

# HOW DOES A BILL BECOME A LAW ?

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## A N I N S I D E R S G U I D E

One of the most important traits of individuals who succeed at congressional lobbying is that they have a strong grasp of legislative procedure. This article provides an introduction—or refresher, as the case may be—on that process, including insight into how laws are shaped from the ground up.

### Introduction

The whole process begins when a member of Congress introduces a piece of legislation, which may originate in either the House of Representatives or the Senate. Typically, legislative proposals come in the form of bills. For example, during the last session of Congress, members introduced nearly 9,000 bills. This article will track a bill's life, starting first in the House and then moving over to the Senate, though certainly bills are just as likely to originate in either chamber.

Any member may introduce a bill at any time while the House is in session. To introduce a bill in the House of Representatives, a member simply places it in the “hopper,” a wooden box located on the House floor. The member who introduces the bill is known as its primary sponsor. An unlimited number of additional members may co-sponsor a bill.

The clerk assigns the bill a number. A bill originating in the House of Representatives is designated by the acronym “H.R.,” followed by a number. Likewise, “S.” followed by its number designates a Senate bill. Many pieces of legislation will be introduced in similar or identical form in both the House and Senate. These are commonly referred to as “companion bills.” Last year, medical liability legislation was introduced in this form as H.R. 5 and S.11 in the House and Senate, respectively.

### Referral to committee

Once a bill is introduced, the clerk assigns it to each committee that has jurisdiction over its subject matter and sends a copy to each committee chair. In the House, most health care bills are referred to the Energy and Commerce Committee, the Ways and Means Committee, or both. However, other committees do focus on issues of concern to surgery. For example, bills that would enact medical liability reform or an anti-

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trust exemption for physician joint negotiations are referred to the Judiciary Committee.

Perhaps the most important phase of the legislative process occurs when a bill is “in committee.” Many issues first gain recognition at this stage. Due to the great volume of bills referred to committee, however, most bills never progress beyond this point. For example, in an effort to stop the 5.4 percent Medicare physician payment cut from taking effect in 2002 nearly a dozen bills were introduced in the House alone but never progressed beyond committee consideration, despite broad bipartisan support of the issue.

### Committee consideration

The committees give the most intense consideration to a proposed measure. Before analyzing a specific piece of legislation, a committee or one of its subcommittees may hold a hearing on the issue. Members of the committee or subcommittee hear testimony from witnesses, including members of Congress, cabinet officers, high-ranking government officials, or private citizens.

After hearings are completed, the subcommittee will usually hold a session that is popularly referred to as a “markup.” During this process, the Representatives meet in the hearing room and work through the legislation line by line, discussing sections and offering amendments. At the conclusion of the discussion, the subcommittee votes to determine the next action. Most often, the subcommittee will report the bill favorably to the full committee, with or without amendment.

Upon the recommendation of the subcommittee, the entire subcommittee process may be repeated at the full committee level. Of course, it is within the discretion of the committee chair to take action on the legislation. If the chair chooses to move the bill forward, the full committee usually marks up the legislation, offering and debating additional amendments, and then the committee votes on how to report on the bill to the full House.

If the committee votes to report the bill to the House, the committee staff drafts a report, which describes the purpose and scope of the bill and the reasons for its recommended approval. Generally, a section-by-section analysis is provided, explaining precisely the intents of each portion. All changes to existing law must be detailed in the document. Executive branch communications on

the bill are also appended at this stage. Committee reports are perhaps the most valuable element of the legislative history of the law. Executive departments and courts will later use these reports to determine legislative intent.

### Consideration and debate

In the House, the Rules Committee specifically has jurisdiction over resolutions relating to the order of business in the House. This small committee determines when and how a particular bill will be debated and voted on. It designates the time for debate and whether amendments may be offered on the floor. Once the Rules Committee has reached an agreement, the whole House votes on the rule for debate on the individual bill. When a majority of members vote favorably on the rule, the House may proceed to consider and debate the bill itself. Legislation usually passes by a simple majority vote.

Once one chamber passes a piece of legislation, the process begins anew in the other chamber. In this case, the bill would move to the Senate, where it would be referred to committee. Senate committees give the bill the same detailed consideration as it received in the House. They may report the bill out of committee with or without amendment. After suffering through the Senate committee process, with some exceptions, the bill can move to the Senate floor for debate.

The rules of procedure in the Senate differ to a large extent from those in the House. The Senate was designed to serve as a deliberative body and relies heavily on the practice of obtaining consensus for actions to be taken. Debate ends only after a Senator yields the floor and no other Senator seeks recognition, unless a unanimous consent agreement limiting the time of debate is operating.

While this open debate forum offers many benefits, it often lacks expediency. For example, when a bill is reported from committee, the Senate Majority Leader Bill Frist, MD, FACS (R-TN), may ask for unanimous consent for the immediate consideration of the bill. The Senate does not have a panel that is comparable to the House Rules Committee. If the bill is not controversial, barring an objection, the Senate may pass the bill with little or no debate, including only a brief explanation of its purpose and effect. However, even in this in-

stance, the bill is subject to amendment by any Senator. As a general rule, just a simple majority vote is necessary to carry an amendment as well as pass the bill.

On occasion, Senators who oppose a measure may extend debate by making lengthy speeches intended to prevent or defeat action. This tactic is commonly known as a “filibuster.” Once the presiding officer recognizes a Senator, that individual may speak for as long as he or she wishes and loses the floor only after yielding or forfeiting it. Use of this strategy has traditionally prevented Senate consideration of medical liability reform, for example.

### Conference committee

If a piece of legislation passes both the House and the Senate, it is ready for final action. If the chambers passed identical bills, the legislation may proceed immediately to the President. However, presumably amendments were accepted along the way or the bills differed from the start, which means that the bills must be reconciled through a conference of the House and Senate.

The mere fact that each chamber may have passed its own bill on a subject is insufficient grounds for making either bill eligible for conference. One chamber must first take the additional step of amending and then passing the bill of the other body and requesting a conference. If the other body agrees to the request, each body appoints a number of members representing both political parties to represent the House and the Senate.

Many high-profile pieces of legislation stumble at this point in the race. For instance, in the summer of 2001, the House and Senate both passed the Patients’ Bill of Rights. Unfortunately, conferees never met to reconcile the two bills, which were passed with vastly different provisions. When Congress adjourned its two-year session late in 2002, the bill died. For that legislation to be signed into law, it would need to return to the starting gate and be reintroduced.

When the conferees, by majority vote of each group, have reached complete agreement, they make their recommendations in a conference report. On occasion, the conferees may agree on some but not all of the provisions. The report is then sent back to the House and the Senate for consid-

## WAYS TO HELP

Fellows may serve as a voice for surgery on Capitol Hill by joining one of the College’s federal advocacy teams, which are as follows:

### The Capitol Team

Surgeons on the Capitol Team work directly with College lobbyists to build strong relationships with their Senators and Representatives. With the support of College staff, each team member will contact one congressional office on a regular basis to discuss how federal health care policies affect surgery. Members of the Capitol Team must be willing to spend, on average, one hour per month learning about federal policies, talking with College lobbyists, and contacting congressional staff. College staff will provide team members with all necessary background information, contact names and numbers, and legislative updates.

### The District Team

Surgeons on this team work with their chapters and College lobbyists to schedule local meetings with their Senators and Representatives when Congress is out of session. Members of the District Team must be willing to meet with their representatives once or twice each year in their hometown. College staff will provide team members with local contact names and numbers, as well as talking points and briefing materials.

### The Constituent Team

Surgeons on the Constituent Team receive e-mail action alerts about timely legislative issues. The action alerts contain a brief legislative update and a Web link to a prewritten letter that may be e-mailed to their representatives. Members of the Constituent Team must be willing to spend, on average, 10 minutes a month e-mailing or calling their representatives.

To inquire about participation in any grassroots effort, Fellows are encouraged to contact the Department of Advocacy and Health Policy at 202/337-2701 or via e-mail at [hap@fac.org](mailto:hap@fac.org).

## Congressional procedure terms

*Act:* Legislation that has passed both houses of Congress and has been signed by the President or that has been vetoed with Congress overriding that decision.

*Amendment:* A change in a bill during legislative consideration, or change in an existing law by enactment of new legislation.

*Cloture:* The process that ends a Senate filibuster, requiring the vote of 60 out of 100 senators to pass.

*Companion bills:* Identical or similar bills introduced in both houses of Congress.

*Conference committee:* The committee formed to reconcile differences between similar House and Senate bills that have been passed by both houses.

*Hopper:* Box on the House clerk's desk where members deposit bills to introduce them.

*Cosponsor:* A member who joins one or more members in sponsoring a measure.

*Filibuster:* A delay tactic used by the Senate minority party to prevent a vote on a bill.

*Hearings:* Committee sessions for taking testimony from witnesses, which usually include specialists, government officials, and entities affected by the legislation under study.

*Markup:* A process whereby a bill is revised in committee or subcommittee.

*Rider:* A provision that is attached to a bill that may have no direct relationship to that bill.

*Veto:* The President's disapproval of a bill or joint resolution.

# G L O S S A R Y

eration. Each must now pass the revised legislation in identical form.

### Presidential action

A final bill that has survived all the previously mentioned stages in the process becomes law only after the President reviews it. As was the case with the Medicare prescription drug bill, the President will often approve the legislation by signing it. If

the White House objects, a piece of legislation fails to become law without the President's signature, unless Congress overrides a presidential veto with a two-thirds vote in each chamber.

### Procedure as a tool

Mastering the basics of congressional procedure is essential to moving an agenda on Capitol Hill. As constituents, surgeons wield more power in Congress than they often realize. Senators and Representatives are sensitive to physicians' views. They frequently want input from surgeons regarding health care policy.

Enacting a particular piece of legislation, as outlined above, by and large entails a number of steps. Elected officials remain susceptible to influence at a variety of points along the way. Usually, the most effective stage for Fellows' active involvement is the week leading up to action on a bill, whether it is a markup, a floor vote, or a meeting of the conference committee.

When a committee or subcommittee holds hearings on an issue, the College communicates its position to congressional staff through letters and written statements. The ACS may arrange to have witnesses at hearings and often encourages surgeons whose representatives serve on the subcommittee to contact their lawmakers.

Once a bill reaches the floor for a vote by the whole House or Senate, the focus switches to encouraging all members to vote for or against the measure. The ACS regularly meets with Congressional offices in Washington, but constituent support for a measure can often be the key to gaining a member's support. Hence, surgeons may be effective in many places along the way to passage of a bill.

### Getting involved

Surgeons are encouraged to use the College's Legislative Action Center <http://capwiz.com/facs/home/> to send letters to their legislators regarding issues that are important to surgery. In addition, the College can offer interested Fellows help in getting involved in grassroots advocacy, regardless of previous experience. Fellows are encouraged to contact the office for assistance in communicating with Congress at 202/337-2701 or via e-mail at [hap@facs.org](mailto:hap@facs.org). 