
Making Laws is a series of publications that explain the lawmaking process of the Minnesota Legislature. This work is the fourth in the series and discusses bicameral agreement between the House of Representatives and the Senate. Please see the list at the end for other works in this series.

Executive Summary

Besides imposing bill processing requirements on each house, the constitution requires that both houses pass the same bill with identical content. If the House and Senate cannot agree on one document with identical language, the bill cannot be an act of the legislature presentable to the governor.

The Requirement of Bicameral Agreement. The constitution requires that both houses, acting separately and independently, pass the same bill with identical text.

The legislature has developed rules and procedures intended to ensure that every act it presents to the governor satisfies this constitutional requirement. The legislature's compliance strategy has three main components: companion bills, restricted passageways, and conference committees.

Companion Bills. The companion bill system fosters timely passage of the same bill in both houses. Companion bills are two bills—one introduced in the Senate and the other in the House—that are administratively linked to enhance bicameral bill management and coordination. Almost all bills going through the legislative process are companion bills.

Three Passageways. To promote the timely passage of a bill with identical content, legislative rules restrict further proceedings on a bill after both houses have passed it once. Only three paths forward lie open to a bill returning from the second house to the house of origin. One path is for bills that the second house did not amend. The other two are for bills that the second house amended: the house of origin may concur in the amendment, or it may refuse to concur and request a conference on the bill. The house of origin may not further amend the bill.

Conference Committees. Conference committees are part of the third passageway to bicameral agreement. A conference committee comes into being only when a bill's house of origin refuses to concur in an amendment to it by the second house. The legislature relies on

the third passageway—conference committees—to settle differences between the houses on the content of most complex or controversial bills. However, the manner in which conference committees operate has substantively changed in recent times from deliberation and negotiation, towards service as a procedural vehicle for leadership agreements.

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The Requirement of Bicameral Agreement

The state constitution imposes the requirement of bicameral agreement, which has two elements:

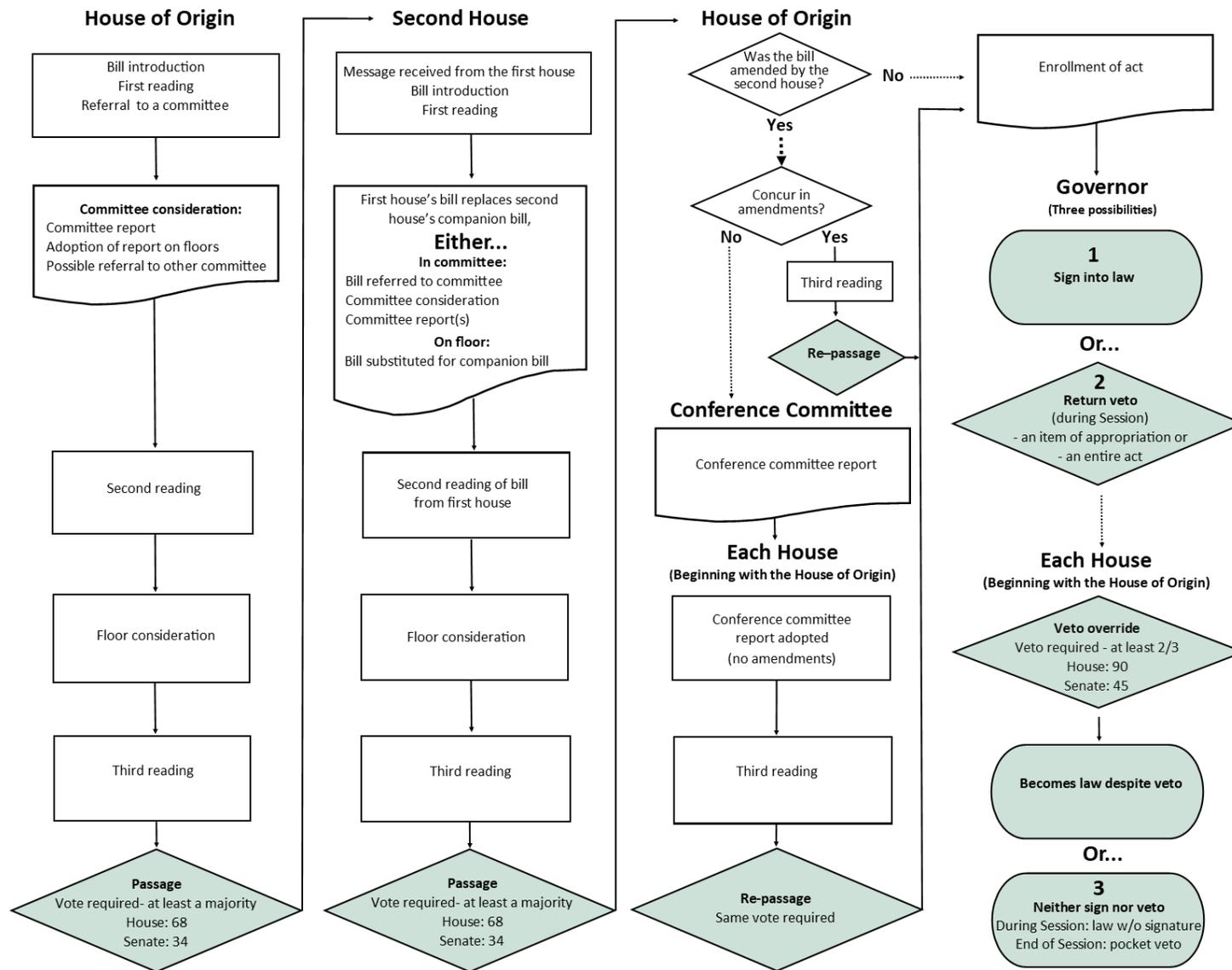
- **The same bill—one document—must pass both houses.**

The Senate and the House, acting separately and independently, 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.

- **The content of the bill—its text—must be identical.**

The document passed by the Senate and the House must have identical language. If the bill passed by one house differs from the bill passed by the other, the validity of the act will be called into question.

Overview of the Legislative Process



Companion Bills

The companion bill system is one means of complying with the constitutional requirement of bicameral agreement.

The two columns on the left of the flowchart suggest that bills are considered by the two houses in sequence—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 time make this impractical. Instead, bills on the same subject generally are introduced in both houses and move simultaneously through the legislative process in both houses.

Simultaneous and independent proceedings in the two houses on separate bills on the same subject put the legislature at risk of failing to comply with the constitutional imperative that both houses pass a single document. Some mechanism is needed to coordinate legislative activity in the two houses on the thousands of bills introduced each session to ensure that the same bill passes in both houses of the legislature. The companion bill system is this mechanism.

Companion bills help the two houses coordinate action on legislation

Companion bills are two bills—one introduced in the Senate and the other in the House—that are administratively linked to enhance bicameral bill management and coordination. Almost all bills going through the legislative process are companion bills.

There are two types:

True companions

True companions are two bills, one introduced in each house, that are identical when first introduced. True companions have the same Revisor document number. The two bills remain companions even though they may diverge greatly in content as they move through the two houses. The Revisor of Statutes prepares green and yellow jackets for companions to match up House and Senate files.

Designated companions

The two houses may agree to handle two bills as companion bills, even though they are not true companions. The chairs of corresponding committees in the two houses each may select a bill to be the main vehicle for legislation on some subject and agree to treat these two bills as companions. They inform the leadership, the secretary of the Senate, the chief clerk of the House, and the Revisor. Even though the two bills are not true companions when introduced, they can be handled in the legislative process as companions.

The partnering of a bill in the House and a bill in the Senate allows each house to work independently and simultaneously on the “same” legislation, 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, as required by the constitution.

The companion bill that first passes a house is the one acted on by both houses

This point in the process—when one of the companion bills is selected for action in both houses—comes when the second house begins considering a bill that has passed the first house.

When a house passes a bill, it transmits it to the second house, along with a message requesting that the second house act on the bill as well. The companion bill system obliges the second house to comply with this request—to put aside its companion bill in favor of action on the bill from the other house. This obligation derives from traditional comity between the houses; it is not spelled out in joint rules but expressed by the rules of each house separately. Consequently, the bill that eventually passes the legislature is the bill that first passes a house, not the second house’s companion to that bill.

A bill may originate in either house, with one exception. The constitution requires that “all bills for raising revenue” originate in the House of Representatives, a requirement known as the origination clause. Apart from this constitutional restriction, which companion bill makes it through a house first is the result of both happenstance and strategy. For many bills, the house of origin is of little consequence and is therefore left to the natural vagaries of committee schedules and the flow of floor business in the two houses. On some controversial or important bills, the house of origin may be of considerable strategic, political, or practical importance and therefore a matter for conscious decision by bill authors or leaders in one or both houses. House and Senate leaders also may try to coordinate action on some companion bills—especially those likely to engender lengthy floor debate and conference committee negotiation (e.g., the budget bills)—in order to expedite work on the bills and make the most efficient use of committee and floor time in both houses.

The bill from the first house displaces its companion in the second house

The substitution of the bill from the first house for its companion in the second may occur either in committee or on the floor, depending on the location of the companion in the second house.

In committee

When the bill from the first house is introduced and given its first reading in the second house, if the second house’s companion bill is still in committee, then the bill from the first house is referred to that committee. The committee now possesses both

companion bills. When (and if) the committee takes up the bills, it acts on the bill from the first house rather than the companion bill.

The author of the companion bill in the second house assumes the role of the author of the bill from the other house. Proceedings on the bill from the other house then follow the usual course in the second house: after all committees with jurisdiction report the bill, it receives a second reading, followed by floor consideration, third reading, and finally the vote on passage.

The displaced companion bill normally remains in the committee permanently and dies there at session's end without being reported.

On the floor

When the bill from the first house is introduced and given its first reading in the second house, if the companion bill in the second house awaits action on the floor, having already finished with the committee process, then the substitution of bills occurs on the floor rather than in a committee. The Senate and House use different procedures for making the substitution, but the result is the same in both houses: floor proceedings on the second house's companion bill are "indefinitely postponed," and the bill from the first house receives its second reading and replaces the companion bill in a list of bills awaiting floor action. When (and if) the bill is taken up for floor action, the author of the companion bill in the second house assumes the role of the author of the bill from the other house.

These bill substitution proceedings in the second house are depicted in the set of boxes near the top of the second column of the flowchart on page 3.

The second house may amend the first house's bill, and often does

The substitution of one bill for the other does not mean that the second house must accept the *content* of the bill from the first house, only the *document* (i.e., the file number). In a bicameral legislative system, both houses must be able to act on and amend the same bill. Joint legislative rules give either house "the power to amend any bill, memorial, or resolution passed by the other house."

Naturally the second house often prefers the content of its own bill, so the bill from the first house is often amended as a matter of course whenever its language differs from the second house's companion bill. In fact, a Senate rule requires this whenever the substitution of bills occurs on the Senate floor, unless the Senate author objects. The House rule, on the other hand, maintains the Senate language unless the House author chooses to substitute the House language.

On the Senate floor

If the Senate companion bill is on the floor when a bill from the House receives its first reading in the Senate, both bills are referred to the Senate Committee on Rules and

Administration for comparison. The comparison is done by the Revisor's Office under the direction of the committee. If the text of the House bill is found to differ from the text of the Senate companion bill, the committee is required to recommend that the text of the Senate bill be substituted for the text of the House bill. When the committee report is adopted by the Senate, the effect is to amend the House bill by replacing all of its content with the content of the Senate bill, leaving only the House file number. If the Senate author prefers some or all of the House language, as sometimes happens, when the bill later comes up for consideration the author must move to amend the House bill to restore the desired House language and justify this choice to fellow Senators.

On the House floor

The House takes the opposite approach when substituting bills on the floor: it automatically resolves differences in favor of the content of the Senate bill, not the House companion. If the House companion bill is on the floor when a bill from the Senate receives its first reading in the House, both bills are referred to the chief clerk for comparison (rather than the rules committee, as in the Senate). The comparison is done by the Revisor's Office under the direction of the clerk. The comparison shows whether the text of the two bills is identical or not. But either way, the House accepts the text of the Senate bill, not just its file number. If the House author prefers some or all of the House language, which is usual, when the Senate bill later comes up for consideration, the author must move to amend the Senate bill to insert the desired House language.

In committee

When the substitution of one bill for the other occurs in committee rather than on the floor, both houses use the House approach to the bill's content. Committee proceedings begin with the bill from the first house, with its content intact. The author in the second house who prefers some or all of the content of the second house's companion bill moves to amend the bill from the first house accordingly.

Because the bill from the first house may be—and often is—amended in the second house, the bill needs to be engrossed to incorporate amendments into the text to make the bill readable. As explained in a separate work in this series *Forms of Action*, because neither house is deemed to have the authority to engross bills of the other, engrossments of bills in the second house are called *unofficial* engrossments. Unofficial engrossments by the second house, like engrossments by the house of origin, are prepared by the Revisor's Office.

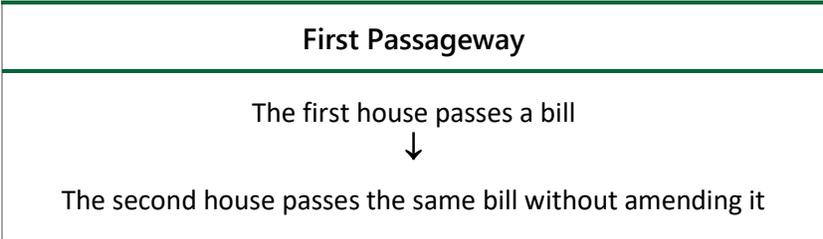
Three Passageways

When the second house passes a bill received from the other house, it returns the bill to the house of origin with a message describing the actions of the second house. Both houses now have passed the same document. This satisfies one aspect of the constitutional requirement for bicameral agreement. But there is a second constitutional demand: not only must the same document pass each house, the content of the document, as it passes each house, must be identical.

To promote the timely passage of a bill with identical content, legislative rules restrict further proceedings after both houses have passed the same bill once. Only three paths forward lie open to a bill returning from the second house to the house of origin. One pathway is for bills that the second house did not amend; the other two are for bills that the second house amended. The three passageways are depicted in the flowchart on page 3 by the three lines leading from the third to the fourth column (to enrollment, and then to the governor).

First Passageway: The first and second house pass the same bill with identical content

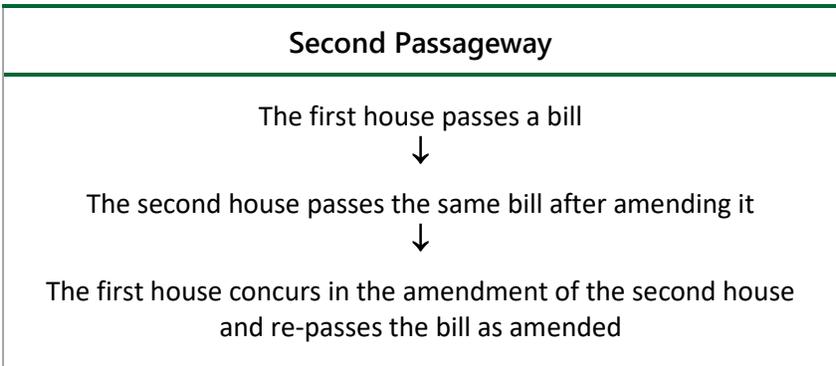
If the second house returns a bill to the house of origin, after having passed it without amendment, the legislative process is complete. Each house has passed the same document with identical content. The constitutional requirements for bicameral agreement have been satisfied, and no further legislative action is necessary, except to enroll the bill and present it to the governor.



This pathway is depicted by the topmost of the three lines leading to the fourth column in the flowchart on page 3.

Second Passageway: The first house accepts the second house’s amendment to the bill

If the second house amends the bill, the message accompanying the returning bill requests that the house of origin “concur in” the amendment of the second house. The house of origin now must decide whether to accept the amendment of the second house. If it does, the bill takes the second permitted passageway, depicted in the flowchart on page 3 by the middle line leading from the third to the fourth column.



Navigating the second passageway requires several steps in the house of origin. First, the house must vote to concur in the amendment of the second house.¹ The chief author of the bill usually makes the motion to concur, explaining why the amendment by the second house is acceptable. Sometimes, the authors in the two houses have agreed privately on an amendment before it was offered in the second house; other times, the author in the house of origin was not consulted about the second house’s amendment but finds it acceptable. Concurrences are useful to leadership, allowing a vehicle for adoption of a leadership agreement.

To prevail, the motion to concur requires a favorable vote from at least a majority of those voting on the question (not a majority of all members). If the motion to concur prevails, which is usual, the first house has adopted the second house’s amendment to the bill.

Two more steps then follow: the house gives the bill another third reading, as amended, followed by another vote on passage. Unlike the vote to concur, the vote on passage must meet the usual constitutional and legislative requirements: passage requires a roll-call vote and the support of at least a majority of all the members elected to the house, not just a majority of those voting on the question.

If the bill again passes the first house, this time as amended by the second house, the legislative process is complete. Each house has passed the same document with identical content. The constitutional bill passage requirements have been satisfied, and no further legislative action is necessary, except to enroll the bill and present it to the governor.

If support for concurrence is lacking, either the author’s motion to concur does not prevail or there are an insufficient number of votes to pass the bill as amended. If left to stand, this result in the house of origin—inaction—would doom the bill, unless the author persuades a sufficient

¹ In 2019, the House adopted a rule to require a 12-hour wait on concurrences with Senate files in order to allow more transparency to what is a final action on a bill that would then go to the governor’s desk.

number to reconsider.² When faced with this prospect, therefore, the author usually changes course and turns the bill into the third passageway by moving to refuse to concur.³

Third Passageway: The houses disagree and appoint a committee to resolve their differences

The third passageway comes into use when the house of origin refuses to concur in the amendment of the second house. This path to bicameral agreement is longer than the other two.

After considering the amendment of the second house, the author in the house of origin may decide that the changes in the bill are unacceptable. The author then moves that the house of origin refuse to concur in the amendment of the second house. To prevail, the motion to refuse to concur requires a favorable vote from a least a majority of those voting on the question (not a majority of all members).

Occasionally, an author's motion to refuse to concur does not prevail (or is withdrawn by the author to avoid defeat). Perhaps a majority of members support the second house's amendment or fear that a conference committee on the bill will deliver a more objectionable result than the bill before them. If the motion to refuse to concur is defeated or withdrawn, the bill is doomed by inaction in the house of origin. The author wishing to move forward either must persuade a sufficient number to reconsider or—the usual choice—change course and turn the bill into the second passageway by moving instead to concur.

Usually, however, the author's motion prevails, and the house of origin refuses to concur in the amendment of the second house. Now the two houses have passed the same document but with differences in content: the second house has altered the first house's bill in ways that the first house rejects. If neither house will give way to the other, they have arrived at an impasse. Unless the dispute can be resolved, the bill cannot become an act of the legislature or a law.

The conference committee is the legislature's method of trying to resolve disputes between the houses over the content of a bill. Legislative rules direct the house of origin of a bill, whenever it refuses to concur in the amendment of the second house, to request the appointment of a conference committee on the bill. In fact, both houses make this request an integral part of the motion to refuse to concur.

Conference committee proceedings are described in some detail in the next section. Briefly, a conference committee consists of a few members of each house who are appointed to confer on the matters in dispute and find a way through or around the impasse between the houses.

² A failure of a vote to concur is not the same as a motion to not concur. Both actions are about concurrence, the first being an author's motion and the second, an opponent's.

³ Occasionally an author in the house of origin, dissatisfied with the actions of the second house, may simply abandon the bill, making no motion whatever on the question of concurrence.

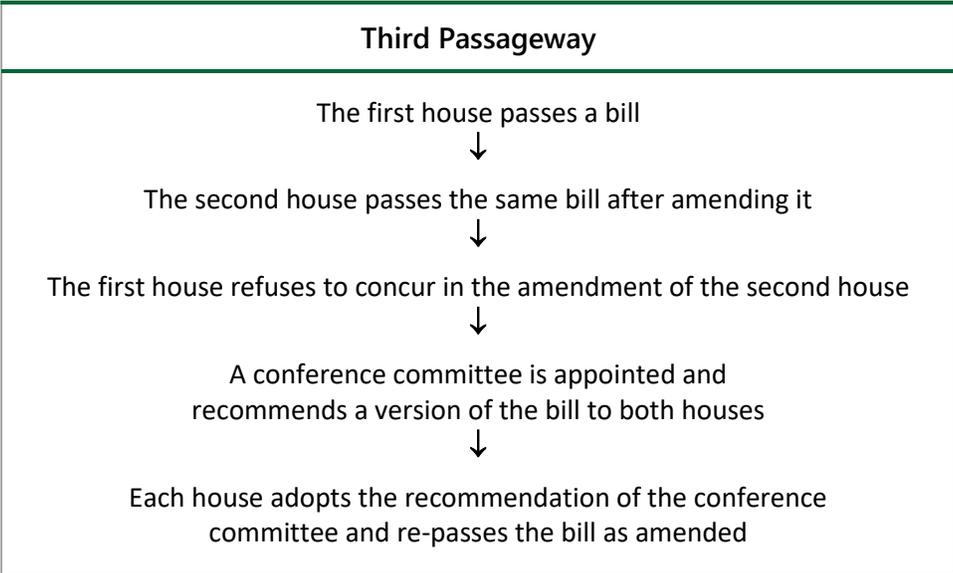
The object of the conferees, as they are called, is to report a bill with content that both houses will accept—that is, pass without further amendment.

If the conference committee reports the bill, the house of origin, followed by the second house, must:

- adopt the report, which has the effect of amending the bill as recommended by the conference committee, and then
- without further amendment, give the bill another third reading and another vote on passage.

The vote on passage must meet the usual constitutional and legislative requirements: a roll-call vote and support from at least a majority of all members elected to the house. If the bill again passes both houses as amended by conference, the legislative process is complete. Each house has passed the same document in identical form. The constitutional bill-passage requirements have been satisfied, and no further legislative action is necessary, except to enroll the bill and present it to the governor.

This is the third passageway depicted in the flowchart on page 3 by the bottom line leading from the third to the fourth column:



Many complex bills go by way of the third passageway, requiring a conference committee

Under current legislative rules and practices, a bill must follow one of these three pathways to bicameral agreement on the content of the bill. Most bills that pass the legislature do so by way of the first pathway or the second—that is, without a conference committee. Either the second house does not amend the house of origin’s bill, or the house of origin concurs in the amendment of the second house.

The other bills take the longer route, in which a conference committee is used to settle differences between the houses about the content of the bill. The bills taking this third route include nearly all complex, contentious, and important legislation, including the omnibus budget bills.

This reliance on conference committees to settle the content of so much important legislation provokes controversy. Critics assert that conference committees are too powerful, constituting a “third house” of the legislature composed of a chosen few whose work the rank and file have little practical choice but to accept. Defenders respond that conference committees are a more efficient, time-saving, and open, public way of settling interhouse differences than the alternatives.

During the past decade, criticisms of conference committees have given way to criticisms of meetings between the governor and legislative leaders. Particularly so for the omnibus budget bills and highly contentious policy proposals, conference committees have tended to be used as merely receptacles into which a leadership deal is deposited. This may be a short-term trend, caused by years of divided government, or it may be more permanent, a change in how decisions are made. It is clear that leadership control is enhanced in a divided legislature, diminishing the negotiation leeway allowed to conference committee chairs.

Conference Committees

As just explained, a conference committee is a part of the third passageway to bicameral agreement. A conference committee comes into being only when the house of origin refuses to concur in an amendment to a bill by the second house.

Each house appoints an equal number of conferees—either three or five

A conference committee consists of either six members (three from each house) or ten members (five from each house). Traditionally, most conference committees have six members. Ten-member conference committees are used to deal with important, complex, or controversial bills (for example, the omnibus budget bills).

Procedurally, conferees are appointed first by the house of origin, then by the second house. After deciding not to concur in the amendment of the second house, the house of origin appoints conferees and transmits a message to the second house asking that it do the same. The second house complies with this request by appointing conferees and notifying the house of origin of this action.

During this period—after the house of origin appoints conferees but before the second house does so—either house may still reconsider its position. The second house, discovering that the house of origin is adamant, may recede from its amendment and repass the bill with content acceptable to the house of origin. Or the house of origin may change course and decide to concur in the amendment of the second house and repass the bill with the content preferred there. Last minute about-faces on the floor of either house are rare. Even if one house is willing

to give way, a quick conference committee often is the most efficient way to accomplish this result.

Conferees are chosen by the leaders of the majority political caucus in each house

In the House, the speaker appoints members to conference committees, in consultation with others. The appointments are reported on the floor as “Announcements by the Speaker” and entered into the House journal. Senators are appointed to conference committees by the Subcommittee on Committees of the Committee on Rules and Administration. The subcommittee is chaired by the Senate majority leader and dominated by leaders of the majority caucus. The appointments are reported by the subcommittee to the floor and entered into the Senate journal. Both houses also publish the names of conferees.

The lead conferee from each house is the member whose name is listed first when the conferees are announced or reported. Usually the chief author of the bill in each house is appointed as the lead conferee. Other conferees typically include chairs or members of committees that considered the bill, authors of important amendments to the bill, members who have expertise in the subject, and members who will represent the position or interests of the house or important legislative groups or leaders within the house. Usually (but not always) the lead conferee and the majority of conferees from each house are members of the majority political caucus, and often (but not always) the minority caucus of each house is represented among the conferees.

The selection of conferees may be a decision of considerable strategic importance. Members who want to have an influence on the content of a bill essentially must *ask* to be appointed to the conference committee. This gives the appointing authority leverage, not just over the deliberations of the conference committee itself, but also over initial floor consideration of the bill before it goes to conference. For example, a member who has serious reservations about a bill may nonetheless vote for it, or may be induced to vote for it, in hopes of being appointed to the conference committee.

In reaching agreement, conferees have much latitude but not complete freedom

Conference committees in the Minnesota Legislature are mostly “open”—that is, neither house formally instructs or charges the conferees on what they must or cannot agree to. But conferees are not completely free to do whatever they please. They are constrained by practical considerations, by the expectations of the appointing authorities and other members, and by legislative rules.⁴

⁴ The state constitution imposes some constraints on conference committee agreements as well. For example, the constitution says that laws may not “embrace more than one subject” and that “bills for raising revenue” must originate in the House.

The position previously taken by each house on the bill is one constraint. Each house generally expects its conferees to support the position taken by the house on the matters in dispute, giving way just enough to produce an agreement, but no more. A Senate rule says that the senators appointed to a conference committee must support the Senate's position on the matters in dispute. The House has no such explicit rule but a similar customary expectation.

For some conferees, the pressure to take the side of the house they represent on all matters in dispute may conflict with other commitments—to leaders with other views, to important dissenting factions in the house, to personal convictions, to the interests of constituents. Also, of course, conferees normally have to give way on something if they hope to reach agreement with the other side. But conferees cannot completely confound the expectations of the house they represent, for to succeed they must return with something that can pass there without amendment, understanding that the reason the conference committee exists in the first place was their own house's refusal to agree to the other house's proposed language of the bill.

Another constraint on conference committees comes from legislative rules that limit the freedom of conferees to add new provisions to a bill that were not in either version of the bill as it passed the two houses. These extraneous provisions can be conferenced if "referred" as amendments to the conference committee by leadership in either body. But extraneous provisions should not otherwise be included.

- A conference committee cannot add a new provision that creates certain types of government boards to which a member of the legislature may be appointed.
- A conference committee cannot add a new provision that delegates administrative rulemaking authority to an executive branch agency or that exempts an agency from rulemaking procedures.
- A conference committee cannot include in its report new provisions that are not germane to one or both versions of the bill that was committed to the conference.

The two houses define germaneness a little differently. A joint rule replicates the standard for germaneness found in Senate rules: "A provision is not germane if it relates to a substantially different subject or is intended to accomplish a substantially different purpose" than either version of the bill committed to conference. A House rule adds another standard aimed specifically at outlier provisions imported from other bills: a conference committee must limit itself to subject matter contained in the two versions of the bill committed to conference or "like subject matter contained in a bill passed by the House or Senate." These germaneness standards are somewhat amorphous, and members of a conference committee may differ on their application to a provision proposed to be added. But however ambiguous they may be in their application, the germaneness rules do require conferees to consider the pertinence of new provisions they add to a bill.

Conference committees on the large omnibus bills that make up the state's budget are not bound by the budget controls and limits that each house establishes during the legislative process, as described in a separate work in this series *Making the Budget*. Were conferees

bound by these separate House and Senate budget limits, no agreement between the houses on the budget bills would be possible—unless both houses happened to adopt identical limits. Although the budget limits set earlier by each house are lifted at the conference committee stage, any tendency of conferees to work out disputes by sweetening the pot is curbed by a legislative rule requiring permission: a conference committee may not recommend appropriating a larger amount than the amount authorized by the more generous version of the bill committed to conference, without first getting permission from the leadership of both houses.

A majority of the conferees from each house must support any agreement

A conference committee has two sides, one appointed by each house, meeting jointly. Each of these sides must agree to decisions about the bill. Hence, a majority of the conferees from each house must agree. It is not sufficient that a majority of all conferees agree. 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. This standard for agreements also applies to all subsidiary procedural questions raised during a conference committee.

Conference committee proceedings may be short and sweet or long and agonizing

Each conference committee follows its own road to some extent, because it is unique—a temporary, *ad hoc* committee selected to perform a particular function in a certain time with a singular mix of participants and issues. Prior to 2010⁵ however, conference committee procedures had become gradually more regular, more uniform—and more like standing committee procedures.

Preparing

Before a conference committee meets, legislative staff usually prepare materials showing the differences between the Senate and House versions of the bill. Conferees from each house may prepare themselves by reviewing these materials and discussing the issues with staff, with each other and other members, and with outside groups and individuals interested in the outcome.

Sometimes the lead conferees from each house meet informally before the conference committee assembles. This is called “pre-conferencing” the bill. The lead conferees have various goals in mind: to prepare for the meeting, to save meeting time, to establish rapport, to avert a public brawl over sensitive issues, or to better control the result.

⁵ After 2010, with the legislature more often divided by body, conference committees more often became vehicles for leadership agreements.

At times, preconference discussions produce a satisfactory agreement, making a meeting of the conference nearly superfluous. Occasionally, there is no meeting at all: to save time the conference committee report is “round-robin-ed” for signatures. Open-meeting rules usually inspire at least one brief meeting to review and formally approve the agreement in public.

Meeting—in public and in private, by day and by night

The legislative open meeting law and supporting legislative rules require conference committees to make decisions in public meetings scheduled and announced in advance, as much as practical. (In the past, conference committees customarily met in private. In Congress and some states, they still do.)

The wording of the legislative open meeting law and legislative rules allows room for private discussion among conferees, even a quorum of conferees, as long as no action is taken and no decision made. Private meetings of a quorum are somewhat rare, but conferees often engage in private discussions with each other, particularly on big or difficult bills. Especially common are private meetings between the two lead conferees and among conferees from one or the other house. On big, complex bills, public and private meetings may alternate: a public meeting is followed by private meetings among various conferees and others, then by another public meeting.

Conference committees generally meet publicly during the day or evening. In the past, conference committees met publicly at night—sometimes all night. In part this was for lack of a better time, because most conferences occur in the closing weeks of the legislative session when both houses are in floor session for long hours most days. In recent years, the legislature has adopted rules restricting late-night public conference committee meetings—between midnight and 7:00 a.m. Both houses also now try to schedule floor sessions to allow conference committees more time to meet in the afternoons and evenings rather than late into the night. The rule prohibiting meeting after midnight can and has been waived by adoption of a concurrent resolution allowing all-night meetings, as occurred in 2016.⁶

Getting started

The lead conferees serve as co-chairs at meetings of the conference. A joint rule adopted in 2010 requires that the presiding officer change each day, whether the conference committee meets that day, or not. Sundays and holidays are exceptions. This alternation of authority between the co-chairs can have strategic implications during

⁶ A joint and concurrent resolution adopted by both bodies is essentially a temporary joint rule, and can do many things, including suspending a rule, setting a date for adjournment, or adopting a temporary joint rule.

later conference committee proceedings, because the holder of the gavel is responsible for calling—or not calling—the next meeting.⁷

The proceedings typically begin with a presentation and discussion of the issues in dispute between the houses. The conferees from each house explain their contrasting positions on various provisions in the bill, defend their views, question and criticize the position of the conferees from the other house, and, particularly in the early going, enlist support from experts and citizens in the audience.

In these initial exchanges, the conferees may appear inflexible and adamant, intent only to bolster and protect their positions on the issues. But this early sparring also is a form of negotiation. It allows the conferees to examine the disputes on the merits, to test the resolve and reasoning of other conferees on various points, and begin to explore ways of reconciling the differences.

Taking testimony

Some meetings of conference committees, even when open to the public, have been devoted entirely to discussion among the conferees. Occasionally, a question might be asked of someone in the audience, but testimony on disputed matters in the bill has often been neither invited nor permitted. The amount of testimony allowed is a choice of the chair, and extensive testimony can divert from the goal of reaching final agreement.

However, testimony can serve some functions. Prior to 2010, conference committees commonly allowed, even requested, considerable public testimony, but only on issues in dispute between the houses. Full public hearings on a bill—the norm for standing committees—are unusual for conference committees. But on controversial or difficult matters, a conference committee meeting may take on the quality of a regular committee hearing, with hours of testimony on both sides of an issue. One positive aspect of this practice is the venue such public testimony provides for executive branch and public concerns.

Bargaining

Some conferences reach agreement easily and quickly. Conferees from one house may conclude that the other house actually has the better position on an issue. On other matters, minor changes in wording may satisfy both sides. On still others, it may become apparent that the differences are not of great moment and can be dealt with by old-fashioned horse-trading. In such cases, conferees may begin to “clear the decks,” agreeing on the easy or minor issues one-by-one, until they finally isolate and find a resolution to each of the more substantive disagreements.

⁷ As chairs have struggled with this rotation, one response has been to refuse to attend a meeting called by the other body's chair. The choice to meet or not to meet, and when, is an ongoing tool of political wrangling.

For other conferences, agreement is more elusive, not amenable to issue-by-issue settlement or horse-trading. It is in the nature of things that the thorniest problems, the most important questions of law and policy, the most entrenched differences of opinion among legislators and voters, and the largest and most complex bills are visited upon conference committees. Legislators appointed to contentious or complex conferences find themselves peering across apparently unbridgeable divides or groping uncertainly through dozens or hundreds of disputed points, all interrelated in murky ways both substantively and politically. Faced with this sort of conflict or uncertainty, conferees may dig in early, stubbornly resisting agreement on anything, even very technical and minor issues, out of a concern that an early concession on one point may have unpredictable consequences in negotiations later on other points.

Finding a way through or around the resulting gridlock may require long hours, days, even weeks of analysis, explanation and counter-explanation, pro and con testimony, vigorous contention, edgy negotiations on individual items, offers and counter-offers, the ferrying back and forth of “package deals” trading one set of concessions for another, interspersed with occasional displays of annoyance or outrage. Other issues may also be the personalities of the chairs or the intransigence of their policy positions.

Bogging down

After days or weeks of fruitless grappling, when no avenue opens to agreement, the proceedings may enter a stage marked by signs of apparent failure. Attitudes harden. Conference committee meetings become gradually more quarrelsome. Meetings become irregular and unpredictable. A scheduled meeting is aborted because conferees from one house do not appear; another ends unexpectedly with the abrupt departure of furious conferees. Meetings may cease entirely for a time, as face-to-face negotiations are replaced by documentary bombardments flung back and forth. Smaller subconferences break out to negotiate particular issues, and alert members in both houses begin scrambling to find other homes—another bill, another conference committee—for important provisions.

Failing and succeeding

When a conference appears to be subsiding into utter ruin, it is possible for the two houses to discharge the floundering conferees and appoint others in their place. This is rarely done. More often when a conference verges on collapse, the leaders of the two houses intervene in an effort to help work out a compromise or even to force one upon reluctant conferees. If these rescue efforts fail, both houses may resort in desperation to lobbing “missiles”—newly minted, take-it-or-leave-it bills—from chamber to chamber. Occasionally, this works. More often it does not, and the bill—sometimes an important one—simply dies in conference as session time, energy, and patience run out. (For the disposition of such a bill at the end of the first year of regular session, see a separate work in this series *Forms of Action*.)

However painfully and reluctantly, the conferees often discover a way through or around the standoff. A settlement emerges at last from some combination of the forces at work in such proceedings—goodwill, reason, exhaustion, deadlines, doggedness, despair, pressure from other legislators and officials, and recognition that the citizenry depends upon some legislative decision, however imperfect.

The leadership agreement conference

There is only one essential item that must be agreed upon by the legislature and governor. That is the appropriation of a balanced budget that meets the constitutional criteria. Since 1858, Minnesota has achieved a balanced budget.

Many other provisions are important, but not required. Authorizations of federal funds, or implementation of court agreements, can amount to hundreds of millions of dollars for the state. Policy decisions can affect millions of lives. Because these important decisions are not constitutionally defined, the legislature and governor can fail to agree, and in fact this has happened.

Prior to 2010, agreements between leaders were often structural, short bullet-point decisions that fed into actual negotiations by chairs and members, with state agencies present. Since 2010 (and occasionally before that) end-of-session agreements have often come via extended negotiation sessions with legislative leaders and the governor. Stories are told about the “good old days” when the governor and legislative leaders would negotiate a series of bullet-point agreements, and communicate these to conference committee chairs, who would then make extensive decisions on their own. The governor and legislative leaders would then troubleshoot, fixing problems and mending breakdowns.

This practice of involving chairs was not codified but was instead the product of the historical culture of lawmaking. Since 2010, the pattern has shifted to meetings with the governor, at which omnibus bills are at times negotiated one by one and in detail. The result is a series of deals (or failures to make deals) that are delivered to conference committees, sometimes at the last minute, and often without public input.

The “leadership agreement conference” is arguably a product of divided government, but some have also argued that in the face of a divided polity, where social media trumpets each decision and interest groups track decisions in detail, only the actual leaders can deliver compromise. Whatever the explanation, it is also becoming clear that the functions of bill writing, policy vetting, fiscal accounting, and workflow management are not designed to successfully fit within leadership negotiations as structured to date.

The product of a successful conference committee is a committee report on the bill

When the conferees (or leadership) reach an agreement, the conference produces a conference committee report. The report recommends that both houses pass the bill with the content agreed upon by the conferees. The required number of conferees—at least a majority from each house—must sign the report, indicating their support.

A conference committee report can be very short, recommending that one house simply agree to the version of the bill passed by the other—either that the house of origin accept the amendment of the second house or that the second house abandon its amendment and accept the bill as it came from the first house. Usually neither house yields so completely to the other, so most conference committee reports recommend that one of the two houses accept the bill passed by the other, but with various changes, small and large.⁸

Conference committee reports are prepared by the House and Senate staff working with the conference and put into final form by the Revisor’s Office. After the report is signed by the required number of conferees, it is returned to the Revisor’s Office, where it joins the original bill (which is deposited there by the house of origin at the time conferees are initially appointed). The Revisor’s Office delivers the report along with the original bill to the house of origin.

Each house must adopt the report and repass the bill without further amendment

Neither house may amend a conference committee report. Legislators in both houses have but two options now: accept the bill as recommended by the conference committee or reject it.

Reports of conference committees are not a regular order of business in either house. In the House, a report on a House bill can be taken up at any time, while a report on a Senate bill normally is taken under the order of business “Messages from the Senate.” In the Senate, conference reports usually are received as messages and then acted upon under the order of business “Motions and Resolutions.”

Except during the closing days of a regular session (typically the last Friday through Monday), joint rules require that a conference committee report be available to the members at least 12 hours before it is taken up on the floor. During the closing days, when the 12-hour limit does not apply, it is common for conference committee reports to be taken up on the floor almost as

⁸ Technically, a report can accomplish this in one of two ways, recommending either: (a) that the house of origin concur in the amendment of the second house and that the bill be further amended in specified ways, or (b) that the second house recede from its amendment and that the bill be further amended in specified ways. If the changes to the bill are very simple, the report may be in the form of a page-and-line amendment to the bill. Usually the amendments are more extensive, and the report takes the form of a delete-all amendment to the bill. This has the advantage of displaying the whole agreement recommended by the conferees and reducing the risk of technical errors in the final text.

soon as they become available. (Availability may be in the form of a paper copy, a copy printed in the journal, or an electronic copy accessible on the Internet.)

Consideration of a conference committee report is a four-step process in each house:

- **Receipt of the message.** The house receives and announces the presence of the report.
- **Adoption of the report.** When the conference committee report comes up for consideration on the floor (which may be right after the message or later), the lead conferee begins by moving that the house adopt the report. The lead and other conferees then summarize⁹ and explain the main features of the proposed compromise, focusing on how the issues in dispute between the houses were resolved by the conferees and how the recommendations in the report differ from the positions taken earlier by the house when it passed the bill.

Other members may—and usually do—ask questions, which lead to exchanges between the conferees and others and then to generalized debate about the terms of the agreement. Some conference committee reports are adopted quickly, with few questions and little or no debate. Others may be strongly opposed, producing intense debate and a close vote, occasionally even a vote to reject the conference report.

When discussion of the report concludes, the house votes on the initial motion of the lead conferee to adopt the report. If the motion prevails, the effect is to amend the bill accordingly. This action requires the support of a majority of those voting on the question (not a majority of the whole membership).

- **Third reading, as amended.** After adopting the report, the house gives the bill another third reading, as amended, signifying that it is ready, once more, for the vote on passage.
- **Vote on passage.** Finally—perhaps after more debate on contentious issues—the house votes on whether the bill should pass, as amended in conference. The usual constitutional and legislative requirements for bill passage apply, requiring a roll-call vote and support from at least a majority of all the members elected to the house, not just a majority of those voting on the question.

The house of origin acts on the conference committee report first. If the house succeeds in adopting the report and passing the bill again, the bill and the report are transmitted to the second house with a message indicating the action of the house of origin. The second house then must go through the same four steps.

⁹ Joint Rules require the author of the bill to describe the changes made in the conference committee report. The accuracy of this description is relied upon by the body, especially if time is too short to read or understand the bill.

If either house rejects the conference committee report, or adopts the report and then does not pass the bill, the bill fails—unless, time permitting, it is returned to conference for more work. Often time does not permit, for adjournment draws near, and rejection is likely to doom the whole bill for the year. Members may conclude that any bill, however flawed, is better than no bill. For this reason and others, conference committee recommendations are not often rejected on the floor.

If both houses adopt the recommendations of the conference committee and repass the bill as amended, the legislative process is complete. Each house has passed the same document in identical form. The constitutional bill-passage requirements have been satisfied, and no further legislative action is necessary, except to enroll the bill and present it to the governor.

The role of conference committees has changed

The role of conference committees in a given session depends on the uses that legislative leadership assigns. The past pattern of conference committee usage has shifted over the last decade, with a lowering commitment to the use of conference committees to make decisions about the state budget.

Conference committees often reconcile nonbudget bills, some of which have large and unwieldy issues (cannabis, Vikings stadium, Prairie Island cask storage, etc.). Smaller policy differences are often worked out in short conference committees. However, the state budget is passed every two years, using between nine and 12 large budget conference committees.

In 1986, a study of the Minnesota Legislature, sponsored by the legislature and carried out by the Humphrey Institute of Public Affairs at the University of Minnesota, called out conference committees as a problematic tool for reconciliation of differing takes on budget and policy issues. In “The Third House” the Humphrey Institute noted the secretive decision-making, and inclusion of unique items, that marked out the conference committee stage of the legislative process as prone to abuse. That study resulted in reforms such as requiring public meetings, recording those meetings, enforcing open meeting laws, and implementing rules to limit the insertion of new items into negotiations.

Nearly 40 years later, the dynamic has shifted at the legislature. Leadership negotiations often eclipse the conference committees as a tool for finishing the legislative session. There are many markers on the trail to this shift in the operating mores of the legislature:

- In 2007, many final bills were written in the Senate Rules Committee, and sent to the House for concurrence on Senate changes, avoiding conference committees entirely.
- In 2011, during the government shutdown, special unappointed working groups with executive branch officials and subsets of members worked within the closed State Capitol to finalize bills to be adopted in a special session.
- In 2013, an attempt was made to revitalize the conference committee process, in part due to a recognition that special session negotiations with the governor empower the executive branch.

- In 2015 and 2017, extended negotiations by leaders resulted in deals that were written quickly and passed by the legislative bodies in conference committees that met seldom and did not “vet” or reveal deals. The leadership conference process (see chart below) fed decisions into conference committees that were “manila envelopes” for deals to be placed within for easy passage.
- In 2019 and 2021, a divided legislature required detailed dealmaking by a small group of members and the governor. Arguments were made that the short time available, forced by the 1971 flexible sessions amendment to the Minnesota Constitution, was making the legislative process unworkable. Others blamed the nature of divided government.
- In 2023, control of government by one party allowed conference committees more leeway in creating deals between bodies governed by the same party. The size of the surplus and the huge amount of legislative language made conference committees difficult to manage, because of the scope of the deals being made. The result was a successful session, raising the question: Are conference committees just more workable with single-party governance?

Conference Committee Approaches

Conference Committee Process (old school)	Leadership Conference Process (of late)
Conference committees are appointed two to three weeks prior to the end of session and meet publicly for at least two weeks of meetings	Leadership meetings occur sporadically over the last two weeks of session
Conference committees produce daily, one-off drafts of specific issues of contention, which can be reviewed by executive branch officials, lobbyists, and the public	Leadership discussions produce lists of agreements and issues-in-contention, and often these lists are themselves disputed
Over the weeks of public meetings, issues are refined, bill drafts are circulated, and issues are solved—with involved experts and agencies in the room and making suggestions	The actual bill drafts are often not written until final decisions are made
Many members are on a large conference committee and do make many decisions	Conference committees are “manila envelopes” into which leadership deals are dropped
The legislative leadership and governor circulate bullet point lists of decisions and leave the rest to the chairs. Occasionally, the governor submits a letter to guide the negotiations	Leadership often writes all of the bills and solves all of the issues, taking on a huge workload; state agencies in private meetings insert their changes without public knowledge

Conference Committee Process (old school)	Leadership Conference Process (of late)
The conference committee process is hard to follow, with many meetings going on in various places around the Capitol, creating a natural target for savvy lobbyists and members	The leadership process creates a way for commissioners, the governor, and legislative leaders to dominate the process and exclude the public, the majority of legislators, and interested lobbyists
The weeks of meetings and the involvement of many members create an impetus to finish, to avoid wasting the work	Leadership-brokered deals are often passed quickly, preventing most members and the public from voicing knowledgeable opposition
This process was itself the result of reforms in the 1980s that added transparency, emphasized public recorded meetings, empowered chairs, and met some of the goals of the 1980s reports	This process came about due to the divided nature of the Minnesota Legislature, which moves the level of decision-making upwards, as each decision is seen as indicative of the broader political positions of the caucus

About This Series

This publication series describes the formal process of making laws in Minnesota. The series is made up of nine separate publications, each one describing an aspect of the lawmaking process. Together they explain the legislature as a body and the various components and procedures that are involved in creating law.

The first two works in the series describe the structure of the legislature and forms of action in the legislative body. The rest of the works in the series describe steps in the process of making laws, including passing bills, bicameral agreement, review by the governor, the committee system, committee proceedings, a bill on the floor, and making the budget. The complete series is listed here:

- [The Legislature](#)
- [Forms of Action](#)
- [Passing Bills](#)
- Bicameral Agreement
- [Review by the Governor](#)
- [The Committee System](#)
- [Committee Proceedings](#)
- [The Bill on the Floor](#)
- [Making the Budget](#)

Earlier Versions

Making Laws was originally published as a comprehensive guide to the Minnesota legislative process in 2005 and written by Tom Todd, former director of House Research. It was updated and republished in 2010 and again in 2018. The current series represents separate chapters in the previously published guide.



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