



POLICY BRIEF

MAKING & FUNDING LAWS: A PRIMER

Authorizations & Appropriations
in the U.S. Congress

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Authorizations & Appropriations

Many people find the legislative process—that is, how laws are proposed, passed, and funded by the U.S. Congress—arcane. With some oversimplification, this document attempts to demystify two aspects of the process, Authorizations and Appropriations.

Congress uses the “Authorization” process to create or modify laws that require authorizing discretionary spending for a particular purpose, like Adult Education or Job Training. The “Appropriations” process is used to allocate real dollars to each program. Examples of Authorizing Committees are the House Education and Labor Committee and the Senate HELP (Health, Education, Labor, and Pensions) Committee, which have specific areas of jurisdiction. The House and Senate both have an Appropriations Committee, and both operate with 12 subcommittees, each of which has responsibility for a particular portfolio of programs.¹

There are several opportunities in the legislative process for advocates at the national, state, and local level to affect legislation by working with elected officials, but the further along the process gets, the more difficult this becomes. Thinking of the process as a pyramid, the higher you climb the steeper it gets.²

How the Authorization Process Works

1. A bill is drafted with input from advocates and constituency groups. The actual drafting is done by attorneys with substantive experience. These “Legislative Counsels” work for the House and Senate and do not interact directly with the public. Bills are usually developed through a back-and-forth process in which Congressional staff and the Legislative Counsel trade drafts until the staff (the Legislative Aides on behalf of the Representatives and Senators for whom they work) are satisfied with the result. **This is the FIRST opportunity to affect the content of a bill.**

¹ (For a listing of Senate and House Committees, see http://www.senate.gov/pagelayout/committees/d_three_sections_with_teasers/committees_home.htm and www.house.gov/house/CommitteeWWW.shtml)

² This primer focuses on Congress, but the Administration and the major federal departments are always operating behind the scenes. Their representatives work with the Congressional leadership, Committees, and subcommittees to achieve a particular outcome. They are a critical part of the process and should be kept educated on the issues as well as Congressional staff and leadership.

2. After the bill has been drafted, the author of the bill (a senator or representative) formally “introduces” or “drops” it, and it becomes a matter of public record.

Supporters of the bill, called original co-sponsors, may join the author.³ The bill is given a number. Based on its subject matter, the Parliamentarian then refers it to a particular Committee (which can refer it to an appropriate subcommittee) for further action. If the subject matter crosses issue areas, each affected Committee gets a chance to shape the part of the bill over which it has jurisdiction.

Because Committees and subcommittees are where substantive expertise resides, members who serve on other Committees and subcommittees tend to give considerable deference to their actions. It is unusual for the content of a bill to change significantly from the Committee’s or subcommittee’s product, although more change can occur from the subcommittee to full Committee stage than is likely to occur from the full Committee stage on.

3. Some bills are “held at the full Committee” level because of their importance or timeliness and they never go through a subcommittee. But most are referred by the full Committee to a subcommittee according to relevant areas of expertise.

4. The subcommittee holds hearings on the bill and then has a “mark-up” session in which members of the subcommittee can offer amendments. **The amendment process at the subcommittee level is the SECOND opportunity to affect the content of the bill.**

5. The subcommittee completes consideration of the bill and “reports” or sends it to the full Committee for further consideration. The full Committee schedules a “mark-up” to give those members of the Committee who are not on the relevant subcommittee the chance to amend the bill. Subcommittee members get another chance to offer amendments. **The full Committee amendment process is the THIRD opportunity to affect the content of the bill.** The full Committee then reports the amended bill to the full House or Senate for further consideration.

6. In the House, the Rules Committee sets the terms under which a bill is considered. Controlled by the Majority, it determines the amount of time the full House will devote to a bill and which amendments, if any, will be considered. The Minority will often try to defeat the Rule to replace it with one more to its liking, but such efforts rarely succeed. In the Senate, the circumstances of how and when a bill is considered are the subject of negotiations in a Time Agreement between the Majority and the Minority.

³ Additional co-sponsors may sign up later in the process, and usually do.

Each bill that goes to the Floor for consideration has a Manager who controls the process for the Majority and the Minority side. The rules usually permit the Committee one more opportunity to change the bill through a Manager's Amendment that includes the results of any last minute changes. **Getting your proposed changes into the Manager's Amendment is the FOURTH opportunity to affect the bill.**

After the Manager's Amendment has been considered, other Members can offer amendments pursuant either to the Rule [House] or Time Agreement [Senate]. **Having a Floor amendment considered is the FIFTH opportunity to affect the bill.**

7. The amended bill passes each House. Because the House and Senate versions of a bill almost always differ at this stage, bills are usually resolved through a Conference Committee—chosen from the Committee members by the Committee Chair—which is empowered to negotiate on behalf of the entire Committee. Conferees are usually chosen on the basis of seniority and their interest in a particular bill. **Influencing the decisions of the conferees is the SIXTH opportunity to affect the bill.**

8. The differences between the bills are resolved and included in a Conference Report, which includes not only the final bill, but also an explanation of Congressional intent that provides so-called "legislative history." **Getting "report language" into the Conference Report is the SEVENTH opportunity to affect the process.**

9. Each House of Congress passes the new bill, which then goes to the President for signature.

How the Appropriations Process Works

Once a law has been signed, the Appropriations Committee must decide whether to fund it and, if so, at what level. Unlike Authorizations, which are in effect for many years, or even permanently, **Congress repeats the Appropriations process every year.**

The President releases the Administration's budget in late January or early February. Then the Congressional Budget Committees (each House has its own) divide the entire budget into "Functions." (Function 500 includes all education, training, and social service programs, for example.) By the middle of April, Congress is supposed to have approved a Budget Resolution, which sets aggregate spending limits for the year, and which may also call for changes in entitlement programs to be achieved through what is known as the Reconciliation process.

The Appropriations Committees take the total amount of discretionary spending assumed in the Budget Resolution and re-allocates it to the 12 subcommittees. Again, a great deal of deference is paid to the relevant subcommittee because that is where the expertise resides.

Appropriators hold oversight hearings on programs and funding requests from their colleagues, including “earmarks.” By deciding what to fund and what not to fund, these appropriators wield considerable power over agencies and programs. Appropriations subcommittee chairs are often called “Cardinals” because of their power and the lack of transparency that (still) characterizes the process. Appropriators affect policy through the power of the purse. They also have been known to include substantive legislation in their bills, even though the practice is frowned upon. Working the Appropriations process is the EIGHTH opportunity to affect policy.

Appropriators want to complete work on each of the twelve bills by the end of the fiscal year (which for the U.S. Government is September 30). This happens less and less frequently. Instead of shutting down the government, the Congress passes Continuing Resolutions (or “CR’s”) to keep the government functioning. Appropriations bills are often packaged together into so-called Omnibus bills to facilitate their passage.

Finally, each House operates more or less independently of the other. The same opportunities available in one House are likely to be available in the other. While there are many pressure points at which the process can be affected, the deeper into the process one gets, the more decision-making is concentrated in fewer hands and the more difficult it is to influence things.

In sum, one focuses on the Authorization process to affect policy, and on the Appropriation process to affect funding levels. Clearly, any stage of either process can be daunting. Getting a piece of legislation to the final stage of a law and then getting it funded can take months and sometimes years. The process requires great persistence and flexibility on the part of both sponsors and advocates. ■

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