

The Texas Constitution: The People, History, and Government of the Lone Star State

Chapter 6 The Texas Legislative Branch

Chapter 6 discusses the roles of the Texas legislature, state policy making, and legislative process in the Texas legislature. After reading this chapter students should understand:

- The leadership of the Texas House of Representatives and Texas Senate
- The roles of the House and Senate in Texas government
- The legislative processes of the House and Senate
- The interaction of the state legislature with other parts of state government
- The unique features of the Texas legislative branch of government

The auxiliary precautions James Madison set forth in *Federalist No. 51* – separation of powers and federalism – can sometimes be confusing to observers of American government. Separation of powers divides power between the three branches of government (legislative, executive, and judicial), and federalism further divides power between the national government and state governments. The precautions are constitutional mechanisms intentionally designed to ensure government power in the United States system is not concentrated in one person, branch or level of government in order to protect the political values of limited government and individual rights. The Texas Constitution was also written to reflect the state's political culture (as discussed in Chapter 3), and creates a system of government that reflects the basic precautions of separation of powers and federalism contained in the United States Constitution. Separation of powers divides state power between three branches of state government – the legislative, executive, and judicial branches – and further divides power between the different levels of state government. **Dillion's Rule**, discussed in Chapter 4, holds that local governments (counties and cities) are creatures of the states that are permitted to enact legislation governing their respective spheres within the parameters allowed them through state law. Because of Dillion's Rule, the legislative process does not stop with the United States Congress passing laws concerning the nation and the Texas Legislature passing laws

concerning the state. County commissioners' courts enact laws concerning Texas counties; city councils pass laws concerning cities; and school boards and other special districts pass laws and ordinances that govern their special districts. Historically, the United States Constitution has been interpreted to give states authority over the “**police powers**” or traditional government functions of the states to regulate the safety, health, and morals of its citizens. This chapter focuses on the roles and processes of the state legislature and elaborates the ways in which the law making function of the Texas Legislature impacts the lives of Texans.

❖ **The Roles and Leadership of the Texas Legislature**

The Texas Legislature is the primary law making body in the state. While the state executive branch is involved with enforcing law and the judicial branch with interpreting law, the legislature is busy performing its state constitutional duty of making laws. **State statutes**, or laws passed by the Texas Legislature, involve everything from wearing a helmet while riding a motorcycle to carrying concealed firearms, requiring childhood vaccinations for school-aged children, and appropriating money for state teachers, school districts, prisons, and roads. Like the United States Congress, the Texas Legislature is **bicameral** and consists of the House of Representatives and Senate. Members are elected from state House and state Senate districts that roughly contain equal populations per chamber district. House districts are 1/150th of the state's population (meaning there are 150 members of the Texas House) and Senate districts represent roughly 1/31st of the state's population (meaning there are 31 members of the Texas Senate). Members of the Texas House are elected to two-year terms and members of the Texas Senate are elected to four-year terms.

The Texas House and Texas Senate have different methods of selecting the leaders in their respective chambers. The Texas House is presided over by the **Speaker of the House**. The Speaker is selected by the members of the House and is therefore typically a member of the political party that holds a majority in the chamber. The Speaker is empowered to select the chairs and members of all House committees and subcommittees that perform the essential legislative functions of drafting, reviewing, revising, and enacting state laws. Unlike the United States Congress, not all committee chairs in either the Texas House or the Texas Senate are necessarily members of the majority party. The Speaker is

free to select whomever he or she chooses to chair House committees and subcommittees and a small number of chairs are normally members of the minority party. The President of the Texas Senate also selects the members and chairs to serve on all Senate committees and subcommittees. But, unlike the Speaker of the House, the President of the Texas Senate is not chosen by the members of the chamber; rather, he is or she is elected by the state's voters along with several other statewide officials in elections held in non-presidential even-numbered years. The President of the Texas Senate is the **Lieutenant Governor**, a position that is constitutionally part of the executive branch and therefore discussed in greater detail in Chapter 7.

The state House and Senate also differ in terms of their respective powers and constitutional obligations. The Senate is generally considered the more prestigious of the two chambers and is entrusted with responsibilities not delegated to the House. First, if a governor or other state official is considered for **impeachment** from office, the House determines whether or not to impeach the official but the Senate decides on whether the official should subsequently be removed from office. Only one Texas governor has been impeached and removed from office. James E. "Farmer Jim" Ferguson was convicted by the Texas Senate in 1917 on several charges including those stemming from a fight over control of the University of Texas.

For the Record: The Impeachment of "Farmer Jim" Ferguson and Subsequent Election of "Ma" Ferguson

Texas is home to the second female governor in United States history. The first woman governor, Nellie Ross, was elected Governor of Wyoming in 1925 in a special election to replace her late husband. Fifteen days later, **Miriam "Ma" Ferguson** was inaugurated as the Governor of Texas. Ferguson, like Ross, "replaced" her husband in the governor's mansion; but, it was not her husband's death that compelled "Ma" to run for office. Governor James "Farmer Jim" Ferguson was impeached by the Texas House of Representatives and removed from office by the Texas Senate after trying to remove public officials who opposed him (namely, members of the University of Texas board of regents) from office.

When the Texas Supreme Court blocked Farmer Jim's attempt to get his name on the gubernatorial ballot in 1924, his wife threw her hat into the ring. "Ma" quickly assured Texans that if elected she would follow the advice of her husband and Texans would therefore be gaining "two governors for the price of one." Her campaign was based on four primary platforms: vindicating the Ferguson name, cutting state appropriations, condemning the Ku Klux Klan, and

opposing the passage of new liquor laws.¹ “Ma” Ferguson easily defeated the Klan-supported prohibitionist candidate, Felix Robertson, in the Democratic gubernatorial primary, then handily defeated the Republican nominee, George C. Butte, a former dean of the University of Texas School of Law, in the general election.

Controversies including increases in state appropriations, irregularities in pardons and paroles, and supposed kickbacks for state highway construction contracts surrounded her first term in office. She was defeated by Attorney General Daniel James Moody in the 1926 gubernatorial election and again in 1930 by Ross Sterling.² The electoral defeats did not thwart “Ma’s” desire to serve as Texas Governor. She again ran and was again elected to governor in 1932 and after a brief retirement from public life, was defeated in the 1940 governor’s race by radio announcer W. Lee “Pappy” O’Daniel (inducted into the Texas Radio Hall of Fame in 2015 for his contributions to Texas music including promotion of the Texas band, the Light Crust Doughboys and its members Bob Wills and Milton Brown).³

Second, the Texas House does not have a formal say in whether or not an official appointed by the governor receives confirmation. Unlike the President of the United States, the Texas Governor has very limited appointment powers and most high-ranking state executive officials are elected. Some important chairs and members of state boards and commissions are, however, appointed by the governor but must be approved by a 2/3 vote of the Texas Senate in order to assume office. An example of a governor-appointed, Senate-confirmed state board is the Texas Board of Pardons and Paroles. Many people assume the act of pardoning a state offense is strictly at the governor’s discretion when, in fact, a pardon must first be approved by the Board of Pardons and Paroles. Other examples of governor-appointed and Senate-confirmed board memberships include those to the Texas State University Board of Regents which oversees Lamar University, Sam Houston State University, and other colleges and universities in the Texas State system, and the Texas Alcoholic Beverage Commission (TABC) which regulates all phases of the alcoholic beverage industry in Texas. Unlike the vast authority held by the President of the United

¹ Huddleston, John D. Huddleston, “Ferguson, Miriam Amanda Wallace (Ma),” *The Handbook of Texas*, Texas State Historical Association, <https://tshaonline.org/handbook/online/articles/ffe06>

² Huddleston, John D. Huddleston, “Ferguson, Miriam Amanda Wallace (Ma),” *The Handbook of Texas*, Texas State Historical Association, <https://tshaonline.org/handbook/online/articles/ffe06>.

³ George N. Green, “O’Daniel, Wilbert Lee (Pappy),” *Handbook of Texas Online*, <https://tshaonline.org/handbook/online/articles/fod11>.

States to remove appointed officials from office (discussed in Chapter 7), the removal powers of the Texas Governor are greatly restricted by state constitutional and statutory requirements.

❖ **The Texas Legislature and Policymaking**

The Texas Constitution requires a **part-time legislature** meaning the state legislature only meets in **regular session** once every other year, in odd-numbered years, for a period not to exceed 140 days. Regular sessions begin in January and end in late spring – a period time that is very brief given the legislature must address in regular session its entire agenda including the state budget (which must last two years because of constitutional limits on regular legislative sessions); individual budget items such as appropriations to social services, state teachers, colleges and universities, and state prisons; and, proposed non-appropriation bills such as campus weapons carry, restroom accommodations based on gender identity or biological sex at birth, and sanctuary cities. If the legislature does not adopt a budget or address a bill the governor considers important during its regular session, the governor may call a **special legislative session**. Special legislative sessions may only be called by the governor; require members of the legislature to return to Austin to consider unresolved legislative matters; and may last no more than 30 days. Although the governor has the power to call and set the agenda for a special session, he or she is not given the authority to force a vote by the legislature. The governor may call a special session specifically for the purpose of gaining legislation he or she desires such as a finalized budget or the passage of a specific bill; but, the session may produce an opposite result by the legislature refusing to pass the governor's proposals. If the governor's proposals are not passed in special session the governor may call another special session. There are no constitutional or statutory limits on the number of special sessions a governor can call; however, informal constraints do exist given the financial costs incurred by Texas taxpayers for special sessions is extremely high and the professional and personal lives of lives of legislators are disrupted by having to return to Austin to consider matters unresolved in the regular session or a previous special session.

Service in the Texas legislature is designed to be a **non-professional**, part-time position. Members of the Texas Legislature including the Speaker of the House currently earn less than \$8,000 per year for their legislative service. Extremely low pay requires state

legislators to have jobs or income derived from sources outside of their legislative service, and members with extra-legislative careers must by necessity have jobs that allow them to take off work in order to perform their legislative duties. Since the average Texan does not have a job that allows him or her to be absent from work for a minimum of 140 days every other year and take off additional time to attend special sessions and handle legislative matters and maintain constituency contacts outside the regular session, membership in the Texas legislature is overwhelmingly comprised of individuals with greater personal wealth and resources than those held by the average Texan and is not reflective of the overall racial, ethnic, and gender demographics of Texas. Nearly 2/3 of state lawmakers were non-Hispanic white Texans in 2017, while that demographic label describes only 43% of state's population. Also, men were close to 80% of lawmakers that year.⁴

❖ The Legislative Process in Texas

The legislative process in Texas actually begins before a bill enters the state House or Senate. A legislator, interest group, or private individual must first have an idea about a new state law or the need to repeal an existing law. Interest groups and private citizens must find a state representative or senator willing to support the bill and introduce it in the legislature. Figures 6.1 and 6.2 below demonstrate the legislative processes in the Texas House and Texas Senate and provide readers valuable information about how an individual might be able to impact state law through representative democracy and the legislative process.

Legislative processes in the House and Senate differ slightly but their commonalities shed light on how bills become state law. First, a bill may originate in either legislative chamber. The chambers each perform three **readings** of the bill before it can be considered for passage into law. The first reading occurs when a bill is introduced. Only the bill's caption is read and, based on the caption, is referred by the Speaker of the House or the President of the Senate to an appropriate committee in their respective chamber.⁵ There is no vote in the full chamber immediately following the first reading of a bill. Second, after a

⁴ Ura, Alexa and Jolie McCullough. "Once again, the Texas Legislature is mostly white, male, middle-aged." Texas Tribune. January 9, 2017. <https://www.texastribune.org/2017/01/09/texas-legislature-mostly-white-male-middle-aged/>

⁵ "The Legislative Process in Texas," Texas Legislative Council for 85th Legislature, p. 2, <http://www.tlc.texas.gov/docs/legref/legislativeprocess.pdf>.

bill enters committee, all committee business on the bill must be conducted in open meetings and no official action or vote may be taken except in a meeting that is open to the public.⁶ The committee to which the bill is assigned decides how to address the bill. It may vote to reject the bill which in political terms means the bill is dead and ceases to be considered for passage; leave the bill pending or refuse to give it a hearing which also essentially “kills” the bill; or approve the bill without any amendments. The committee may also vote to amend the bill and approve it in its amended version.

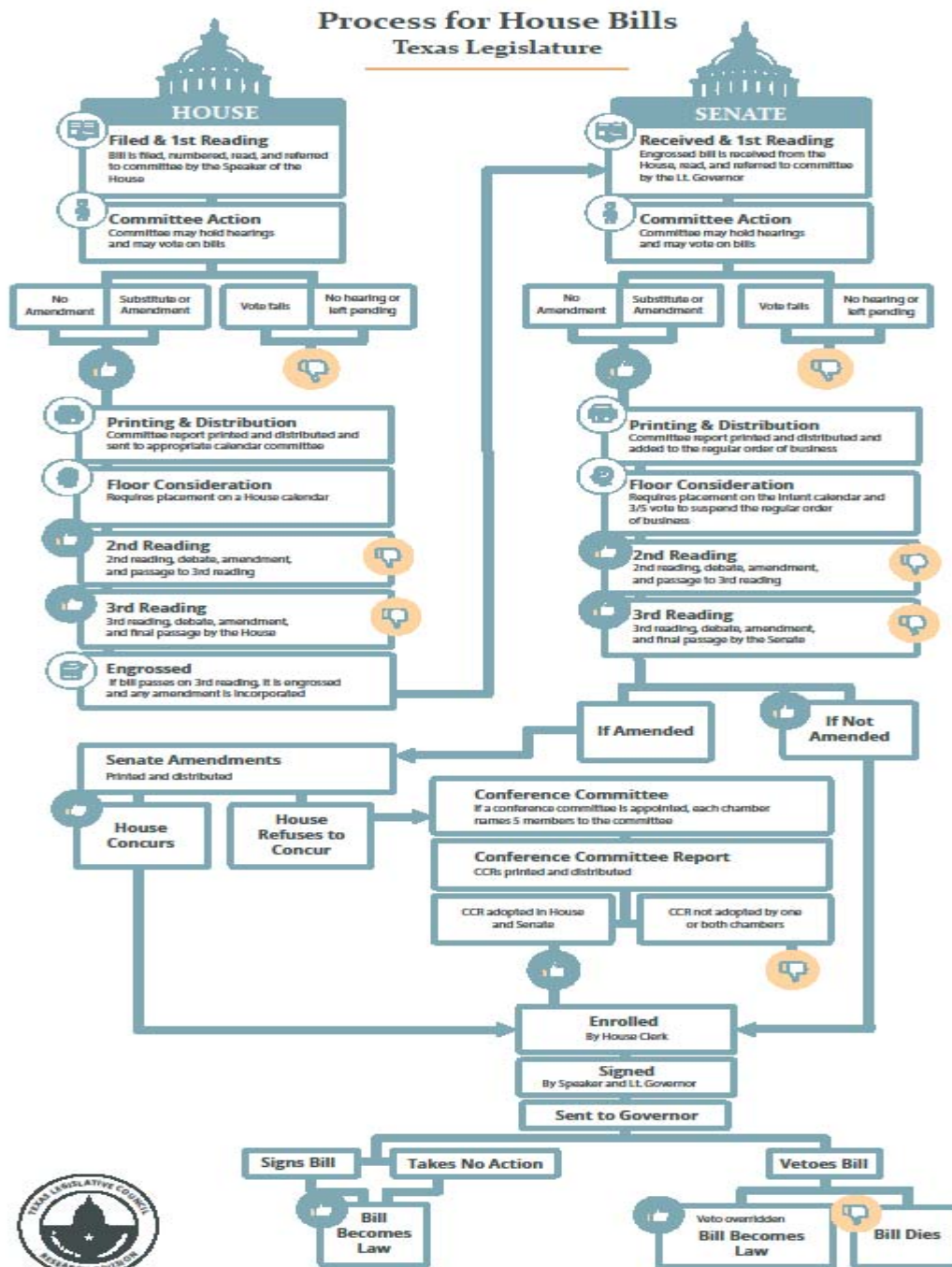
Figure 6.1 outlines the legislative process in the Texas House of Representatives. After a bill has been approved by a House committee, it moves on to the **printing and distribution** stage. The committee report is printed and distributed to members of the House and sent to a House calendar committee to determine when the bill will be considered by the House floor (the entire chamber). Once set on the calendar, the bill proceeds to a **second reading** where the bill is read aloud to the House and open to debate and discussion by members of the chamber. Amendments proposed after the second reading must be approved by over half of the members present in order for the amendments to be added to the bill.⁷ The bill proceeds to a **third reading** after it is approved by a majority of the chamber’s membership and is again subject to debate and amendments. Amendments proposed to a bill after the third reading require a 2/3rd rather than simple majority vote of the House in order to be included as part of the bill.⁸ If the House votes against the bill after either the second or third reading, the bill is “killed.” But, if the House approves the bill it becomes **engrossed** meaning any approved and applicable amendments are added to the original bill before it is sent to the Texas Senate. Regardless of whether a bill originates in the House or Senate, once it is approved by the original chamber it must proceed to the other chamber for passage before going to the governor for approval or veto.

⁶ “The Legislative Process in Texas,” Texas Legislative Council for 85th Legislature, p. 3, <http://www.tlc.texas.gov/docs/legref/legislativeprocess.pdf>.

⁷ “How a Bill Becomes a Law.” Texas House of Representatives. <http://www.house.state.tx.us/about-us/bill/>.

⁸ “How a Bill Becomes a Law.” Texas House of Representatives. <http://www.house.state.tx.us/about-us/bill/>.

Figure 6.1⁹



⁹ Source: "Process for House Bills: Texas Legislature." Texas Legislative Council: Research Division.
http://www.tlc.state.tx.us/docs/billprocess/BillProcessHouse_Final.pdf.

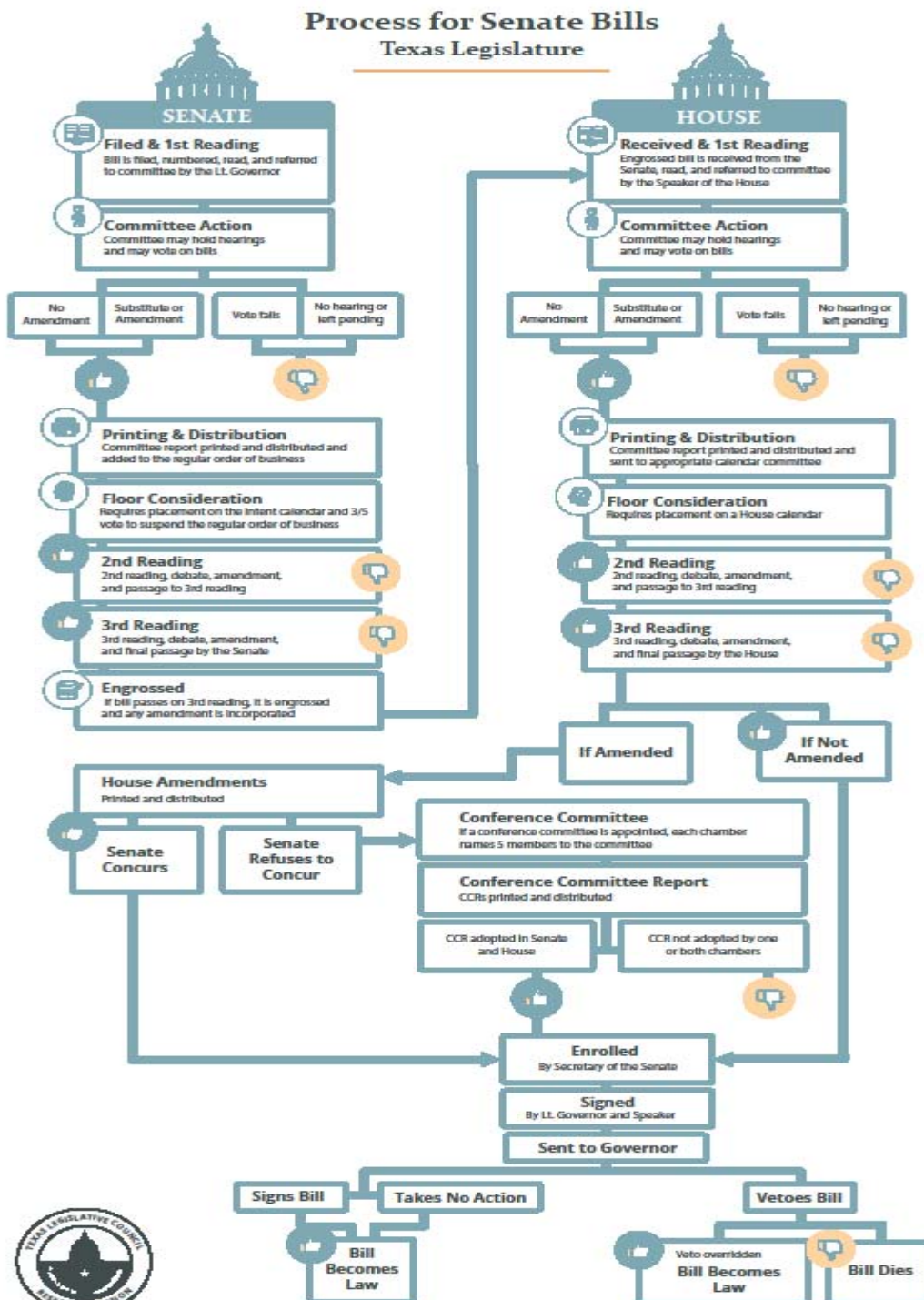
Figure 6.2 details the legislative process in the Texas Senate. The original stages of the process are identical to those in the Texas House. After the first reading of a bill, the Lieutenant Governor (acting as President of the Senate) refers the bill to committee. The Senate committee then faces the same set of choices faced by a House committee: it may vote to reject the bill; leave the bill pending or refuse to give it a hearing; approve the bill without any amendments; or amend the bill and approve it in its amended version. Once approved, the bill enters the printing and distribution stage and [is?] scheduled in the Senate's regular order of business. The Texas Senate may then consider the bill; but, unlike Texas House rules, Senate rules require not only that the bill be placed on the chamber's calendar but also that a vote to suspend the regular order of business occur before the full Senate can consider a bill. The Texas House does not have a similar **suspension of order rule**. Suspending the regular order of business of the Senate requires a 3/5th vote of the chamber and stems from a Texas Senate tradition of placing bills with little or no chance of passage or highly controversial bills with only limited support at the top of the legislative agenda at the beginning of the session. The Senate cannot move forward to consider other, more viable legislation unless and until a 3/5th vote is gained to suspend the regular order of business to allow the chamber to consider less viable bills. If a suspension of business order is not secured, the bills at the top of the agenda will not progress further for consideration by the chamber. If a 3/5th vote is obtained, the bill moves on to a second reading and debate and discussion by the chamber's members.

Amendments at this stage of the legislative process of the Senate require the support of only a simple majority of present and voting Senate members.¹⁰ If amendments are approved, the bill goes on to a third reading. After the third reading, any proposed amendments to the bill must receive a 2/3rd vote of the chamber in order to be added to a bill.¹¹ Bills that fail to gain a majority vote of the Senate after the third reading are "killed," and bills that receive a majority vote pass the chamber and proceed to the next step in the legislative process.

¹⁰ "How a Bill Becomes a Law." Texas House of Representatives. <http://www.house.state.tx.us/about-us/bill/>.

¹¹ "How a Bill Becomes a Law." Texas House of Representatives. <http://www.house.state.tx.us/about-us/bill/>.

Figure 6.2¹²



Once approved by the chamber in which it originates, a bill must proceed to the other chamber for passage before going to the governor for approval or veto. Let's assume a bill passes the Texas House and moves to the Senate for consideration. During Senate debate and voting on the bill, the Senate votes to approve amendments to the original bill. Since the addition of Senate amendments changes the contents of the original bill approved by the House, the bill with the newly added Senate amendments will be printed and distributed to members of the House. The House will then vote on whether or not to concur with the Senate amendments. If the House concurs with the amendments the House Clerk will enroll the bill, both the Speaker of the House and the Lieutenant Governor will sign it, and the bill will move forward to the Governor's desk. If the House votes to refuse concurrence of the Senate amendments, a **conference committee** consisting of five members from each chamber will convene to discuss and draft a report that is subsequently printed and distributed to the members of both chambers. The report is then voted on by the members of both chambers. If either chamber rejects the report, the bill dies. If the report is approved by both chambers the House Clerk will enroll the bill, the Speaker and Lieutenant Governor will sign it, and the bill will proceed to Governor.

There is no guarantee a bill approved by both chambers of the legislature will be enacted into law. The Governor has ten days from the date of the passage of the bill to act on it. He or she may sign the bill, take no action on the bill, or veto the bill. If the Governor signs the bill it becomes law with the Governor's signature. If he or she takes no action on the bill within ten days, the bill becomes law without the Governor's signature on the eleventh day. If the Governor vetoes the bill, the bill is returned to the chamber in which it originated for a vote on an override. A 2/3rd majority of both chambers of the legislature are required to override a gubernatorial veto.¹³ A 2/3rd majority vote of both chambers is extremely difficult to achieve and the vast majority of vetoes by the Texas Governor, like those by the President of the United States, fail to be overridden.

¹² Source: "Process for Senate Bills: Texas Legislature." Texas Legislative Council: Research Division. http://www.tlc.state.tx.us/docs/billprocess/BillProcessSenate_Final.pdf.

¹³ Citizen Handbook: How the State Legislature Works: Page 12. http://www.senate.texas.gov/_assets/pdf/Citizen_HBook_Web_2015.pdf

Conclusion

Legislative process in the two chambers that comprise the Texas legislative branch are similar with the exception of unique traditions such as the suspension of order rule in the Texas Senate. The roles of the Speaker of the House and the Lieutenant Governor are also similar in terms of legislative process. We will discover in the next chapter, however, that the Lieutenant Governor holds constitutional and statutory authority in both legislative and executive branches of government and is widely considered to be the most powerful statewide official in Texas.

Key Terms

Dillon's Rule
bicameralism
impeachment
special sessions
suspension of order rule
printing and distribution

police powers
Speaker of the House
James Ferguson and "Ma" Ferguson
"part-time" legislature
"non-professional" legislature
veto power

state statutes
President of the Senate
regular sessions
readings
conference committees