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# Making Laws

Making valid law is a two-step process, involving a proposal by the legislature which is accepted by the governor. A third step, the veto override, is required when the governor rejects a legislative proposal by vetoing it.

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A law must first be proposed by the legislature. The legislature does this by passing a *bill for an act*, which transforms it into an *act* of the legislature, and presenting the act to the governor.

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The governor has three options for responding to an act presented by the legislature: approve, acquiesce, or veto. If the governor approves or acquiesces, the act becomes a law; it is said to be enacted. If the governor vetoes, a third step is necessary to make law: the legislature must override the veto.

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The constitution dictates procedures that the legislature must use, in making bills into acts, and that the legislature and governor must follow in making acts into laws. Much of the intricate formality of the lawmaking process derives from these constitutional requirements and the procedural rules designed to ensure they are not violated.

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## Overview of the Legislative Process

The flowchart on the opposite page depicts the course of a bill as it moves through the lawmaking process. The bill moves from left to right, through four columns.

***The first column***, on the left

Shows the typical sequence of action in the house that passes the bill first (called the “house of origin”). A bill may originate in either the House of Representatives or the Senate, with one exception: the constitution says that “bills for raising revenue” must originate in the House.

***The second column***

Shows legislative action on the same bill in the second house, after it has passed the house of origin.

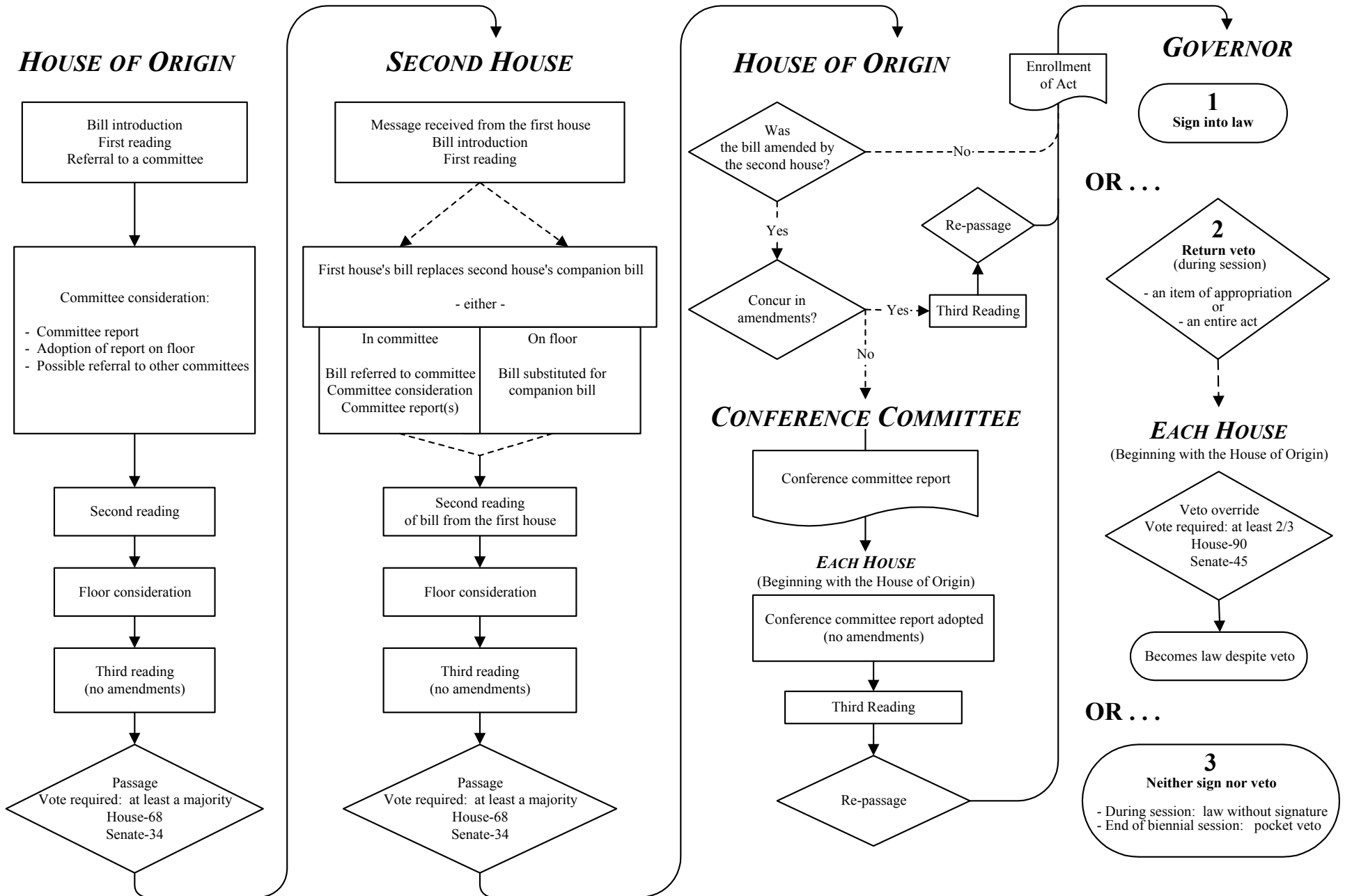
***The third column***

Shows the final phase of the legislative process, after each house has passed the bill once. The procedures depicted here are designed to ensure that the two houses pass the same bill in identical form. Once the legislature accomplishes this, it enrolls the bill, which makes it into an act, and then presents the act to the governor.

***The last column***, on the right

Shows the three options available to the governor for dealing with an act and the steps that the legislature may use to enact legislation over the objections of the governor.

# Overview of the Legislative Process



# An Act of the Legislature

This section summarizes the legislative procedures for making *a bill for an act* (a proposal to the legislature) into *an act* (a proposal of the legislature).

The legislature must follow constitutionally prescribed procedures when acting on a bill. If it fails to do so, the resulting act of the legislature is not valid. The constitution imposes three main requirements:

- **Reporting bills:** Before a house may vote to pass a bill, it must report the bill three times to its membership, normally on three different days.
- **Voting on passage of bills:** At least a majority of all the members in each house must vote in favor of passing the bill, and the vote must be recorded in the journal of the house.
- **Bicameral agreement on bills:** The same bill must pass both houses in identical form.

The legislature has adopted rules and procedures to enforce these three constitutional requirements, so as to ensure that every proposed law that it sends to the governor for review is a valid act of the legislature.<sup>1</sup>

## REPORTING BILLS: THE SIX-STEP PROCESS

The constitutional bill-reporting requirement is intended to ensure that legislators and other interested parties are informed of every bill before the vote on passage. To accommodate the constitutional reporting requirement, both houses have adopted, by rule, a six-step procedure for acting on bills.

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<sup>1</sup> Another bill passage requirement—that neither house may pass a bill “upon the day prescribed for adjournment”—has little practical effect, usually, because it has been construed to refer only to:

- the constitutional deadlines for adjourning the biennial session *sine die* (without a date for reconvening)—which means either: (a) the 120th legislative day (a day when either house meets on the floor), or (b) the first Monday following the third Saturday in May of the second (even-numbered) year
- a day formally prescribed by the legislature for adjourning *sine die*

Sessions almost never end on these days.

## **The constitution requires three reports, normally on different days**

Each house must: (a) report a bill three times before voting to pass it; and (b) make each report on a different day, unless an extraordinary majority of the members of the house agree to declare an urgency.

### ***Three reports***

Before asking its members to vote on whether the bill should pass, a house must report the bill three times on the floor (the chamber in the Capitol where the house meets). Because both houses must make these reports, a bill ultimately must have six reports, three in each house, before it becomes an act of the legislature.

The reports traditionally are called “readings” of the bill, a term that recalls bygone times when bills were read aloud to legislators on the floor. Nowadays, bills are not actually read to the members. Instead, to save time, the presiding officer—the Speaker of the House or the President of the Senate—simply announces bills by their file numbers,<sup>2</sup> sometimes along with other information about their status. Legislators and others wanting more information about the bills consult a printed list that shows all of the vital information on each bill reported that day: file number, title, authors, and procedural status. To reflect these contemporary practices, the term “reading” has been replaced in the constitution by the term “report”—meaning an announcement of the bill before the members of the house. But the old term is still commonly used at the legislature.

### ***On different days***

The constitution requires each house to make the three reports on three different days. This is intended to slow the legislative process, promote deliberation, and inhibit precipitous legislative action. Because both house must separate their reports, five is the minimum number of days required for the legislature to move a bill from the beginning to the end of the legislative process in both houses. A sixth day is not required, because the last reading in one house and the first reading in the second house can occur on the same day.

### ***Unless a house declares an urgency***

The constitution writers recognized that fast legislative action might sometimes be warranted, so the constitution allows either house to dispense with the requirement separating the three days on which a bill must be reported.

To restrain casual use of this method of speeding consideration of legislation, the constitution specifies a standard for the action and requires more than a majority of members to agree to it. The three reports must be made on different days, the constitution says, “unless, in case of urgency, two-thirds of the house where the bill is pending deem

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<sup>2</sup> To keep track of bills, each house numbers its bills sequentially through the legislative session. Bills are numbered in the order of their introduction. For this purpose bills are referred to as *files*. So, the House begins with H.F. 1, H.F. 2; the Senate with S.F. 1, S.F. 2.

it expedient to dispense with this rule.” The two-thirds requirement has been construed to mean two-thirds of *all* the members of the house, not just two-thirds of those present. Accordingly:

- A minimum *number* must agree to declaring an urgency: in the House, at least 90 of the 134 representatives; in the Senate, at least 45 of the 67 senators.
- Not voting has the same effect as voting in the negative, for purposes of attaining the required number of votes to declare an urgency.

If at least the required number agree to expedite passage of a bill, the bill may receive its second and third readings—or even all three readings—in a single day. Because both houses can do this, a bill can go through both houses of the legislature, from first reading to final passage, in one day. During a one-day special session, the legislature does exactly that.

## **A six-step process in each house implements the reporting requirement**

The constitution leaves it to the House and Senate to decide when during consideration of a bill the three reports should occur. Both houses have adopted the same general practice. Between each report, time is inserted for legislators to consider the bill, first in committee and then on the floor of the house. The result is a six-step procedure for moving bills through each house.

### ***1. The first reading of a bill occurs when it is introduced in a house***

When the legislators who are sponsoring a bill—called “authors”—put it before the members of a house, they are said to “introduce” the bill in that house. A bill receives its first report when it is introduced, as a part of the same order of business.

### ***2. Between the first and second readings, the bill is considered in committee***

At the same time that a bill is introduced and receives its first reading, it is always referred to a legislative committee.<sup>3</sup>

If the committee acts favorably on the bill, it returns the bill to the house with a committee report. The report conveys the committee’s recommendations on whether (and how) the bill should be amended and how it should be considered further in that house. Some bills go through just one committee; others visit two or more committees.

A committee report is just the committee’s recommendation to the house. The recommendation takes effect only after the house adopts the committee report.

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<sup>3</sup> Legislative rules specify two exceptions to this referral requirement: for companion bills in the second house and for committee bills. Companion bills are described beginning on page 10. A committee bill is a bill introduced by a committee. Because the bill is already a product of a committee, referral to a committee is not always required.

**3. *The second reading of the bill occurs when committees are finished with it***

After a bill has been considered and reported by the committees with jurisdiction, the bill receives its second reading. Second reading signifies that committee action on the bill is finished, and the bill is ready for consideration by the full house.<sup>4</sup>

**4. *Between the second and third readings, the bill is considered by the house***

After the second reading—usually on a subsequent day—the house may take up the bill on the floor, where all members of the house are able to discuss the bill and propose and vote on amendments to it.

**5. *The third reading occurs when the bill is ready for the vote on passage***

The third reading occurs after the house has finished debating and voting on any amendments to the bill on the floor. Third reading signifies that the bill is in finished form and ready for the vote on passage. After third reading, debate on the merits of the bill may continue, but the bill cannot be further amended without unanimous consent (except in very technical, nonsubstantive ways).

**6. *The vote on passage follows the third reading***

After the third reading and any final debate on the bill, the members of the house vote on whether the bill should pass.

These six steps are depicted graphically in the left two columns of the flowchart on page 3. The flowchart does not show that the three readings occur on different days, but normally they do.

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<sup>4</sup> Occasionally, a bill can have two second readings. This occurs when a house decides to refer a bill to another committee after the bill has received its second reading. If the committee subsequently reports the bill, the house gives the bill another second reading. Even more rarely, the house then decides on yet another referral, which may produce a third second reading.

### ***Filtering and Organizing Bills***

The six-step process is a model describing the course of a bill moving independently to passage in a house. Like all such abstractions, it obscures aspects of the reality it is intended to display. Legislative proceedings often depart from the model in various ways. Two are particularly important to a full understanding of the legislative process.

***Many bills fail to advance.*** The legislative process is, in part, a complex filtering or screening mechanism, which “kills” many introduced bills. Committees form an important part of the screen. Many bills go no further than first reading and referral to a committee, where they remain without further consideration. Other bills are reported by one committee but die in another committee or elsewhere in the legislative process.

***Many bills appear to fail but actually advance as parts of other bills.*** The legislative process not only screens bills but organizes them as well, aggregating proposals on common subjects so that all bills do not go separately through the legislative process. Most of this organization of bills takes place in committees. Fifty bills may be referred to a committee, but only one bill emerges, with many of the other 49 included as parts of the whole. Or, a bill that apparently has died in one committee later may reappear as an amendment to another bill in another committee, on the floor, or in the other house.

Such aggregations and combinations of bills are common in the legislative process. In fact, this is the main way that the legislature creates omnibus bills. The term ***omnibus bill*** refers to a bill that addresses a subject comprehensively. There are two types of omnibus bills: (1) *Finance or budget bills*. This is the most common use of the term. It refers to the dozen or so comprehensive bills that the legislature uses for enacting the state budget—that is, for imposing taxes and appropriating money for state and local government functions. These bills typically are developed in the tax and appropriations committees. (2) *Comprehensive policy bills*. The term omnibus bill also may refer to any bill that attempts to address a particular topic comprehensively, even though the bill is not a budget bill and may raise or spend no money directly. Examples would be: an omnibus liquor bill, an omnibus insurance bill, an omnibus waste management bill.

## **VOTING ON PASSAGE OF BILLS**

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The second main constitutional requirement for making a bill into an act also has two elements: (a) at least a majority of all the members of each house must vote to pass the bill; and (b) the vote must be recorded in the journal of each house.

### **At least a majority of each house must vote to pass the bill**

The constitution says that at least “a majority of all the members elected to each house” must vote in favor of passage. If a bill does not receive the required number of votes in a house, it cannot pass that house and therefore cannot become an act of the legislature or a law.



The constitutional language is clear: the support of a majority of all the members is required, not merely a majority of those present. Accordingly:

- A minimum *number* of members in each house must vote for passage: at least 68 members of the House (a majority of the 134 representatives); and at least 34 members of the Senate (a majority of the 67 senators).
- Not voting has the same effect as voting in the negative, for purposes of attaining the required number of votes for passage.<sup>5</sup>

### **More than a majority is required to pass some bills**

For some bills, the constitution requires support from more than a majority of all the members of each house.

The notable application of this requirement is for bonding bills, which authorize the state to incur public debt for capital projects (purchasing and improving public land and buildings). A bonding bill must be supported by at least three-fifths of all members of each house. This means that a bonding bill must have the support of at least 81 representatives and at least 41 senators.

Another application is for veto override votes, when the legislature passes legislation into law over the governor's objections. This requires a two-thirds vote in each house: at least 90 representatives and at least 45 senators. Veto override procedures are described on [pages 20 and 21](#).

### **The vote on passage must be recorded in the journal of the house**

The constitution also requires that the vote on passage be entered in the journal of each house, to show for certain that the required number voted for passage. The constitutional language ("the vote") has been construed to require a journal entry showing the required vote total, not necessarily the vote of each member. Nonetheless, both houses have long required a roll-call vote on passage of a bill, which results in a journal entry showing how each member voted.

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<sup>5</sup> The constitution also requires the presence of at least a majority of all members (a "quorum") to conduct business. Because of these two requirements—a majority to conduct business and at least a majority to pass a bill—the constitution allows each house to require members to attend floor sessions. "A majority of each house constitutes a quorum to transact business, but a smaller number may adjourn from day to day and compel the attendance of absent members in the manner and under the penalties it may provide." Without this power, the legislature might be disabled by the deliberate absence of a group of its members.

## **BICAMERAL AGREEMENT ON BILLS**

The third constitutional imperative for legislative action on bills—in addition to the reporting requirement and the voting requirement—is bicameral agreement: every bill must win the approval of both houses of the legislature. To make a law, the Senate and the House, acting separately, must pass the same document. A bill that passes the Senate must also pass the House. A bill that passes the House must also pass the Senate.

Not only must the same bill pass each house, it must pass each house with identical content. If the bill passed by one house differs from the bill passed by the other house—however slightly, by so much as a word—the validity of the act may be called into question.

Nor may the two houses make law by passing separate bills that are identical. Each house, acting separately and independently, must pass the same document in identical form.

The legislature has developed rules and procedures intended to ensure that every act it presents to the governor satisfies this constitutional requirement of bicameral agreement. The legislature's compliance strategy has two main components:

- *companion bills* to foster timely passage of the same bill in both houses
- *restricted passageways* to promote identical content

### **The companion bill system fosters timely action on the same bill**

The two columns on the left of the flowchart on page 3 suggest that bills are considered by the two houses in sequence—with one house beginning its consideration of a bill after the other has finished with it. In reality, few bills proceed sequentially through the two houses in this way. The volume of legislation and limits on session and committee time make this impractical. Instead, bills on the same subject generally are introduced in both houses early in session and move in parallel through the committee and floor process in both houses.

But simultaneous and independent proceedings in the two houses on separate bills puts the legislature at risk of failing to comply with the constitutional requirement that both houses pass the same bill after giving it three readings. The companion bill system is the legislature's method of coordinating legislative activity on the thousands of bills introduced each session, so as to ensure that the two houses will not inadvertently transgress constitutional requirements by failing to pass the same bill after three readings in each house.

### ***Companion Bills***

Companion bills are two bills, one introduced in the Senate and the other in the House, that are administratively linked for purposes of bicameral bill management and coordination. There are two types of companion bills:

***True companions*** are two bills, one in each house, that are identical when introduced. True companions have the same Revisor-issued *document* number. (They need not—generally do not—have the same Senate and House *file* number, nor need they be introduced simultaneously in both houses.) The bills remain companions after they are introduced, even though they may diverge greatly in substance as they move separately through the two houses.

***Designated companions*** are two bills, one in each house, that the two houses simply agree to treat as companion bills, even though they were not companions when introduced.

Although a bill can be introduced in one house without a companion in the other, almost all bills with prospects have a companion in the other house. The partnering of a bill in the House and a bill in the Senate allows each house to work independently and simultaneously on its bill, while ensuring that at some point in the proceedings one house puts aside its bill in favor of action on the other house's bill, so that only one of the two passes the legislature after three readings in each house.

This point in the process—when one house puts aside its bill to act on the other house's bill—comes when the second house begins consideration of a bill that has passed the first house.

#### ***House of origin bill survives***

After passing a bill, the house of origin transmits it to the second house, along with a message indicating passage and requesting that the second house act on the bill as well. The second house complies with this request: instead of continuing to work on its companion bill on the same subject, the second house acts instead on the bill that has passed the first house. Thus, the bill that eventually passes the legislature is the house of origin bill, rather than the second house's companion to that bill.<sup>6</sup>

#### ***Bill substitution procedures in the second house***

The second house acts after giving the bill from the first house its first reading. The substitution of this bill for its companion occurs either in committee or on the floor, depending on the location of the companion. The object is to put the bill from the first house in the same place, procedurally, as its companion in the second house.

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<sup>6</sup> Either house may originate any bill (except that "bills for raising revenue" must originate in the House). Which house passes a particular bill first, and which second, is not entirely unplanned or fortuitous. It is efficient for the two houses to divide the burden of being first off the mark, especially with major bills. So the leaders, committee chairs, and bill authors in the two houses informally coordinate action on companion bills, ensuring that the House originates some bills and the Senate others.

- *In committee.* If the companion bill in the second house is still in committee, the second house refers the bill to the committee that possesses the companion. When (and if) the committee takes up the two bills, it sets aside the second house's bill and acts and reports instead on the companion bill from the first house. The second house's bill normally remains in the committee permanently and ends the session there, without being reported.
- *On the floor.* If, on the other hand, the companion bill awaits action on the floor in the second house, having already finished with the committee stage of the process, the substitution of bills occurs on the floor rather than in a committee. The Senate and House use different procedures for connecting and comparing the language of the two companion bills (report of the rules committee in the Senate, report of the Chief Clerk in the House). But the upshot is the same in both houses: proceedings on the second house's bill are "indefinitely postponed," and the bill from the first house takes its place on a list of bills awaiting floor action.

The author of the companion bill in the second house assumes the role of the author of the first house's bill, which now proceeds through the second house in the usual fashion. If the substitution occurred in a committee, one or more committees may report the bill. When committees are finished with it (or when the substitution occurs on the floor), the bill receives its second reading, followed by floor consideration and amendment, third reading, and finally the vote on passage in the second house.

The second column of the flowchart on [page 3](#), depicts these proceedings on a bill in the second house.

### ***Amendments in the second house***

The acceptance of the first house's bill by the second house does not mean that the second house accepts the *content* of the bill, only that the second house acts on the *document* (i.e., the file number) from the first house.

Legislative rules allow the second house to amend the first house's bill. The second house usually does so whenever the language of the two bills differs substantially. Indeed, in the Senate this is required by rule when the substitution occurs on the floor: if the text of the House bill is not identical to the text of the Senate companion bill, the Senate automatically replaces the entire text of the House bill with the Senate text; only the House file number remains. In contrast, on the floor of the House (and in a committee in either house), textual differences are not resolved automatically in favor of the second house's bill. Instead, after the substitution occurs, an author who prefers some or all of the language of the second house's bill must move to amend the bill from the first house accordingly.

After passing the first house's bill, the second house returns it to the first house, along with a message indicating action by the second house. Both houses have now passed the same document, the same file, after three readings in each house.

## **Restriction to three passageways promotes identical content**

The constitutional requirement of bicameral agreement makes another demand: not only must the same document pass each house, the text of the document must be identical.

To meet this second demand, legislative rules restrict proceedings after initial action on the same bill by both houses. When the bill returns from the second house to the house of origin, only three paths are open to it. The three passageways are described here and shown in the flowchart on page 3 by the three lines leading from the third column (the legislature) to the fourth column (the governor).

### ***1. If the second house did not amend, the bill has passed the legislature***

If the second house did not amend the bill, the legislative process is complete. Each house has passed the same document with identical content after three readings. The constitutional bill-passage requirements have been satisfied, and no further legislative action is necessary, except to prepare the bill for presentation to the governor (enrollment). This is the first of the three possible ways for the legislature to achieve bicameral agreement on a bill, as required by the constitution.

### ***If the second house amended the bill, the house of origin has two options***

The second and third passageways are for bills that were amended in the second house.

### ***2. Concur in the amendment and re-pass the bill as amended by the second house***

Taking this option involves several steps. First, the house of origin must concur in the amendment of the second house. A motion to concur requires a favorable vote from a majority of those voting on the question. If the motion prevails, the first house has adopted the second house's amendment to the bill. Now the first house gives the bill, as amended, another third reading, followed by another vote on passage. As always, passage requires a favorable vote from at least a majority of all the members of the house, not just a majority of those voting on the question. (See [page 8-9](#).)

If the bill passes the first house again, as amended by the second house, the legislative process is complete. Each house has passed the same document in identical form after three readings. The constitutional bill-passage requirements have been satisfied, and no further legislative action is necessary, except to prepare the bill for presentation to the governor.

This is the second way to achieve bicameral agreement on a bill.

### ***3. Refuse to concur in the amendment and request a conference on the bill***

The third passageway is longer than the other two.

#### ***Refusal to concur***

Instead of concurring in the amendment of the second house, the house of origin may reject the amendment. This it may do either by supporting a motion not to concur, or

by defeating a motion to concur. If the house of origin refuses to concur in the amendment of the second house, then the two houses have passed the same bill (the same document) but with differences in content. If neither house will give way, the bill cannot become an act or a law.

In this situation, if the bill is to proceed any further, legislative rules require the appointment of a conference committee. Thus, a conference committee is employed only when the second house has amended a bill of the first house, and the first house refuses to accept the amendment.

### *Conference committee*

A conference committee consists of an equal number of members (either three or five) from each house. The object of the conferees, as they are called, is to resolve the impasse between the houses on the content of the bill, by negotiating an agreement on the bill that both houses will support without further amendment.

A conference committee really is two committees, one appointed by each house, that meet jointly. For this reason, a majority of the conferees from each house (not a majority of all conferees) must agree to decisions about the bill. On a six-member conference committee, at least two of the three members from each house must agree; on a ten-member conference committee, at least three of the five members from each house must agree.

If the conferees reach an agreement on the bill, the conference committee produces a conference committee report, which describes the text of the bill that the conferees recommend for passage. The required number of conferees from each house must sign the report, indicating their support for the agreement.

### *Adoption and re-passage*

The agreement recommended by the conference committee must win the approval of both houses. Neither house may amend. Each has but two options now: accept the bill recommended by the conference committee, or reject it.

Consideration of the conference committee report begins in the house of origin. The conferees from that house explain how and why the recommended agreement differs from the bill that the house passed initially. The house debates and then votes on whether to adopt the conference committee report, which requires support from a majority of those voting on the question. If a majority votes to adopt the conference committee report, the effect is to amend the bill accordingly. Now the house of origin gives the bill, as amended, another third reading, followed by another vote on passage. As always, passage requires a favorable vote from at least a majority of all the members of the house, not just a majority of those voting on the question.

If the house of origin rejects the conference committee report, or adopts the report and then fails to pass the bill, the bill has reached the end of the line—unless, time permitting, it is returned to conference for more work. If the bill succeeds in the first

house, the matter is transmitted to the second house, which also must adopt the report and re-pass the bill.

If both houses adopt the recommendations of the conference committee and re-pass the bill as amended, the legislative process is complete. Each house has passed the same document in identical form after three readings. The constitutional bill-passage requirements have been satisfied, and no further legislative action is necessary, except to prepare the bill for presentation to the governor. This is the last of the three passageways to bicameral agreement on a bill.

Current legislative rules and practices require every bill to follow one of these three pathways to agreement between the houses on bill content. About two-thirds of the bills that pass the legislature do so by way of the first or the second path—that is, without a conference committee. Either the second house does not amend the house of origin's bill, or the first house concurs in the amendment of the second house. The other third of bills takes the longer route, in which a conference committee is used to negotiate and settle bicameral differences about the content of the bill. However, this third comprises the most complex, controversial, and important legislation, including the omnibus budget bills. The legislature's reliance on conference committees to negotiate the content of so much important legislation has lately provoked considerable public discussion, with some criticizing the legislature's practice of using conference committees so extensively, and others defending it.

### *The Three Passageways*

Under current legislative rules, the two houses must agree on an identical bill in one of the following three ways:

***First way:***

The first house passes a bill.



The second house passes the same bill without amending it.

***Second way:***

The first house passes a bill.



The second house passes the same bill after amending it.



The first house concurs in the amendment of the second house and re-passes the bill as amended.

***Third way:***

The first house passes a bill.



The second house passes the same bill after amending it.



The first house refuses to concur in the amendment of the second house.



A bicameral conference committee negotiates and recommends an agreement on the bill to both houses.



Both houses adopt the recommendation of the conference committee and re-pass the bill without further amendment.



## From an Act to the Law: Relations with the Governor

A bill that passes both houses with identical text in the required fashion becomes an act of the legislature. An act is still a proposal—not yet a law. This section describes the means by which an act of the legislature becomes—or does not become—a law of the state.

Before the act can become a law, the legislature must:

- **Enroll the bill**, which transforms it physically into an act
- **Present the act to the governor**, who has the constitutional authority to approve, disapprove, or acquiesce.<sup>7</sup>

An act of the legislature presented to the governor becomes a law in one of three ways:

- **Approval.** The governor approves the act by signing it.
- **Veto override.** The governor disapproves the legislation by vetoing it; but the legislature overrides the veto by passing the legislation once more, this time by an extraordinary majority vote (two-thirds) of each house.
- **Acquiescence.** The governor neither approves nor vetoes, but acquiesces in the act by retaining the legislation under certain circumstances for longer than a constitutionally specified period.

An act of the legislature must satisfy one of these three conditions to become law.

### *Legislative Role of the Governor*

Because this publication is about formal procedures for making laws, it emphasizes the official role of the governor in lawmaking as prescribed in the constitution and laws of the state. But the governor and other executive officials also play a considerable unofficial role in the legislative process. Many legislative proposals (new laws, new policies, the entire state budget) originate in the executive branch and strongly influence the legislature's agenda and activities. Moreover, the governor and executive agencies often play a key, even decisive role as participants in legislative discussions and negotiations.

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<sup>7</sup> Because of exemptions in the federal or state constitution, the governor does not have the authority to disapprove certain legislative actions, even when they take the form of an act. The legislature still must present the act, but the governor has no power to veto it.

## **ENROLLMENT AND PRESENTMENT**

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After a bill passes both houses, it is enrolled and then presented to the governor. Both of these steps are expressly required by the constitution. The Revisor of Statutes, a joint legislative staff office, performs these functions as an agent of the legislature.

### **Enrollment transforms a bill into an act**

An enrollment is an accurate copy of a bill, as it passed both houses of the legislature. The enrollment transforms “a bill for an act” into “an act”—from a proposal *to* the legislature into a proposal *of* the legislature. The enrollment is printed on archive quality paper and includes places for the signatures of legislative and executive officials. Each enrollment is given a number (in order of passage), which later becomes its chapter number in the session laws for that year.

Before it leaves the legislature’s hands, the enrollment must be signed by two elected officers of each house: the Speaker and Chief Clerk of the House, and the President and Secretary of the Senate.

### **The legislature must present the act to the governor for review**

The constitution requires the legislature to present each enrolled act to the governor.

When to present an act is a decision of the legislature, within limits set by the constitution. Normally there is no reason for delay, so the legislature presents the act as soon as practical after passing it. But the legislature must present it by one of two constitutional deadlines. Which of the two deadlines applies depends on when the act passed the legislature.

*If the act passed before the last three days of a session*, the legislature must present it before the legislature adjourns the session *sine die* (permanently, without a date for reconvening).

*If the act passed during the last three days of a session*, the legislature must present it by the end of the third calendar day after the day that the legislature adjourns *sine die*.

## **REVIEW BY THE GOVERNOR**

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The constitution limits both the time and the options available to the governor in responding to an act of the legislature.

### **The governor has a specified number of days to respond**

The time allotted by the constitution for gubernatorial review depends on when an act passes the legislature.

***If the act passed before the last three days of a session***, the governor has three calendar days to review it after the day it is presented. Sunday does not count as one of the three days.

***If the act passed during the last three days of a session***, the governor has 14 calendar days (including Sundays) to review it after the day that the legislature adjourns *sine die* (not after the day the act is presented). The governor's review period may be reduced by as much as three days (to 11 days), because the legislature has three days after the day of adjournment to present the act. Conversely, the period can be lengthened by as much as three days (to 17 days), if the legislature presents the act during the last three days, before adjourning the session.

## **The governor has three options for responding**

The constitution gives the governor three ways of responding to an act presented by the legislature. The three options are depicted in the right-hand column of the flowchart on page 3.

### ***Option 1: The governor signs the act within the time allowed***

If the governor signs the act in the time allowed, it becomes a law. It is said to be enacted.<sup>8</sup> After signing, the governor is required to file the act (now a law) with the Secretary of State and to notify the legislature.

### ***Option 2: The governor vetoes the legislation within the time allowed***

The constitution allows the governor to disapprove, or veto, most acts of the legislature. The governor does this by returning the act to the house of origin, with a message explaining the reason for the veto, in the time allowed and while the legislature is still in session (i.e., before it adjourns *sine die*). This is called a *return veto*. The governor is required to file a notice with the Secretary of State indicating the chapter number of the vetoed act.

A variation on the return veto is the *item veto*. If an act contains "several items of appropriation of money," the constitution allows the governor to sign the act but veto one or more of the items of appropriation.<sup>9</sup> The governor vetoes an item of appropriation by appending to the signed act a statement indicating the items vetoed. If the legislature is still in session, the governor must return a copy of the veto statement to the house of origin. The governor is required to file the signed act, along with the veto statement, with the Secretary of State. Governors also sometimes mark the vetoed item or items on the act itself.

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<sup>8</sup> A law does not necessarily take effect when it is enacted. A law takes effect on a date specified in the law itself or, in the absence of a specification in the law, on a date prescribed by general law. General law prescribes three effective dates for laws, depending on the character of the law. A law with an appropriation is effective on July 1, the start of the state's fiscal year. A law that applies to a local unit of government usually is effective upon the approval of the law by the unit's governing body. All other laws are effective on August 1.

<sup>9</sup> What qualifies as an item of appropriation—and hence a valid target of a veto—is a complex issue and the subject of considerable litigation in states like Minnesota that give the governor this authority.

A vetoed act or item of appropriation does not become law, unless both houses of the legislature vote to override the veto by a two-thirds majority. The procedure for doing this is described in the following section.

In the half-century from 1952 to 2002, governors vetoed 356 acts, either in whole or, by item, in part. About two-thirds of these vetoes occurred in a 12-year period, during the administrations of governors Arne Carlson and Jesse Ventura (1991-2002).

***Option 3: The governor neither signs nor vetoes within the time allowed***

The governor's third option, besides signing or vetoing, is simply to keep the act, doing nothing with it, until the time allowed for gubernatorial review expires.

The effect of inaction by the governor depends on: (a) when the act passed the legislature; and (b) whether the legislature is still in session when the governor's time expires.

***If the act passed before the last three days of a session***, the act becomes law without a signature at the close of the governor's three-day review period, unless the legislature has prevented a return veto by adjourning the session *sine die* during that time. A governor who acquiesces to a law in this way is required to file it with the Secretary of State, along with a notice that the governor is allowing the act to become law without the governor's signature.

***If the act passed during the last three days of a session***, the act does not become law without the governor's signature. This is called the "pocket veto." The governor is required to retain the act in the records of the governor's office and to file a notice with the Secretary of State indicating that the act (identified by chapter number) has been pocket vetoed.

## **VETO OVERRIDE**

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If the governor vetoes an act or an item of appropriation while the legislature is still in session, the legislature may enact the proposal into law anyway, despite the governor's objections. This action is called a veto override. Veto override procedures are seen in the right-hand column of the flowchart on [page 3](#).

### **Overriding a veto requires the support of two-thirds in each house**

To override a veto, two-thirds of all the members of each house (not merely two-thirds of those present and voting) must vote in favor of making the legislation a law despite the governor's objections to it. Accordingly:

- A minimum *number* of members in each house must vote to override: in the House, at least 90 (of the 134 representatives); in the Senate, at least 45 (of the 67 senators).

- Not voting has the same effect as voting in the negative, for purposes of attaining the required number of votes to override the veto.

For a veto override decision, the constitution expressly requires a roll-call vote. It also requires that the vote of each member on the question be entered into the journal. (This is more stringent than the constitutional requirement for the vote on passage. See [page 8-9](#).)

## **The house of origin votes first, then the second house**

The governor executes a return veto by delivering the veto to the house of origin. The constitution requires the house of origin to enter the governor's objections into the journal. The house of origin then may either:

- allow the veto to stand without challenge, or
- submit the veto to an override vote.

If the veto is not submitted to a vote, or if the vote falls short of the two-thirds required, the veto stands, and proceedings on the legislation go no further.

If the house of origin does vote in favor of overriding the veto, it transmits the matter to the second house with a record of its decision. The second house now decides whether to challenge the veto. If the second house also submits the veto to a vote, and if two-thirds of all the members there also vote in favor of overriding the veto, then the act or the item of appropriation becomes law despite the governor's objections.

When the legislature overrides a veto, the legislature files the legislation, now a law, with the Secretary of State.

Compared to some states, veto overrides are quite rare in Minnesota. They have become more frequent in recent years, as the number of gubernatorial vetoes has risen, but still are not common. In the 50 years from 1952 to 2002—a period during which governors have issued 356 vetoes—the legislature has overridden the veto of 11 acts and four items of appropriation. All but three of these 15 veto overrides occurred during the four years of the Ventura administration, from 1999-2002.

## **ENACTMENT AND THE TIME OF PASSAGE**

These exchanges between the legislature and the governor may be organized and understood in another way—according to when an act passes the legislature. The constitution prescribes different relationships between the legislature and the governor for two categories of acts:

- those that pass the legislature “during the last three days of a session”
- those that pass earlier in the session

The arrangements for these two categories of act are described below and depicted graphically on the two pages that follow the description.

## If the act passed before the last three days of a session

For acts passed during most of a legislative session, the constitution imposes the following arrangements on the legislature and the governor:

- **Presentment.** The legislature must present the act before it ends the session by adjourning *sine die* (permanently, without a date for reconvening).
- **Three-day review period.** The governor has three calendar days, following the day that the act is presented, to either sign or return veto the legislation. Sunday does not count as one of the three days.
- **Signature.** If the governor signs within the three-day review period, the legislation becomes law.
- **Return veto.** If the governor return vetoes the legislation within the three-day review period, the legislation does not become law unless the legislature overrides the veto. The legislature has until it adjourns the session *sine die* to override the veto. If it does not override by then, the veto stands, and the legislation does not become law.
- **Acquiescence.** If the governor neither signs nor return vetoes the legislation by the end of the three-day review period, the legislation becomes a law without the governor's signature, unless the legislature prevents a return veto by adjourning *sine die* before the governor's time expires.

## If the act passed during the last three days of a session

For acts passed near the end of a legislative session, during the last three days before the legislature adjourns *sine die*, the constitution prescribes different arrangements.

- **Presentment.** The legislature may present the act before it adjourns *sine die*, but it need not do so. The legislature may present the act during the three calendar days after the day it adjourns.
- **Fourteen-day review period.** The governor has a longer time to decide whether to sign the act—up to 14 days (Sundays included) after the day that the legislature adjourns, rather than the usual three days after the day that the legislature presents. Because the review period is calculated from the day of adjournment rather than presentment, the number of days actually available to the governor to review an act can be reduced or extended by as much as three days (i.e., to as few as 11 days or as many as 17), depending on when the legislature presents the act.
- **Signature.** If the governor signs within the 14-day review period, the legislation becomes law.
- **Return veto.** If the legislature presents the act before it adjourns *sine die* (i.e., during the last three days of the session), the governor may return veto before the legislature adjourns, and the legislation does not become law unless the legislature overrides the veto.

The legislature has until it adjourns the session *sine die* to override the veto. If it does not override by then, the veto stands, and the legislation does not become law.

After the legislature adjourns *sine die*, the governor still may veto but does so by methods other than a return veto.

- **Pocket veto.** Whether the legislature presents the act before or after it adjourns *sine die*, the act does not become law unless the governor signs it by the end of the fourteen-day review period. The governor may not acquiesce, by allowing the act to become law without the governor's signature. Thus, the effect of gubernatorial inaction on these end-of-session acts is opposite to its effect on acts passed earlier in the session: instead of becoming law without the governor's signature, the act does not become law. This is called a "pocket veto."
- **Item veto.** The governor can also veto an item of appropriation after the legislature adjourns, by signing the act during the 14-day review period, while vetoing the item of appropriation.

**"... the last three days of a session ..."**

The constitutional words "passed during last three days of a session" have been construed to mean the day that the legislature adjourns a session permanently (*sine die*) and the two calendar days before that day. Thus, the end-of-session arrangements for gubernatorial review do not apply to acts passed during the three days leading up to an interim adjournment *during* a legislative session. The notable example is the three days before the customary long interim adjournment of the biennial regular session, at the end of the first (odd-numbered) year's session. Acts passed in these three days are not considered to have passed during the last three days of a session.

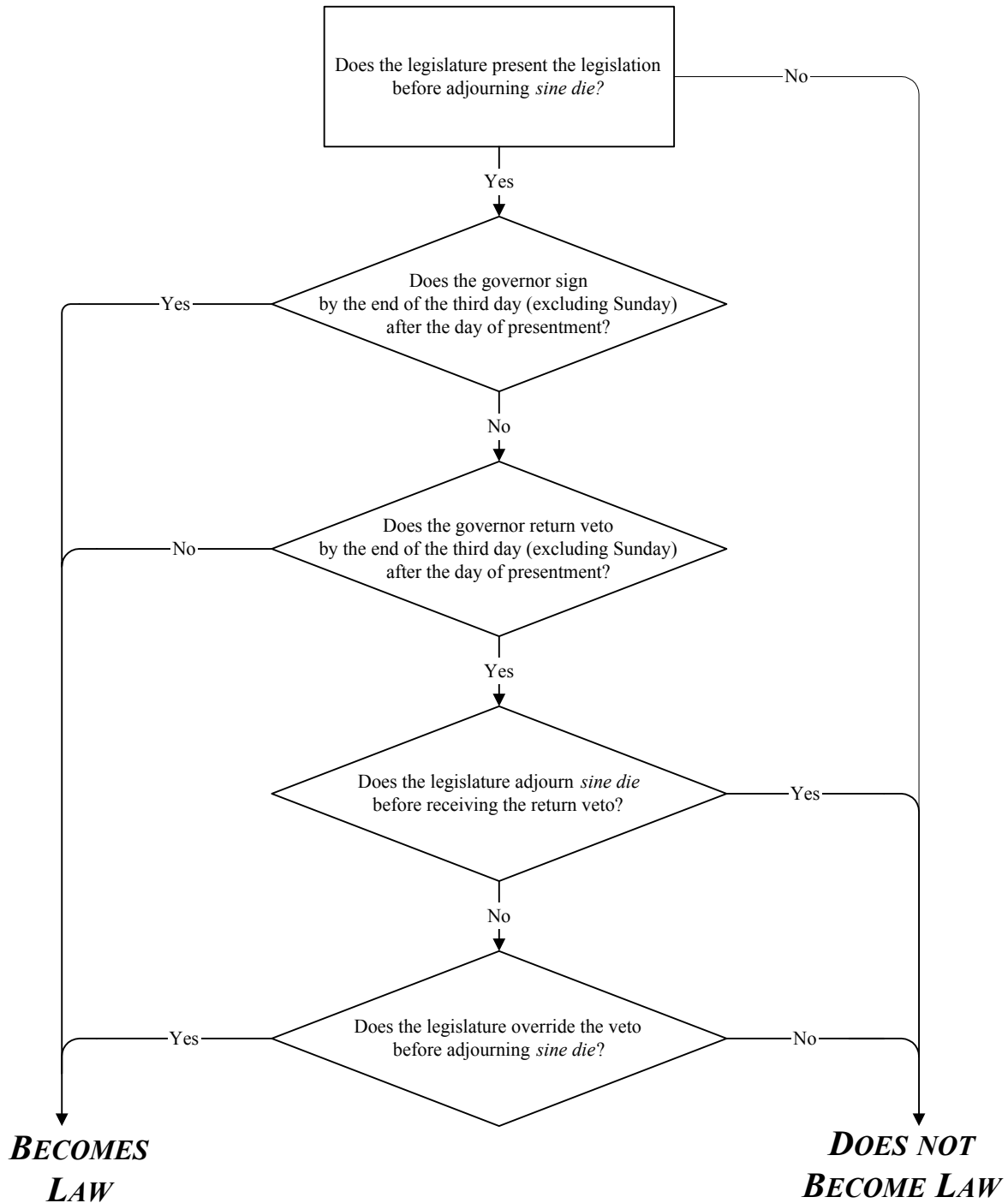
The application of the close-of-session enactment procedures to particular acts can be quite complex, even murky. One source of difficulty is that the last three days of a session usually are known for sure only after the legislature actually adjourns *sine die*.

Another issue is whether Sunday is one of the three days. The legislature typically adjourns *sine die* on Monday, and the constitution does not say whether the last three days are Saturday, Sunday, and Monday, or whether Sunday is excluded so that the last three days are Friday, Saturday, and Monday. The constitution does not expressly exclude Sunday from the three days, as it does in other, nearby language. On the other hand, excluding Sunday seems generally consistent with the constitutional scheme for dealing with close-of-session legislative actions (unless the legislature itself were to meet and act on that last Sunday, which it never has).

For purposes of identifying whether a bill passed the legislature on the last three days, the word "passed" does not necessarily mean the day of the vote on final passage in the second house, because the courts have construed the word to include at least the additional time required to enroll the act and obtain the required signatures of legislative officers. Thus, for purposes of this provision, a bill passes during the last three days if it is enrolled and signed during those days, even though it was voted on finally in the second house on an earlier day.

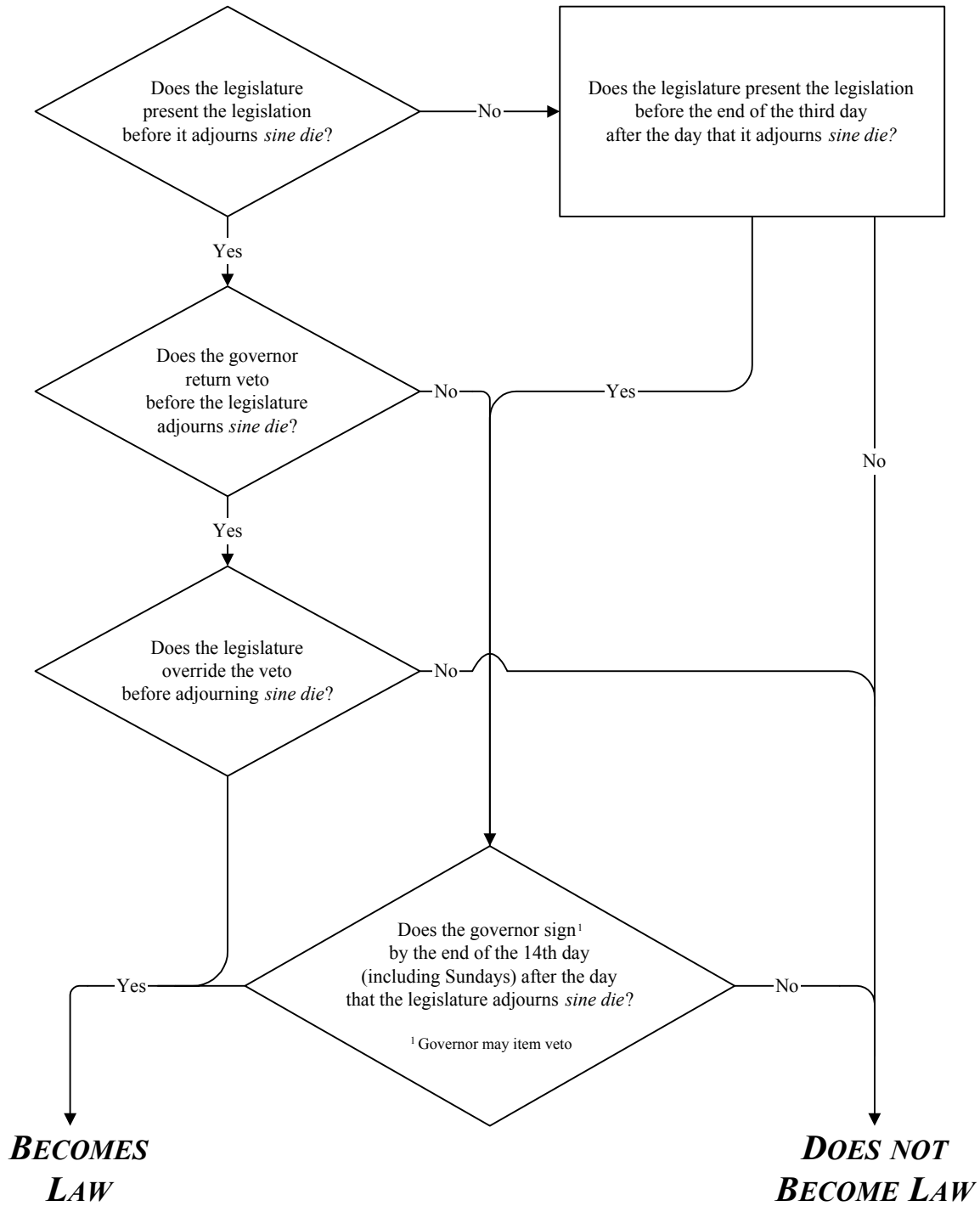
The flowcharts on the following two pages depict these enactment arrangements for the two categories of bills identified by the constitution.

## **LEGISLATION THAT PASSES** ***Before* THE LAST THREE DAYS OF A SESSION**





## LEGISLATION THAT PASSES During THE LAST THREE DAYS OF A SESSION



# References

The references are to Minnesota Statutes 2002 and legislative rules for the 82<sup>nd</sup> legislative session (2001-2002).

## Page

- 2 Revenue bills: [Minn. Const. art. IV](#), sec. 18.
- 4 Day prescribed for adjournment: [Minn. Const. art. IV](#), sec. 21; *State v. Hoppe*, 298 Minn. 386, 215 N.W.2d 797 (1974).
- 4-7 Bill reporting and six-step process: [Minn. Const. art. IV](#), sec. 19; [House Rules 1.04, 1.11, 1.13, 1.15, 1.30, 5.02, 6.30](#); Senate Rules 2, 3, 4, 21, 33, 34, 45.
- 6 Committee referral requirement: [House Rules 1.11, 1.13, 1.15](#); Senate Rules 4, 21, 45.
- 6 Committee reports: [House Rule 6.30](#).
- 8 Filtering and combining bills, omnibus bills: [Minn. Const. art. IV](#), sec. 17; [House Rules 3.21, 4.03, 6.40](#); Senate Rules 37; [Joint Rules 2.02, 2.06](#).
- 8-9 Vote on passage: [Mn. Const. art. IV](#), secs. 15, 22, 23; art. XI, sec. 5; [House Rules 2.03, 5.03](#); Senate Rule 42. *Lincoln v. Haugen*, 45 Minn. 451, 48 N.W. 196 (1891). The court distinguished the language in section 22 of article IV of the constitution from the language in section 23. Section 22, dealing with the vote on passage, says: “No law shall be passed unless voted for by a majority of all the members elected to each house of the legislature, and *the vote* entered in the journal of each house.” Section 23, which deals with veto overrides, says: “In such cases the votes of both houses shall be determined by yeas and nays, and *the names of the persons voting for or against* the bill shall to entered in the journal of each house.” Emphasis added.
- 8-9 Attendance and voting required: [Minn. Const. art. IV](#), sec. 13; [House Rules 2.01, 2.05](#); Senate Rules 37, 41.
- 9 Bonding bills: [Minn. Const. art XI](#), sec. 5; art. IV, sec. 15.
- 10 Bicameral agreement on bills: [Minn. Const. art. IV](#), secs. 19, 22.
- 10-11 Companion bills: [Minn. Const. art. IV](#), secs. 19, 22; [House Rule 1.15](#); Senate Rule 49.
- 11 Revenue bills: see note above, [page 2](#).
- 11 Amending bills of the other house: [Joint Rule 2.04](#).
- 13 Three passageways, conference committees: [House Rule 6.40](#); Senate Rules 11, 25, 46; [Joint Rules 2.05, 2.06](#).
- 17 Exemptions from gubernatorial approval: [Joint Rule 2.07](#).

- 18 Enrollment, presentment: [Minn. Const. art IV](#), secs. 20, 23, 24; Senate Rule 44; [Joint Rule 2.07](#); [Minn. Stat. secs. 3.19, 3.191, 3C.04](#), subd. 5.
- 18 Governor's review: [Minn. Const. art IV](#), secs. 20, 23, 24; [Minn. Stat. secs. 3.19, 3.191, 3C.04](#), subd. 5, [4.034](#); [Joint Rule 2.07](#).
- 19 Effective dates of laws: [Minn. Stat. sec. 645.21](#).
- 19, 20 Veto, veto override: Data are from a compilation by the Legislative Reference Library. See also Joel Michael, House Research, *Veto Procedures* (January 1992) and *History of the Item Veto in Minnesota* (January 1992); Peter Wattson, Senate Counsel and Research, *Veto Power of the Governor of Minnesota* (September 12, 1995).
- 20 Veto override, vote required: see note, [page 8](#).
- 22, 23 Last three days of a session: [Minn. Const. art. IV](#), sec. 23; *State v. Hoppe*, 298 Minn. 386, 215 N.W.2d 797 (1974); *Burns v. Sewell*, 48 Minn. 425, 51 N.W. 224 (1892).

*For more information about the legislative process, visit the government operations area of our web site, [www.house.leg.state.mn.us/hrd/issinfo/gv\\_state.htm](http://www.house.leg.state.mn.us/hrd/issinfo/gv_state.htm).*