

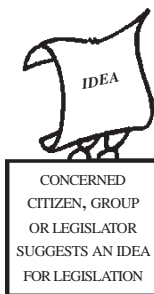
THEY DIDN'T THINK MUCH TO THE OCEAN;
THE WAVES, THEY WERE FIDDLIN' AND SMALL,
THERE WAS NO WRECKS AND NOBODY DROWNED,
FACT, NOTHING TO LAUGH AT AT ALL.

Marriott Edgar, *The Lion and Albert*

A smooth surface does not mean that an ocean is calm. Detritus on the seashore — blasted mollusks, the carcass of a tern — may alert a beachcomber to the turbulence beneath even a gentle “painted ocean.”¹ To appreciate the ocean, an observer must imagine the scene that is invisible from the shore: the eel, the stingray, the crab with colossal pincers scuttling across the rocky floor.² The same is true of a session of the Legislative Assembly: To understand how an idea becomes law, a person must witness the whole of the formal legislative process, not just the parts that make for the best political theater.

Each session, the Legislative Administrator, the public official who coordinates the state’s legislative operations,³ distributes a booklet to guide citizens through the legislative process. This guidebook includes “How An Idea Becomes Law: A Simple View of the Oregon Legislative Process,” an illustrated flow chart that shows key steps through which an idea may pass on its way to becoming a law.⁴ This flow chart, accurate though it may be, presents a picture of the formal legislative process that is only as complete as Marriott Edgar’s description of the ocean. A view of the whole institutional process shows that it is anything but simple. The purpose of this booklet is to provide a look at the commotion beneath the surface, the parts of the formal legislative process most citizens cannot see.⁵

I. HOW AN IDEA BECOMES A BILL



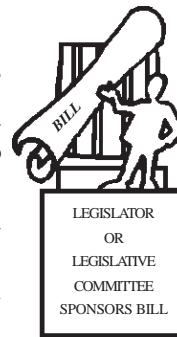
A. SOURCES OF IDEAS

Sources of ideas are as varied as the ideas themselves. A legislator may read about a problem in the newspaper. A constituent may call a problem to a legislator’s attention. A state employee may suggest a change in the law that would allow the agency to better manage the people’s business. A public official may have a political agenda to implement through legislation. An organization, such as the National

Conference of Commissioners on Uniform State Laws, may offer ideas.⁶ In some cases, such as that of the Oregon Law Commission, the legislature has created a group specifically to come up with ideas for legislation.⁷ In every case, however, an idea can become a law only through the efforts of a person or entity with the authority to convert the idea into a bill that the legislature may consider. That stage of the process involves sponsorship.

B. SPONSORS OF IDEAS

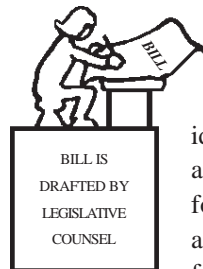
Here, the flow chart uses the phrase “sponsors the bill” to mean “assumes responsibility for” converting the idea into a bill;⁸ the member or person taking responsibility to make an idea law may or may not be the “chief sponsor” whose signature ORS 171.127 (2) requires on a measure filed for introduction.⁹ At this stage, a member or person assumes responsibility for an idea by asking the Legislative Counsel to draft a measure that reflects the idea.



C. IDEAS INTO DRAFT BILLS

1. OFFICE OF THE LEGISLATIVE COUNSEL

Despite what some media may report,¹⁰ members of the Legislative Assembly do not draft bills themselves. Their rules do not allow them to do their own drafting. Each session, the House of Representatives and the Senate adopt rules that prescribe the form and style of legislative measures and direct the Office of the Legislative Counsel to prepare the measures in that form and style.¹¹ To draft bills and amendments to bills, the Legislative Counsel employs 14 attorneys and 12 other professionals with backgrounds in areas other than law, such as languages and journalism.



There are several reasons why members do not draft their own bills. First, members do not have time. Digesting the information necessary to choose from among ideas — taxes, teachers, telecommunications — is more than a full-time job. Second, drafting a bill is a task too complicated for other than professional drafters to accomplish well. Only a professional drafter can hope to know almost 100 pages of formal and stylistic conventions along the lines of: “When a bill ... will delay the effective date of [the] Act until *after* the normal effective date, place the section containing the effective date at the end of the bill[.]”¹²

In addition, only a professional drafter can be expected to keep track of the special meaning of various terms in the Oregon Revised Statutes, such as the dozens of different definitions of “public body”¹³ and the term “person” which usually includes corporations and other nonhuman entities.¹⁴

Not only members and committees of the legislature may obtain the drafting services of the Legislative Counsel. ORS 173.130 (2) authorizes the Legislative Counsel to draft bills for state agencies and the Governor, the Governor’s designated representative, the Secretary of State, the State Treasurer, the Attorney General, the Commissioner of the Bureau of Labor and Industries, and the Superintendent of Public Instruction. Of the 4,240 requests for draft measures in the 1999 session, 793 requests came from state agencies and independently elected state officials.

Through the 1953 legislative session, attorneys in private practice volunteered their services to draft measures for the legislature. By that time, however, the legislature determined that part-time volunteers did not provide satisfactory drafting services or the specialized legal advice members needed. As a result, the legislature created the nonpartisan position of Legislative Counsel and charged the officer with providing legal — including drafting — services to members and their committees.¹⁵ Because the Legislative Counsel serves all 90 members of the legislature and members-elect, the legislature prohibits employees of the Office of the Legislative Counsel from “oppos[ing], urg[ing] or attempt[ing] to influence legislation,”¹⁶ and the guiding principle of the office is to avoid appearing to advocate for or against any political issue.¹⁷

2. CONFIDENTIALITY OF COMMUNICATIONS

The work of the Legislative Counsel for members, agencies, and public officials is confidential for the same reason the legislature protects other communications between clients and their attorneys:¹⁸ to encourage sound decisions through frank communication.¹⁹ With draft legislation kept confidential, a person or entity may be more likely to experiment with ideas that do not yet have a popular following.

The Office of the Legislative Counsel drafts many more bills than the Legislative Assembly considers in a session. In the 1999 session, for example, the Office of the Legislative Counsel received 4,240 requests for draft measures, but the Clerk of the House and the Secretary of the Senate accepted only 3,308 measures for introduction. This means that the Office of the Legislative Counsel drafted some or all of 932 measures that did not obtain a public sponsor in the sense used in ORS 171.127 (2) and legislative rules²⁰ and, therefore, did not enter the public part of the legislative process.

3. DRAFTING DRAFT BILLS

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

The attorney's first task is to understand the request, which may require the attorney to consult with the requester or the requester's representative.²¹ When the attorney understands the request, the attorney researches the issue to determine whether the law permits the attorney to fulfill the request. Among other issues, the attorney considers the requirements the Constitution prescribes for the form and substance of bills, such as containing a single subject,²² taxing uniformly,²³ and setting forth the entire text of a law a bill proposes to amend.²⁴

The attorney also completes a search of a legislative computer database that informs the attorney of related statutes the attorney may want the bill to amend. For example, section 1, chapter 1074, Oregon Laws 1999, amended ORS 171.130 to eliminate the authority of state agencies to file proposed measures with the legislature except through a member or committee. There were, however, three other statutes — ORS 456.571, 456.625, and 468B.162 — that authorized specific agencies to submit proposed legislation, and a database search identified them so the attorney could include amendments to them in the bill.²⁵

Once satisfied that the law allows the requested bill, the attorney begins drafting. By emphasizing the A, B, C's of drafting — accuracy, brevity, and clarity — the attorney prepares a draft bill with the goal of satisfying the constitutional command that “[e]very act . . . be plainly worded, avoiding as far as practicable the use of technical terms.”²⁶ A draft bill also includes an impartial summary of the bill's content, describing new law and changes in existing law proposed by the bill²⁷ and “written in a manner that results in a score of at least 60 on the Flesch readability . . . [or] comparable test.”²⁸

4. EDITING DRAFT BILLS

After the attorney finishes the initial draft of a bill, the attorney transfers the draft to the office's Publication Services section where, in many cases, the

lion's share of the work on a bill occurs. There, the draft undergoes a thorough proofreading by two editors, who verify the accuracy of base texts and the thoroughness and consistency of proposed changes. They also review the draft for errors of form and style, such as capitalization or designation of subsections, as well as for errors in substance, such as the creation of a crime without specifying the penalty.

The Legislative Counsel Committee considers this depth and detail of editing, which, in the case of a long bill, may take days to complete, to be worth the effort because the inadvertent omission of even a single word may have a large fiscal impact.²⁹

5. DRAFTING TIMELINES

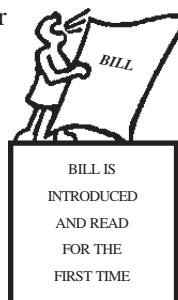
The need for thorough editing becomes clearer with an understanding of the time frames within which the drafting of bills occurs: The Office of the Legislative Counsel prepares almost half of a biennium's draft bills — roughly 2,000 bills — in under two months.

Because most members are involved in elections until the second Tuesday in the November before session, the Office of the Legislative Counsel receives comparatively few drafting requests from members before that time. The limits on the years a member may serve in the legislature³⁰ mean that, each session, roughly one-third of the members are not in a position to request draft bills until the session starts. As a result, the Office of the Legislative Counsel receives the bulk of members' requests after session begins on the second Monday in January. Both the Senate and House require the Office of the Legislative Counsel to complete its drafting of members' and committees' bills by roughly a month and a half into the session. House Rule 13.10 (1) required the Legislative Counsel to complete that chamber's drafts by the "36th calendar day of the session," and Senate Rule 13.10 (1) required the Legislative Counsel to complete that chamber's drafts by the "50th calendar day following the election of a President." Both chambers permit some additional drafting after the deadline. Members may request two additional bills,³¹ and some committees may request more bills.³²

II. HOW A DRAFT BECOMES A BILL

A. INTRODUCTION

From the Office of the Legislative Counsel, the requester receives the draft bill and a “bill back,” the document a person or entity uses to introduce the bill into the formal legislative process.³³ On the bill back, the person or entity introducing the bill identifies the chief sponsor, the bill’s title, and, if appropriate, on whose behalf the sponsor is introducing the bill.³⁴ Before introducing the bill, a member has the opportunity to obtain additional members’ sponsorship. To show support for a bill, a member signs the bill back.³⁵



The person or entity delivers the draft bill and completed bill back to a chamber’s chief legislative officer, a nonpartisan office nicknamed the Desk.³⁶ In the Senate, the chief legislative officer is the Secretary; the chief legislative officer in the House of Representatives is the Chief Clerk. The respective houses elect the officers.³⁷

A member introduces a bill in the chamber in which the member serves,³⁸ and constitutional requirements may influence the chamber in which a person or entity asks a member to introduce a bill. For example, section 18, Article IV of the Oregon Constitution, requires “that bills for raising revenue shall originate in the House of Representatives.”³⁹

The Desk makes sure that the person or entity introducing the bill has completed the bill back correctly.⁴⁰ The Desk then assigns the draft bill a number,⁴¹ and delivers the bill to the Office of the Legislative Counsel, who arranges for printing through the State Printer.

B. PRESESSION FILING

ORS 171.130 (1) allows the Legislative Counsel Committee or the chambers themselves to set a time before session by which members and committees may file bills they have introduced with the Legislative Counsel. For the Seventieth Legislative Assembly, that deadline was December 31 of the year preceding session.⁴² ORS 171.130 (2) allows independently elected public officials in the executive department until December 15 of the year preceding session to file the bills they have introduced with the Legislative Counsel.⁴³ Executive department agencies may also file their bills with the Legislative Counsel by December 15, but only “through a member or committee[.]”⁴⁴

Submitting a proposed measure before session, called pre-session filing, gives the measure's proponent a potential advantage over proponents of measures filed later: The Desks do not accept measures for introduction from December 31 to the start of the session.⁴⁵ As a result, a measure pre-session-filed will be available for the legislature to consider when the legislature convenes or as soon thereafter as possible; there will also be fewer bills with which to compete for members' attention than at any later stage in the process.

C. FIRST READING

When a chamber convenes, the chief legislative officer (or, more likely, a person on the officer's staff) reads the title of the printed bill⁴⁶ out loud to the assembled members and public. With this reading, the bill becomes public for the first time and is available through the Bill Distribution office. The requirement to read the bill's title aloud comes from section 19, Article IV of the Oregon Constitution, which directs that "[e]very bill shall be read by title only on three several days, in each house[,]” one purpose being to allow interested members of the public time to travel to Salem to present their views on the bill.⁴⁷

Once read, the Desk transmits the bill to the presiding officer. The President, who is elected by the members,⁴⁸ presides in the Senate; in the House of Representatives, the presiding officer the members elect is the Speaker.⁴⁹

III. HOW A BILL BECOMES LAW

A. FISCAL AND REVENUE REVIEW

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

1. LEGISLATIVE FISCAL OFFICER

The Legislative Fiscal Officer, who is selected by the Joint Committee on Ways and Means (or, if the position opens during the interim, by the Emergency Board),⁵⁰ assists the legislature in crafting the state budget,⁵¹ and for every bill introduced, estimates the cost to state and local governments.⁵²

The fiscal impact of a bill may affect the process the legislature follows when considering the bill. First, section 15, Article XI of the Oregon Constitution, allows a local government to decline to implement a state-mandated program if the program will have a significant impact on the local government's budget and both houses of the legislature have not passed the bill by three-fifths votes.⁵³

Second, the presiding officers who, under the chambers' rules, have the authority to decide which committees will consider which bills⁵⁴ may require the Joint Committee on Ways and Means to approve bills with particular fiscal impacts, such as those over \$50,000, before the second of the two chambers votes on the bill.⁵⁵

The Legislative Fiscal Officer employs 12 budget analysts and three fiscal analysts, who are, by training, economists, accountants, or business administrators. During session, the budget analysts help the Joint Committee on Ways and Means craft specific agencies' budgets; fiscal analysts estimate the fiscal impacts of all proposed bills. (Because they handle fewer subject areas, budget analysts have more detailed knowledge of government units' finances than fiscal analysts do.)

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

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

2. LEGISLATIVE REVENUE OFFICER

The Legislative Revenue Officer, who, with the approval of the presiding officers, is selected by the House and Senate Committees on Revenue (or, if the position opens during the interim, by the Interim Revenue Committee)⁵⁶ provides the legislature the financial information necessary to evaluate proposed tax laws,⁵⁷ and for every bill introduced, determines whether the law the bill proposes will increase or reduce tax revenues, and if so, by how much. ORS 173.025 (2) requires the Legislative Revenue Officer to prepare a statement on a bill's potential "effect on revenues of local governmental units," and chamber rules extend that responsibility to a bill's "anticipated change in state . . . revenues[.]"⁵⁸

Whether a bill affects revenues is important because that effect may also affect the process through which the legislature considers the bill. Section 18, Article IV of the Oregon Constitution requires "bills for raising revenue . . . [to] originate in the House of Representatives."⁵⁹ Section 25, Article IV of the Oregon Constitution, requires three-fifths votes for revenue bills to become law.

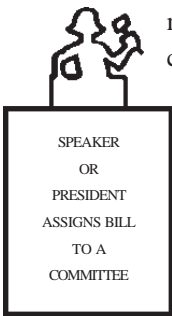
The legislature also assigns to the Legislative Revenue Officer evaluation of the state's principal spending obligation: public school funding. It is, therefore, the Legislative Revenue Officer who calculates the effect on individual school districts of changes to the school funding formula and funding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

The Legislative Revenue Officer receives a copy of every bill introduced and every amendment a committee adopts and makes an initial determination whether the bill or amendment affects state or local tax revenues.⁶⁰ The Legislative Revenue Officer employs four economists who have Ph.D's and special expertise in different areas of tax policy, such as property, income, and excise. If the Legislative Revenue Officer determines that a bill will affect tax revenues, the officer assigns the bill to the economist who specializes in the subject of the bill. If a committee plans to hold a hearing or work session on the bill, the economist, employing a sophisticated computer model, prepares a statement that estimates the revenue impact of the bill.

B. ASSIGNMENT TO COMMITTEE

The chambers' rules require the presiding officer to refer a bill to a committee;⁶¹ under House rules, that decision is based on the subject matter of the bill.⁶² For example, the 1999 House Committee on Human Resources should receive the bills "relating generally to human resources and health care

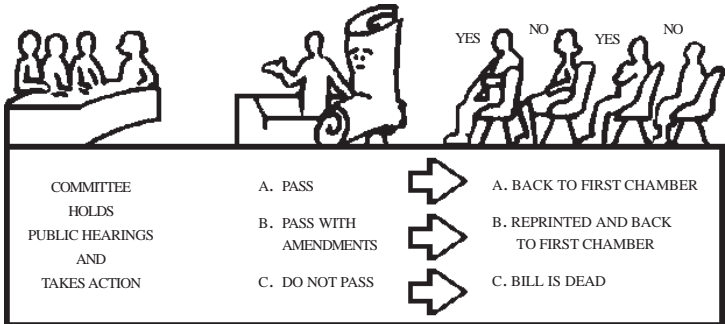
issues[.]”⁶³ As a practical matter, however, a bill may have a subject that falls within the jurisdiction of more than one committee. The Speaker referred HB 2633 (1999), which related to “abortion,” a medical procedure, but also involved procedures for resolving disputes, to the House Committee on Judiciary-Civil Law, which had jurisdiction over bills “relating generally to civil law and administration of justice.”⁶⁴



The presiding officer’s referral of a bill to a particular committee can be a critical decision. Under rules adopted by the committee, the chair, whom the presiding officer appoints,⁶⁵ decides on which bills the committee will take action.⁶⁶ Chairs of different committees may have different political views, and one chair may decline to take action on a bill the other chair favors. Because of this potential for difference in treatment, the presiding officer’s referral is a decision many in the legislative process—sponsors, chairs, lobbyists—attempt to influence. The majority of the members of a committee may force a chair to allow the committee to take action on a bill,⁶⁷ but forced action rarely occurs because the majority of the committee’s members are usually of the same political party as the chair.⁶⁸

C. COMMITTEE ACTION

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



1. SEPARATING WHEAT FROM CHAFF

Most committees of the legislature receive administrative support from Committee Services, which is under the direction of the Legislative Administrator.⁶⁹ Committee Services ordinarily provides one administrator (plus additional clerical staff) for every standing committee. An administrator is usually not an attorney, but often another professional with real-world expertise in the subject matter over which the committee has jurisdiction. For example, the Task Force on Landslides and Public Safety, which the legislature charged with recommending laws to reduce landslides and the damage they cause,⁷⁰ had as its administrator a person who had served for 10 years in the Oregon Emergency Management Division of the Oregon State Police.

When a presiding officer refers a bill to a committee, the administrator's first task is to gather information on the bill — pros, cons, costs — and to present that information to the committee chair so that the chair can decide whether the committee will consider the bill. Depending upon the time of session, the scope of the bill, and the administrator's workload, the administrator may have only a few hours or as much as a couple of weeks to learn what the bill does. To gather the information the chair needs, the administrator may undertake factual or legal research or, more likely, given the constraints of time a session imposes, communicate with parties interested in the bill: sponsors, lobbyists, and affected agencies. When presenting information, the administrator takes care not to advocate for or against a particular course of action. ORS 173.740 (3) prohibits an administrator (and any other employee of the Legislative Administration Committee) from “oppos[ing], urg[ing] or attempt[ing] to influence any measure pending before the Legislative Assembly.”

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

If the chair does decide the committee will hold a public hearing on a bill, the committee staff calls interested parties and invites their testimony, and also provides notice to the public of the time, place, and agenda for the hearing. For the hearing, the administrator may also prepare background materials for com-

mittee members. Background materials may include articles, related laws, or a preliminary staff measure summary, a form of executive summary of the bill. Occasionally, members' personal staff will also have provided background materials; for most members, however, the only information they will have in advance of the hearing is a copy of the bill.

2. PUBLIC HEARING

Potential witnesses sign up to testify before the committee. The chair has the discretion to limit the time a witness may speak or not to hear from a witness at all. As a result, a public hearing may last a few seconds to hundreds of hours.

At the start of the hearing, the administrator may explain the bill to members and answer questions from them about what the bill does. The committee then takes testimony — written and usually oral — from proponents and opponents of the bill: members, representatives of government agencies, private citizens, and lobbyists. On particularly complex or contentious bills, the committee, whose members are usually not attorneys, may also invite testimony from legal experts, such as representatives of the Attorney General, the Legislative Counsel, and the Oregon State Bar. From this testimony and the answers witnesses give to committee members' questions, the committee members form a clearer idea of the law the bill proposes, and decide whether to support the concept or to propose changes to it.

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

When a committee meets, an assistant makes an audio recording of the proceedings, and then, with the committee administrator, prepares minutes containing, among other items, a “summary of discussion on any matter.”⁷¹

3. AMENDMENT

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

a member may request an amendment to a bill that the member has not sponsored. Other state officials and private parties may request amendments only through a member or committee.⁷² The Office of the Legislative Counsel keeps members' requests for amendments confidential, but treats committees' requests as public.

(A) DRAFTING

The Office of the Legislative Counsel drafts amendments using the process for drafting bills: initial drafting by an attorney followed by editing.⁷³ In the 1999 session, members and committees requested 5,894 amendments to measures. Just as much effort goes into drafting an amendment as a bill, but because the drafting of amendments is concentrated in just a few months (just under 4,000 in three months in 1999), the time available for drafting amendments is more limited.

Through its rules, the legislature requires the Office of the Legislative Counsel to make line-by-line amendments rather than new versions of what the bill would look like as amended.⁷⁴ An amendment, therefore, looks like this:

On page 3 of the printed bill, line 17, delete “without” and insert “after”.⁷⁵

It is only after a committee has adopted amendments to a bill and sent the bill to the floor that the office prepares a version of what the bill looks like as amended, which is called an engrossed bill.

(B) LEGAL AND PARLIAMENTARY REQUIREMENTS

There are two other significant requirements for an amendment to a bill. First, the amendment must fit within the title. A bill that is “relating to horses” cannot accept an amendment that deals only with cows.⁷⁶ An amendment must also be “germane” to the subject of the bill,⁷⁷ which is a somewhat narrower inquiry than whether the title covers the amendment. To be germane, the amendment must be “relevant, appropriate, and in a natural and logical sequence to the subject matter of the original proposal.”⁷⁸ Thus, an amendment that fits within the title may still not be germane. For example, an amendment that would ban the sale of horse meat might not be germane to a bill “relating to horses” that would limit the tort liability of sponsors of equine activities. Whether an amendment is germane is a parliamentary — not legal — question, the answer to which the chambers' rules delegate to the chief legislative officer in the first instance.⁷⁹

These requirements of form most often come into play when a member or committee seeks to remove the entire text of a bill and replace it with a different text. This kind of amendment, called a gut and stuff, occurs most frequently in the latter stages of a session when there is insufficient time before adjournment sine die for a bill to move through two chambers. In that case, a member will find a vehicle — a bill that has passed one chamber and that has a title that will accept the amendment the member proposes — then ask the committee with jurisdiction over the bill to gut the bill’s contents and replace them with the member’s amendment. A member or committee must find a bill with an acceptable title because a committee may not amend the title of a bill.⁸⁰ If the chamber passes the gutted and stuffed bill, the bill (as with all amended bills) will go back to the floor of the originating chamber to vote on whether to accept the amended version of the bill. If the originating chamber does accept (by repassing) the amended bill, then the bill will become enrolled⁸¹ without a committee in the originating chamber having considered the amended version of the bill.

The genesis of HB 2550 (1999) (relating to “education”) demonstrates the transformation that a bill may undergo. As introduced, the bill proposed a law to prohibit the State Board of Higher Education from funding athletic programs with funds from academic programs. The House gutted the contents of the bill and inserted a proposal to require secondary schools to admit military recruiters on campus.⁸² The Senate, in turn, removed the military recruiters text and replaced it with a licensing requirement for teachers in public charter schools.⁸³ The House concurred in the Senate amendments, and upon the Governor’s signature, the idea the bill proposed became law.⁸⁴

When voting on whether to adopt an amendment to a bill, a committee should have the amendment in front of it so that it knows the exact language on which it is voting. Amendments are known by their “dash” numbers. Each time the Publication Services section in the Office of the Legislative Counsel processes an amendment, the amendment receives as its distinguishing mark the next highest number. The first amendment to a bill the office processes is the –1 amendment; the second is the –2.⁸⁵

(C) CONFLICTS

Another vital part of the process involves what the legislature calls conflict amendments.⁸⁶ More bills than one may propose to amend the same section of the Oregon Revised Statutes. If the legislature passes two or more bills dealing with the same section and the bills conflict — such as one amends

the section and another repeals it—then, under section 22, Article IV of the Oregon Constitution, “the act last signed by the Governor shall control.”⁸⁷ Members of the legislature frequently prefer to have a result other than having the bill last signed control, and with over 3,000 bills under consideration, frequently do not know that bills affecting the same provision of law are working their way through the system. To help the members adopt the versions of law they intend, the Office of the Legislative Counsel designates a group of editors as its “conflicts team” and charges the group with (1) tracking all bills as they move through the legislature, and (2) bringing to the drafting attorneys’ attention the potential for conflict between bills, based on computer-assisted analysis using the Amend and Repeal Tables and Measure History databases. After conferring, if necessary, with interested members, the Legislative Counsel prepares amendments to resolve the conflict in the way that preserves the legislative intent. Typically, the conflict amendments will provide that, if the preferred and alternate versions both become law, the alternate version is repealed.⁸⁸

D. WORK SESSION

First a caveat: Contrary to popular opinion, the Public Meetings Law⁸⁹ does not apply to the Legislative Assembly. Section 11, Article IV of the Oregon Constitution, requires “[e]ach house when assembled . . . [to] determine its own rules of proceeding.” This authority means that one Legislative Assembly cannot, through a rule or statute (such as the Public Meetings Law), require a future Legislative Assembly to operate in a particular way.⁹⁰

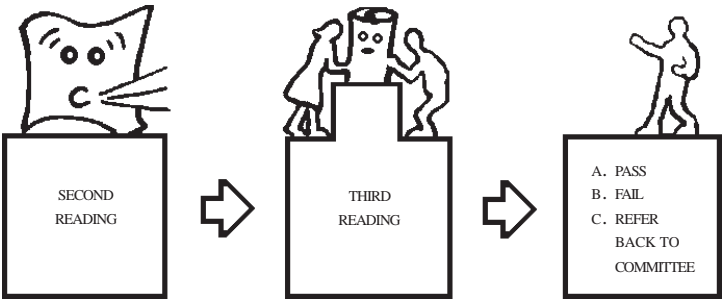
The legislature is nevertheless not free to operate in secret. Section 14, Article IV of the Oregon Constitution, requires the meetings of the legislature and its committees to be “open,” and requires the chambers to adopt rules to maintain that openness. Those rules are similar to but not copies of the Public Meetings Law. The House prohibits a quorum of a committee from meeting “in private for the purpose of deliberating or taking collective action on any matter.”⁹¹ The House also requires at least 36 hours’ notice to the public of a committee meeting.⁹² When adjournment sine die was “imminent,” however, the Speaker could reduce the 36 hours’ notice for public hearings to 24 hours and for work sessions to “notice appropriate to the circumstances,”⁹³ which in practice meant that committees gave at least one hour’s notice before voting on a bill.⁹⁴

The meeting at which a committee votes on a bill is called a work session, which usually consists only of a discussion between members and then a vote

(usually) on whether to pass the bill to the floor of the chamber with a positive (“do pass” or “do pass as amended”) recommendation.⁹⁵ A majority of the committee must agree to a course of action, such as passing a bill to the floor.⁹⁶

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

E. SECOND AND THIRD READINGS



1. REPORTS

A committee’s passing a measure as amended to the floor triggers a flurry of activity. Within three days:

The Legislative Fiscal Office prepares a revised fiscal impact statement for the bill taking into account the effect of the amendments;

The Legislative Revenue Office prepares a revised revenue impact statement for the bill; and

The committee administrator completes the committee report and staff measure summary which, together, state and explain the committee’s action on the bill.

When the committee staff has gathered or produced all of the required paperwork, the committee staff delivers the complete bill folder to the Desk.⁹⁷ The Desk reviews all of the reports to make sure that they are complete and accurate and then schedules the bill for its second and third readings on the chamber floor.⁹⁸

2. ENGROSSING

The chambers' rules require a printed measure to be "placed" on members' desks before a vote on the measure.⁹⁹ The chief legislative officer, therefore, transmits the bill and the amendments to the Publication Services section in the Office of the Legislative Counsel, which then produces, through another process of editing, a set of printed amendments and a printed engrossed bill, i.e., one that incorporates the amendments the committee adopted.

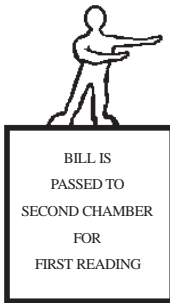
3. THIRD READING: THE FLOOR VOTE

A bill usually comes up for its third, or final, reading the day after the second reading. It is upon this third reading that all of the members debate and vote on the bill.¹⁰⁰ The vote is an up or down vote. Unlike other states and the United States Congress, Oregon's legislature does not permit amendments from the floor.¹⁰¹ If the chamber wants to amend a bill before voting on it, the chamber votes to refer the bill back to a committee, which then makes the necessary amendment.¹⁰² There are also a number of parliamentary motions a member may make in an effort to position a vote, such as its timing, in a manner that best meets the member's needs.¹⁰³

After the Desk reads the bill by number and title, the presiding officer recognizes the bill's carrier. The carrier has 10 minutes in which to speak on the bill, explaining its terms and the reasons members should support it. Other members may then address questions to the carrier (through the presiding officer) or address the bill; they are limited to five minutes.¹⁰⁴ Each member, including the carrier, may have at the member's desk one person to assist the member with the debate.¹⁰⁵ The person assisting the member on the floor may be the member's legislative aide,¹⁰⁶ but more likely will be a committee administrator or a representative of the Legislative Counsel, Legislative Fiscal Officer, or Legislative Revenue Officer.¹⁰⁷ A lobbyist may not enter the chamber area while a house is in session,¹⁰⁸ but may watch from the third floor public gallery.

When members have finished speaking, the presiding officer calls on the carrier of the bill for closing remarks,¹⁰⁹ and the members vote for or against passage of the bill.¹¹⁰ The chief legislative officer records all actions taken by the chamber, including votes.¹¹¹ The chief legislative officer's record of floor proceedings, called the journal, is to the legislative process what a birth certificate is to a person. The journal is a requirement of the Oregon Constitution and the official record of the actions the legislature has taken on a measure.¹¹² Each day, the Desks post to "measure history," a computer database, information

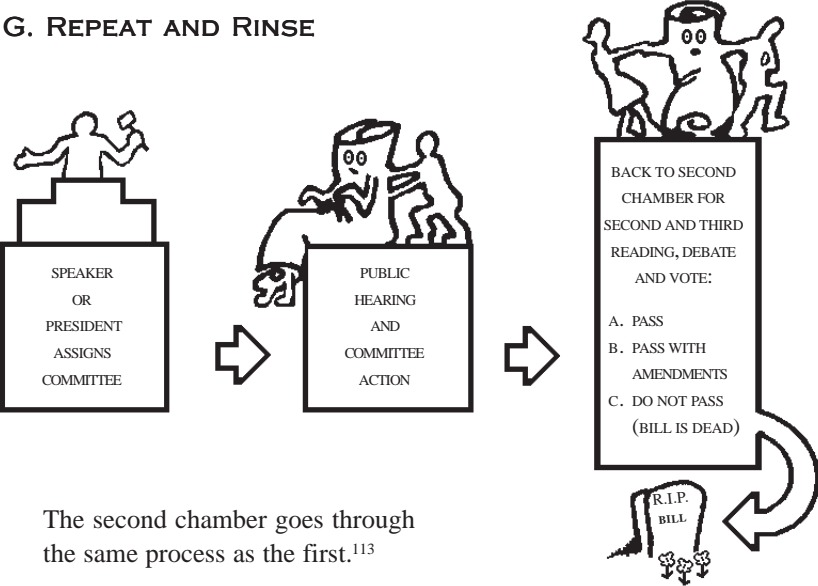
received from committees about bills. With this history at their fingertips, the Desks serve as clearinghouses throughout the session, providing members and the public with information about the status of bills as they pass through the system.



F. PASSING THE BATON

If the first chamber passes the bill, the Desk in the originating chamber transmits the bill and all of its associated reports to the Desk in the other chamber. This transmission is called a “message,” which the Desk in the other chamber reads to its members when assembled.

G. REPEAT AND RINSE



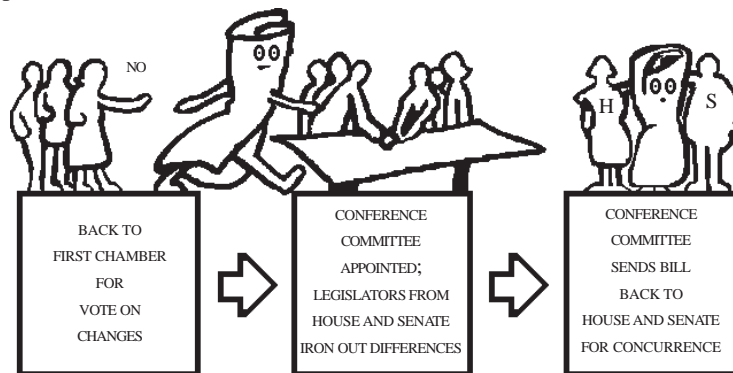
The second chamber goes through the same process as the first.¹¹³

H. CONCURRENCE OR CONFERENCE COMMITTEE

1. REPASSING

If the second chamber amends and passes a bill, then the bill returns to the original chamber to decide whether to concur in the amendments and repass the bill.¹¹⁴ The chair of the committee that handled the bill in the original chamber usually makes the motion and leads the debate on the chair’s proposed course of action. If the original chamber does not concur in the other

chamber’s amendments, the presiding officers appoint a conference committee to iron out the differences between the different versions of the bill.¹¹⁵ If the conferees can then agree on the form of the bill, the bill returns to both chambers for members to vote on whether to adopt the conference committee’s report.¹¹⁶



2. ENROLLING

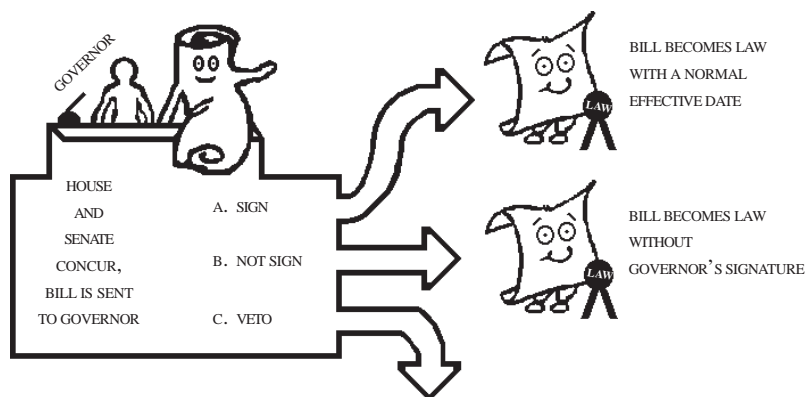
When the second chamber has approved a bill, the Desk once more sends the bill to the Office of the Legislative Counsel. This time, the office converts the bill into its enrolled form, which means that the editors have proofed the bill one more time and added signature lines for the chief legislative officer of the chamber in which the bill started, the presiding officers, the Governor, and the Secretary of State.¹¹⁷

I. SIGN OR VETO

After a bill has been enrolled, the bill must survive the Governor’s review before the law it proposes can take effect. Together, sections 15a and 15b, Article V of the Oregon Constitution, give the Governor the authority to veto whole bills or “single items in appropriation bills.” During session, the Governor has five days (not counting Saturdays and Sundays) within which to veto a bill. The Governor may take up to 30 days from adjournment sine die to veto bills passed within the last five days of the session. Section 15b (4), Article V, imposes an additional procedural requirement with which the Governor must comply before vetoing a bill after the legislature has adjourned sine die: The Governor must make a public announcement at least five days before the veto that he has the “possible intention” to veto the bill. This announcement may trigger lobbying by interested parties to influence the Governor’s decision.

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

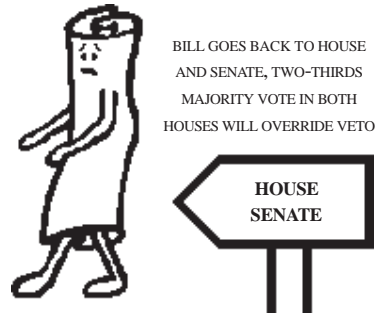
When the legislature passes a bill, the Desk of the originating chamber sends the Governor an advance copy of the bill so that the Governor can, at the earliest opportunity, consider whether to sign or veto. To assist the Governor's decision, the Governor receives from a policy advisor a folder on each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



When the Governor vetoes a bill, the Governor returns it unsigned to the presiding officer of the chamber in which the bill originated together with the Governor's explanation for the veto.¹¹⁸ A member of the chief legislative officer's staff reads the Governor's message on the floor of the chamber when the chamber is in session.¹¹⁹

J. OVERRIDING A VETO

Section 15b, Article V of the Oregon Constitution, authorizes the legislature to override the Governor's veto by obtaining two-thirds votes of the members present in each chamber. If the legislature wants to "reconsider" and repass a bill that the Governor vetoed during the session, the legislature must act before adjournment sine die. The legislature must move to reconsider bills the Governor vetoes after adjournment at the next convening of the legislature, whether a special or regular session.¹²⁰



IV. CONCLUSION

If there is a fault with the flow chart that illustrates the legislative process, it is that the flow chart understates the amount of work required for an idea to become law. The significant amount of work invested in converting an idea into law recognizes the high "price tag on badly constructed legislation."¹²¹ The price tag is high because "[j]udges struggle to interpret and apply [poorly drafted statutes], attorneys find it difficult to base any sure advice on them, the citizen with an earnest desire to conform is confused."¹²² A citizen may quarrel with the idea that becomes law, but there should be little complaint about the effort made in the legislative process to understand the idea and to ensure that the law expresses the idea clearly.¹²³

NOTES

- ¹ S. Coleridge, *The Rime of the Ancient Mariner*, part 2, stanza 8, line 4 (1798).
- ² “There anchoring, Peter chose from man to hide,
There hang his head, and view the lazy tide
In its hot slimy channel slowly glide;
Where the small eels that left the deeper way
For the warm shore, where the shallows play;
Where gaping mussels, left upon the mud
Slope their slow passage to the fallen flood;—
Here dull and hopeless he’d lie down and trace
How side-long crabs had scrawl’d their crooked race;”
G. Crabbe, *The Borough*, Letter XXII (Peter Grimes), lines 185 - 193 (1810).
- ³ ORS 173.720.
- ⁴ 1999 Oregon Legislative Guide, p. 141.
- ⁵ This booklet does not address how a legislator makes a decision or the role of a citizen in that process. For academic discussions of legislative decision making, *see* J. Wahlke & H. Eulau, eds., *Legislative Behavior* (1959). For an excellent series on legislative decision making in the Oregon legislature, *see* J. Mapes, “A Near Miss: How gun control failed in the 1999 Oregon legislature,” *The Oregonian*, p. 1A, col. 2 (Nov. 28, 1999).
- ⁶ *See* ORS 172.010 and 172.020, which create Oregon’s Commission on Uniform State Laws.
- ⁷ ORS 173.342 requires the Oregon Law Commission to recommend “statutory and administrative changes[.]”
- ⁸ Merriam-Webster’s Collegiate Dictionary 1136 (10th Ed. 1993).
- ⁹ ORS 171.127 (2) states in pertinent part: “Each proposed legislative measure shall bear a statement signed by the chief sponsor thereof.”
- ¹⁰ Footnote to J. Mapes, “Leonard wades into water cleanup with Portland plans,” *The Oregonian* (Feb. 3, 1999) (“[Rep. Randy] Leonard said he was drafting two bills[.]”).
- ¹¹ House Rule 13.01; Senate Rule 13.01 (3). All references to House and Senate rules are to those adopted in 1999 for the Seventieth Legislative Assembly.

In rare instances, a political compromise will produce language for a draft bill that the Office of the Legislative Counsel may not change. For an example, *see* ORS 192.502 (27).

- ¹² Form and Style Manual for Legislative Measures 27 (1999) (emphasis in original).
- ¹³ Compare ORS 196.815 (3)(d)(B) (public body includes federal government) with ORS 526.801 (4) (public body does not include federal government).
- ¹⁴ ORS 174.090(4).
- ¹⁵ Sections 1 to 14, chapter 492, Oregon Laws 1953. At the same time, the legislature created the Legislative Counsel Committee, a permanent legislative committee, ORS 173.111, composed of the President and the Speaker and nine other members they appoint under ORS 173.191 (1), to oversee operations of and set policy for the Office of the Legislative Counsel. ORS 173.130(4).
- ¹⁶ ORS 173.240.
- ¹⁷ Over the years, the Legislative Assembly has assigned the Legislative Counsel additional duties, including editing and publishing session laws and the Oregon Revised Statutes, ORS 171.236, 171.275 to 171.325, 173.160, reviewing and reporting on executive department agencies' administrative rules, ORS 183.710 to 183.725, participating in legal proceedings, ORS 173.135, assisting in the preparation of statewide initiative measures, ORS 173.140, drafting statements explaining referred and initiative measures in the Voters' Pamphlet, ORS 251.225, and assisting the ongoing law revision program of the Oregon Law Commission, ORS 173.335. ORS 173.120 also requires the Legislative Counsel to "be in attendance upon all sessions of the Legislative Assembly."
- ¹⁸ ORS 40.225 (2) provides: "A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client[.]"
- ¹⁹ Evidence 16-6 (Oregon CLE 1986).
- ²⁰ House Rule 12.01; Senate Rule 12.01.
- ²¹ A member may ask the Legislative Counsel to take direction from a constituent or a lobbyist rather than from the member. This request, which must be in writing, is commonly called a "Note from Mother."
- ²² Section 20, Article IV, Oregon Constitution.
- ²³ Section 1, Article IX, Oregon Constitution.
- ²⁴ Section 22, Article IV, Oregon Constitution.
- ²⁵ Sections 2 to 4, chapter 1074, Oregon Laws 1999.

²⁶ Section 21, Article IV, Oregon Constitution.

²⁷ House Rule 14.15 (1); Senate Rule 13.02 (1).

²⁸ ORS 171.134.

²⁹ An example of the scope of mistake the employment of professional drafters and editors is designed to prevent occurred in the 1995 session. Before that session, former ORS 279.340 required units of local government to pay their employees overtime, and former ORS 279.342 made exceptions to that general rule, including for local governments' white-collar workers. Since the legislature adopted ORS 279.340 in 1973 (section 1, chapter 418, Oregon Laws 1973), the state had developed new kinds of local governments, and it was unclear whether ORS 279.340 applied to metropolitan service and mass transit districts. As a result, SB 750 (1995) expanded the scope of governments to which the overtime requirement applied. Rather than list all of the covered entities in ORS 279.340, the legislature incorporated by reference the definition of "public employer" in ORS 243.650, which included metropolitan service and mass transit districts and also the "State of Oregon" (section 26, chapter 286, Oregon Laws 1995). At the same time, the legislature should have made a conforming amendment to ORS 279.342, expanding the exemptions to include the state's white-collar workers. Without that conforming amendment, the law by its terms required the state to pay overtime to its white-collar workers.

The history of SB 750 (1995) shows that the legislature never intended to pay overtime to the state's white-collar workers. There is no mention in any legislative proceeding of the bill having that effect. The administrator of the state's Labor Relations Division never mentioned the bill's granting overtime to the state's white-collar workers. Testimony of Peter DeLuca on SB 750 (1995) before S. Interim Comm. on General Govt., Sixty-seventh Legislative Assembly, Document 2 (January 9, 1995).

The Legislative Fiscal Office estimated that the change to ORS 279.340 would have no effect on the state's budget, and measure summaries prepared by committee staff omitted the changes to ORS 279.340 from discussions of the significant effects of SB 750 (1995). Nevertheless, in *Young v. State of Oregon* (161 Or. App. 32, 40, 983 P.2d 1044 (1999)), the court of appeals, refusing to look beyond the text of the statutes, held that the law required the state to pay overtime to its white-collar workers. The cost to the state for the period the law granted overtime to white-collar workers may be several million dollars. See A. Green, "Court awards overtime to state's salaried workers," *The Oregonian* p. D6 (June 3, 1999). In 1997, the legislature amended ORS 279.342 to exempt the state's white-collar workers from eligibility for overtime. Section 3, chapter 793, Oregon Laws 1997.

- ³⁰ Section 19 (1), Article II, Oregon Constitution, provides: “No person shall serve more than six years in the Oregon House of Representatives, eight years in the Oregon Senate, and twelve years in the Oregon Legislative Assembly in his or her lifetime.”
- ³¹ House Rule 13.15 (1); Senate Rule 13.15 (1).
- ³² House Rule 13.10 (2); Senate Rule 13.10 (1).
- ³³ *See* discussion in text at note 9. The person or entity that requested the draft does not have to be the person or entity that introduces the draft as a bill. For example, a member who requested a draft may be defeated for reelection and offer the member’s drafts to a person who will serve in the coming session.
- ³⁴ *See* ORS 171.127 (2).
- ³⁵ The process of obtaining cosponsors, hastened by impending filing deadlines, may to some resemble a school yearbook signing party.
- ³⁶ Section 11, Article IV, Oregon Constitution, allows each house to create its own offices.
- ³⁷ Senate Rule 15.01; House Rule 15.05.
- ³⁸ House Rule 13.01 (1); Senate Rule 13.01 (1).
- ³⁹ For a discussion of when a bill is one for raising revenue, *see Northern Counties Trust Co. v. Sears*, 30 Or. 388, 401-03, 41 P. 931 (1895).
- ⁴⁰ For example, the Desk may find that a member other than a committee chair has signed a bill a committee seeks to introduce. *SEE* Senate Rule 12.05 (“A measure to be sponsored by a committee . . . must be signed by the committee chair.”).
- ⁴¹ As a matter of custom, Senate bills begin with 1 and House bills begin with 2001. Form and Style Manual for Legislative Measures 79 (1999). A bill the principal purpose of which is to appropriate money begins with 5000 in the House and 5500 in the Senate.
- ⁴² Interim Senate Rule 213.15 (1997).
- ⁴³ The Oregon Department of Administrative Services may also file bills with the Legislative Counsel before session to implement the Governor’s budget. ORS 171.130 (2)(a). A public official newly elected in the November preceding the session may file bills after the December 31 deadline, ORS 171.130 (3), because the official does not take office until after December 31.
- ⁴⁴ ORS 171.130 (4). This procedure is new for the 2001 session. Under *former* ORS 171.130 (1)(e) and ORS 171.132 (1997 Edition), an agency could

pre-session-file a bill without needing the intermediary of a member or committee.

- ⁴⁵ See, e.g., House Rule 12.00 (1).
- ⁴⁶ Section 20, Article IV, Oregon Constitution, requires every bill to have a title that expresses the bill's subject. The purpose of this requirement is "to provide fair notice to legislators (and to others) of the contents of a bill[.]" *McIntire v. Forbes*, 322 Or. 426, 438, 909 P.2d 846 (1996). Examples of titles are "Relating to weed control emergencies," chapter 472, Oregon Laws 1999, and "Relating to recording notice of homeowners association," chapter 447, Oregon Laws 1999.
- ⁴⁷ Sutherland State Const § 10.04 (5th Ed. 1994). Another reason for requiring the Desk to read bills out loud was that, at the time of the adoption of the constitution, "literacy was not widespread . . . [and s]ome members would not have had any other means of knowing on what they were deciding." Sutherland State Const § 10.04.
- ⁴⁸ Senate Rule 7.01.
- ⁴⁹ House Rule 7.01.
- ⁵⁰ ORS 173.410.
- ⁵¹ ORS 173.420.
- ⁵² ORS 173.025 (1) requires the Legislative Fiscal Officer to prepare a statement on a bill's potential "effect on local governmental units," and chamber rules extend that responsibility to a bill's "anticipated change in state . . . expenditures[.]" House Rule 14.25 (1). In addition to the responsibility to estimate the fiscal impact of all measures, the legislature has also charged the Legislative Fiscal Office with providing research and administrative support to the Joint Committee on Ways and Means, ORS 171.410 to 171.420, the Joint Legislative Audit Committee, ORS 171.580 (6), the Joint Committee on Information Management and Technology, ORS 171.852 (6), and the Emergency Board, ORS 171.410 to 171.420.
- ⁵³ There is a common misperception that, under section 15, Article XI, Oregon Constitution, a bill requiring a local government to implement a program needs three-fifths votes to pass. A bill that imposes a local mandate needs only simple majorities to become law. What section 15, Article XI, Oregon Constitution, says is: "A local government is not required to comply with any state [mandate that costs more than] one-hundredth of one percent of the [local government's] annual budget [unless the mandate] is approved by three-fifths of the membership of each house[.]"

- ⁵⁴ See discussion in text at notes 61 to 64.
- ⁵⁵ House Rule 9.01 (3); Senate Rule 8.40 (1).
- ⁵⁶ ORS 173.800.
- ⁵⁷ ORS 173.820.
- ⁵⁸ House Rule 14.25 (1). In addition to the responsibility to estimate the revenue impact of all measures, the legislature has also charged the Legislative Revenue Office with providing research and administrative support to the House and Senate Committees on Revenue and the Joint Interim Revenue Committee, ORS 173.820, assisting the Department of Education implement the public school funding formula, section 5, chapter 821, Oregon Laws 1997, and preparing reports on specific issues, such as capital gains taxes. Section 11, chapter 809, Oregon Laws 1995.
- ⁵⁹ See discussion in text at note 39.
- ⁶⁰ As a matter of long-standing practice, the Legislative Revenue Office does not estimate the effect of all bills that affect revenues. The Legislative Revenue Office does not estimate the effect of bills that affect the amount of a fee or of specialized assessments, such as those for unemployment compensation. Estimates of those kinds of bills may fall to the Legislative Fiscal Office.
- ⁶¹ House Rule 9.01; Senate Rule 8.40 (1).
- ⁶² House Rule 8.01.
- ⁶³ House Rule 8.01 (7).
- ⁶⁴ House Rule 8.01 (8).
- ⁶⁵ House Rule 8.05 (1); Senate Rule 8.05 (2).
- ⁶⁶ See House Rule 8.10 (2); Senate Rule 8.10 (3).
- ⁶⁷ House Rule 8.20 (1); Senate Rule 8.20 (2).
- ⁶⁸ House Rule 8.05 (2).
- ⁶⁹ House Rule 15.20 (1); Senate Rule 15.05 (4); ORS 173.720 (1) and (9). The Legislative Administrator, who is selected by the Legislative Administration Committee, ORS 173.710, has many other duties, such as managing the State Capitol Building, ORS 173.720 (7) and (8), providing electronic distribution of legislative information, ORS 173.763, and performing administrative service functions (accounting, personnel) for all legislative employees.
- ⁷⁰ Section 7 (1), chapter 565, Oregon Laws 1997.
- ⁷¹ Senate Rule 8.25 (1); see House Rule 8.25 (1).

- ⁷² Senate Rule 13.10 (3).
- ⁷³ See discussion in text at notes 21 to 29.
- ⁷⁴ Form and Style Manual for Legislative Members 53 (1999).
- ⁷⁵ Form and Style Manual for Legislative Members 57 (1999).
- ⁷⁶ Section 20, Article IV, Oregon Constitution.
- ⁷⁷ House Rule 5.35.
- ⁷⁸ Mason’s Manual of Legislative Procedure, § 402(2) (NCSL 1989).
- ⁷⁹ House Rule 15.05 (1)(a)(C); Senate Rule 15.01 (2)(e).
- ⁸⁰ House Rule 5.37; the Senate enforces the same rule through an order from the President.
- ⁸¹ See discussion in text at note 117.
- ⁸² 1999 A-engrossed HB 2550.
- ⁸³ 1999 B-engrossed HB 2550.
- ⁸⁴ Chapter 199, Oregon Laws 1999.
- ⁸⁵ A source of confusion sometimes occurs when, due to the complexity of a concept, the office creates working drafts of an amendment. To keep track of the working drafts, the office numbers the drafts as if they were final amendments (e.g., -3, -4). Drafts, however, do not leave the office. As a result, a committee may find itself considering -1, -2, and -5 amendments and wondering whether the committee has mislaid the -3 and -4 amendments.
- ⁸⁶ See Senate Rule 8.80 (4).
- ⁸⁷ “No act shall ever be revised, or amended by mere reference to its title, but the act revised, or section amended shall be set forth, and published at full length. However, if, at any session of the Legislative Assembly, there are enacted two or more acts amending the same section, each of the acts shall be given effect to the extent that the amendments do not conflict in purpose. If the amendments conflict in purpose, the act last signed by the Governor shall control.”
- ⁸⁸ For an example of conflict amendments, see section 27a, chapter 999, Oregon Laws 1999: “If Senate Bill 946 becomes law, section 33, chapter _____, Oregon Laws 1999 (Enrolled Senate Bill 946) (amending ORS 316.102), is repealed.”
- ⁸⁹ ORS 192.610 to 192.690.

- ⁹⁰ Atty. Gen. Public Records Manual A-3 (Sept. 15, 1997).
- ⁹¹ House Rule 8.15 (3)(a).
- ⁹² House Rule 8.15 (5).
- ⁹³ House Rule 8.15 (5) and (6).
- ⁹⁴ Just what notice is appropriate under the circumstances is a matter of differing opinions. In the waning days of the 1999 session, the House Committee on Rules, Elections and Public Affairs met on one hour's notice to consider a bill after the Capitol had closed to the public for the evening.
- ⁹⁵ House Rule 8.20 (2); *see* Senate Rule 8.50 (4). A committee may take other actions on a bill, such as tabling it, but those actions are rare.
- ⁹⁶ House Rule 8.25; Senate Rule 8.10 (2).
- ⁹⁷ House Rule 8.20 (3); Senate Rule 8.50 (4); ORS 173.045.
- ⁹⁸ House Rule 9.32; Senate Rule 8.55.
- ⁹⁹ House Rule 3.45; Senate Rule 3.45 (1).
- ¹⁰⁰ House Rule 9.37; Senate Rule 8.80.
- ¹⁰¹ House Rule 5.40 (1); Senate Rule 5.40.
- ¹⁰² House Rules 5.40 (2) and 9.01 (2); Senate Rule 8.43.
- The members of a political party in a chamber will often meet, i.e. caucus, before a floor session to discuss the bills scheduled for third reading that day.
- ¹⁰³ Senate Rules 5.01 to 5.25; House Rules 5.01 to 5.15.
- ¹⁰⁴ House Rules 6.10 (3)(a) and 6.30 (1); Senate Rules 6.20 and 6.30.
- ¹⁰⁵ House Rule 17.01 (1); Senate Rule 17.01 (1).
- ¹⁰⁶ *See* House Rule 15.10 (1)(a); Senate Rule 15.05 (1)(a).
- ¹⁰⁷ House Rule 17.01 (1); Senate Rule 17.01 (f).
- ¹⁰⁸ House Rule 17.01 (6); Senate Rule 17.01 (3).
- ¹⁰⁹ House Rule 6.25 (1); Senate Rule 6.25 (1).
- ¹¹⁰ House Rules 3.12 to 3.20; Senate Rules 3.15 to 3.30.
- ¹¹¹ House Rule 14.01 (1); Senate Rule 14.01 (1).
- ¹¹² Section 13, Article IV, Oregon Constitution, provides in pertinent part: "Each house shall keep a journal of its proceedings.—The yeas and nays on any question, shall at the request of any two members, be entered, together with

the names of the members demanding the same, on the journal.” For a discussion of the effect of an omission from the legislative journal, *see Portland v. Yick*, 44 Or. 439, 442–43, 75 P. 706 (1904).

¹¹³ *See* Section 25 (1), Article IV, Oregon Constitution.

¹¹⁴ House Rule 11.01; Senate Rule 11.01.

¹¹⁵ House Rule 11.05; Senate Rule 11.05. House Rule 11.10 (1) and Senate Rule 11.10 (1) authorize a conference committee to propose amendments “within the scope of the issues between the houses[.]” but in practice conference committees have gutted bills and stuffed them with contents different from either chamber’s version of the bill. *See, e.g.*, chapter 275, Oregon Laws 1999.

¹¹⁶ House Rule 11.15; Senate Rule 11.15.

¹¹⁷ Form and Style Manual for Legislative Measures 80 (1999).

¹¹⁸ Section 15b (1), Article V, Oregon Constitution, states “(1) Every bill which shall have passed the Legislative Assembly shall, before it becomes a law, be presented to the Governor; if the Governor approve, the Governor shall sign it; but if not, the Governor shall return it with written objections to that house in which it shall have originated, which house shall enter the objections at large upon the journal and proceed to reconsider it.” If the Governor vetoes a bill after the legislature has adjourned, the Governor sends the unsigned bill and written objections to the Secretary of State, who holds the documents until the legislature convenes again. Section 15b (3), Article V, Oregon Constitution.

¹¹⁹ Section 15b (1), Article V, Oregon Constitution; House Rule 4.01 (1)(e); Senate Rule 4.01 (2).

¹²⁰ Section 15b (3), Article V, Oregon Constitution.

¹²¹ L. Jaworski, “The American Bar Association’s Concern with Legislative Drafting” in *Professionalizing Legislative Drafting*, p. 5 (R. Dickerson, Ed., 1973).

¹²² Menard, “Legislative Bill Drafting,” 26 Rocky Mt L Rev 368 (1954).

¹²³ Expressing an idea clearly is vital in Oregon because, under *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 611, 859 P.2d 1143 (1993), a court will consider legislative history—the process through which an idea became law—as a guide to interpretation only if the text of the statute is unclear. As Judge Jack L. Landau has observed, the court’s method of interpreting a statute “cannot be squared with the known realities of the legislative process[.]” Landau, “Some Observations about Statutory Construction in Oregon,” 32 Will. L. Rev. 1, 25 (1996).

