



The Texas Legislative Process: The “Real” Story!



Presented by

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“No man’s life, liberty, or property are safe while the Legislature is in session”¹

Overview of Texas Legislative Process:

The powers of the Texas Legislature are delegated in Article III of the Texas Constitution.² It is without question that of the three distinct branches of Texas State Government, the Legislative Branch maintains primacy and power over the executive and judicial branches. Many scholars attribute this fact to the power of the legislature to control the budgetary functions and administrative processes.³ In other words the Texas Legislature acts as the overall regulators of state government as a whole.

The legislative process in Texas is *extremely dynamic* due to liberal “suspension” of rules and parliamentary interpretations that change over the years. In addition the process is often hard to follow due to the light-speed at which business is conducted. By only meeting for 140 days every odd numbered year⁴, the system is designed to swiftly dispose of business. This characteristic sets Texas apart from most states whose legislative processes move at a more deliberative pace.

The legislative process is also greatly impacted by the individual personalities of the current legislative leaders. For example, a committee chairman of a particular committee will greatly impact the overall experience one has before the committee. The way the chairman chooses to operate his or her committee will influence the overall legislative process. Although both the Senate and the House have general rules governing committee operations⁵, the chairmen are given wide latitude and discretion to manage their specific committees. Likewise, the personalities and styles of the presiding officers of each chamber (i.e. the Lt. Governor and the Speaker of the House) will greatly impact the pace of the legislative process, the issues that get debated, and the overall “mood” of the legislature. The two presiding officers in the Senate and House have more impact on the legislative process than any other individuals (including the Governor).

Notwithstanding the various personalities and political agendas that impact the overall legislative process, there is always an attempt during the lawmaking process to “protect the system.” Members and staffers that take on the responsibility of attempting to ensure that orderly and time honored rules and decorum are followed often have a great sense of the immense history contained in the Texas Legislative record. The precedents and procedures that developed in the Texas Legislature have been borrowed liberally from successful models from around the world (especially the British Parliament’s bicameral system and U.S. Congressional precedents).

The remainder of this paper will attempt to provide useful “insider” opinions on how to successfully engage in the legislative process by understanding some of the nuisances of the overall process. It will also provide a few tricks of the trade from a

lobbyist’s perspective on how to accomplish your stated legislative agendas (whether your goal is to defeat or pass legislation). Lastly, the paper will have several basic appendices that are useful resources to utilize as you all prepare to engage during upcoming 82nd Regular Session of the Texas Legislature.

Texas Legislative Process: “Limited” Government at Work:

Despite the recent growth in the number of proposed pieces of legislation, the overall Texas legislative process is setup to produce “limited” government. The very fact that the Legislature is limited to meeting in Regular Session every other year is the first sign of the commitment that the framers of the Texas Constitution had to a narrow part-time citizen government. Every step of the legislative process is designed to weed-out or consolidate various pieces of proposed legislation. *Overall, the historical passage rate for filed legislation is approximately 20%, said another way 80% of all proposed bills fail.*⁶

As the Texas Municipal League notes in their annual wrap-up of the Texas Legislative Session⁷, the overall number of bills being filed has dramatically increased over the last few sessions.

<u>Year</u>	<u>Total Bills Introduced*</u>	<u>Total Bills Passed</u>	<u>City-Related Bills Introduced</u>	<u>City-Related Bills Passed</u>
1993	4,560	1,089	800+	140+
1995	5,147	1,101	800+	140+
1997	5,741	1,502	1,100+	130+
1999	5,908	1,638	1,230+	130+
2001	5,712	1,621	1,200+	150+
2003	5,754	1,403	1,200+	110+
2005	5,369	1,397	1,200+	105+
2007	6,374	1,495	1,200+	120+
2009	7,609	1,468	1,500+	120+

*Includes bills and proposed Constitutional amendments; regular session only.

As the above chart demonstrates the overall number of filed bills has grown to record numbers the past few sessions. Last session the 7,609 pieces of filed

legislation eclipsed the previous all-time record for filed bills by over 1,200 bills. This volume of work within the legislative process has tremendous consequences. First, the system is not fully equipped to administratively process this many proposed bills. Therefore, members tend to rely more on staff and “opinion leader” members to inform them of the merits of the proposed bills. It is nearly impossible for a member to read and understand all versions of the bills they will be asked to cast a vote on due to the tremendous volume of work conducted in a compressed timeframe.

Committee is Last Stop for Most Bills:

For the vast majority of bills the committee they are referred to by the presiding officers in the House and Senate are their last stops. Obtaining a favorable referral to a friendly committee or sympathetic chairman can go a long way to passing or defeating a bill. Most pieces of proposed legislation meet their end at the committee level of the legislative process.

The committee system is the basic backbone of the entire legislative process. The main debate, negotiations, and drafting of bills typically take place in the committee of jurisdiction. Members in fact will often criticize bills that reach the House or Senate floor and then need a number of “amendments” to fix problems (this is especially true of run of the mill basic bills). Often members will inquire why the proposed bill was not “worked out” in committee before being placed on the floor calendar for debate. It is not uncommon for these types of bills to get defeated or dramatically amended when questions are raised during floor debate. *If you are trying to pass a bill it is always desirable to have all of the drafting changes worked out in the committee.* The less discussion on your bill on the respective chamber floors the better.

Committee chairmen are some of the most influential members of the legislative process. They can single handedly prevent legislation from moving even if you have secured a majority of support on the committee (or even within the whole body). When attempting to pass legislation it is always best to have a committee chairman informed on the specific reasoning for your proposed bill. It is good practice to have chairmen of the committees of jurisdiction author or sponsor your proposed legislation your attempting to pass. *History shows that you greatly increase your chances of success if you have a committee chairman carrying your bill.*

The reasons for the increased chances of passage when a committee chairman carries your proposed bill are many. First, committee chairmen can help ensure your legislation gets “out of the gates” before the backlog of bills clog up the legislative process at the end of the session. Timing and making sure your bill is continually moving forward is the key to being successful at passing your bill. Second, chairmen typically will have more members trying to gain favor with them so that they might pass their own bills out of that chairman’s committee. In other

words members are less likely to be hostile towards a chairman's bill than they are other legislation carried by non-chairmen members. Chairmen typically are more experienced members and have a better understanding of the overall legislative process. Finally, most chairmen have larger staffs, which helps them efficiently manage the bills through the process. All of these attributes combine to help you greatly improve your chances of passing your proposed bill. That is not to say members won't oppose a bill brought by a chairman or other members can't pass legislation but the historical numbers clearly illustrate chairmen have a better passage rate overall.⁸

Managing Volume and Deadlines:

As discussed earlier, the tremendous increase in the volume of filed legislation makes it imperative to fully understand the House and Senate Calendar Deadlines. Understanding the pace of the legislative process can help you increase chances of passing your support bills and or defeating bills you oppose. For example, sometimes you know with certainty that a bill you oppose will come out of committee but if you can get it delayed even by one meeting date then you have greatly increased your chances of defeating the measure. Simply getting minor changes to bills in committee you oppose helps slow them down, because these amendments will cause a new printing of the measure, the need for a new fiscal note, and an updated bill analysis to be prepared. All of these steps increase the amount of time it takes for the measure to move forward. The further into session you get the thinner the margin of error becomes for passing bills because any small hang-up can lead to defeat of the bill.

It is not uncommon for bill authors (and their supporters) to literally "amend their bill to death" by constantly seeking to perfect the bill along the legislative process to the point they completely run out of time. This is why it is vitally important to begin the preparations and due diligence for proactive legislation as early as possible. I advise clients that *the goal is to have our bills in as near final form as possible when they are filed*. If amendments become necessary they should be in the form of a basic committee substitute or a clarifying floor amendment. *By making minimal changes to the filed bill you can help ensure your legislation gets in front of the late session crush* that inevitably defeats thousands of bills each session.

Understanding and managing key calendar dates and deadlines is a vital component to a successful governmental affairs strategy (both for passing and defeating bills). Below are the most important calendar dates one should use to guide the formation of an overall legislative plan. It is important to note that you can always utilize rule suspensions to get around some of these deadlines but it is not the preferred method.

Key Dates of Interest:

- ***Pre-filing of Bills:*** Beginning the first Monday after the general election (Monday, Nov. 8th, 2010) preceding the regular session or 30 days prior to any called special session.⁹
- ***82nd Regular Session of the Texas Legislature Convenes:*** Convenes at noon on Tuesday, January 11th, 2011.¹⁰
- ***Deadline for Bill Filing:*** 60th Calendar Day of Session (can be suspended with a 4/5ths vote of members present and voting).¹¹
- ***Last Day for House Committees to Report HBs/HJRs:*** 119th Calendar Day of Session. No express rule but in reality it is the last day to have any chance of getting a bill on the calendar.
- ***Last House Calendar for HBs/HJRs:*** 120th Calendar Day of Session the last House Calendar must be printed and distributed to the Members. Although there is not an express rule on this issue, when read in conjunction with other House Rules it produces this de facto deadline.
- ***Last Day for House to Consider 3rd Reading HBs/HJRs:*** 123rd Calendar Day of Session.
- ***Last Day for Senate to Consider ALL bills and JRs:*** 135th Calendar Day of Session. This deadline doesn't take into account House end of session deadlines, which in reality shortens this timeframe for SBs to be received in the House by the 130th Calendar Day of Session.
- ***Last Day for Conference Committee Reports to be Printed and Distributed:*** 138th Calendar Day of Session.
- ***82nd Regular Session Adjourns "Sine Die":*** Monday, May 30th, 2011.¹²
- ***Governor Vetoes:*** The Governor has 10 days (*not* counting Sundays) after a bill is received by his office to sign it, let it become law without a signature, or veto it. For bills received by the Governor in the final 10 days of a session, the Governor has 20 days (counting Sundays) after the final day of session (*sine die*) to act on a bill.¹³ (Sunday, June 19th, 2011).

(*Little Known Fact:* Why are there never special sessions called in June of an odd numbered year? It would provide the legislature with the opportunity to override a Governor veto¹⁴. So in reality there is little possibility of overriding a Governor veto that occurs post-session. The Governor has only had a veto overridden once in the last 65 years.)

Rules Can Be Your Best Friend or Worst Nightmare:

“The thing about democracy is that it is not neat, orderly, or quiet. It requires a certain relish for confusion.”¹⁵

The House and Senate Rules set-forth a detailed guide to the process in which a bill must follow to become law. Unfortunately, as the old saying goes “rules are made to be broken.” That cliché holds very true in the legislative process. Rules are routinely “suspended” and or “reinterpreted” by various parliamentary officials for what appears to be outcome oriented results. In fact the later part of a legislative session the rules are suspended so often one wonders if the better name would be the “House and Senate *Suggestion Book*” instead of “Rule Book.”

Notwithstanding the constant suspension of the rules, one who plans on being effective in either passing or defeating legislation must have a strong grasp of the House and Senate Rules. The Rules provide you with a roadmap and tools for achieving either goal (i.e. passage or defeat). Towards the later part of session there is a certain phrase that all bill proponents dread to hear, “*Mr. Speaker I raise a point of order on further consideration of House Bill ###.*”¹⁶ This short phrase can spell the end of months of work and hours upon hours of legislative effort.

The raising of a technical point of order for a violation of the House Rules is a widely used tool by opponents to defeat a measure. The potential calling of a point of order can also be used to gain leverage for seeking amendments to a bill. Points of Order are most commonly called for violations of House Rules that occur during the committee process. The technical point of order can be as minor as misstating a statutory cite or failing to ensure that a witness signed their affirmation form when appearing before the committee. Points of Order have ended many a bill both large and small in nature. On one occasion an entire calendar was killed on the last day for bills to be heard in the House because the Calendar Chairman misstated the room number that the Calendars Committee would be meeting in later that evening. This point of order became known as the “Memorial Day Massacre” because hundreds of bills met their untimely fate.

Bottom-line is that you must fully understand the rules of procedure and calendaring process in both the House and Senate to be an effective advocate. However, rest assured that as soon as you get the rules down it is likely they will be suspended or “reinterpreted.” To be successful in the legislative process one has to be very fluid with the game plan and strategy that is mapped out.

Key Rule Provisions¹⁷:

House Rule 4: Outlines “Organization, Powers, and Duties of Committees” (violation of this detailed rule is the most common point of order)

House Rule 6: Provides for “Order of Business and Calendars”.

House Rules 8 & 11: Outlining procedures and requirements for proposed legislation and amendments to legislation.

House Rule 13 § 6-13: Outlines conference committee procedures. Conference committee operations are one of the more elusive functions of the legislative process. In other words the inner workings of the conference committee process is probably the least transparent and most dangerous part of the legislative process. There is absolutely no requirement for this process to be beyond individual conversations of the members appointed to the conference. If you have a bill that goes to conference you must stay in close contacts with the conference committee members (especially the House and Senate Chairs) to ensure your interests are being accounted for during deliberations.

Senate Rule 5.13 (“2/3rds Rule”): In order to “suspend the regular order of business” the Senate Rules require that 2/3rds of all members present must vote to allow consideration of any bill out of the regular order. This means that any 11 Senators can block a bill from coming to the Senate floor for consideration. If all members are present it takes 21 members voting yes to bring the bill up for debate. Early in Session a “blocker” bill is passed so that all other bills must be taken “out of the regular order of business.” This rule ensures that each Senator maintains a significant amount of power even if they are in the minority party. The rule is intended to bring about significant majorities for all measures on the Senate floor. The 2/3rds rule impacts the legislative process in the Senate beyond any other requirement. The 2/3rds rule sets the Texas Senate apart from most legislative bodies in the country because it requires bi-partisan support for every bill to move forward.

Senate Rule 11: Outlines all aspects of committee organization and procedure.

Senate Rule 11.19 (“TAG Rule”): This Rule is often used to defeat legislation late in Session when it is procedurally difficult due to calendar deadlines to provide 48 hours advance notice of a hearing on a bill. The Rule allows any Senator to request 48 advance written notice of the time and place of the hearing were action is intended to occur on a specific piece of legislation. The Senator must file a notice with the Secretary of the Senate or the appropriate Committee Chairman if the hearing has already started. Senators can “tag proof” bills by ensuring that the measures have been posted for a hearing at least 72 in advance and the Senate has met in Session at least once during the 72 hours.

Technology Changing the Process for the Better:

Technology and the ability to view various aspects of the legislative process via the Internet have greatly enhanced the openness of the overall legislative process. Although, transparency in the Legislature is still not as regimented as the open government laws that apply to local governments operating procedures. Part of the difficulty in following an orderly open government process is attributable to the short timeframe (140 days) in which the legislature must conduct its business. However, technology has greatly improved the ability of interested parties to follow legislative actions, view voting records, and get copies of proposed bills etc.

The availability of voting records and ability to view committee and floor debates in real time has impacted the public policy decisions in recent years. Once it took weeks for citizens to learn about potential legislation and now groups can mobilize in a matter of hours after a particular policy decision. Often the real time feedback can alter the ultimate outcome of the policy issue. In short the “two-way” nature of today’s communication devices and tools are becoming vital mechanisms for impacting public policy debates.

Twitter, Facebook, texting, blogging, instant messaging, virtual focus groups, online news such as www.texastribune.org, and even old fashion emailing are integral communication tools being employed by both legislative members and interested stakeholders. These tools are used to advocate a particular position, educate stakeholders, and generally support or oppose a particular agenda. Although these tools are wonderful for increasing two-way communications with decision-makers they are also raising significant questions with regards to open records matters. It appears the use of these new electronic media tools in the legislative process will only continue to increase. In order to successfully advocate in the coming years one will need to seamlessly and effectively incorporate these new electronic tools and techniques into their overall governmental affairs strategy.

You Can’t Have a Conversation About the Legislative Process Without Talking about the Lobbyists!

I often tell my mother that by being a lobbyist I have found the one profession that most people despise more than lawyers. Of course it is really bad for a lobbyist/lawyer like myself. Public opinion polls and anecdotal evidence reveals that most people believe that lobbyists are “part of the problem” with government today. Needless to say I have a slightly different perspective on this issue. I view lobbyists as vital components and checks on the legislative process. That is not to say that lobbyists don’t often help produce bad laws or that all of their actions are defensible in the court of public perception (but neither are lawyers for that matter).

Lobbyists are simple advocates representing the position of clients. However, the good ones also serve as vital parts of the legislative process. Advocacy efforts on behalf of clients and interest groups are of course constitutionally protected rights to petition government and free speech. The role of a lobbyist in directly influencing the outcome of specific legislation is well known. However, this aspect is just a small fraction of the role a professional lobbyist plays in the overall legislative process.

Lobbyists serve as significant sources of information on specialized subjects or industries. For example, I get lots of calls from members and their staffs on a variety of issues that impact cities (franchise fee matters, land use, economic development, etc.). These offices know I represent cities, so they know I will give them the point of view of local governments. That being said they also know I have to be straightforward with them if I want to maintain my credibility within the Capitol corridors.

The legislative process would be seriously hampered if individuals representing clients with issues being debated before the legislature were unable to directly provide input on the proposals. The volume of issues prevents individual offices from becoming subject matter experts on every topic. The usual course of action for a member is to seek input from *BOTH* sides (i.e. two sets of lobbyists) of a bill and then make an informed decision. In this process ensuring that all interest groups are effectively represented becomes extremely important. If the homebuilders, telecom companies, and anti-tax groups were able to have lobbyists but cities were prevented from having professional representation then the results would likely be very one sided. In other words lobbyists can play a vital check and balance on the outcome of legislation.

Experienced lobbyists also play an important role in maintaining the “institutional knowledge” of the legislative process. Legislative staffers come and go for the most part and the average career of a Representative is about seven years. However, the experience of most effective lobbyists spans decades. Being able to call on past experiences allows lobbyists to pass along information that helps members and staff alike become more effective within the legislative process. Of course the educational process is a two-way street and most lobbyists learn a great deal from observing veteran lawmakers and staffers operate within the legislative process.

In developing an overall legislative strategy is imperative that one look at the various interested stakeholders who will care about a particular proposal. During the early strategy stages you need to identify all groups (and who their lobbyists are) that will be for and against a particular bill. Often you will spend as much time dealing with the lobbyists of a particular issue as you will members and staff. It is not uncommon for legislative members to in essence instruct members of the lobby to work out an “agreed to” version of a bill. Members will often assume the role of mediators between the various interested stakeholders.

Working with lobbyists, public policy groups, key individuals, and advocates will be a central part of an overall governmental affairs strategy. Having the ability to identify and work with the central stakeholders on a particular matter will greatly increase your overall chances of legislative success.

So What Does All of this Mean?

The legislative process is not a process for the faint of heart. The stakes are often high, the egos are super-sized, the issues are complex, the workload is immense, and the rules can change. These are only a few of the reasons that you have to approach the legislative process with a great deal of thought and strategy. Significant due diligence is required if you want to succeed in the legislative process.

By gaining as much information as you can about the legislative issue you intend to engage on will assist you in achieving a favorable outcome. Utilizing the specialized information you possess or have access to (i.e. resources such as a city legal department) can help ensure you have a seat at the table when legislative debates begin and end.

In order to be successful in the legislative process you must approach it with the full understanding that being flexible is a requirement due to the dynamic nature of the system. You must be able to adapt strategies to unforeseen circumstances at a moments notice. You can also be appreciative that the legislature only meets every other year!

{Please feel free to contact me at snapper@focusedadvocacy.com or 512.637.6020}

¹ 1 Tucker 248 (N. Y. Surr. 1866) (105-year-old New York court decision that provided us with the widely used quote).

² Tex Const. art. III (delegating legislative powers of the State).

³ See Texas Legislative Guide, “A Guide to the Texas Legislative Process”, pg. 19 (2001).

⁴ Note that the Regular Session of the Texas Legislature convenes in Austin, Texas on the 2nd Tuesday of January of odd numbered years.

⁵ See Tex. Senate Rule 11 (81st Leg., R.S., 2009) and Tex. House Rule 4 (81st Leg., R.S., 2009).

⁶ Statistics provided by Texas Legislative Reporting Service (www.telicon.com).

⁷ Texas Municipal League Legislative Update (June 11, 2009, Number 21) (http://www.tml.org/legis_updates.asp).

⁸ Statistics provided by Texas Legislative Reporting Service (www.telicon.com).

⁹ Tex. House Rule 8, sec. 7; Tex. Sen. Rule 7.04(A) (81st Leg., R.S., 2009).

¹⁰ Tex. Gov’t Code § 301.001 (2010).

¹¹ Tex. House Rule 8, sec. 8 (81st Leg., R.S., 2009).

¹² Tex. Const. Art. III, § 24(b).

¹³ Tex. Const. Art. IV, § 14 (outlines veto requirements).

¹⁴ Tex. Const. art. 4, sec. 14 (provides that the legislature may override a veto if the originating chamber, approves the override by a 2/3rds vote of the members present and the other chamber must pass the override by a straight 2/3rds of the membership).

¹⁵ Molly Ivins, Austin American Statesman, Journalist(2001).

¹⁶ Tex. House Rule 1, sec. 9(81st Leg., R.S., 2009) (Stating the Speaker shall decide all questions of order).

¹⁷ All rules references are to Tex. House or Senate Rules for the 81st Leg. (R.S., 2009). Complete copies of House and Senate Rules can be obtained at www.capitol.state.tx.us (the official Texas Legislature website).