

Texas Legislative Process

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Law School

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Legislative Process: State vs Federal

- 3 general categories of state constitutions:
 - Cabinet-style (Northeast and many Union states in Civil War)
 - Post-reconstruction decentralized (Most southern states that went through reconstruction after Civil War)
 - Hybrid (Mostly Western states that entered after Civil War)

Legislative Process: State vs Federal

- Most state legislatures are bi-cameral. (NE)
- Most state legislatures meet annually. (TX, NV, MT, ND)
- Length of session varies.
- Most require balanced budgets (Some caveats)
- Citizen legislators live and work in their districts, live under laws they pass.
- Generally less partisan than Congress though that has been changing. (Example: Whips)
- Government closer to the people; people more impacted by state law than federal.
- More opportunity for citizen input.

Why Texas Matters

- 2nd most populous state (Approx. 27 million, or 46th largest country. More than Australia, Netherlands, Greece, etc.)
- 2nd largest state geographically (Approx. 269K square miles, larger than France, Germany, Japan, etc.)
- Economy. If it were a country, the Texas economy would have ranked 14th largest in the world in 2012.
- International boarder, ports and coast, huge natural resources with national and global impact.
- Formerly an independent country
- Geographic, Geologic, and Ethnic regions
- Model legislation for other states

Texas Legislature

- The Big Three: Governor, Lt. Governor, Speaker.
- Also featuring: Comptroller, Parliamentarians, Texas Legislative Council, Legislative Budget Board
- House: 150 members. Speaker elected by members.
- Senate: 31 members. Lt. Gov publicly elected.

TEXAS! Why We're The Best*

**Opinion Alerts*

- 140 days every 2 years.
- 2-year budget contributes to creating stable business climate.
- Increased accountability: Legislators get elected, work one session, then citizens vote on how they did.
- Legislators have to go home for 18 months and get a job! (Pay \$600/mo; greater diversity of professions represented)

TEXAS! Why We're The Best

- Features:
 - Strongly enforced procedures
 - Tight timelines
 - Mostly consistent enforcement
 - Protections for minorities on any given issue
 - Constitutional checks on balancing budget
 - Sunset Review process

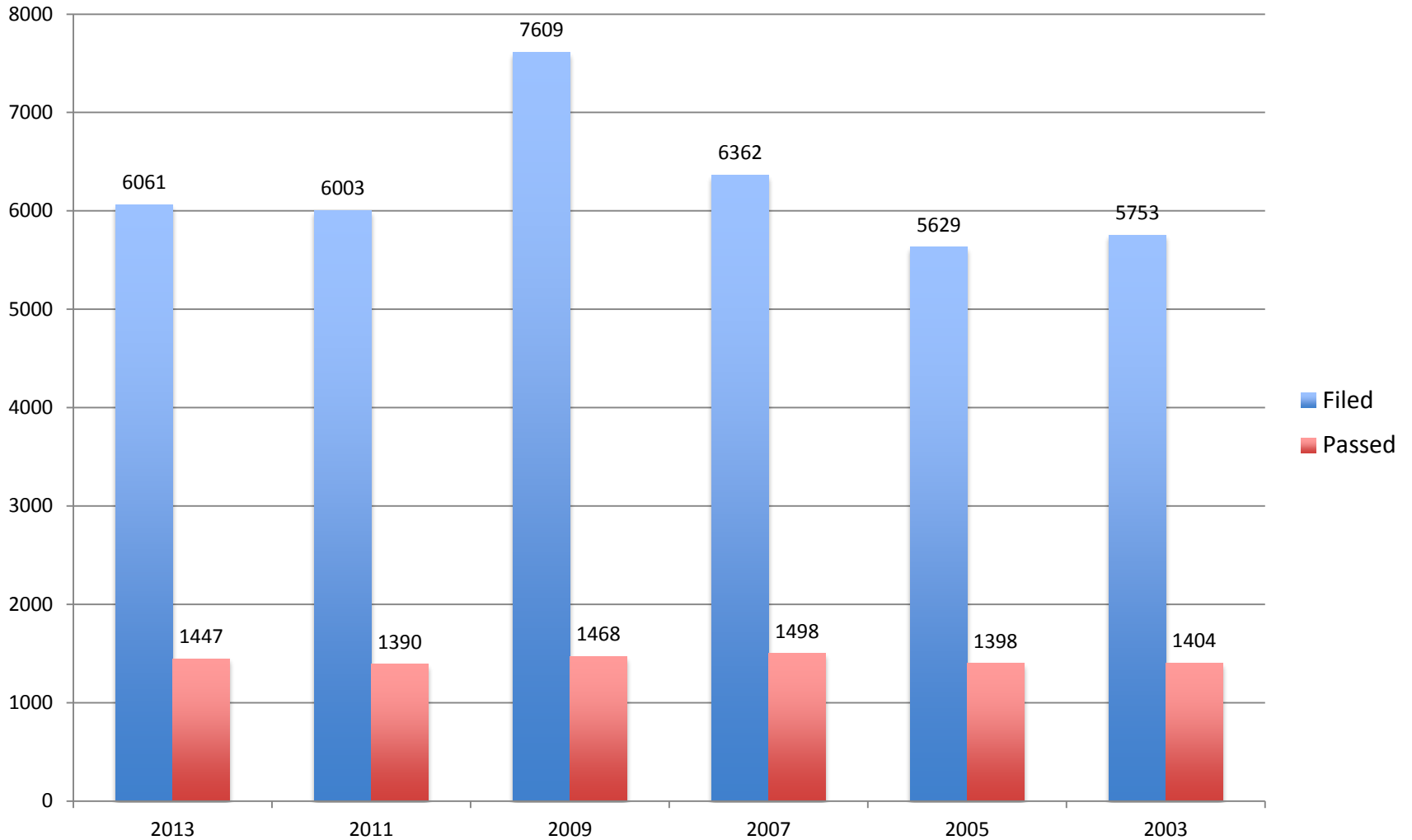
TEXAS! Why We're The Best

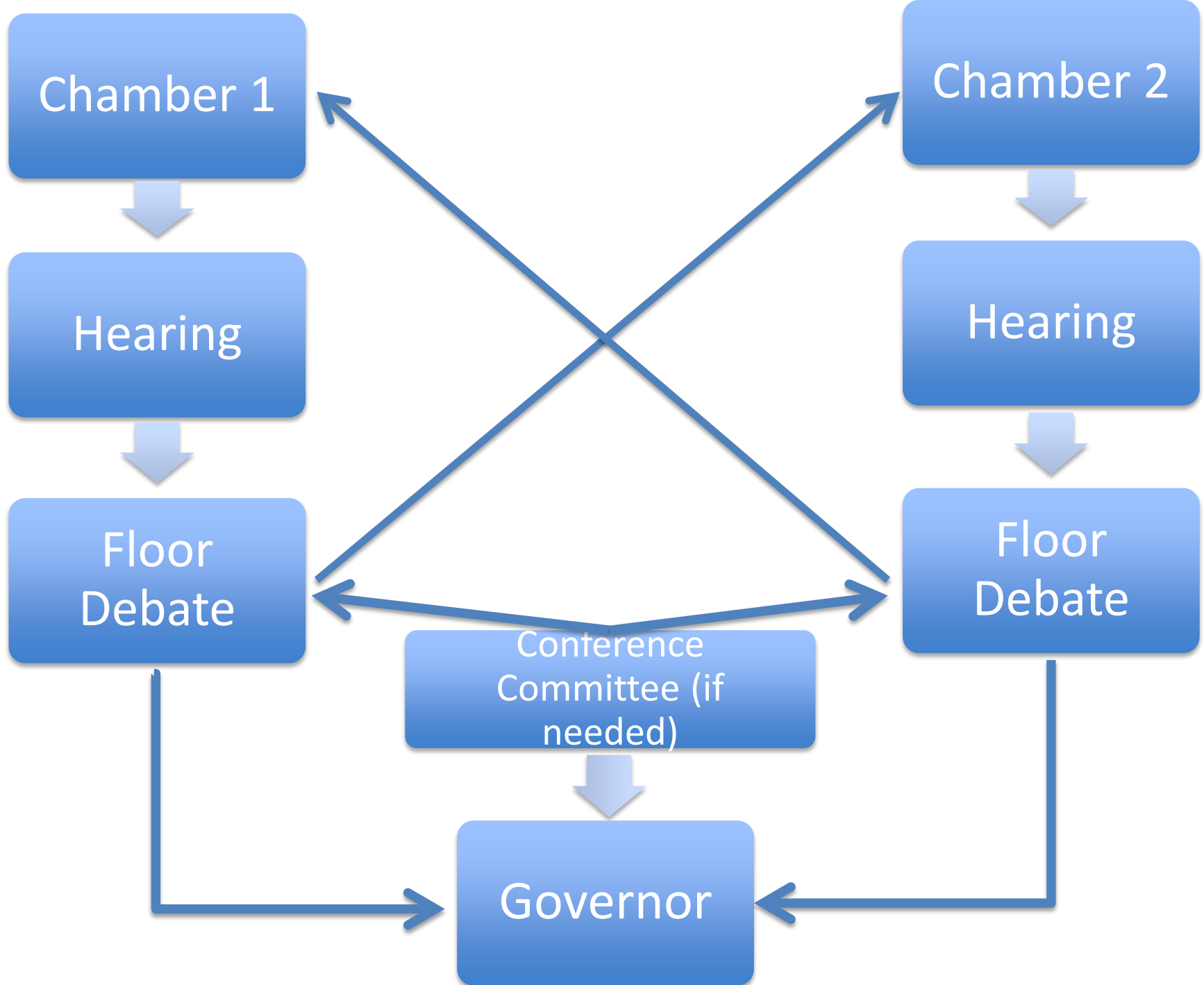
- Benefits:
 - System forces compromise
 - Incremental change (less flip-flops, more stability)
 - Increased Accountability
 - Electeds from more diverse professions than D.C.
 - Turnover – no term limits needed
- Trade-Offs:
 - Incremental change (Very hard to get sweeping reforms fast.)
 - Electeds still trends toward wealthy and white collar

“Maybe someday, I’ll be a LAW!”



Bill Mortality





Anatomy of a Bill

www.capitol.state.tx.us

- Caption
- Enacting clause
- Sections: Amend, Create, Applicability, Enforceability
- Repealers
- Effective Dates

Committees

- Referral
- Hearing request, Bill Analysis, Fiscal Note
- Testimony: For, Against, On
- Pending versus terminally pending
- Subcommittee = consolidation or death
- Substitutes and amendments
- Formal meetings
- Watch for Points of Order: Posting, Voting procedure, committee report

Calendars : House

- Local and Consent:
 - No opposing testimony.
 - No floor debate. No individual vote.
 - Speed versus vulnerability (self-policing)
 - 10 signatures or 10 minutes
- General Calendars:
 - Major State and General State, Constitutional amendments, Resolutions
 - Debate and vote. Record vote optional for most.
- Watch for Amendments

Calendars: Senate

- Administration committee
- Committee of the Whole
- 2/3rds rule (now 4/5ths), “blocker” bill
- Tagging

Floor Action

- 2nd Reading versus 3rd Reading
- Postponements: Time Certain, Indefinitely
- Debate:
 - No set time allocations like federal
 - Sponsor opens and closes
 - Yielding the floor
 - Amendments
 - Tactics: Floor leaders, buying time, rules gurus and points of order, members lobby members!
 - Filibusters
- Votes: Table, Amend, Record

Conference Committees

- Don't have to meet. Don't have to post.
- Going out of the bounds.
- Signatures required

Vetos

- Don't count on them as a strategy.
- Lobbying the veto process
- Competing Philosophies: Show of Strength or *Failure of Leadership* NOTE: Opinion alert!*

Agency vs Legislative Processes and State vs Local

- Legislation vs rulemaking
 - How in-depth does debate need to be?
 - How prescriptive does solution need to be?
 - Trust in delegation – the pendulum swings
- Home rule city authority (ordinances)
- County authority (subdivisions of the state)
- Local control versus patchwork of laws
- Why something can be legal at state level and illegal locally.

Case Studies in Creativity

- Constitutional construct – state solution for local problem. Dormant office. (HJR 2 – 2001)
- Local customization – local solution for state problem. Domestic Violence court. (HB 2183 – 1997)
- Balancing Act – Inactive well regulations (HB 2259 – 2009)
- www.capitol.state.tx.us

Case 1: Constitutional Concept

HJR 2 - 2001

- Article 5, Section 18 - DIVISION OF COUNTIES INTO PRECINCTS; ELECTION OF CONSTABLE AND JUSTICE OF THE PEACE; COUNTY COMMISSIONERS AND COUNTY COMMISSIONERS COURT
- <http://law.justia.com/constitution/texas/sections/cn000500-001800.html>
- TEMPORARY TRANSITION PROVISION

(h) The commissioners court of a county may declare the office of constable in a precinct dormant if at least seven consecutive years have passed since the end of the term of the person who was last elected or appointed to the office and during that period of time no person was elected to fill that office, or during that period a person was elected to that office, but the person failed to meet the qualifications of that office or failed to assume the duties of that office. If an office of constable is declared dormant, the office may not be filled by election or appointment and the previous officeholder does not continue to hold the office under Subsection (a) of this section or Section 17, Article XVI, of this constitution. The records of an office of constable declared dormant are transferred to the county clerk of the county. The commissioners court may reinstate an office of constable declared dormant by vote of the commissioners court or by calling an election in the precinct to reinstate the office. The commissioners court shall call an election to reinstate the office if the commissioners court receives a petition signed by at least 10 percent of the qualified voters of the precinct. If an election is called under this subsection, the commissioners court shall order the ballot for the election to be printed to permit voting for or against the proposition: Reinstating the office of Constable of Precinct No.____ that was previously declared dormant. The office of constable is reinstated if a majority of the voters of the precinct voting on the question at the election approve the reinstatement.

Study Questions

- What was the history of the issue leading up to this bill?
- Who were the stakeholders and what were their positions? What was the either/or impasse?
- How did this concept balance the concerns?
- What additional procedural steps were required for this bill than the average bill?
- What implementation language do you see included in the bill that might not have been included if there was an agency rulemaking in this case?

Case 2: Custom Court

HB 2183 - 1997

SECTION 2. Section 25.2292, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The County Court at Law Number 4 of Travis County shall give preference to cases in which family violence is alleged, including cases under Chapter 71, Family Code.

SECTION 3. Notwithstanding Section 25.2291(a)(4), Government Code, as amended by this Act, the County Court at Law Number 4 of Travis County is created January 1, 1999.

SECTION 4. Notwithstanding Section 25.0009, Government Code, the initial vacancy in the office of judge on creation of the County Court at Law Number 4 of Travis County shall be filled by election. The office of judge of the County Court at Law Number 4 of Travis County exists for purposes of the primary and general election in 1998. A vacancy after the initial vacancy is filled as provided by Section 25.0009, Government Code.

Study Questions

- What was the either/or impasse?
- How did this bill solve it?
- What additional procedural steps were required for this bill than the average bill? (Hint: It is a true local bill.)
- What implementation language do you see included in the bill that might not have been included if there was an agency rulemaking in this case? What was unusual about the language?

Case 3: Balancing Act. Inactive Wells.

HB 2259 - 2009

- Relating to the plugging of certain inactive oil or gas wells and to standards for electrical power lines serving certain oil and gas facilities.
- Two distinct problems had a common solution under new scheme.
- New definitions.
- Menu of options.
- Numerous stakeholders with long, adversarial history!!!

Study Questions

- Identify at least 3 either/or impasses.
- How did this bill solve them?
- What new definitions were created? What new procedures were created?
- How was enforcement achieved?
- What is unusual about the implementation language? What is the role of the agency after passage?

Additional Reading and Resources

- www.capitol.state.tx.us
- www.telicon.com
- <http://www.lbb.state.tx.us/>
- <http://www.tlc.state.tx.us/>
- <http://www.window.state.tx.us/>
- www.ncsl.org