



Wisconsin Legislative Reference Bureau

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# Legislative Procedure

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## LEGISLATIVE PROCEDURE

A state legislature operates under procedural rules that are based on the traditions and customs established by English parliamentary law. That parliamentary law is based in turn on the administrative practices of Anglo-Saxon tribes, practices that were well established hundreds of years before the Norman invasion of Britain in 1066. In 1801, Thomas Jefferson published a manual called *Manual of Parliamentary Practice for the Use of the Senate of the United States*, which applied these ancient customs, with substantial modifications, to the lawmaking process in the United States.

Today, many legislative bodies rely on *Mason's Manual of Legislative Procedure* as guidance for establishing legislative rules. *Mason's Manual*, first published in 1935 and updated periodically since then, was designed specifically for state legislatures and, although it refers to the principles established in Jefferson's manual, was based on an extensive study of legal and legislative precedents. *Mason's Manual* posits the following ten principles that govern procedure in group decision-making:

1. The group must have the authority to take the action it purports to take.
2. The group must meet to make decisions.
3. All group members must receive proper notice of any meeting.
4. A quorum must be present at any meeting in order to conduct business.
5. The group must make a decision based on a question put before the group.
6. All group members must have the opportunity to debate the question.
7. The group must vote to decide the question.
8. The group must decide any question, or take any action, only with the majority's approval.
9. With regard to deciding any question or taking any action, a group member may not use any sort of fraud, trickery, or deception that will result in injury to another member.
10. The group's decision or action must not violate any applicable law or constitutional provision.

Under article IV, section 1, of the Wisconsin Constitution, the legislative power—the power to make laws—is vested in the two houses of the legislature, a Senate and an Assembly. Each house of the legislature “may determine the rules of its own proceedings.”<sup>1</sup> The rules, generally, are used to effectuate the majority's will while protecting the minority's right to be heard and to persuade those members who oppose a minority position.

Legislative rules are in place to ensure a fair and efficient process. The rules apply to the majority and the minority alike, but the majority ultimately decides how to resolve any conflict between fairness and efficiency. The majority controls the process and rules on points of order. Rulings on process become precedent for how the legislative rules will be interpreted by future legislatures. The rules and precedent keep the majority in check but also keep the minority from commandeering the lawmaking process.

Each house establishes or modifies its rules by adopting a resolution. Joint Rules—rules that apply to the joint action of both houses—must be approved by each house in the form of a joint resolution. The rules remain in effect from one biennial session to the next, unless they are superseded by rules adopted, amended, or repealed in subsequent sessions.

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<sup>1</sup>Wisconsin Constitution, article IV, section 8.

The rules are frequently suspended to quicken the pace of floor debate, but also, in most cases, enforced to delay action and ensure a vigorous debate. The most obvious manifestation of how the rules work is visible when either house is in session.

### **COMMITTEE HEARINGS AND THE DAILY CALENDAR**

After a bill is introduced, the leadership of the house in which the bill is introduced refers the bill to a committee for further consideration. A committee may hold a public hearing on the bill, offer amendments to the bill, and approve the bill for passage by the legislature. In the Senate, a committee must provide notice of a public hearing at least 24 hours in advance unless the committee on senate organization determines that, for good cause, such notice is impossible or impractical. In no case, however, may a committee provide notice of a public hearing less than two hours before the hearing. In the Assembly, generally, no later than noon on Monday of each week during the legislative session, the chairperson of each committee must file with the assembly chief clerk a list of all public hearings for that week. The chief clerk publishes the list and the committee chairperson posts the list on the Assembly's electronic bulletin board.

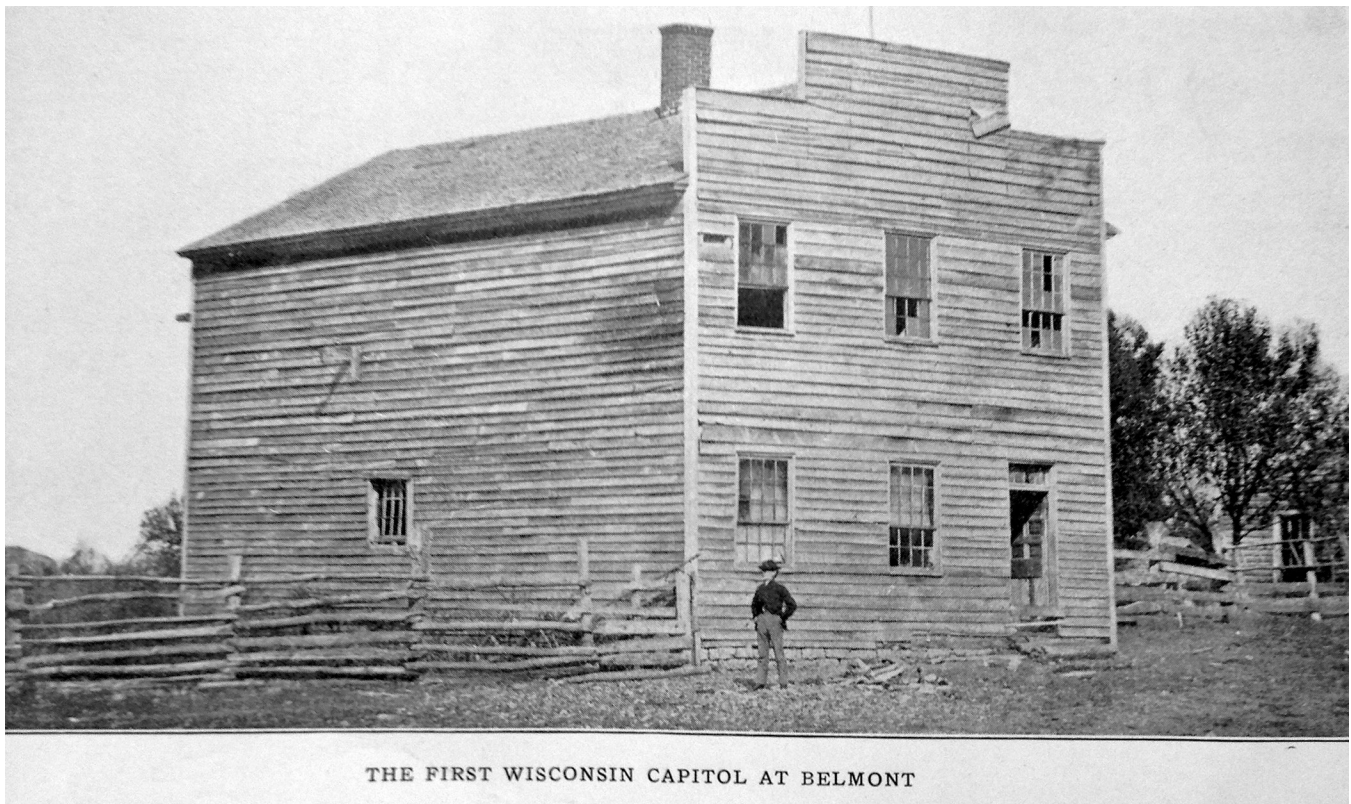
If a committee recommends a bill for passage, the bill may be placed on the house's daily session calendar so that all members of the house may offer amendments, debate the proposal's merit, and, ultimately, vote to approve or reject the bill.

The leadership in each house produces a daily session calendar that lists all proposals subject to consideration. The chief clerk provides a copy of the calendar to each member of the house at least 18 hours before the session begins, except that in the Assembly, during the last general business floor period, each member will receive a copy of the calendar at least 12 hours before the session begins. The legislative day, pursuant to that day's calendar, typically begins with the roll call.

### **THE ROLL CALL**

Each house must have a quorum to conduct business. Under article IV, section 7, of the Wisconsin Constitution, a "majority of each [house] shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide." Some legislative action, however, requires approval by more than a simple majority. For example, article VIII, section 8, of the Wisconsin Constitution provides that passage of any law that "imposes, continues or renews a tax, or creates a debt or charge, or makes, continues or renews an appropriation of public or trust money" requires a quorum consisting of three-fifths of all the members elected to each house. The constitution also requires that three-fourths of the total members of both houses must approve any bill that increases retirement fund benefits and two-thirds of the members present must approve any override of a governor's veto.

Occasionally, a member will ask for a "call of the house" to compel the attendance of all members. This is generally invoked prior to debating a particularly controversial or significant matter. In the Assembly, 15 members must second the call of the house. In the Senate, five senators must second the call. The sergeant-at-arms closes the doors to the chamber and all members must remain in the chamber while the sergeant-at-arms finds the absent members. The chief clerk reads the roll and gives the sergeant-at-arms a list of the members who are absent without leave. The call is lifted when the absentees are finally in the chamber, when a motion to lift the call is approved by the members present, or when the house recesses or adjourns.



*Photo courtesy of the Wisconsin Historical Society.*

### **THE PRAYER**

Under Assembly Rule 31 and Senate Rule 17 (1), the orders of business of each house follow the opening prayer and the pledge of the allegiance to the flag. The First Amendment of the U.S. Constitution, which applies to the states by way of the Fourteenth Amendment, provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise” of religion. In 1983, the U.S. Supreme Court, in *Marsh v. Chambers*, found that to “invoke Divine guidance on a public body entrusted with making the laws is not . . . an ‘establishment’ of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country.”<sup>2</sup>

The majority opinion, written by Chief Justice Warren E. Burger, begins with a recitation of the history of legislative prayers in the United States: a practice “deeply embedded in the history and tradition of this country” that “has coexisted with the principles of disestablishment and religious freedom.”<sup>3</sup>

The court also noted that three days after Congress authorized the appointment of paid chaplains, the framers of the constitution reached final agreement on the Bill of Rights language: “Clearly the men who wrote the First Amendment Religion Clauses did not view paid legislative chaplains and opening prayers as a violation of that Amendment, for the practice of opening sessions with prayer has continued without interruption ever since that early session of Congress.”<sup>4</sup>

### **THE AMENDABLE STAGE**

Under the legislative rules, a bill may be amended after the bill’s second reading and before the third reading. The rules provide that the purpose for giving the bill its second reading is “to consider amendments and perfect the form and content of proposals.”<sup>5</sup>

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<sup>2</sup>*Marsh v. Chambers*, 463 U.S. 783 (1983).

<sup>3</sup>*Id.* at 786.

<sup>4</sup>*Id.* at 788.

<sup>5</sup>Wisconsin Assembly Rule 46 (1).

Each bill must be read on three separate, nonconsecutive legislative days. Reading the bill's relating clause, however, is the most that is required under the rules. The relating clause is essentially the bill's title. For instance, the relating clause for 2015 Wisconsin Act 55 indicates that it is an act "relating to: state finances and appropriations, constituting the executive budget act of the 2015 legislature."

A bill's first reading does not happen on the floor of the house when the house is in session. Pursuant to Assembly Rule 42 (3) (b) and Senate Rule 36 (1m) (b), on a day when the Senate or the Assembly is not in session, the chief clerk's act of recording a proposal in the journal is considered the first reading. In the Senate, the Senate President's referral of a bill to a committee is also considered the bill's first reading. In the Assembly, on a legislative day, a report showing the number and relating clause of a bill is considered the first reading if the report is provided to the members before the second order of business. In the Senate, this report is considered the first reading if it is provided to the members before the fourth order of business.

A bill is given its second reading (which, like the first reading, need consist only of the bill's relating clause) on the floor during the legislative session. The eleventh order of business on each house's daily calendar is the second reading of proposals originating in the house that is currently considering the bill, and the twelfth order of business is the second reading of proposals originating in the other house. After the bill is read a second time, the house considers amendments. Some amendments are disposed of rather quickly. For example, most amendments are "laid on the table" to avoid a protracted debate on amendments opposed by the majority.

#### **THE MOTION TO TABLE**

Tabling an amendment temporarily removes the amendment from consideration. An amendment that has been laid on the table may be taken from the table, and considered, by a majority vote. Tabling an amendment avoids the process of taking a vote on the substance of the proposal and is a relatively quick way to dispose of numerous amendments. Tabling an amendment is usually a more efficient way of disposing of an amendment than, for example, raising a point of order that the amendment before the body is not germane to the underlying bill.

In most state legislatures, under longstanding custom and practice, motions that relate to procedural matters, such as a motion to lay a proposal on the table, are not subject to debate. Under the Assembly rules, however, the Assembly may debate a motion to table for 10 minutes, with no member having more than two minutes for debate. Of course, members typically ask for, and are granted, unanimous consent to speak for a longer period of time once their two-minute limit has expired. Under the Senate rules, however, a motion to table is not debateable.

#### **POINT OF ORDER: GERMANENESS**

A member may rise from his or her seat to raise a point of order. Every point of order requires a ruling from the presiding officer. A member may appeal the ruling of the presiding officer and then the question before the body is: "Shall the decision of the chair stand as the decision of the Assembly or Senate?" The ruling is sustained by a majority vote of the members present. Ruling that an amendment is not germane to the underlying bill is a final disposition of the amendment; an amendment ruled nongermane cannot be revived.

The rules are specific about what is or is not germane. For example, Assembly Rule 54 provides that the Assembly "may not consider any assembly amendment . . . that relates to a different subject or is intended to accomplish a different purpose than that of the proposal to which it relates." Types of assembly amendments that are not germane include a general proposition that amends a specific proposition, an

amendment substantially similar to an amendment already considered, an amendment that negates the effect of another amendment previously adopted, and an amendment that substantially expands the scope of the proposal. Types of assembly amendments that are classified as germane include a specific provision that amends a general provision, an amendment that accomplishes the same purpose in a different manner, and an amendment limiting the scope of the proposal. The Senate Rules also specify that an amendment is not germane if it is irrelevant, inappropriate, or not in a natural and logical sequence to the bill's subject matter.

### **PASSAGE**

After all amendments are considered or otherwise disposed of, the bill is ordered engrossed and to a third reading. (Engrossing a bill simply means incorporating all approved amendments into the bill.) Under the rules, a bill is given its third reading on the second legislative day following the day on which it is given its second reading. Frequently, however, a member will ask for unanimous consent from the body to give a bill its third reading. If the member cannot get unanimous consent for a third reading, the member may move to suspend the rules so that the bill may be read a third time. A motion to suspend the rules requires approval by two-thirds of the members present.

At the third reading, the question before the body is passage of the bill, as amended. If the bill is approved after the third reading, the bill may be messaged to the other house for consideration in that house. Although the rules require that a bill that has passed one house cannot be messaged to the other house until the time for reconsideration has expired, a member of the majority will usually ask for unanimous consent to immediately message all of a day's actions to the other house. Occasionally a member who opposes the bill will object to immediate messaging if the member wishes to delay action on the bill and knows that the majority cannot get a two-thirds vote to suspend the rules.

### **CONFERENCE COMMITTEE**

If each house has approved a different version of the same proposal, and neither house will recede from its position or concur in the other's action, the leadership of both houses may form a conference committee. Under the joint rules, unless otherwise provided by joint resolution, a conference committee consists of three members from each house, with one member from each house being a member of the minority party. The members meet to discuss their differences concerning the proposal in question and try to reach a compromise acceptable to the majority in each house. If the members agree on a compromise, the committee produces a report implementing that compromise. The report is drafted as a "substitute amendment," which is an amendment that takes the place of the underlying proposal. Under the legislative rules, the report, once completed and submitted for consideration by both houses, cannot be amended, and a vote for final passage in either house cannot be reconsidered.

### **EXTRAORDINARY SESSION**

At the beginning of each biennial session, the legislature adopts a session schedule that sets forth the various days during the two-year period on which the legislature will consider proposed legislation and otherwise conduct its business. The legislature, generally, does not consider any new proposal after the last general business floor period ends. The legislature may, however, agree to convene an extraordinary session to consider all proposals concerning a specific subject. The rules that apply to a regular session apply to an extraordinary session, with certain exceptions. During an extraordinary session, committees only need to provide notice of hearings or other committee activities by posting notices on the legislative bulletin boards. A motion to postpone a proposal to a different day or time is not allowed, a motion to reconsider must be taken up immediately, and all motions to advance a proposal to a third reading or message a proposal to the other house may be adopted by a simple majority of the members present.

## **SUBMITTING BILLS TO THE GOVERNOR**

Under Joint Rule 34, after a bill has been approved by both houses, the chief clerk of the house in which the bill originated submits the bill to the governor's office as provided in the session schedule or by other legislative rule. The session schedule typically gives the chief clerk at least seven days, and as many as 30 days, following the end of a floor period to submit bills to the governor. However, under Assembly Rule 23 (4), a correctly enrolled bill may be immediately messaged to the governor on a motion or by directive from the Speaker of the Assembly.

Under article V, section 10 (3), of the Wisconsin Constitution, the governor has six days, not including Sundays, to veto a bill and return the bill to the legislature for a possible override. If the governor does not return the bill within that period, the bill becomes law, unless the legislature, by final adjournment, prevents the bill's return.

## **JUDICIAL REVIEW**

Courts will not intervene when the legislature ignores or violates its own rules. This is longstanding jurisprudence that is based on the legislative power being vested, by the constitution, solely in the two houses of the legislature. In 1892, the U.S. Supreme Court decreed that when an act is passed according to constitutional requirements, the court will not inquire as to whether the legislature complied with its own rules of procedure on the bill between its introduction and its passage.<sup>6</sup>

## **CONCLUSION**

The Wisconsin Constitution, along with well-established traditions, customs, and usages, grants broad authority to the state legislature to determine its own procedural rules. The rules are adopted to ensure a vigorous debate on matters that impact the electorate. The rules are enforced, and sometimes suspended, in order to implement the majority's will while respecting the minority's right to meaningfully participate in the legislative process. Because the lawmaking power is vested in the state Assembly and Senate, if state lawmakers have not violated any constitutional mandate, the courts will not intervene in any matter where the legislature may have violated its own rules of procedure.

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<sup>6</sup>*United States v. Ballin*, 144 U.S. 1 (1892).