

Committee on Rules Legislative Process Program

Section 2 – *Drafting, Introduction and Bill Referral*

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Authoring Legislation

Section 2, chapter 1 of 2

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Authoring Legislation

Section 2 chapter 1 of 2

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Sources of Legislation

Excerpt from "How Our Laws Are Made" (pages 4-5)¹
June 20, 2003

Charles W. Johnson
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Sources of ideas for legislation are unlimited and proposed drafts of bills originate in many diverse quarters. Primary among these is the idea and draft conceived by a Member. This may emanate from the election campaign during which the Member had promised, if elected, to introduce legislation on a particular subject. The Member may have also become aware after taking office of the need for amendment to or repeal of an existing law or the enactment of a statute in an entirely new field.

In addition, the Member's constituents, either as individuals or through citizen groups, may avail themselves of the right to petition and transmit their proposals to the Member. The right to petition is guaranteed by the [First Amendment to the Constitution](#). Many excellent laws have originated in this way, as some organizations, because of their vital concern with various areas of legislation, have considerable knowledge regarding the laws affecting their interests and have the services of legislative draftspersons for this purpose. Similarly, state legislatures may "memorialize" Congress to enact specified federal laws by passing resolutions to be transmitted to the House and Senate as memorials. If favorably impressed by the idea, a Member may introduce the proposal in the form in which it has been submitted or may redraft it. In any event, a Member may consult with the Legislative Counsel of the House or the Senate to frame the ideas in suitable legislative language and form.

In modern times, the "executive communication" has become a prolific source of legislative proposals. The communication is usually in the form of a message or letter from a member of the President's Cabinet, the head of an independent agency, or the President himself, transmitting a draft of a proposed bill to the Speaker of the House of Representatives and the President of the Senate. Despite the structure of separation of powers, [Article II, Section 3](#), of the Constitution imposes an obligation on the President to report to Congress from time to time on the "State of the Union" and to recommend for consideration such measures as the President considers necessary and expedient. Many of these executive communications follow on the President's message to Congress on the state of the Union. The communication is then referred to the standing committee or committees having jurisdiction of the subject matter of the proposal. The chairman or the ranking minority member of the relevant committee usually introduces the bill promptly either in the form in which it was received or with desired changes. This practice is usually followed even when the majority of the House and the President are not of the same political party, although there is no constitutional or statutory requirement that a bill be introduced to effectuate the recommendations. The committee or one of its subcommittees may also decide to examine the communication to determine whether a bill should be introduced. The most important of the regular executive communications is the annual message from the President transmitting the proposed budget to Congress. The President's budget proposal, together with testimony by officials of the various branches of the government before the Appropriations Committees of the House and Senate, is the basis of the several appropriation bills that are drafted by the Committee on Appropriations of the House.

Many of the executive departments and independent agencies employ legislative counsels who are charged with the drafting of bills. These legislative proposals are forwarded to Congress with a request for their enactment.

The drafting of statutes is an art that requires great skill, knowledge, and experience. In some instances, a draft is the result of a study covering a period of a year or more by a commission or committee designated by the President or a member of the Cabinet. The Administrative

¹ <http://thomas.loc.gov/home/lawsmade.bysec/sourceofleg.html>

Procedure Act and the Uniform Code of Military Justice are two examples of enactments resulting from such studies. In addition, congressional committees sometimes draft bills after studies and hearings covering periods of a year or more.

Bills and Resolutions: Examples of How Each Kind Is Used

CRS Report: 98-706²
Updated November 26, 2008

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When Congress seeks to pass a law, it uses a bill or joint resolution, which must be passed by both houses in identical form, then presented to the President for his approval or disapproval. To regulate its own internal affairs, or for other purposes where authority of law is not necessary, Congress uses a concurrent resolution (requiring adoption by both houses) or a simple resolution (requiring action only in the house of origin). More detailed descriptions appear in [CRS Report 98-728](#), *Bills, Resolutions, Nominations, and Treaties: Characteristics, Requirements, and Uses*.

Congress may use each of the four forms of measure it employs for a variety of purposes. This report identifies the most prevalent uses of each and, as appropriate, gives brief explanations of these uses. For more information on legislative process, see: <http://www.crs.gov/products/guides/guidehome.shtml>.

Bills (H.R. or S.)

- Authorization or reauthorization of federal policies, programs, and activities
- Amendment of existing law (sometimes also by joint resolution)
- Establishment of federal departments and agencies, or alteration of their structure
- Revenue (tax) legislation (originates in House only)
- Regular annual general appropriations
- Supplemental appropriations (sometimes also by joint resolution)
- Reconciliation bill (alters spending authority pursuant to instructions in a congressional budget resolution)
- Private bill (provides specified benefits to named individuals)

Joint Resolutions (S.J.Res. or H.J.Res.)

- "Incidental, inferior, or unusual purposes of legislation" (*House Manual*, section 397)
- Proposed constitutional amendment (requires two-thirds vote in each house)
- Declaration of war
- Continuing resolution (extends appropriations for specified purposes until regular appropriations are enacted)
- Transfer of appropriations
- Adjustment of debt limit
- Abrogation of treaty
- Alteration of date for convening of Congress
- Resolution of disapproval or approval (of specified executive action pursuant to a statute making a contingent delegation of authority)

² <http://apps.crs.gov/products/rs/html/98-706.html>

- Extension of expiration or reporting dates under existing law (e.g., date for President to submit budget)
- Congratulations, condolences, welcomes, thanks, etc. (also by simple or concurrent resolution)

Concurrent Resolutions (S.Con.Res. or H.Con.Res.)

- Congressional budget resolution (sets targets for spending and revenue, procedurally enforceable against subsequent legislation; may set instructions to committees for reconciliation bill)
- Adjournment *sine die*
- Recess of either or both houses of more than three days
- Providing for a joint session of Congress
- Creation of a joint committee
- Correction of conference reports or enrolled bills
- Request for return of measures presented to the President
- "Sense of Congress" resolution (expresses "fact, principles, opinions, and purposes of the two houses," *House Manual*, section 396. "Sense of Congress" provisions may also appear in lawmaking measures)

Simple Resolutions (H.Res. or S.Res.)

- Adoption or amendment of chamber rules
- Special rule (for considering a measure) or other "order of business resolution" (House)
- Establishment of a standing order (principally Senate)
- Privileges of the House resolution (principally House; to secure a chamber's rights, safety, dignity, or integrity of proceedings, House Rule IX);
- "Blue slip resolution" (House; returns a Senate tax measure as violating House privilege to originate revenue measures)
- Personal privilege of individual Member
- Disposition of contest to a Member's election
- Expulsion of a Member (requires two-thirds vote)
- Censure or other discipline of a Member
- Citation for contempt of Congress
- Authorization of response to subpoena by Members or employees
- Resolution of ratification (advice and consent to treaty; Senate)
- Election of committee members or chamber officers
- Committee funding
- Expenditures from chamber's contingent fund (e.g., printing House and Senate documents, also by concurrent resolution)
- Creation of a special or select committee (e.g., investigating committee)
- Resolution of inquiry (requests factual information from executive branch; principally House)
- Providing notifications to other house, President, etc.
- Request for other house to return a measure (for technical corrections)
- Discharge of committee from a measure, nomination, or treaty (Senate)
- Instructions to conferees already appointed (Senate)
- Commemorative periods (formerly by joint resolution)
- "Sense of the Senate" or "sense of the House" resolution (expresses fact, principles, opinions, or purposes of one house, *House Manual*, section 395; such provisions may also appear in lawmaking measures)

Forms of Congressional Action

Excerpt from "How Our Laws Are Made" (pages 5-8)³
June 20, 2003

Charles W. Johnson
Parliamentarian, US House of Representatives

The work of Congress is initiated by the introduction of a proposal in one of four forms: the bill, the joint resolution, the concurrent resolution, and the simple resolution. The most customary form used in both Houses is the bill. During the 107th Congress (2001-2002), 8,948 bills and 178 joint resolutions were introduced in both Houses. Of the total number introduced, 5,767 bills and 125 joint resolutions originated in the House of Representatives.

For the purpose of simplicity, this discussion will be confined generally to the procedure on a House of Representatives bill, with brief comment on each of the forms.

Bills

A bill is the form used for most legislation, whether permanent or temporary, general or special, public or private. The form of a House bill is as follows:

A BILL

For the establishment, etc. [as the title may be].

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, etc.

The enacting clause was prescribed by law in 1871 and is identical in all bills, whether they originate in the House of Representatives or in the Senate.

Bills may originate in either the House of Representatives or the Senate with one notable exception provided for in the Constitution. [Article I, Section 7](#), of the Constitution provides that all bills for raising revenue shall originate in the House of Representatives but that the Senate may propose or concur with amendments. By tradition, general appropriation bills also originate in the House of Representatives.

There are two types of bills—public and private. A public bill is one that affects the public generally. A bill that affects a specified individual or a private entity rather than the population at large is called a private bill. A typical private bill is used for relief in matters such as immigration and naturalization and claims against the United States.

A bill originating in the House of Representatives is designated by the letters "H.R." followed by a number that it retains throughout all its parliamentary stages. The letters signify "House of Representatives" and not, as is sometimes incorrectly assumed, "House resolution". A Senate bill is designated by the letter "S." followed by its number. The term "companion bill" is used to describe a bill introduced in one House of Congress that is similar or identical to a bill introduced in the other House of Congress.

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

Presidential approval; or

³ <http://thomas.loc.gov/home/lawsmade.bysec/formsofaction.html>

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

It does not become law without the President's signature if Congress by their final adjournment prevent its return with objections. This is known as a "pocket veto". For a discussion of presidential action on legislation, see [Part XVIII](#).

Joint Resolutions

Joint resolutions may originate either in the House of Representatives or in the Senate—not, as is sometimes incorrectly assumed, jointly in both Houses. There is little practical difference between a bill and a joint resolution and the two forms are often used interchangeably. One difference in form is that a joint resolution may include a preamble preceding the resolving clause. Statutes that have been initiated as bills have later been amended by a joint resolution and vice versa. Both are subject to the same procedure except for a joint resolution proposing an amendment to the Constitution. When a joint resolution amending the Constitution is approved by two-thirds of both Houses, it is not presented to the President for approval. Following congressional approval, a joint resolution to amend the Constitution is sent directly to the Archivist of the United States for submission to the several states where ratification by the legislatures of three-fourths of the states within the period of time prescribed in the joint resolution is necessary for the amendment to become part of the Constitution.

The form of a House joint resolution is as follows:

JOINT RESOLUTION

Authorizing, etc. [as the title may be].

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all, etc.

The resolving clause is identical in both House and Senate joint resolutions as prescribed by statute in 1871. It is frequently preceded by a preamble consisting of one or more "whereas" clauses indicating the necessity for or the desirability of the joint resolution.

A joint resolution originating in the House of Representatives is designated "H.J. Res." followed by its individual number which it retains throughout all its parliamentary stages. One originating in the Senate is designated "S.J. Res." followed by its number.

Joint resolutions, with the exception of proposed amendments to the Constitution, become law in the same manner as bills.

Concurrent Resolutions

A matter affecting the operations of both Houses is usually initiated by a concurrent resolution. In modern practice, and as determined by the Supreme Court in *INS v. Chadha*, 462 U.S. 919 (1983), concurrent and simple resolutions normally are not legislative in character since not "presented" to the President for approval, but are used merely for expressing facts, principles, opinions, and purposes of the two Houses. A concurrent resolution is not equivalent to a bill and its use is narrowly limited within these bounds. The term "concurrent", like "joint", does not signify simultaneous introduction and consideration in both Houses.

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

Simple Resolutions

A matter concerning the rules, the operation, or the opinion of either House alone is initiated by a simple resolution. A resolution affecting the House of Representatives is designated "H. Res." followed by its number, while a Senate resolution is designated "S. Res." together with its number. Simple resolutions are considered only by the body in which they were introduced. Upon adoption, simple resolutions are attested to by the Clerk of the House of Representatives or the Secretary of the Senate and are published in the Congressional Record.

Authorization vs. Appropriation

Excerpt from "The Budget Process: Authorization vs Appropriation"⁴
US Senate Appropriations Committee Website
Accessed January 10, 2008

Authorization laws have two basic purposes. They establish, continue, or modify federal programs, and they are a prerequisite under House and Senate rules (and sometimes under statute) for the Congress to appropriate budget authority for programs.

Some authorization laws provide spending directly. In fact, well over half of federal spending now goes to programs for which the authorizing legislation itself creates budget authority. Such spending is referred to as direct, or mandatory, spending. It includes funding for most major entitlement programs. (Some entitlements are funded in annual appropriation acts, but the amounts provided are controlled by the authorization law that established the entitlement.) The authorization laws that provide direct spending are typically permanent, but some major direct spending programs, such as the Food Stamp program, require periodic renewal.

Discretionary spending, which is provided in the 13 appropriation acts⁵, now makes up only about one-third of all federal expenditures. For discretionary spending, the role of the authorizing committees is to enact legislation that serves as the basis for operating a program and that provides guidance to the Appropriations Committees as to an appropriate level of funding for the program. That guidance typically is expressed in terms of an authorization of appropriations. Such authorizations are provided either as specific dollar amounts (definite authorizations) or "such sums as are necessary" (indefinite authorizations).

In addition, authorizations may be permanent and remain in effect until changed by the Congress, or they may cover only specific fiscal years. Authorizations that are limited in duration may be annual (pertaining to one fiscal year) or multiyear (pertaining to two, five, or any number of specific fiscal years). When such an authorization expires, the Congress may choose to extend the life of a program by passing legislation commonly referred to as a reauthorization. Unless the underlying law expressly prohibits it, the Congress may also extend a program simply by providing new appropriations. Appropriations made available for a program after its authorization has expired are called "unauthorized appropriations."

Longstanding rules of the House allow a point of order to be raised against an appropriation that is unauthorized. During initial consideration of a bill in the House (which by precedent originates appropriation bills), unauthorized appropriations are sometimes dropped from the bill. However, the House Committee on Rules typically grants waivers for unauthorized appropriations that are contained in a conference agreement. In the Senate, there is a more limited prohibition against considering unauthorized appropriations.

Both House and Senate rules require that when the Committees on Appropriations report a bill, they list in their respective committee reports any programs funded in the bill that lack an authorization. The information in the committee reports, however, differs somewhat from the

⁴ <http://appropriations.senate.gov/budgetprocess.cfm>

⁵ Beginning in the 110th Congress, there are only 12 regular appropriations acts.

information shown in this report. This report covers programs that at one time had an explicit authorization that either has expired or will expire. Unlike the lists shown in the Appropriations Committee reports, this report does not include programs for which the Congress has never provided authorizations of appropriations. For example, some Treasury Department programs have never received explicit authorizations of appropriations. They receive appropriations nonetheless because the authority to obligate and spend funds is considered "organic"—inherent in the underlying legislation or executive action that originally empowered the Treasury to perform particular functions.

As mentioned above, many laws establish programs with authorizations of discretionary appropriations that do not expire. Both the Appropriations Committee reports and this CBO report exclude programs with that type of authorization because its effect is permanent."

Introducing a House Bill or Resolution

CRS Report: 98-458⁶
Updated November 25, 2008

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Developing Ideas for Legislation.

Ideas and recommendations for legislation come from a wide variety of sources, such as individual Representatives, committees and other House working groups, party and chamber leaders, executive branch agencies and the White House, states and localities, and citizens or interest groups. Any or all of these individuals or entities may participate in drafting legislation, although only a Member may formally introduce legislation. For more information on legislative process, see <http://www.crs.gov/products/guides/guidehome.shtml>.⁷

Some of the most common considerations that might be taken into account when drafting a bill are

- To what committee or committees is the measure likely to be referred?
- Will the bill attract cosponsors?
- Does the measure have bipartisan appeal?
- Is the measure best introduced at the beginning or toward the end of a Congress?
- What are the budgetary or appropriations implications?
- Should there be a companion measure introduced in the Senate?

Drafting Legislation.

Although there is no requirement that bills and other measures introduced in the House be prepared by the House Office of Legislative Counsel, the office plays an important role in drafting legislation. Its staff attorneys are both subject-matter specialists and experts in legislative drafting. Legislative counsel staff are often assigned to serve a specific committee or committees and focus almost exclusively on related policy areas in which they are expert. They act as nonpartisan, shared staff, working closely with committee members and staff. Numerous drafts of a bill or resolution may be required before a measure is formally introduced.

⁶ <http://apps.crs.gov/products/rs/html/98-458.html>

⁷ This report was originally prepared by former CRS Specialist Richard C. Sachs. Please direct any inquiries to the listed author.

Staff drafting legislation may seek assistance from legislative counsel at any stage. All communications with the office are considered confidential. The office is located at 136 Cannon House Office Building (5-6060).

After introduction, a bill will normally be referred to the committee (or committees) having jurisdiction, under House Rule X, over the subject the bill addresses. (For detail, see [CRS Report 98-175](#), *House Committee Jurisdiction and Referral: Rules and Practice*, by Judy Schneider.) The referral will be made by the Office of the Parliamentarian, acting as agent of the Speaker (Rule XII, clause 2). Members and staff drafting legislation may consult the Office of the Parliamentarian on the referral that a draft bill would be likely to receive, and on the possibility of securing a different referral by making adjustments in its text before introduction.

Introducing a Bill.

The formal procedures that govern the practical activity of introducing legislation are few and are found in House Rule XII. Former House Parliamentarian Wm. Holmes Brown in *House Practice: A Guide to the Rules, Precedents and Procedures of the House* (Washington: GPO, 2003) has stated: "The system for introducing measures in the House is a relatively free and open one." House rules do not limit the number of bills a Representative may introduce.

When a Representative who is the primary sponsor has determined that a bill or resolution is ready for introduction, the measure is printed in a form that leaves room for the parliamentarian's office to note the committee or committees of referral and for a clerk to insert a number. The Member must sign the measure and attach the names of any cosponsors on the form provided by the Clerk's office; cosponsors do not affix their signatures to the bill. The Member then deposits the measure in the box, or "hopper," at the bill clerk's desk in the House chamber when the House is in session. A Member need not seek recognition in order to introduce a measure.

If a Member has second thoughts after introducing a measure, he or she may reclaim it from the clerk so long as the measure has not been assigned a number and referred to committee (a process that normally takes one day). Once a measure has been numbered and referred, it becomes the property of the House and cannot be reclaimed. The House has the authority to consider an introduced bill or resolution even if the primary sponsor resigns from the House or dies.

In the first days of a new Congress, hundreds of bills and resolutions are introduced. Measures are numbered sequentially and Representatives may seek to reserve numbers, as these are sometimes seen as providing a shorthand meaning to the legislation, or having some other symbolic meaning. In recent years, the House has ordered that bill numbers one through 10 be reserved for majority party leaders.

Drafting Considerations

Prepared by Rules Committee Staff
January 10, 2008

There are several factors to consider when drafting legislation. These include: the scope of the legislation, drafting to influence committee referral, the title of the legislation, the timing of introduction, whether to draft companion legislation for the Senate, and generating support from other members and outside groups for the proposal.

Scope of Legislation

One of the most important considerations when drafting legislation is the scope of proposal. A member may have an idea to improve public safety by creating a government grant program to

hire and train thousands of individuals for service as police officers around the country, but the drafting the legislation would require more detailed information. A primary question would be which entities would be eligible to apply for the grants. The member may believe that all local police departments around the country should be equally eligible; conversely, the member could believe that local police departments in communities with high crime rates should be given special consideration and that police departments in areas with low crime rates should not be eligible for grants. A decision regarding the scope of the program would affect how the legislation would be written.

A further question might be whether universities, which often house their own police departments, also would be eligible for grant funding. If so, would all universities be eligible or would only public universities be? Again, the answers to these questions would impact the scope of the grant program that is established and the legislation, itself.

Often, it is difficult to flesh out all of the proposal's details before beginning the drafting process. In fact, the drafting process, itself, can help bring unresolved issues to light.

Influencing Committee Referral

"...During the pre-introductory phase of lawmaking, a Member and staff often devote considerable time crafting a bill so it will be referred to a preferred committee. One goal is to avoid having their measure sent to an unsympathetic panel or to two or more committees that might hold opposite views of the bill. Accordingly, lawmakers and their staff may meet privately with the House Parliamentarian (who refers nearly all measures on behalf of the Speaker) to discuss various drafting issues. For example, will the bill be referred to only one committee? If it is multiply-referred (see below), which committee might receive a primary referral and which would receive a secondary referral? On most measures, it is plain where they will be referred. Military measures will be sent to the Armed Services panel or bills dealing with small businesses will go to the Small Business Committee. However, with so many policy interdependencies, the referral of measures might not be self-evident.

"Artful drafting not only can get a bill sent to a preferred committee, but it might also minimize jurisdictional clashes. For example, lawmakers who prefer that a telecommunications bill be sent to the Judiciary Committee could draft it as an amendment to the Sherman Antitrust Act, which is the exclusive jurisdiction of the Judiciary Committee. Conversely, Members who want an Internet bill referred to the Energy and Commerce Committee could draft it as an amendment to the Telecommunications Act of 1996, which is the purview of the Commerce panel. Committees often prefer sole responsibility for a measure because it allows them to control the measure's fate through various lawmaking stages: committee hearings and markups, floor consideration, and conference committee deliberations. A single referral may also enhance lawmakers' opportunities to better serve their constituents and mediate and win the support of outside groups interested in the topic.

"Various bill drafting techniques and practices provide some leeway to the Speaker (or the Parliamentarian acting on the Speaker's behalf) in referring bills to one committee rather than to another. For example, the Agriculture Committee received a measure dealing with eminent domain — the seizure of private property for public use — even though the issue is typically handled by the Judiciary Committee. However, the bill connected eminent domain with rural development. As the House Parliamentarian noted: "The bill involved the Committee on Agriculture's jurisdiction because of the way it defined the term 'federal economic development program'."⁸

⁸ Walter J. Oleszek, "Resolving House Committee Jurisdictional Disputes: A Survey of Options" *CRS Report: RL34293*, December 26, 2007, p. 3.
<http://www.congress.gov/erp/rl/html/RL34293.html>

Title of Legislation

The title of a bill can be of prime importance when drafting it because the author can use it to convey the intent of the legislation and give it positive connotations. For example, a member who introduces legislation to eliminate the tax owed by those who receive inheritances may choose to call the bill the “Death Tax Repeal Act.” Those who oppose repealing the tax, however, might introduce legislation to modify it and name it the “Protection of the Fair Estate Tax Act.”

Another commonly-used tool in naming legislation is the acronym. For instance, in the 110th Congress, the House considered H.R. 3773, the “Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective Act of 2007,” a bill that governed the Federal government’s ability to conduct electronic surveillance. While the title itself may seem long, the bill’s sponsor had created a title that could be more commonly referred to by an acronym: the RESTORE Act. The sponsor presumably used that title and acronym to convey his idea that the bill would “restore” certain powers or rights regarding electronic surveillance.

Timing of Introduction

A further consideration when drafting legislation is when to introduce it. This is an important factor, particularly when dealing with legislation on complicated or controversial issues. If a major government health care program expires in December 2007, it might be unwise to wait until November 2007 to introduce legislation to reauthorize it. This is because opponents of the program may have enough political leverage to block the bill and prevent the program’s reauthorization. A better course would be to draft legislation as far ahead in the year as possible so that the bill’s proponents and opponents can iron out any differences and bring compromise legislation to the House floor prior to the program’s expiration.

Members also may introduce legislation to coincide with certain memorial days or weeks. For instance, President Kennedy designated May 15 as National Peace Officers Memorial Day, and the week in which May 15 falls is National Police Week. Media stories about police officers and police issues often characterize that week. Members wanting to introduce legislation important to police officers might time their efforts so that they can introduce their bills during that specific week and generate the publicity and attention that comes it. Another popular timeframe for legislation is July 4, when legislation purporting to free Americans from varying constrictions are introduced. A prime example of this would include bills stressing independence from foreign sources of energy.

Companion Legislation

Because the same bill must pass both the House and Senate in order for it to be presented to the President for enactment into law, an important issue is whether and how to move companion legislation in the Senate. A member who wishes to retain firm control over the legislation might choose not to seek the introduction of a Senate counterpart, as the Senate counterpart could move in a different direction as it proceeds through the political process. Alternatively, working toward the introduction of a Senate counterpart could be a way of demonstrating to political leaders and outside groups that there may be political will in both Houses of Congress to pass the legislation.

Generating Support

Perhaps the most important factor in drafting legislation is generating support for it. In fact, the task of generating support for a bill is a never-ending process that begins when the idea for the bill is formed, continues until the bill is enacted into law, and impacts every step in between. Without support from other members, no legislation will move in the House or be signed into law; of equal importance is support from the public or interested groups as such support can generate interest among members for specific legislation. For example, a member who wishes to draft legislation enhancing the rights of crime victims might consider working with crime victims’ groups to hear their thoughts and learn of any concerns they may have with the member’s idea. This is because a bill proposing to help crime victims has a better chance of passage if it has the support of those intended to be helped, but it may have very limited chances without such support. As

stated above, however, efforts to gain support are a continuous process and may involve negotiating compromises between various members and groups, both before legislation has been drafted and after it has been introduced.

Office of Legislative Counsel: House

CRS Report: RS20735⁹
Updated March 31, 2008

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Summary

The Office of the Legislative Counsel of the House of Representatives provides confidential, nonpartisan legislative drafting services to committees and Members of the House. The office's legislative mandate is "the achievement of a clear, faithful, and coherent expression of legislative policies." The Legislative Counsel, appointed by the Speaker of the House of Representatives, is responsible for the management and administration of the office. The professional staff of the office currently includes a deputy legislative counsel, approximately 40 attorneys and an administrative support staff. Services are provided to Members and committees "upon request," giving priority to legislation with imminent conference, markup, or floor action. For more information on legislative process, see <http://www.crs.gov/products/guides/guidehome.shtml>.

Background and History¹⁰

The original Legislative Drafting Service¹¹, established by Section 1303 of the Revenue Act of 1918,¹² was a single agency composed of two independent branches, one under the direction of the Senate and the other under the direction of the House. The House Office of Legislative Counsel was given its own separate legislative charter by Title V of the Legislative Reorganization Act of 1970 (2 U.S.C. 281-282e), effectively separating the Office of Legislative Counsel into autonomous House and Senate components.

Structure and Functions

The management, supervision, and administration of the Office is vested in the House Legislative Counsel, appointed by the Speaker of the House. The Legislative Counsel is empowered to "appoint such attorneys and other employees as may be necessary for the prompt and efficient performance of the functions of the Office." These attorneys are both subject-matter specialists and experts in legislative drafting. The Legislative Counsel also designates a deputy legislative counsel to serve during his absence or disability or when the position of Legislative Counsel is vacant.

⁹ <http://apps.crs.gov/products/rs/html/RS20735.html>

¹⁰ This report was originally written by Thomas P. Carr, formerly an analyst in American National Government at CRS. The listed author updated the report and is available to answer questions concerning its contents.

¹¹ The Legislative Drafting Service was renamed the Office of Legislative Counsel by Section 1101 of the Revenue Act of 1924, 43 Stat. 353 (1924), to avoid confusion with the Legislative Reference Service of the Library of Congress (now the Congressional Research Service).

¹² Revenue Act of 1918, 40 Stat. 1141 (1919), 2 U.S.C. 271 et seq.

The statutory charter requires the office to be impartial as to issues of legislative policy and to maintain the attorney-client relationship with respect to any communications with Members or committees of the House. The work of the office typically includes:

- Drafting of bills and resolutions for introduction, and drafting of amendments for use by Members during subcommittee, committee, and floor consideration of bills and resolutions.
- Drafting advice (including advice on form and procedure) on drafts of bills, resolutions, and amendments prepared by others.
- Assisting committees in the preparation of reports, including changes to existing law in compliance with the Ramseyer rule, and explanatory statements accompanying conference reports.

Requests for drafting assistance are at Members' initiative. There is no requirement in the rules of the House of Representatives that bills and resolutions must be drafted by the Office of Legislative Counsel. One notable exception to this general rule relates to amendments made in order under special rules from the Rules Committee. Guidelines promulgated by the committee stipulate that the assistance of the Legislative Counsel's Office should be sought in drafting such amendments, to ensure they are drafted to the most up-to-date version of a base bill, and to facilitate posting the text to the Rules Committee website.

The ability of the Office of Legislative Counsel to respond to requests for assistance can be affected by the volume of requests for drafting assistance, as well as the complexity of the issues presented. The statute governing operations of the office gives priority for drafting services first to conference managers, second to committees, third to Members controlling floor time, and last to individual Members. However, the office endeavors to meet all requests in a timely manner.

At the direction of the Speaker, the office may perform other legal services for the House of Representatives not inconsistent with statutory mandates. However, matters relating to legal advocacy and litigation relating to Members performance of official duties are the province of the Office of the General Counsel.

Contact Information

The Office of Legislative Counsel is located in Room 136, Cannon House Office Building. Requests for assistance may be made in person, in writing, by telephone (5-6060), by fax (5-3437), or via email (LegCoun@mail.house.gov). Additional information on the office's policies, procedures, and services is available from the Legislative Counsel's website at <http://legcoun.house.gov/>.

Sponsorship and Cosponsorship of House Bills

CRS Report: RS22477¹³
November 25, 2008

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A Representative who introduces a bill or other measure in the House is called its *sponsor*. Under House Rule XII, clause 7, several Members together may submit a bill, but the first-named Member is the chief or primary sponsor; the others are *cosponsors*. A bill can have only one

¹³ <http://apps.crs.gov/products/rs/html/RS22477.html>

primary sponsor. For more information on legislative process, see <http://www.crs.gov/products/guides/guidehome.shtml>.¹⁴

Sponsorship of a Bill.

Representatives introduce bills in the House chamber by placing them in the clerk's "hopper," a box at the rostrum, when the House is in session. The original signature of the primary sponsor must appear on the measure when it is introduced. Cosponsors do not have to affix their signatures to the bill; the primary sponsor need only submit a list of names when the bill is dropped in the hopper. Cosponsors commonly ask the sponsors to add their names to a bill to signal support for the measure.

Members typically sponsor bills they support. On occasion, a Representative may introduce a bill as a courtesy, such as legislation proposed by the President or a senior Administration official. In such a case, the sponsor may designate the bill as introduced "by request." As House Rule XII states, "When a bill or resolution is introduced 'by request,' those words shall be entered on the Journal and printed in the *Congressional Record*."

The primary sponsor may withdraw the measure he or she has placed in the hopper only until it receives a number and is referred to committee. Once referred, neither the sponsor nor any cosponsor nor any other Member may withdraw the bill, even by unanimous consent. The measure becomes the property of the House, and the House may act on it even if the primary sponsor resigns from the House, or dies.

Cosponsorship of a Bill.

Representatives may cosponsor a bill either at the time of its introduction or subsequently. Members whose names are submitted with a bill at the time of introduction are commonly referred to as "original cosponsors." Once a bill has been introduced, Members may add their names as cosponsors until the bill has been reported from all the committees to which it is referred (or been discharged from the committees).

The names of added cosponsors appear in the *Congressional Record* and in any subsequent prints of the bill. Sponsors and cosponsors of bills and amendments may be found by searching the Legislative Information System (LIS), CRS's online legislative resource. House Rule XII provides that a bill may be reprinted if 20 or more cosponsors have been added since the previous printing, and the primary sponsor submits a written request for the Speaker to reprint the bill.

A cosponsor may also have his or her name removed from a bill until the last committee of referral has reported it. For this purpose, either the cosponsor or the primary sponsor of the bill must request unanimous consent on the House floor.

Rules governing the number of cosponsors permitted on a bill have changed over the years. From 1967 to 1979, House rules limited the number of cosponsors to 25 per bill, requiring the introduction of identical bills when the number of cosponsors exceeded 25. Since 1979, an unlimited number of cosponsors has been allowed. Private bills are prohibited from having cosponsors.

Gaining Cosponsors.

Supporters of a bill often seek cosponsors in hope of demonstrating its popularity and improving its chances for passage. One of the most common techniques for soliciting support for a bill is the

¹⁴ This report was originally prepared by former CRS Specialist Richard C. Sachs. Please direct any inquiries to the listed author.

"Dear Colleague" letter, a mass mailing to selected or all Members. These letters are so called after the salutation with which they begin.

No House rules or formal procedures govern "Dear Colleague" letters. They are, in effect, a sponsor's advertisement for a bill (or, sometimes, an amendment). Typically, the letters briefly state the issue the bill addresses, its major components, and its policy importance, and include an appeal to join as a cosponsor. Almost always, they carry the name and phone number of a staff aide to contact. A new system for distributing "Dear Colleagues" through the Internet was implemented in the 110th Congress. (See CRS Report RS21667, *'Dear Colleague' Letters: A Brief Overview*, by Jacob R. Straus.)

Before a bill is formally introduced, a Member or an aide acting at his or her direction, who wishes to become a cosponsor may contact the sponsoring Member's office and request that his or her name be added to the bill. A form listing cosponsors is kept, usually by a staff aide, and submitted along with the bill at introduction. After the bill is introduced, a Member may also contact the primary sponsor's office and ask to be listed as a cosponsor. The primary sponsor decides when to submit these additional cosponsors to the House Clerk for publication in the *Congressional Record*.

Introduction and Referral to Committee

Excerpt from "How Our Laws Are Made" (pages 8-11)¹⁵
June 20, 2003

Charles W. Johnson
Parliamentarian, US House of Representatives

Permission is not required to introduce the measure. The Member introducing the bill is known as the primary sponsor. An unlimited number of Members may cosponsor a bill. To prevent the possibility that a bill might be introduced in the House on behalf of a Member without that Member's prior approval, the primary sponsor's signature must appear on the bill before it is accepted for introduction. Members who cosponsor a bill upon its date of introduction are original cosponsors. Members who cosponsor a bill after its introduction are additional cosponsors. Cosponsors are not required to sign the bill. A Member may not be added or deleted as a cosponsor after the bill has been reported by the last committee authorized to consider it, but the Speaker may not entertain a request to delete the name of the primary sponsor at any time. Cosponsors names may be deleted by their own unanimous consent request or that of the primary sponsor. In the Senate, unlimited multiple sponsorship of a bill is permitted. Occasionally, a Member may insert the words "by request" after the Member's name to indicate that the introduction of the measure is at the suggestion of some other person or group—usually the President or a member of his Cabinet.

In the Senate, a Senator usually introduces a bill or resolution by presenting it to one of the clerks at the Presiding Officer's desk, without commenting on it from the floor of the Senate. However, a Senator may use a more formal procedure by rising and introducing the bill or resolution from the floor. A Senator usually makes a statement about the measure when introducing it on the floor. Frequently, Senators obtain consent to have the bill or resolution printed in the *Congressional Record* following their formal statement.

If any Senator objects to the introduction of a bill or resolution, the introduction of the bill or resolution is postponed until the next day. If there is no objection, the bill is read by title and referred to the appropriate committee. If there is an objection, the bill is placed on the Calendar.

¹⁵ <http://thomas.loc.gov/home/lawsmade.bysec/introtocomm.html>

In the House of Representatives, it is no longer the custom to read bills—even by title—at the time of introduction. The title is entered in the Journal and printed in the Congressional Record, thus preserving the purpose of the custom. The bill is assigned its legislative number by the Clerk. The bill is then referred as required by the [rules of the House](#) to the appropriate committee or committees by the Speaker, the Member elected by the Members to be the Presiding Officer of the House, with the assistance of the Parliamentarian. The bill number and committee referral appear in the next issue of the Congressional Record. It is then sent to the Government Printing Office where it is printed in its introduced form and printed copies are made available in the document rooms of both Houses. Printed and electronic versions of the bill are also made available to the public.

Copies of the bill are sent to the office of the chairman of the committee to which it has been referred. The clerk of the committee enters it on the committee's Legislative Calendar.

Perhaps the most important phase of the legislative process is the action by committees. The committees provide the most intensive consideration to a proposed measure as well as the forum where the public is given their opportunity to be heard. A tremendous volume of work, often overlooked by the public, is done by the Members in this phase. There are, at present, 19 standing committees in the House and 16 in the Senate as well as several select committees. In addition, there are four standing joint committees of the two Houses, with oversight responsibilities but no legislative jurisdiction. The House may also create select committees or task forces to study specific issues and report on them to the House. A task force may be established formally through a resolution passed by the House or informally through organization of interested Members by the House leadership.

Each committee's jurisdiction is divided into certain subject matters under the rules of each House and all measures affecting a particular area of the law are referred to the committee with jurisdiction over that particular subject matter. For example, the Committee on the Judiciary in the House has jurisdiction over measures relating to judicial proceedings generally, and 17 other categories, including constitutional amendments, immigration and naturalization, bankruptcy, patents, copyrights, and trademarks. In total, the [rules of the House](#) and [\[rules\] of the Senate](#) each provide for over 200 different classifications of measures to be referred to committees. Until 1975, the Speaker of the House could refer a bill to only one committee. In modern practice, the Speaker may refer an introduced bill to multiple committees for consideration of those provisions of the bill within the jurisdiction of each committee concerned. Except in extraordinary circumstances, the Speaker must designate a primary committee of jurisdiction on bills referred to multiple committees. The Speaker may place time limits on the consideration of bills by all committees, but usually time limits are placed only on additional committees. Additional committees are committees other than the primary committee to which a bill has been referred, either initially on its introduction or sequentially following the report of the primary committee. A time limit is placed on an additional committee only when the primary committee has reported its version to the House.

Membership on the various committees is divided between the two major political parties. The proportion of the Members of the minority party to the Members of the majority party is determined by the majority party, except that half of the members on the Committee on Standards of Official Conduct are from the majority party and half from the minority party. The respective party caucuses nominate Members of the caucus to be elected to each standing committee at the beginning of each Congress. Membership on a standing committee during the course of a Congress is contingent on continuing membership in the party caucus that nominated a Member for election to the committee. If a Member ceases to be a Member of the party caucus, a Member automatically ceases to be a member of the standing committee.

Members of the House may serve on only two committees and four subcommittees with certain exceptions. However, the rules of the caucus of the majority party in the House provide that a Member may be chairman of only one subcommittee of a committee or select committee with legislative jurisdiction, except for certain committees performing housekeeping functions and joint committees.

A Member usually seeks election to the committee that has jurisdiction over a field in which the Member is most qualified and interested. For example, the Committee on the Judiciary traditionally is composed almost entirely of lawyers. Many Members are nationally recognized experts in the specialty of their particular committee or subcommittee.

Members rank in seniority in accordance with the order of their appointment to the full committee and the ranking majority member with the most continuous service is usually elected chairman. The rules of the House require that committee chairmen be elected from nominations submitted by the majority party caucus at the commencement of each Congress. In the 108th Congress, no Member of the House may serve as chairman of the same standing committee or of the same subcommittee thereof for more than three consecutive Congresses.

The rules of the House prohibit a committee that maintains a subcommittee on oversight from having more than six subcommittees with the exception of the Committee on Appropriations and the Committee on Government Reform.

Each committee is provided with a professional staff to assist it in the innumerable administrative details involved in the consideration of bills and its oversight responsibilities. For standing committees, the professional staff is limited to 30 persons appointed by a vote of the committee. Two-thirds of the committee staff are selected by a majority vote of the majority committee members and one-third of the committee staff are selected by a majority vote of minority committee members. All staff appointments are made without regard to race, creed, sex, or age. Minority staff requirements do not apply to the Committee on Standards of Official Conduct because of its bipartisan nature. The Committee on Appropriations has special authority under the rules of the House for appointment of staff for the minority.

Expiration of Measures at the End of a Congress

Prepared by Rules Committee Staff
January 10, 2008

Article I, section 2, of the Constitution provides that “the House of Representatives shall be composed of Members chosen every second Year by the People of the several States.” The impact of this mandate is that the House of Representatives essentially expires every two years and is reconstituted each January of odd years. The reconstitution in January follows the November elections of House members.

This biennial cycle of expiration and reconstitution involves every facet of the House. For example, at the beginning of each new Congress, a new Speaker must be sworn in, the members of the House must be sworn, and the officers of the House must be appointed. One important aspect of this to remember is that, with the House’s biennial termination, bills and resolutions also expire.

What this means is that any bill or simple resolution that was not enacted into law or passed by the House, respectively, expires when the House adjourns at the end of each congressional term.¹⁶ A bill may have been the subject of congressional hearings, could have been approved by a Congressional committee, and may have passed the House with a unanimous vote, but it still would expire unless it also passed the Senate and was signed by the President. One exception to this rule is that Congress can send a bill to the President for a signature and then adjourn for the session; the President can sign the bill into law notwithstanding the fact that Congress already has adjourned. Simple resolutions, however, require only passage by the House to be effective, not passage by both Houses or signature by the President.

In short, for a measure to be considered in a particular term of Congress (e.g., the 110th, 111th), a member must introduce it in that term.

¹⁶ Joint resolutions are treated the same as bills, while concurrent resolutions must pass both the House and Senate to be effective.