becomes Law: A Simple View of the Oregon Legislative Process," an illustrated flow chart showing key steps through which an idea may pass on its way to becoming a law.⁵ This flow chart, although accurate, presents a picture of the formal legislative process that is only as complete as Marriott Edgar's description of the ocean.⁶ An understanding of the whole institutional process reveals that it is anything but simple.

This Article provides a glimpse of the commotion beneath the surface, the parts of the formal legislative process that most citizens cannot see.⁷

3. See G. CRABBE, *THE BOROUGH*, Letter XXII, lines 185-193 (1810).
There anchoring, Peter chose from man to hide,
There hang his head, and view the lazy tide
In its hot slimy channel slowly glide;
Where the small eels that left the deeper way
For the warm shore, where the shallows play;
Where gaping mussels, left upon the mud
Slope their slow passage to the fallen flood;—
Here dull and hopeless he'd lie down and trace
How side-long crabs had scrawl'd their crooked race;

Id.

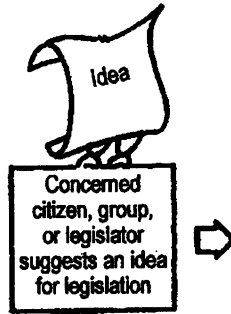
4. See OR. REV. STAT. § 173.720 (1999).

5. See OREGON LEGISLATIVE GUIDE 141 (Legislative Admin. Comm. 1999) [hereinafter LEGISLATIVE GUIDE].

6. See *supra* text accompanying note 1.

7. This Article does not address a legislator's decisionmaking process or the citizen's role in that process. For academic discussions on legislative decision making, see LEGISLATIVE BEHAVIOR (J. Wahlke & H. Elau eds., 1959). For an excellent series on legislative decision making in the Oregon legislature, see J. Mapes, *How Gun Control Failed in the 1999 Oregon Legislature*, OREGONIAN, Nov. 28, 1999, at 1A.

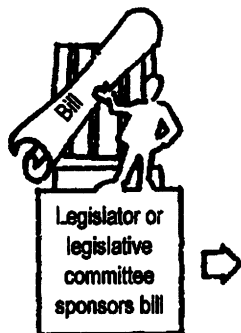
I. HOW AN IDEA BECOMES A BILL

*A. Sources of Ideas*

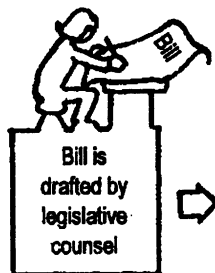
Sources of ideas are as varied as the ideas themselves. A legislator may read a newspaper account of a problem. A constituent may bring a problem to a legislator's attention. A state employee may suggest a change in the law that would allow the agency to manage the people's business better. A public official may have a political agenda to implement through legislation. An organization, such as the National Conference of Commissioners on Uniform State Laws, may offer ideas.⁸ In some cases, as with the Oregon Law Commission, the legislature has created a group specifically to develop ideas for legislation.⁹ In every case, however, an idea can become a law only through the efforts of a person or an entity who has the authority to convert the idea into a bill for the legislature to consider. That stage of the process involves sponsorship.

8. See, e.g., OR. REV. STAT. §§ 172.010, 172.020 (1999) (creating Oregon's Commission on Uniform State Laws).

9. See *id.* § 173.342 (requiring the Oregon Law Commission to recommend "statutory and administrative changes").

B. Sponsors of Ideas

Here the flow chart uses the phrase “sponsors bill” to mean “assumes responsibility for” converting the idea into a bill.¹⁰ The member or person taking responsibility for making an idea law might or might not be the “chief sponsor” whose signature is required under Oregon Revised Statutes (ORS) Section 171.127(2) on a measure filed for introduction.¹¹ At this stage, a member or a person assumes responsibility for an idea by asking the Legislative Counsel to draft a measure that reflects the idea.

C. Ideas into Draft Bills

10. See LEGISLATIVE GUIDE, *supra* note 5, at 141; MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 1136 (10th ed. 1993).

11. This section states, in pertinent part: “Each proposed legislative measure shall bear a statement signed by the chief sponsor thereof. . . .” OR. REV. STAT. § 171.127(2).

1. Office of the Legislative Counsel

Despite what some media may report,¹² members of the Legislative Assembly do not draft bills themselves. Each session, the House of Representatives and the Senate adopt rules that prescribe the form and style for legislative measures and direct the Office of the Legislative Counsel to prepare the measures in that form and style.¹³ To draft bills and amendments to bills, the Legislative Counsel employs fourteen attorneys and twelve other professionals who have backgrounds in areas other than law, such as foreign language and journalism.¹⁴

There are several reasons for this process. First, members do not have time to draft their own bills. Digesting the information necessary to choose from among the proposal ideas, such as those concerning taxes, teachers, or telecommunications, is more than a full-time job. Second, drafting a bill is too complicated for persons other than professional drafters to accomplish well. Only a professional drafter can hope to know the almost 100 pages of required formal and stylistic conventions, such as: "When a bill . . . will delay the effective date of the Act until after the normal effective date, place the section containing the effective date at the end of the bill. . . ."¹⁵ In addition, only a professional drafter keeps track of the special meanings of various terms used in the Oregon Revised Statutes—such as the dozens

12. See, e.g., J. Mapes, *Leonard Wades into Water Cleanup with Portland Plans*, OREGONIAN, Feb. 3, 1999, at B8 (reporting that Representative Randy Leonard was drafting two bills.).

13. See H. Rule 13.01, 70th Leg. (Or. 1999); S. Rule 13.01(3), 70th Leg. (Or. 1999). References to House and Senate rules are to those adopted in 1999 for the Seventieth Legislative Assembly. In rare instances, a political compromise will produce language for a draft bill that the Office of the Legislative Counsel may not change. See OR. REV. STAT. § 192.502.

14. Not only members and committees of the legislature may obtain the drafting services of the Legislative Counsel. Legislative Counsel is authorized by ORS 173.130(2) to draft bills for state agencies, the Governor, the Governor's designated representative, the Secretary of State, the State Treasurer, the Attorney General, the Commissioner of the Bureau of Labor and Industries, and the Superintendent of Public Instruction. Of the 4,240 requests for draft measures in the 1999 session, 793 requests came from state agencies and independently elected state officials. See OFFICE OF THE LEGISLATIVE COUNSEL, STATISTICAL SUMMARY, 70 Leg., exh. 1, at 2 (Or. Jan. 11 to July 24, 1999).

15. FORM AND STYLE MANUAL FOR LEGISLATIVE MEASURES 27 (Legislative Admin. Comm. 1999) [hereinafter LEGISLATIVE FORM AND STYLE MANUAL].

of different definitions of "public body"¹⁶ and the term "person," which usually includes corporations and other nonhuman entities.¹⁷

Through the 1953 legislative session, attorneys in private practice volunteered their services to draft measures for the legislature.¹⁸ By that time, however, the legislature had determined that part-time volunteers did not provide satisfactory drafting services or the requisite specialized legal advice. As a result, the legislature created the nonpartisan position of Legislative Counsel and charged the officer with providing legal (including drafting) services to members and their committees.¹⁹ Because the Legislative Counsel serves all ninety members of the legislature and members-elect, the legislature prohibits employees of the Office of the Legislative Counsel from "oppos[ing], urg[ing] or attempt[ing] to influence legislation."²⁰ The guiding principle of the office is to avoid appearing to advocate for or against any political issue.²¹

2. Confidentiality of Communications

The Legislative Counsel's work for members, agencies, and public officials is confidential for the same reason the legislature protects other communications between clients and their attor-

16. Compare OR. REV. STAT. § 196.815(3)(b)(D) (public body includes federal government) with *id.* § 526.801(4) (public body does not include federal government).

17. See *id.* § 174.100(4).

18. See OFFICE OF THE LEGISLATIVE COUNSEL 2 (1998).

19. See 1953 Or. Laws, ch. 492, §§ 1-14 (repealing OR. REV. STAT. § 171.110). At the same time, the legislature created the Legislative Counsel Committee, a permanent legislative committee, see OR. REV. STAT. § 173.111, composed of the President of the Senate, the Speaker of the House of Representatives, and nine other members appointed by them under ORS section 173.191(1) to oversee operations of and set policy for the Office of the Legislative Counsel. See OR. REV. STAT. § 173.130(4).

20. See *id.* § 173.240.

21. Over the years, the Legislative Assembly has assigned the Legislative Counsel additional duties, including editing and publishing session laws and the Oregon Revised Statutes, see *id.* §§ 171.236, 171.275-.325, 173.160, reviewing and reporting on executive department agencies' administrative rules, see *id.* §§ 183.710-.725, participating in legal proceedings, see *id.* § 173.135, assisting in the preparation of statewide initiative measures, see *id.* § 173.140, drafting statements explaining referred and initiative measures in the Voters' Pamphlet, see *id.* § 251.225, and assisting the ongoing law revision program of the Oregon Law Commission, see *id.* § 173.335. OR. REV. STAT. § 173.120 (1997). The Legislative Counsel also is required to "be in attendance upon all sessions of the Legislative Assembly." *Id.* § 173.120.

neys.²² This promise of confidentiality encourages sound decisions through frank communication.²³ With draft legislation kept confidential, a person or entity may be more likely to experiment with ideas that do not yet have a popular following.

3. Drafting Draft Bills

The Legislative Counsel assigns to an attorney a request for a draft bill by matching the subject of the request to the area of law in which the attorney specializes. Each attorney handles different subject areas and is responsible for drafting bills affecting the chapters of the Oregon Revised Statutes that correspond to his or her areas of expertise.

The attorney's first task is to understand the request, which may require that the attorney consult with the requester or the requester's representative.²⁴ When the attorney sufficiently understands the request, the attorney researches the issue to determine whether the law permits the attorney to fulfill the request. Among other issues, the attorney considers constitutional requirements for the form and substance of bills, such as containing a single subject,²⁵ taxing uniformly,²⁶ and setting forth the entire text of a law the bill proposes to amend.²⁷

The attorney also completes a search of a legislative computer database that informs the attorney of related statutes that might be affected. For example, section 1 of chapter 1074, Oregon Laws 1999, amended ORS 171.130 to eliminate state agencies' authority to file proposed measures with the legislature except through a member or committee.²⁸ There were three other statutes, ORS 456.571, 456.625, and 468B.162, however, authorizing specific agencies to submit proposed legislation. A data-

22. See *id.* § 40.225(2). That section provides: "A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client. . . ." *Id.*

23. See EVIDENCE 16-6 (Oregon State Bar 1986).

24. A member may ask the Legislative Counsel to take direction from a constituent or a lobbyist rather than from the member. This request, which must be in writing, is commonly called a "Note from Mother."

25. See OR. CONST. art. IV, § 20.

26. See *id.* art. IX, § 1.

27. See *id.* art. IV, § 22.

28. See 1999 Or. Laws ch. 1074, § 1 (amending OR. REV. STAT. § 171.130).

base search identified these statutes, allowing the attorney to include in the bill amendments to those statutes.²⁹

Once satisfied that the law allows the requested bill, the attorney begins drafting. By emphasizing the ABCs of drafting—accuracy, brevity, and clarity—the attorney prepares a draft bill with the goal of satisfying the constitutional command that “[e]very act . . . be plainly worded, avoiding as far as practicable the use of technical terms.”³⁰ A draft bill also must include an impartial summary of the bill’s content, describing new law and changes in existing law proposed by the bill³¹ and “written in a manner that results in a score of at least sixty on the Flesch readability . . . [or] comparable test.”³²

4. *Editing Draft Bills*

When the attorney finishes the initial draft of a bill, the attorney transfers the draft to the office’s Publication Services section where, in many cases, most of the work on a bill is done. There, the draft undergoes a thorough proofreading. One editor reads all changes in law the bill proposes, sometimes aloud to another editor—word for word, punctuation mark for punctuation mark. The editor reviews not only for errors of form and style, such as capitalization or designation of subsections, but also for errors in substance, such as the creation of a crime without specifying the penalty.

Every draft then undergoes a second complete editing. In the case of a long bill, the editing process may take days to finish. The Legislative Counsel Committee considers this depth and detail of editing to be worth the effort because the inadvertent omission of even a single word may have a large fiscal impact.

An example of the gravity of error that can be prevented by professional drafters and editors occurred in the 1995 session. Before that session, former ORS 279.340 required units of local

29. See *id.* §§ 2–4.

30. OR. CONST. art. IV, § 21.

31. See H. Rule 14.15(1), 70th Leg. (Or. 1999); S. Rule 13.02(1), 70th Leg. (Or. 1999).

32. OR. REV. STAT. § 171.134. Under the Flesch test, the more syllables a word contains, and the more words a sentence contains, the higher the score the test will assign to the paragraph.

government to pay their employees overtime,³³ and former ORS 279.342 made exceptions to that general rule, including one for local governments' white-collar workers.³⁴ Since the legislature amended ORS 279.340 in 1973,³⁵ the state had developed new kinds of local governments; consequently it became unclear whether ORS 279.340 applied to metropolitan service and mass transit districts. As a result, in 1995 Senate Bill (S.B.) 750 expanded the scope of governments to which the overtime requirement applied. Rather than list all of the covered entities in ORS 279.340, the legislature incorporated by reference the definition of "public employer" in ORS 243.650, which included metropolitan service and mass transit districts and the "State of Oregon."³⁶ At the same time, the legislature should have made a conforming amendment to ORS 279.342, expanding the exemptions to include the state's white-collar workers. Without that conforming amendment, the law by its terms required the state to pay overtime to its white-collar workers.

The history of 1995 S.B. 750 shows that the legislature did not intend to pay the state's white-collar workers overtime. There is no mention in any legislative proceeding of the bill having that effect. The administrator of the state's Labor Relations Division never mentioned the bill's effect of granting overtime to the state's white-collar workers.³⁷ The Legislative Fiscal Office estimated that the change to ORS 279.340 would have no effect on the state's budget,³⁸ and measure summaries prepared by committee staff omitted the changes to ORS 279.340 from discussions of the significant effects of 1995 S.B. 750. Nevertheless, in *Young v. State of Oregon*,³⁹ the Court of Appeals, refus-

33. See OR. REV. STAT. § 279.340 (1993) (pertaining to "[l]abor directly employed by any public employer as defined in ORS [section] 243.650"); *id.* § 243.650(20) (defining "public employer" to include "[c]ities, counties, community colleges, school districts, special districts, mass transit districts, metropolitan service districts," and public or quasi-public corporations).

34. See *id.* § 279.342(5)(a) (specifying the executive, administrative, supervisory or professional nature of their employment").

35. See 1973 Or. Laws ch. 418, § 1.

36. See 1995 Or. Laws ch. 286, § 26.

37. See *Hearing on S.B. 750 Before the Senate Interim Comm. on Gen. Gov't*, 67th Leg., doc. No. 2 (Jan. 9, 1995) (testimony of Peter DeLuca).

38. See Legislative Fiscal Office, Fiscal Analysis of Proposed Legislation, S.B. 750, 68th Leg. (Or. June 1, 1995).

39. 983 P.2d 1044 (Or. Ct. App. 1999).

ing to look beyond the text of the statutes, held that the law required the state to pay overtime to its white-collar workers.⁴⁰ The cost to the state for the period the law granted overtime to white-collar workers may be several million dollars.⁴¹

5. Drafting Timelines

The need for thorough editing becomes clearer with an understanding of the time frames within which the drafting of bills occurs. The Office of the Legislative Counsel prepares almost half of a biennium's draft bills, roughly 2,000 bills, in under two months.⁴²

Because most members of the legislature are involved in elections until the second Tuesday in the November before session, the Office of the Legislative Counsel receives comparatively few drafting requests before that time. One effect of term limits⁴³ is that during each session, roughly one-third of the members are not in a position to request draft bills until the session starts. As a result, the Office of the Legislative Counsel receives the bulk of members' requests after the legislative session begins on the second Monday in January. Both the Senate and the House require the Office of the Legislative Counsel to complete its drafting of members' and committees' bills by roughly six weeks into the session.⁴⁴ House Rule 13.10(1) requires the Legislative Counsel to complete that chamber's drafts by the "36th calendar day of the session,"⁴⁵ and Senate Rule 13.10(1) requires the Legislative Counsel to complete that chamber's drafts by the "50th calendar day following the election of a President."⁴⁶ Both chambers permit some additional drafting af-

40. See *id.* at 1048-49.

41. Ashbel S. Green, *Court Awards Overtime to State's Salaried Workers*, OREGONIAN, at D6 (June 3, 1999). In 1997, the legislature amended ORS section 279.342 to exempt the state's white-collar workers from eligibility for overtime. See 1997 Or. Laws ch. 793, § 3.

42. See STATISTICAL SUMMARY, *supra* note 14, at 6.

43. See OR. CONST. art. II, § 19(1). That section provides: "No person shall serve more than six years in the Oregon House of Representatives, eight years in the Oregon Senate, and twelve years in the Oregon Legislative Assembly in his or her lifetime." *Id.*

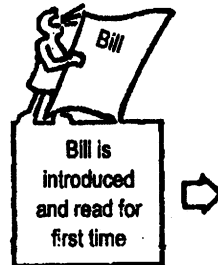
44. See H. Rule 13.10(1), 70th Leg. (Or. 1999); S. Rule 13.10(1), 70th Leg. (Or. 1999).

45. See H. Rule 13.10(1).

46. See S. Rule 13.10(1).

ter the deadline.⁴⁷ Members may request two additional bills,⁴⁸ and some committees may request more bills.⁴⁹

II. HOW A DRAFT BECOMES A BILL



A. Introduction

From the Office of the Legislative Counsel, the requester receives the draft bill and a "bill back," the document a person or entity uses to introduce the bill into the formal legislative process.⁵⁰ On the bill back, the person or entity introducing the bill identifies the chief sponsor, the bill's title, and, if appropriate, the person on whose behalf the sponsor is introducing the bill.⁵¹ Before introducing the bill, a member has the opportunity to obtain additional members' sponsorship. To show support for a bill, a member signs the bill back.⁵²

The person or entity delivers the draft bill and completed bill back to a chamber's chief legislative officer, a nonpartisan office nicknamed "the Desk."⁵³ In the Senate, the chief legislative officer is the Secretary; in the House of Representatives, the

47. See H. Rules 13.15(1), 13.10(2); S. Rule 13.15(1), 13.10(1).

48. See H. Rule 13.15(1); S. Rule 13.15(1).

49. See H. Rule 13.10(2); S. Rule 13.10(1).

50. See discussion *supra* at notes 10-11 and accompanying text. The person or entity that requested the draft need not be the person or entity that introduces the draft as a bill. For example, a member who requested a draft may be defeated for re-election and offer the member's drafts to a person who will serve in the coming session.

51. See OR. REV. STAT. § 171.127(2) (1999).

52. Some may view the process of obtaining cosponsors as hastened by impending filing deadlines, and to some, it may resemble a yearbook-signing party.

53. Article IV, section 11 of the Oregon Constitution allows each house to create its own officers.

chief legislative officer is the Chief Clerk. The respective houses elect those officers.⁵⁴

Constitutional requirements may influence the person's or entity's decision as to which member will introduce a bill. For example, Article IV, section 18 requires "that bills for raising revenue shall originate in the House of Representatives."⁵⁵ A member introduces a bill in the chamber in which the member serves.⁵⁶

The Desk ensures that the person or entity introducing the bill has completed the bill back correctly.⁵⁷ The Desk then assigns a number⁵⁸ to the draft bill and delivers the bill to the Office of the Legislative Counsel, who arranges for printing through the State Printer.

The Office of the Legislative Counsel drafts many more bills than the Legislative Assembly considers in a session. In the 1999 session, for example, the Office of the Legislative Counsel received 4,240 requests for draft measures, but the Clerk of the House and the Secretary of the Senate received only 3,308 measures for introduction.⁵⁹ This means that the Office of the Legislative Counsel drafted some or all of 932 measures that did not obtain a public sponsor, in the sense used in ORS 171.127(2) and legislative rules⁶⁰ and that, therefore, did not enter the public part of the legislative process.

B. Presession Filing

The Legislative Counsel Committee or the chambers themselves are allowed to set a time prior to session by which mem-

54. See S. Rule 15.01, 70th Leg. (Or. 1999); H. Rule 15.05, 70th Leg. (Or. 1999).

55. OR. CONST. art. IV, § 18; see also *Northern Counties Trust Co. v. Sears*, 41 P. 931, 935-36 (Or. 1895) (discussing a bill for the purpose of raising revenue).

56. See H. Rule 13.01(1), 70th Leg. (Or. 1999); S. Rule 13.01(1), 70th Leg. (Or. 1999).

57. For example, the Desk may find that a member other than a committee chair has signed a bill that a committee seeks to introduce. See S. Rule 12.05, 70th Leg. (Or. 1999) ("A measure to be sponsored by a committee . . . must be signed by the committee chair").

58. As a matter of custom, Senate bills begin with 1 and House bills begin with 2001. See LEGISLATIVE FORM AND STYLE MANUAL, *supra* note 15, at 79. Bills that propose to appropriate money begin with 5000 in the House and 5500 in the Senate. *Id.*

59. See STATISTICAL SUMMARY, *supra* note 14, exh. 1, at 20.

60. See H. Rule 12.01, 70th Leg. (Or. 1999); S. Rule 12.01, 70th Leg. (Or. 1999).

bers and committees may file bills already introduced with the Legislative Counsel.⁶¹ Submitting a proposed measure before session, referred to as presession filing, gives the measure's proponent a potential advantage over proponents of measures filed later because the Desks do not accept measures for introduction from December 31 to the start of the session.⁶² As a result, a measure filed presession will be available for the legislature to consider when the legislature convenes. Additionally, a measure filed presession must compete with fewer bills for members' attention than at any later stage in the process. For the Seventieth Legislative Assembly, that deadline was December 31 of the year preceding session.⁶³ Independently elected public officials in the executive department are allowed until December 15 of the year preceding session to file the bills they have introduced with the Legislative Counsel.⁶⁴ Executive department agencies also may file their bills with the Legislative Counsel by December 15, but only "through a member or committee"⁶⁵

C. First Reading

When a chamber convenes, the chief legislative officer (or, more likely, a person on the officer's staff) reads the title of the printed bill⁶⁶ aloud to the assembled members and public. With this reading, the bill becomes public for the first time and is available through the Bill Distribution office. The constitutional

61. See OR. REV. STAT. § 171.130(1) (1999).

62. See H. Rule 12.00(1), 70th Leg. (Or. 1999).

63. See Interim S. Rule 213.15, 69th Leg. (Or. 1997).

64. See OR. REV. STAT. § 171.130(2) (1999). The Oregon Department of Administrative Services also may file bills with the Legislative Counsel before session to implement the Governor's budget. See *id.* § 171.130(2)(a). A public official newly elected in the November preceding the session may file bills after the December 31 deadline, see *id.* § 174.132, because the official does not take office until after December 31.

65. *Id.* § 171.130(4). This procedure is new for the 2001 session. Under former ORS sections 171.130(1)(e) and 171.132, an agency could presession-file a bill without needing the member or committee intermediary.

66. Article IV, section 20 of the Oregon Constitution requires every bill to have a title that expresses the bill's subject. The purpose of this requirement is "to provide fair notice to legislators (and to others) of the contents of a bill." *McIntire v. Forbes*, 909 P.2d 846, 853 (Or. 1996). Examples of titles are "Relating to weed control emergencies," 1999 Or. Laws ch. 472, and "Relating to recording notice of homeowners association," 1999 Or. Laws ch. 447.

requirement to read the bill's title aloud comes from Article IV, section 19, which also directs that "[e]very bill shall be read by title only . . . , in each house."⁶⁷ This allows interested members of the public time to travel to Salem to present their views on the bill.⁶⁸

Once it reads the bill, the Desk transmits it to the presiding officer. The President, elected by the members,⁶⁹ presides in the Senate; the Speaker, elected by the members, presides over the House of Representatives.⁷⁰

III. HOW A BILL BECOMES LAW

A. Fiscal and Revenue Review

The flow chart in the legislative guide omits two essential steps in the process of a bill becoming law: evaluations for budget and tax consequences. When a person or entity introduces a bill, the bill also goes to the Legislative Fiscal Officer and Legislative Revenue Officer for review.

1. Legislative Fiscal Officer

The Legislative Fiscal Officer, selected by the Joint Committee on Ways and Means (or, if the position opens during the interim, by the Emergency Board)⁷¹ assists the legislature in crafting the state budget,⁷² and the officer estimates the cost to state and local governments for every bill introduced.⁷³

67. OR. CONST. art. IV, § 19.

68. See SUTHERLAND STATE CONST. § 10.04 (5th ed. 1994). Another reason for requiring the Desk to read bills out loud is that, at the time of the adoption of the constitution, "literacy was not widespread . . . [and s]ome members would not have had any other means of knowing on what they were deciding." *Id.*

69. See S. Rule 7.01, 70th Leg. (Or. 1999).

70. See H. Rule 7.01, 70th Leg. (Or. 1999).

71. See OR. REV. STAT. § 173.410 (1999).

72. See *id.* § 173.420.

73. See *id.* § 173.025(1). This section requires the Legislative Fiscal Officer to prepare a statement on a bill's potential effect on local governmental units; chamber rules extend that responsibility to a bill's "anticipated change in state . . . expenditures." *Id.*; H. Rule 14.25(1). In addition to the responsibility of estimating the fiscal impact of all measures, the legislature has also charged the Legislative Fiscal Office with providing research and administrative support to the Joint Committee on Ways and Means, see OR. REV. STAT. §§ 173.410-420, the Joint Legislative Audit Committee, see *id.* § 171.580(6), the Joint Committee on Information Management and Tech-

The fiscal impact of a bill may affect the legislative process used when considering the bill. First, Article XI, section 15 of the constitution allows a local government to decline to implement a state-mandated program if (1) the program will have a significant impact on the local government's budget, and (2) both houses of the legislature have not passed the bill by three-fifths of the votes.⁷⁴ Second, the rules of the chambers may require a chamber to follow a particular procedure for a bill with a particular fiscal impact. Under the chambers' rules, the presiding officers may decide which committees will consider which bills,⁷⁵ and the presiding officers may require the Joint Committee on Ways and Means to approve bills with particular fiscal impacts, such as those over \$50,000, before the second of the two chambers votes on the bill.⁷⁶

The Legislative Fiscal Officer employs twelve budget analysts and three fiscal analysts, who are trained economists, accountants, or business administrators. During the legislative session, the budget analysts help the Joint Committee on Ways and Means craft specific agencies' budgets, while fiscal analysts estimate the fiscal impacts of all proposed bills. (Because they handle fewer subject areas, budget analysts have more detailed knowledge of government units' finances than do fiscal analysts.)

The Legislative Fiscal Officer begins the fiscal review by assigning each bill to the fiscal analyst who has special expertise in the subject of the bill (e.g., human resources, corrections, or transportation). The fiscal analyst assigned to the bill reviews it to determine its potential effect on government, and then obtains from affected government units the estimates of the costs of implementing the proposed law.

Suppose, for example, that a bill proposes to require the

nology, *see id.* § 171.852(6), and the Emergency Board, *see id.* § 173.410-.420.

74. Under Article XI, section 15 of the Oregon Constitution, there is a common misperception that a bill requiring a local government to implement a program needs three-fifths of the votes to pass. Additionally, a bill that imposes a local mandate needs only simple majorities to become law. The constitution states in pertinent part: "A local government is not required to comply with any state [mandate that costs more than] one-hundredth of one percent of the [local government's] annual budget [unless the mandate] is approved by three-fifths of the membership of each house." OR. CONST. art. XI, § 15.

75. *See* discussion *infra* notes 84-87 and accompanying text.

76. *See* H. Rule 9.01(3), 70th Leg. (Or. 1999); S. Rule 8.40(1), 70th Leg. (Or. 1999).

Oregon Department of Administrative Services to provide all citizens of the state with a copy of the state Constitution. The fiscal analyst would ask the department to estimate the costs of the supplies, labor, and distribution involved in that undertaking. The fiscal analyst then would review that information and make an independent estimate of the potential fiscal impact of the bill on the department. The fiscal analyst's independent estimate is called a fiscal impact statement. Next, the budget analyst assigned to the department reviews the fiscal impact statement. If the budget analyst approves the statement, the Legislative Fiscal Office sends it to the committee to which the presiding officer has referred the bill.

2. *Legislative Revenue Officer*

The House and Senate Committees on Revenue select the legislative revenue officer (or, if the position opens during the interim, the Interim Revenue Committee selects the officer).⁷⁷ With the presiding officers' approval, the Legislative Revenue Officer gives the legislature the financial information necessary to evaluate proposed tax laws⁷⁸ and, for every bill introduced, determines whether the proposed law will increase or reduce tax revenues, and by how much. Oregon Revised Statute section 173.025 (2) requires the Legislative Revenue Officer to prepare a statement on a bill's potential "effect on revenues of local governmental units,"⁷⁹ and chamber rules extend that responsibility to a bill's "anticipated change in state . . . revenues."⁸⁰

Determining whether a bill affects revenues is important because that effect also may shape the process through which the legislature considers the bill. Article IV, section 18 of the Constitution requires "bills for raising revenue . . . [to] originate in

77. See OR. REV. STAT. § 173.800.

78. See *id.* § 173.820.

79. *Id.* § 173.025(2).

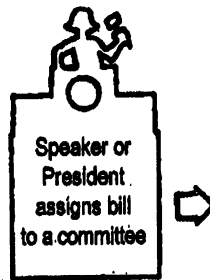
80. H. Rule 14.25(1). In addition to the responsibility of estimating the revenue impact of all measures, the legislature has also charged the Legislative Revenue Office with: providing research and administrative support to the House and Senate Committees on Revenue and the Joint Interim Revenue Committee, see OR. REV. STAT. § 173.820; assisting the Department of Education implement the public school funding formula, see 1997 Or. Laws, ch. 821, § 5; and preparing reports on specific issues, such as capital gains taxes. See 1995 Or. Laws, ch. 809, § 11.

the House of Representatives.”⁸¹ Article IV, section 25 requires three-fifths votes for revenue bills to become law.⁸²

The legislature also assigns to the Legislative Revenue Officer an evaluation of the state’s principal spending obligation: public school funding. It is, therefore, the Legislative Revenue Officer who calculates the effect on individual school districts of changes to the school funding formula and funding levels.

The Legislative Revenue Officer receives a copy of every bill introduced and every amendment a committee adopts and determines whether the bill or amendment affects state or local tax revenues.⁸³ The Legislative Revenue Officer employs four economists with advanced degrees and special expertise in different areas of tax policy, such as property, income, and excise. If the Legislative Revenue Officer determines that a bill will affect tax revenues, the officer assigns the bill to the economist who specializes in the subject of the bill. If a committee plans to hold a hearing or a work session on the bill, the economist, using a sophisticated computer model, prepares a statement that estimates the revenue impact of the bill.

B. Assignment to Committee



Under the rules of both chambers, the presiding officer decides to which committee a bill will be referred.⁸⁴ House Rules

81. See discussion *supra* note 55 and accompanying text.

82. See OR. CONST. art. IV, § 25.

83. As a matter of longstanding practice, the Legislative Revenue Office does not estimate the effect of all bills that affect revenues. The Legislative Revenue Office does not estimate the effect of bills that affect the amount of a fee or of specialized assessments, such as those for unemployment compensation. Estimates of those kinds of bills may fall to the Legislative Fiscal Office.

84. See H. Rule 9.01, 70th Leg. (Or. 1999); S. Rule 8.40(1), 70th Leg. (Or. 1999).

impose an additional requirement that the subject matter of the bill should guide the presiding officer's decision.⁸⁵ For example, the House Committee on Human Resources should receive the bills "relating generally to human resources and health care issues."⁸⁶ As a practical matter, however, a bill may contain a subject that falls within the jurisdiction of more than one committee. For example, the Speaker referred 1999 House Bill (H.B.) 2633, relating to abortion, to the House Committee on Judiciary-Civil Law, which had jurisdiction over bills "relating generally to civil law and administration of justice."⁸⁷ That bill involved a medical procedure, but also involved procedures in resolving disputes.

The presiding officer's referral of a bill to a particular committee can be a critical decision. Under a committee's rules, adopted by the committee, the chair, who is appointed by the presiding officer,⁸⁸ decides on which bills the committee will act.⁸⁹ Chairs of different committees may have different political views, and one chair may decline to act on a bill the other chair favors. Because of this potential for difference in treatment, the presiding officer's referral is a decision that many in the legislative process (including sponsors, chairs, and lobbyists) attempt to influence. The majority of the committee members may try to force a chair to allow the committee to act on a bill,⁹⁰ but forced action rarely occurs because the majority of the committee's members are usually of the same political party as the chair.⁹¹

85. See H. Rule 8.01, 70th Leg. (Or. 1999).

86. *Id.* 8.01(7).

87. *Id.* 8.01(8).

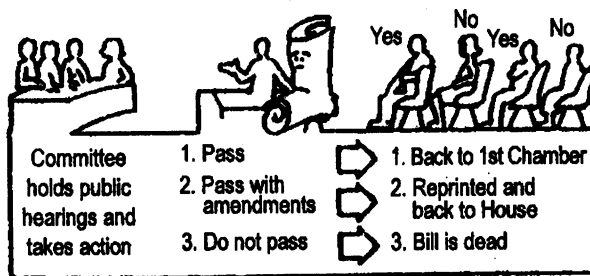
88. See *id.* 8.05(1); S. Rule 8.05(2). Under House Rule 7.10, the Speaker, or the Speaker's designee, is the presiding officer.

89. See H. Rule 8.10(2); S. Rule 8.10(3).

90. See H. Rule 8.20(1); S. Rule 8.20(2).

91. See H. Rule 8.05(2).

C. Committee Action



The flow chart appears to suggest that a committee will hold a public hearing on every bill or hold public hearings before taking action on the bills the committee chooses to consider. If those are the ideas the flow chart intends to convey, it overstates not only the scope of the committees' work, but also the amount of public participation in the legislative process.

1. Separating Wheat from Chaff

Most committees of the legislature receive administrative support from the Office of Policy, Research and Committee Services, which is under the direction of the Legislative Administrator.⁹² The Office of Policy, Research and Committee Services ordinarily provides one administrator (plus additional clerical staff) for every standing committee. An administrator is usually not an attorney, but often another professional with real-world expertise in the subject matter over which the committee has jurisdiction. For example, Ray Kelly had served for ten years in the Oregon Emergency Management Division of the Oregon State Police before administering the Task Force on Landslides and Public Safety, which the legislature charged with recommending laws to reduce landslides and the damage they cause.⁹³

92. See *id.* 15.20(1); S. Rule 15.05(4); OR. REV. STAT. § 173.720(1), (9). The Legislative Administrator, selected by the Legislative Administration Committee, see OR. REV. STAT. § 173.710, has many other duties, such as: managing the State Capitol Building, see *id.* § 173.720(7)-(8); providing electronic distribution of legislative information, see *id.* § 173.763; and performing administrative service functions (e.g., accounting, personnel) for all legislative employees. See *id.* § 173.720.

93. 1997 Or. Laws, ch. 565, § 7(1).

When a presiding officer refers a bill to a committee, the administrator's first task is to gather information on the bill—pros, cons, costs—and to present that information to the committee chair, who decides whether the committee will consider the bill.⁹⁴ Depending on the time of session, the scope of the bill, and the administrator's workload, the administrator may have as little as a few hours or as much as a few weeks to learn what the bill proposes. To gather the requisite information, the administrator may undertake factual or legal research or, more likely (given the time constraints) communicate with parties interested in the bill, such as sponsors, lobbyists, and affected agencies. Oregon Revised Statutes section 173.740(3) prohibits an administrator (and any other employee of the Legislative Administration Committee) from "oppos[ing], urg[ing] or attempt[ing] to influence any measure pending before the Legislative Assembly."⁹⁵ Therefore, when presenting information, the administrator takes care not to advocate for or against a particular course of action.

This culling process saves the legislature considerable time. Of the 3,308 measures introduced in the 1999 session, 990 received no public consideration of any kind.⁹⁶ The presiding officer assigned the measures to committees, but the chairs of those committees decided not to take testimony or have their committees even discuss those bills.

2. Public Hearing

If the chair decides the committee will hold a public hearing on a bill, the committee staff calls interested parties and invites their testimony.⁹⁷ Notice is provided to the public of the time, place, and agenda for the hearing.⁹⁸ The administrator also may prepare background materials for committee members. Such materials may include articles, related laws, or a preliminary staff measure summary, a form of executive summary of the bill.

94. See SESSION COMM. STAFF DUTIES 1 (Legislative Admin. Comm. 2000).

95. OR. REV. STAT. § 173.740(3).

96. OREGON HOUSE OF REPRESENTATIVES FINAL MEASURE STATUS REPORT, at HLS-1 (1999); OREGON SENATE FINAL MEASURE STATUS REPORT, at SLS-1 (1999).

97. See SESSION COMM. STAFF DUTIES, *supra* note 94, at 1.

98. See *id.*

Occasionally, members' personal staff also will provide background materials. For most members, however, the only information they will have prior to the hearing is a copy of the bill. Potential witnesses sign up to testify before the committee. The chair has discretion to limit the time a witness may speak or not to hear from a witness at all.⁹⁹ As a result, a public hearing may last a few minutes or hundreds of hours.

At the beginning of the hearing, the administrator may explain the bill to members and answer questions about the bill. The committee then takes written and oral testimony from the bill's proponents and opponents, such as members, representatives of government agencies, private citizens, and lobbyists.¹⁰⁰ On particularly complex or contentious bills, the committee, whose members are usually not attorneys, may also invite testimony from legal experts, such as representatives of the Attorney General, the Legislative Counsel, and the Oregon State Bar. From this testimony, the committee members form a clearer idea of the law the bill proposes and decide whether to support the concept or propose changes to it. An assistant makes an audio recording of the proceedings.¹⁰¹ The assistant and the committee administrator prepare minutes that contain, among other items, a "summary of discussion on any matter."¹⁰²

If a committee meets in public to consider a bill, no statutory provision, chamber rule, or constitutional provision requires committee members to take testimony from interested members of the public. The committee must permit members of the public to attend the hearing, but need not allow them to speak. As a result, committees can (but rarely do) vote to recommend the passage of bills without holding public hearings.

3. Amendment

As a result of public testimony or discussion with interested parties, a member or committee may decide that a bill as introduced does not propose a law in the form desired. Any member and any committee may ask the Office of the Legislative Counsel to draft an amendment to any bill, including a bill the mem-

99. See H. Model Comm. Rule 7 (1999); S. Model Comm. Rule 7 (1999).

100. See SESSION COMM. STAFF DUTIES, *supra* note 94, at 2.

101. See H. Rule 8.15(8), 70th Leg. (Or. 1999); S. Rule 8.25, 70th Leg. (Or. 1999).

102. S. Rule 8.25(i); see also H. Rule 8.25(1).

ber has not sponsored.¹⁰³ State officials and private parties may request amendments only through a member or committee.¹⁰⁴ The Office of the Legislative Counsel keeps members' requests for amendments confidential, but treats committees' requests as public.

(a) Drafting

The Office of the Legislative Counsel drafts amendments using the same process for drafting bills: initial drafting by an attorney, followed by editing.¹⁰⁵ In the 1999 session, members and committees requested 5,894 amendments to measures. An equivalent amount of effort goes into drafting an amendment as goes into drafting a bill. However, because the drafting of amendments is concentrated within just a few months (just under 4,000 in three months in 1999), there is a limited amount of time available for drafting amendments.

Through its rules, the legislature requires the Office of the Legislative Counsel to make line-by-line amendments, rather than new versions of what the bill would look like as amended.¹⁰⁶ An amendment, therefore, might look like this:

On page 3 of the printed bill, line 17, delete "without" and insert "after".¹⁰⁷

Only after a committee has adopted amendments to a bill and sent the bill to the floor may the office prepare a version of the amended bill.

(b) Legal and Parliamentary Requirements

There are two other significant requirements for an amendment to a bill. First, the amendment must fit within the title.¹⁰⁸ A bill that is "relating to horses" cannot accept an amendment that deals only with cows.¹⁰⁹ An amendment also must be "germane" to the subject of the bill,¹¹⁰ which is a somewhat nar-

103. See OR. REV. STAT. § 173.130(1) (1999).

104. See S. Rule 13.10(3).

105. See discussion *supra* pages 106-07.

106. See LEGISLATIVE FORM AND STYLE MANUAL, *supra* note 15, at 51.

107. See *id.*

108. See OR. CONST. art. IV, § 20.

109. See *id.*

110. See H. Rule 5.35, 70th Leg. (Or. 1999).

rower inquiry than whether the title covers the amendment. To be germane, the amendment must be "relevant, appropriate, and in a natural and logical sequence to the subject matter of the original proposal."¹¹¹ Thus, an amendment that fits within the title may still not be germane. For example, an amendment banning the sale of horse meat might not be germane to a bill "relating to horses," which limits the tort liability of sponsors of equine activities. Whether an amendment is germane is a parliamentary, not legal, question. The chambers' rules delegate that inquiry to the chief legislative officer in the first instance.¹¹²

These requirements of form most often come into play when a member or committee seeks to remove the entire text of a bill and replace it with a different text. This kind of amendment, called a "gut and stuff," occurs most frequently in the latter stages of a session, when there is insufficient time before adjournment for a bill to move through two chambers. In that case, a member will find a vehicle, a bill that has passed one chamber and that has a title that will accept the amendment the member proposes, then ask the committee with jurisdiction over the bill to gut the bill's contents and replace them with the member's amendment. A member or committee must find a bill with an acceptable title because a committee may not amend the title of a bill.¹¹³ If the chamber passes the gutted and stuffed bill, the bill (as with all amended bills) will go back to the floor of the originating chamber for a vote on whether to accept the amended version of the bill. If the originating chamber accepts (by re-passing) the amended bill, then the bill becomes enrolled,¹¹⁴ without a committee in the originating chamber having considered the amended version of the bill.

The genesis of H.B. 2550 (relating to "education") demonstrates the transformation a bill may undergo. As introduced, the bill proposed a law to prohibit the State Board of Higher Education from funding athletic programs with funds utilized for academic programs.¹¹⁵ The House gutted the contents of the bill

111. See PAUL MASON, *MANUAL OF LEGISLATIVE PROCEDURE* § 402(2) (1989).

112. See H. Rule 15.05(1)(a)(C); S. Rule 15.01(2)(e).

113. See H. Rule 5.37. The Senate enforces the same rule through an order from the President.

114. See discussion *infra* note 158 and accompanying text.

115. See H.B. 2550, 70th Leg. (Or. 1999).

and inserted a proposal to require secondary schools to admit military recruiters on campus.¹¹⁶ The Senate, in turn, removed the military recruiters text and replaced it with a licensing requirement for teachers in public charter schools.¹¹⁷ The House concurred in the Senate amendments and, upon the Governor's signature, the idea the bill proposed became law.¹¹⁸

When voting on whether to adopt an amendment to a bill, committee members should have the amendment available so they know the exact language on which they are voting. Amendments are known by their "dash" numbers. Each time the Publication Services section in the Office of the Legislative Counsel processes an amendment, the amendment receives as its distinguishing mark the next highest number. The first amendment to a bill the office processes is the "-1 amendment"; the second is the "-2 amendment."¹¹⁹

(c) Conflicts

Another vital part of the process involves what the legislature calls "conflict amendments."¹²⁰ More than one bill may propose to amend the same section of the Oregon Revised Statutes. If the legislature passes two or more bills dealing with the same section and the bills conflict (such as one amending the section and another repealing it), then, under Article IV, section 22 of the Constitution, "the act last signed by the Governor shall control."¹²¹ Members of the legislature frequently prefer to avoid

116. *See id.*

117. *See id.*

118. *See* 1999 Or. Laws, ch. 199.

119. A source of confusion sometimes occurs when, because of the complexity of a concept, the office creates working drafts of an amendment. To keep track of the working drafts, the office numbers the drafts as if they were final amendments (e.g., -3, -4). Drafts, however, do not leave the office. As a result, a committee may find itself considering -1, -2, and -5 amendments and wondering whether the committee has mislaid the -3 and -4 amendments.

120. *See* S. Rule 8.80(4), 70th Leg. (Or. 1999).

121. OR. CONST. art. IV, § 22. That section provides:

No act shall ever be revised, or amended by mere reference to its title, but the act revised, or section amended shall be set forth, and published at full length. However, if, at any session of the Legislative Assembly, there are enacted two or more acts amending the same section, each of the acts shall be given effect to the extent that the amendments do not conflict in purpose. If the amendments conflict in purpose, the act last signed by the Governor shall control.

that rule. With over 3,000 bills under consideration, members frequently do not know that bills affecting the same provision of law are working their way through the system. To help the members adopt the versions of law they intend, the Office of the Legislative Counsel designates a group of editors as its “conflicts team” and charges the group with (1) tracking all bills as they move through the legislature, and (2) bringing to the drafting attorneys’ attention any potential for conflict between bills.¹²² After conferring with interested members, the editors and attorneys prepare amendments to resolve the conflict as the legislature appears to intend. Typically, the conflict amendments provide that, if the preferred and alternate versions both become law, the alternate version is repealed.¹²³

D. Work Session

First, a caveat: contrary to popular opinion, the Public Meetings Law¹²⁴ does not apply to the Legislative Assembly. Article IV, section 11 of the constitution requires “[e]ach house when assembled . . . [to] determine its own rules of proceeding.”¹²⁵ This authority means that one Legislative Assembly, through a rule or statute (such as the Public Meetings Law), cannot require a future Legislative Assembly to operate in a particular way.¹²⁶

Yet, the legislature is not free to operate in secret. Article IV, section 14 of the constitution requires that the meetings of the legislature and its committees be “open,” and requires the chambers to adopt rules to maintain that openness.¹²⁷ Those rules are similar to, but not duplicates of, the Public Meeting Law. The House rules prohibit a quorum of a committee from meeting “in private for the purpose of deliberating or taking

OR. CONST. art. IV, § 22.

122. See BILL DRAFTING MANUAL 13.11, 18.10-.11 (Legislative Counsel 1998).

123. See *id.* For an example of conflict amendments, see 1999 Or. Laws, ch. 999, § 27a: “If Senate Bill 946 becomes law, section 33, chapter _____, Oregon Laws 1999 (Enrolled Senate Bill 946) (amending ORS 316.102), is repealed.”

124. See OR. REV. STAT. §§ 192.610-.690 (1999). The Public Meetings Law requires governing bodies of most public bodies to meet and make their decisions in public.

125. OR. CONST. art. IV, § 11.

126. See ATTY. GEN. PUBLIC RECORDS MANUAL A-3 (Sept. 15, 1997).

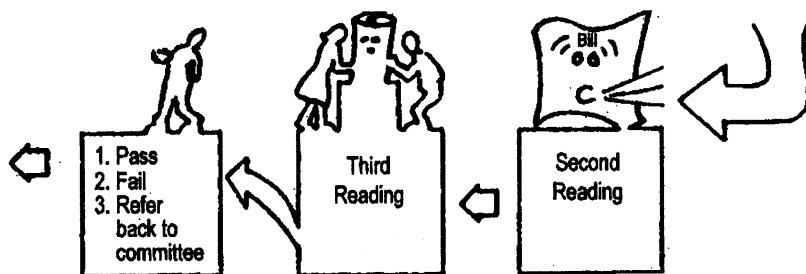
127. See OR. CONST. art. IV, § 14.

collective action on any matter.”¹²⁸ The House rules also require at least thirty-six hours’ notice to the public of a committee meeting.¹²⁹ When adjournment *sine die* is “imminent,” however, the Speaker can reduce the thirty-six hours’ notice for taking public testimony to twenty-four hours and for emergencies to “notice appropriate to the circumstances”¹³⁰—which, in practice, means that committees give at least one hour’s notice before voting on a bill.¹³¹

The meeting at which a committee votes on a bill is called a “work session.” A work session usually consists of a discussion between members and then a vote on whether to pass the bill to the floor of the chamber with a positive (“do pass” or “do pass as amended”) recommendation.¹³² A majority of the committee must agree to a course of action, such as passing a bill to the floor.¹³³

Once the committee votes to pass a bill to the floor, the committee’s chair designates a member, usually the bill’s sponsor or a member of the chair’s committee who voted in the majority, as the carrier of the bill. The carrier’s role is to explain the bill to members and lead the debate on the floor.

E. Second and Third Readings



128. H. Rule 8.15(3)(a), 70th Leg. (Or. 1999).

129. *See id.* 8.15(5).

130. *Id.* 8.15(5)-(6).

131. Just what notice is appropriate under the circumstances is a matter of differing opinions. In the waning days of the 1999 session, the House Committee on Rules, Elections and Public Affairs met on one hour’s notice to consider a bill after the Capitol had closed to the public for the evening.

132. H. Rule 8.20(2); *see also* S. Rule 8.50(4). A committee may take other actions on a bill, such as tabling it, but those actions are rare.

133. *See* H. Rule 8.25; S. Rule 8.10(2).

1. Reports

A flurry of activity follows a committee passing a measure, as amended, to the floor. Within three days, (a) the Legislative Fiscal Office prepares a revised fiscal impact statement for the bill taking into account the effect of the amendments; (b) the Legislative Revenue Office prepares a revised revenue impact statement for the bill; and (c) the committee administrator completes the committee report and staff measure summary that, together, state and explain the committee's action on the bill.¹³⁴ When the committee staff has gathered or produced all required paperwork, the committee staff delivers the complete bill folder to the Desk.¹³⁵ The Desk reviews all reports, checking for completeness and accuracy; the bill is then scheduled for its second and third readings on the chamber floor.¹³⁶

2. Engrossing

The chambers' rules require a printed measure to be "placed" on members' desks before a vote on the measure.¹³⁷ The chief legislative officer transmits the bill and the amendments to the Publication Services section in the Office of the Legislative Counsel, which then produces, through another editing process, an engrossed bill—i.e., one that incorporates the amendments that the committee adopted.

3. Third Reading: The Floor Vote

A bill usually comes up for its third, and final, reading the day after the second reading. On this third reading, all of the members debate and vote on the bill.¹³⁸ The vote is an up or down vote; unlike other states and the U.S. Congress, Oregon's legislature may not amend a measure on the floor without unanimous consent of the members.¹³⁹ If the chamber wants to amend a bill before voting on it, then the chamber votes to refer the bill back to committee, which then makes the necessary

134. See H. Rule 8.20(5); S. Rule 8.50(1).

135. See H. Rule 8.20(3); S. Rule 8.50(4); OR. REV. STAT. § 173.045.

136. See H. Rule 9.32; S. Rule 8.55.

137. See H. Rule 3.45; S. Rule 3.45(1).

138. See H. Rule 9.37; S. Rule 8.80.

139. See H. Rule 5.40(1); S. Rule 5.40.

amendment.¹⁴⁰ A member may make a number of parliamentary motions in an effort to position a vote in a manner that best meets the member's needs.¹⁴¹ One such motion may delay the timing of the vote.

After the Desk reads the bill by number and title, the presiding officer recognizes the bill's carrier. The carrier has ten minutes in which to speak on the bill, explaining its terms and the reasons members should support it.¹⁴² Other members then may address questions to the carrier (through the presiding officer) or address the bill.¹⁴³ Each is limited to five minutes.¹⁴⁴ Each member, including the carrier, may have one person assisting the member with the debate.¹⁴⁵ The person assisting the member on the floor may be the member's legislative aide,¹⁴⁶ but more likely will be a committee administrator or a representative of the Legislative Counsel, Legislative Fiscal Office, or Legislative Revenue Office.¹⁴⁷ Lobbyists may not enter the chamber area while a house is in session,¹⁴⁸ but may observe from the third-floor public gallery. When members finish speaking, the presiding officer invites the carrier of the bill to make closing remarks.¹⁴⁹ The members then vote for or against passage of the bill.¹⁵⁰ The chief legislative officer records all the chamber's actions, including votes.¹⁵¹

This record of floor proceedings, the journal, is to the legislative process what a birth certificate is to a person. The journal is a requirement of the constitution and functions as the official record of the actions the legislature has taken on a measure.¹⁵²

140. See H. Rules 5.40(2), 9.01(2); S. Rule 8.43. The members of a political party in a chamber often will meet—e.g., caucus—before a floor session to discuss the bills scheduled for a third reading that day.

141. See H. Rules 5.01-.15 (providing the motions a member may make and the procedures the chambers employ for processing them); *accord* S. Rules 5.01-.25.

142. See H. Rule 6.30(1); S. Rule 6.30(1).

143. See H. Rule 6.10(3)(a); S. Rule 6.20.

144. See H. Rule 6.30(1); S. Rule 6.30.

145. See H. Rule 17.01(1); S. Rule 17.01(1).

146. See H. Rule 15.10(1)(a); S. Rule 15.05(1)(a).

147. See H. Rule 17.01(1); S. Rule 17.01(f).

148. See H. Rule 17.01(6); S. Rule 17.01(3).

149. See H. Rule 6.25(1); S. Rule 6.25(1).

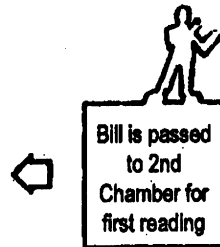
150. See H. Rules 3.12-.20; S. Rules 3.15-.30.

151. See H. Rule 14.01(1); S. Rule 14.01(1).

152. See OR. CONST. art. IV, § 13. This section provides in pertinent part: "Each

Each day, the Desks updates a computer database, referred to as "Measure History," which receives information from committees about the bills. With this history at their fingertips, the Desks serve as clearing houses throughout the session, providing members and the public with information about the status of bills as they pass through the system.

F. Passing the Baton

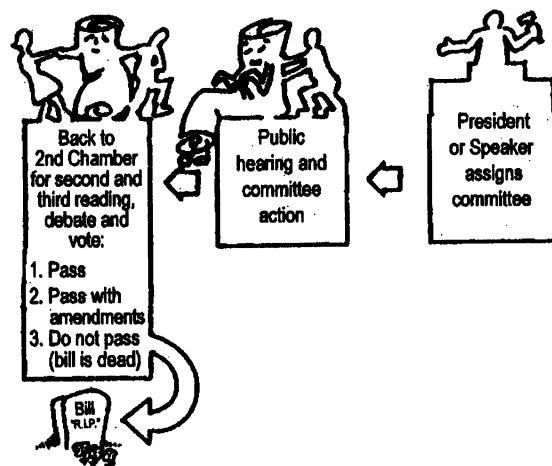


If the first chamber passes the bill, the Desk in the originating chamber transmits the bill and its associated reports to the Desk in the other chamber.¹⁵³ This transmission is called a "message," which the Desk in the other chamber reads to its members when they assemble.

house shall keep a journal of its proceedings.—The yeas and nays on any question, shall at the request of any two members, be entered, together with the names of the members demanding the same, on the journal." *Id.* For a discussion of the effect of an omission from the legislative journal, see *City of Portland v. Yick*, 75 P. 706, 707-08 (Or. 1904).

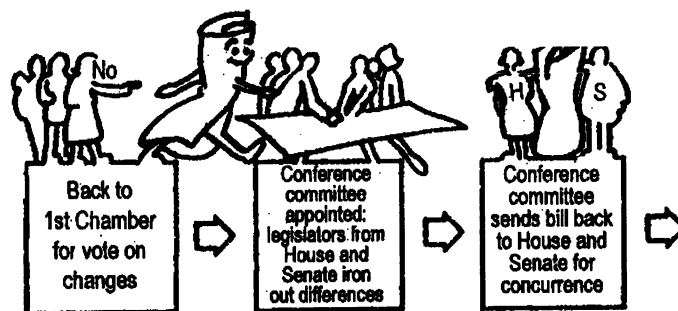
153. MASON, *supra* note 111, §§ 584(1)(e), (f), 761(1), (4).

G. Repeat and Rinse



The second chamber goes through the same process as the first.¹⁵⁴

H. Concurrence or Conference Committee



1. Repassing

If the second chamber amends and passes a bill, the bill returns to the original chamber for a decision on whether or not to concur in the amendments and repass the bill.¹⁵⁵ The chair of the committee that handled the bill in the original chamber usually makes the motion and leads the debate on the chair's proposed

154. See OR. CONST. art. IV, § 25(1).

155. See H. Rule 11.01; S. Rule 11.01.

course of action. If the original chamber does not concur in the other chamber's amendments, the presiding officers appoint a conference committee to iron out the differences between the different versions of the bill.¹⁵⁶ If the conferees then can agree on the form of the bill, the bill returns to both chambers for members to vote on whether to adopt the conference committee's report.¹⁵⁷

2. Enrolling

When the second chamber approves a bill, the Desk again sends the bill to the Office of the Legislative Counsel. This time, the office converts the bill into its enrolled form. Here, the editors proofread the bill once more and add signature lines for the chief legislative officer of the chamber in which the bill originated, the presiding officers, the Governor, and the Secretary of State.¹⁵⁸

I. Sign or Veto

Once a bill has been enrolled, the bill must survive the Governor's review before the proposed law can take effect. Together, sections 15a and 15b of Article V of the constitution give the Governor the authority to veto whole bills or "single items in appropriation bills."¹⁵⁹ During session, the Governor has five working days within which to veto a bill.¹⁶⁰ The Governor may take up to thirty days from adjournment *sine die* to veto bills passed within the last five working days of the session.¹⁶¹ Section 15b(4) of Article V imposes an additional procedural requirement for the Governor to veto a bill after the legislature has adjourned *sine die*: the Governor must make a public announcement at least five days before the veto that he has the "possible

156. See H. Rule 11.05; S. Rule 11.05. House Rule 11.10(1) and Senate Rule 11.10(1) authorize a conference committee to propose amendments "within the scope of the issues between the houses," but in practice, conference committees have gutted bills and stuffed them with contents different from either chamber's version of the bill. See, e.g., 1999 Or. Laws, ch. 275.

157. See H. Rule 11.15; S. Rule 11.15.

158. See MASON, *supra* note 111, § 748.

159. OR. CONST. art. V, §§ 15a, 15b.

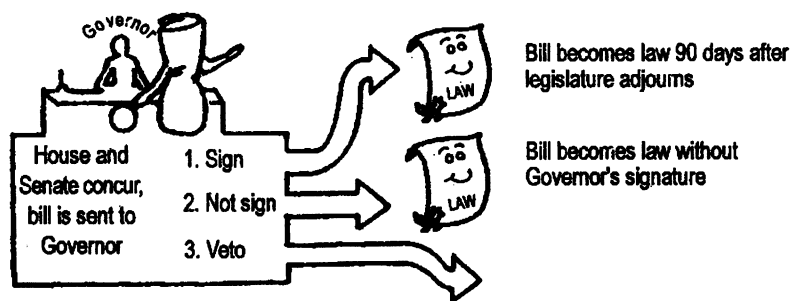
160. See *id.* § 15b(3).

161. See *id.* § 15b(3).

intention"¹⁶² to veto the bill. This announcement may trigger lobbying by interested parties attempting to influence the Governor's decision.

The Governor assigns responsibility for tracking the bill to a policy advisor, who has expertise in the subject of the bill, to help the Governor decide whether to support or oppose a bill. The policy advisor keeps the Governor informed of the bill's progress through the legislative process and may recommend action by the Governor (or Governor's officials), such as testifying at a hearing or meeting with interested parties, to influence the outcome of a vote. By signaling opposition to a bill, the Governor may keep from having to veto the bill.

When the legislature passes a bill, the Desk of the originating chamber sends the Governor an advance copy of the bill so the Governor can consider, at the earliest opportunity, whether to sign or veto. To assist the Governor's decision, the policy advisor has provided the Governor with a folder on each bill, which includes a "bluesheet," a summary of the bill, and the legislative process and the course of action the advisor recommends. The folder also contains legal analyses from the Attorney General and the Governor's counsel, policy advice from affected agencies, advice from the Oregon Department of Administrative Services on fiscal matters, and the staff measure summaries prepared by legislative committee administrators. When deciding whether to sign or veto a bill, the Governor also may confer with interested parties, such as the bill's sponsor or affected citizens.

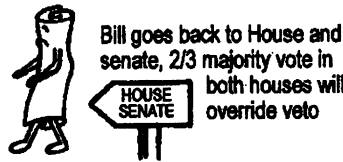


When the Governor vetoes a bill, it returns unsigned to the presiding officer of the chamber in which the bill originated, to-

162. *Id.* § 15b(4).

gether with the Governor's explanation for the veto.¹⁶³ A member of the chief legislative officer's staff reads the Governor's message on the floor of the chamber that is in session.¹⁶⁴

J. Overriding a Veto



Article V, section 15b authorizes the legislature to override the Governor's veto by obtaining two-thirds votes of the members present in each chamber.¹⁶⁵ If the legislature wants to "reconsider"¹⁶⁶ and re-pass a bill that the Governor vetoed during the session, the legislature must act before adjournment *sine die*. The legislature must move to reconsider bills the Governor vetoes after adjournment at the next convening of the legislature, whether a special or regular session.¹⁶⁷

IV. CONCLUSION

If there is a fault with the flow chart that illustrates the legislative process, it is that the chart understates the amount of work required for an idea to become law. The significant amount of work invested in converting an idea into law recognizes the high "price tag on badly constructed legislation."¹⁶⁸ The price tag is high because "[j]udges struggle to interpret and apply [poorly drafted statutes], attorneys find it difficult to base

163. *See id.* § 15b(1). That section states:

Every bill which shall have passed the Legislative Assembly shall, before it becomes a law, be presented to the Governor; if the Governor approve, the Governor shall sign it; but if not, the Governor shall return it with written objections to that house in which it shall have originated, which house shall enter the objections at large upon the journal and proceed to reconsider it.

Id.

164. *See* H. Rule 4.01(1)(e), 70th Leg. (Or. 1999); S. Rule 4.01(2), 70th Leg. (Or. 1999).

165. *See* OR. CONST. art. V, § 15b(2).

166. *Id.*

167. *See id.* § 15b(3).

168. L. Jaworski, *The American Bar Association's Concern with Legislative Drafting*, in *PROFESSIONALIZING LEGISLATIVE DRAFTING* 5 (R. Dickerson ed., 1973).

any sure advice on them, the citizen with an earnest desire to conform is confused.”¹⁶⁹ A citizen may quarrel with the idea that becomes law, but there should be little complaint about the effort made in the legislative process to understand the idea and to ensure that the law expresses the idea clearly.¹⁷⁰

169. BILL DRAFTING MANUAL, p xi (Legislative Counsel 1998)..

170. Expressing an idea clearly is vital in Oregon because, under *PGE v. Bureau of Labor and Indus.*, 859 P.2d 1143 (Or. 1993), a court will consider legislative history—the process through which an idea became law—as a guide to interpretation only if the text of the statute is unclear. *Id.* at 1146. As Judge Jack L. Landau has observed, the court’s method of interpreting a statute “cannot be squared with the known realities of the legislative process.” Jack L. Landau, *Some Observations About Statutory Construction in Oregon*, 32 WILLAMETTE L. REV. 1, 25 (1996).