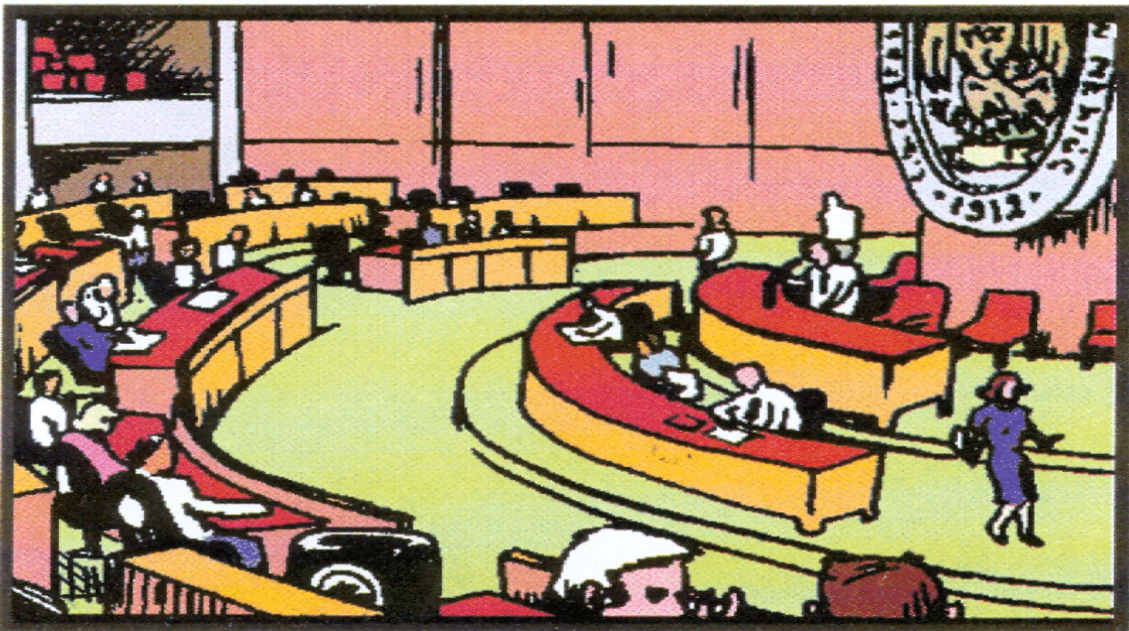


THE “BIRTH OF A NOTION”



THE PROCESS

How an idea becomes a law

The legislative process in the New Mexico House of Representatives.

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The Legislative Process or “The Birth of a Notion”

A. INTRODUCTION

To legislate means to “make or enact laws”. According to our State Constitution “The legislative power shall be vested in a senate and house of representatives which shall be designated the legislature of the State of New Mexico. (Art. IV, Sec.1). The powers of the legislature extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States. This information may seem so self evident that one might question the need to spell it out but, surprisingly, many citizens seem to have overlooked this very essential part of our system of government.

The legislature is that instrument of a representative democracy by which the citizen can have a voice in setting the kinds of rules (laws) which enable us to live together as a society.

This handbook is intended to provide a readable and nontechnical outline of the background and the numerous steps in our state lawmaking process from the origin of an idea for a legislative proposal through its publication as a statute. This is a matter about which every citizen should be well informed.

Our Constitution specifies that “no law shall be passed except by bill” (Art.IV, Sec.15). Only legislators, singly or by committee, may introduce bills. A bill may be introduced in either the Senate or the House of Representatives.

B. THE LEGISLATURE

The New Mexico State Legislature is composed of 112 members. The House has 70 members; the Senate 42. Representatives must be at least 21 years old and Senators at least 25 years old.

Before reapportionment in the 1960s, legislators represented counties; now legislators are elected from 70 districts which have approximately equal population. There are 21 multi-county districts in the House of Representatives which is 30% of the total. In some cases one district represents portions of as many as five or six counties. At the other extreme, Bernalillo County is represented by 24 districts.

Members of the House of Representatives must run for office every two years; members of the Senate every four years.

Compensation for legislators is set by the State Constitution which provides that:

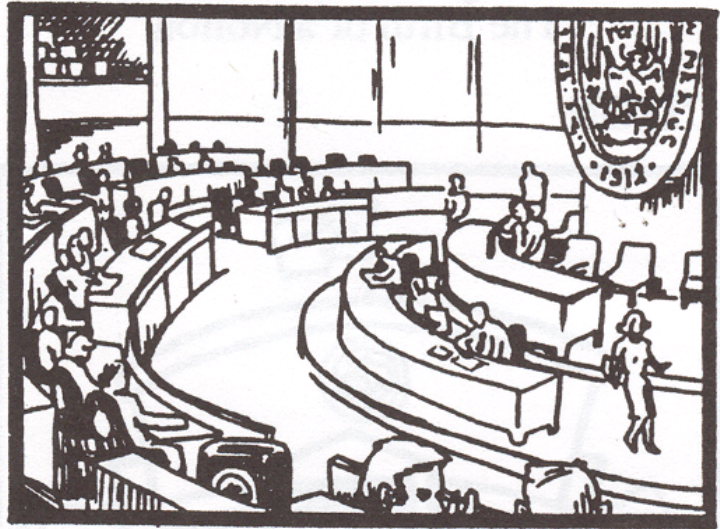
“Each member of the legislature shall receive:

A. per diem at the internal revenue service per diem rate for the city of Santa Fe for each day’s attendance during each session of the legislature and the internal revenue service standard mileage rate for each mile traveled in going to and returning from the seat of government by the usual traveled route, once each session as defined by Article 4, Section 5 of this constitution;

B. per diem expense and mileage at the same rates as provided in Subsection A of this section for service at meetings required by legislative committees established by the legislature to meet in the interim between sessions; and

C. no other compensation, prerequisite or allowance.”

(Article 4, Section 10)



The legislature meets in regular sessions in Santa Fe on the third Tuesday in January of each year. In odd-numbered years the session is for 60 days and in even-numbered years for 30 days.

C. SOURCES OF LEGISLATION

The idea behind any new bill can come from many sources. First of these is, of course, the idea and draft conceived by a member of the legislature. This may emanate from the member’s personal experiences and particular expertise in his chosen profession or employment. Perhaps the member had promised to introduce legislation on a particular subject if elected. Through experience after taking office, the member may have become aware of the need for amendment or repeal of existing laws or the enactment of a statute in another area.

Within the legislature itself, there are twenty-two interim committees which meet year round. These committees hold hearings and study such diverse subjects as education, water and resource planning,

finance, courts, corrections, health care, and Indian affairs to name but a few. The work of these committees results in identifying the need for new legislation.

Groups of interested citizens are another source for the introduction of new bills. Public interest groups may propose bills to legislators for introduction. (*e.g. MADD - Mothers Against Drunk Driving - is a successful lobbying group which was instrumental in bringing about statutory reform by toughening the laws prohibiting drinking and driving. Such interest groups are active in the process*).

Lobbyists are the registered representatives of a particular special interest. Some are paid for their services-some are not. They represent a wide variety of interests, for example: public schools, the health care industry, energy industry, liquor industry, cattle growers, teachers, and organized labor. Many proposed bills are generated from these sources.

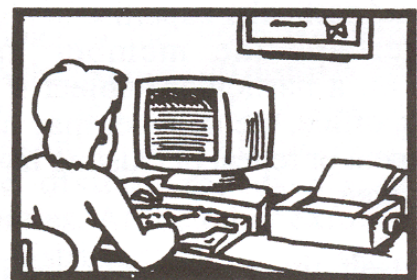
The executive branch of government certainly plays a role in introducing legislation. The Governor will usually get input from his agency directors as to the need for legislatively correcting problems they might have in running their respective agencies. He will then have legislation drafted and will select a legislator or several legislators to carry his bill for him. The bill will be introduced by this chosen legislator and identified by an Executive Message.

Individuals may feel strongly enough about an issue to seek out the legislator who represents them and request that a bill be introduced which would resolve their issue. Constituent-generated legislation is not that rare an occurrence. This is the classic example of representative democracy functioning as it was intended.

D. DRAFTING

Once an idea has found its way to a legislator who is willing to sponsor it, the next step is to frame the idea in suitable legislative form and language for introduction of a bill.

The drafting of statutes is an art that requires great skill, knowledge, and experience. Most bills are drafted by the Legislative Council Service. This service was created by statute “for the use of the members of the legislature, the governor and various departments, institutions and agencies of this state...”. “Notwithstanding the availability of the legislative council service to the various departments, institutions, and agencies of this state, it is part of the legislative branch of government and shall conduct itself with strict regard to the division of powers among the legislative, executive and judicial branches of the government of this state.” One of the duties of the legislative council service is to furnish the members of the legislature the assistance of expert draftsmen, qualified to aid the legislators in the preparation of bills for introduction to the legislature.



E. FORMS OF LEGISLATIVE ACTION

The work of the legislature is initiated by the introduction of a proposal in one of five principal forms. These are: the bill, the joint resolution, the resolution, the joint memorial and the memorial.

1. A bill is the form used to propose laws. It is the only form that carries the phrase “AN ACT” in its title and has an enacting clause.

2. A Joint Resolution is a formal declaration of both houses of the legislature and is generally used to:

(A) propose amendments to the state constitution

(B) ratify amendments to the federal constitution

(C) express the approval of the legislature in those instances where, by statute, legislative approval is required such as approving the sale, trade or lease of state-owned real property in specific instances.

3. A Resolution is a formal declaration by one house of the legislature concerning a subject it cannot or does not wish to control by law.

4. Joint Memorials are expressions of legislative desire, usually addressed to another governmental body in the form of a petition or declaration of intent. Both houses must pass joint memorials.

5. A Memorial is a request by only one house.

F. INTRODUCTION AND REFERENCE TO COMMITTEE

When a bill is drafted and prepared for introduction it is signed by the sponsor and co-sponsors, if any. The bill is then presented to the Chief Clerk in open session. At this point it is assigned a sequential number. The reading clerk reads it printed (usually) and refers it to one or more appropriate committees for consideration.

The House of Representatives has fifteen standing committees. The Speaker appoints all committees and designates the chairman when the committee is appointed. A substantive committee is simply a committee created by the rules of the House to study, conduct hearings and make recommendations on legislative bills, resolutions, memorials or specific problems. During the session, these are the standing committees.



(Substantive)

- (a) Appropriations and Finance;
- (b) Agriculture and Water Resources;
- (c) Business and Industry;
- (d) Consumer and Public Affairs;
- (e) Education;

- (f) Energy and Natural Resources;
- (g) Health & Government Affairs
- (h) Judiciary;
- (i) Labor and Human Resources;
- (j) Taxation and Revenue;
- (k) Transportation and Public Works;
- (l) Voters and Elections;

The House has three procedural standing committees as well as the above identified substantive committees. These are:

- (m) Enrolling and Engrossing;
- (n) Printing and Supplies; and
- (o) Rules and Order of Business. This committee serves as a “germane” committee for the 30-day session. Its purpose is to determine whether or not a legislative measure falls within the definition of items the State Constitution permits the legislature to consider in a 30-day session. These items are:
 1. Budgets, appropriations and revenue bills;
 2. Bills drawn pursuant to special messages of the Governor; and
 3. Bills of the last previous regular session vetoed by the Governor which may be recalled for the purpose of overriding the veto.

After being numbered and read twice a bill is referred to the appropriate committee or committees if it has more than a single referral. All bills carrying appropriations or requiring expenditure of public money shall be referred to the committee on Appropriations and Finance, after being heard by all other referred committees, before being placed on third reading (final passage).

When the bill is referred to committee the public has the opportunity to testify in favor of or in opposition to the bill. Individuals and interest groups now have a chance to state their views on pending legislation; pertinent information and data as well as various points of view may be presented which can be of value to the committee as it considers the bill.

The usual procedure for the conduct of a hearing on a bill is for the chair of the committee to call on the sponsor to explain the bill. After the sponsor’s general review of the measure, one or more experts may be called upon to supplement the sponsor’s explanation.

After the sponsor’s presentation the public is allowed to present its view on the bill. The usual procedure is to alternate those who oppose the measure with those who support it. The chair has the final say as to the amount of testimony permitted. Public testimony on a pending bill is seldom limited. The committee, in advance of the hearing, may place a time limit on the presentation of each witness.

All deliberations and hearings on a bill must be conducted in meetings open to the public. This is usually that time in the life of a bill when amendments are made. The bill can be amended to correct technical problems which might have been discovered in the draft or in order to fine-tune the purpose of the proposal.

Where the amendments are substantial, it is more efficient to offer a substitute for the original bill. In this

case the committee will report the original bill to the floor with recommendation that it “do not pass”, but that committee substitute for the original bill “do pass”.

After the proposed legislation has received its hearing and the committee has voted on what its future is to be in the process, the report on the final vote shall be reported to the House no later than the second calendar day after the day the final vote was taken by the committee.

The committee report is prepared by the committee secretary. It shall include all amendments to the measure approved by the committee and the committee’s recommendation of the action that should be taken on the measure. The report is authenticated by the chair of the committee by signature.

The bill can be reported with the recommendation that it:

- (1) Do Pass,
- (2) Do Pass as Amended, or
- (3) Do Not Pass.

The committee can also report a bill “without recommendation” in which case the bill moves on to its next referred committee if the committee report is accepted.

Committee action is a recommendation to the full House which makes the ultimate decision as to the disposition of the bill.

G. REPORTED BILLS

When a bill is reported by a committee recommending passage and if the report is adopted by the House, all amendments offered by the committee shall be included, and the bill shall be placed on the speaker’s table for one calendar day. In New Mexico it is identified as being on the “Temporary Calendar”.

At the expiration of the one calendar day, the bill will then be placed on the calendar for third reading (final passage).

(This provision for placing a bill on the temporary calendar for a day before final action does not apply during the last eight legislative days of a session.)

H. SENATE ACTION

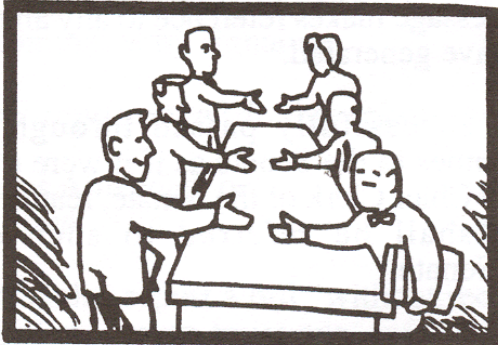
When the bill is reported from its final committee with recommendation that it “Do Pass”, and that recommendation is approved by the full House on third reading, the original bill with all amendments attached is sent to the Senate with a message from the Chief Clerk. The message makes reference to any amendments which the House might have generated.

The bill, having successfully passed through the House of Representatives, comes to the Senate as if it were a brand new bill. It is received by the Chief Clerk of the Senate, read a first and second time and then “shall be referred to such committee as designated by the Senate.”

The bill goes through the same procedure as it received in the House. It is heard in committee; the sponsor

again has an opportunity to present the bill; the public again has an opportunity to speak for or against it.

Should the measure survive the scrutiny of the Senate committee process without being amended and is then approved by the full Senate, it is returned to the House where it will be enrolled and engrossed prior to being sent to the Governor for signature.



I. CONFERENCE COMMITTEE

If the bill should be amended by the Senate, it is returned to the House with a request for concurrence with the Senate amendment. Should the House fail to concur with the Senate amendment the Chief Clerk shall notify the Senate and ask that it recede from its amendment. If the Senate refuses to recede from its amendment, a conference committee consisting of three

members from each body is named by the President-Pro-Tempore of the Senate and the Speaker of the House. This committee meets to resolve the differences between the two bodies on the disputed amendment. When agreement on the matter is reached the committee members report to their respective houses and a majority of the membership from each house is required for adoption of the recommendation.

J. ENROLLING AND ENGROSSING

After the bill has been passed by both houses it is then enrolled and engrossed. This “E & E” process describes the preparation of the final authoritative copy of the bill. This finalization process is performed by the staff from the house of origin of the bill. For the first time all amendments agreed to by both houses are incorporated into the measure. Great care must be taken in preparing this final version for no changes can be made in the document from this point on. The authorized version is then signed by the presiding officers of each house, in open session, and then sent to the Governor for approval.

K. GOVERNOR’S ACTION

The New Mexico Constitution provides that “Every bill passed by the legislature shall, before it becomes a law, be presented to the governor for approval. If he approves it, he shall sign it, and deposit it with the secretary of state; otherwise, he shall return it to the house in which it originated, with his objections...and such bill shall not become law...” This is the power of veto given to the governor. He has three days in which to exercise this option. If he fails to do anything within the three days and the legislature is still in session, the bill becomes a law, whether signed by him or not.

The governor has twenty days after the adjournment of the legislature to act on all bills he receives during the last three days of the session. Any bill he fails to sign by the end of this twenty day period does not become law. This is known as the “pocket veto”.

The governor may also exercise the “line item veto” on any bill appropriating money in that he may approve or disapprove any part or parts of the bill and the parts approved shall become law and the parts

disapproved become void unless passed over his veto by the legislature.

The legislature can override a veto by two-thirds vote of all present and voting in each house.

L. PUBLICATION

Upon approval, the measure is signed by the Governor and sent to the office of the Secretary of State where it is assigned a chapter number in the order it is received. This “E & E’d” copy, duly signed, is then photocopied and bound in book form. These bound copies of the bills enacted into law are identified as “Laws of New Mexico, 20_____”. These volumes are known as the “session laws”.

The official compilation of the statutory law of our state is referred to as New Mexico Statutes Annotated 1978 and NMSA 1978. This refers to a series of volumes in which the laws have been collected and assigned chapter, article and section numbers by the subject matter and may have annotations. The task of compiling and annotating the laws belongs to the New Mexico Compilation Commission established by the statute for that purpose.

M. RIGHT OF REFERENDUM

The same section of the New Mexico Constitution which gives the legislature the authority to pass laws also reserves to the people of the state the power to disapprove, suspend and annul any law enacted by the legislature. This can be accomplished by filing a petition as provided in the constitution and is known as the referendum process.

Exempted from the referendum process are “general appropriation laws: laws providing for the preservation of the public peace, health or safety; for the payment of public debt or the interest thereon...for the maintenance of the public schools or state institutions, and local or special laws.” (Art. IV, Sec.1)

As can be seen from the exclusionary clause in our constitution, the right of referendum is limited.

N. CONCLUSION

Over 150 years ago, General Stephen Watts Kearny took possession of New Mexico for the United States. His first declaration on this occasion was “That the great and essential principles of liberty and free government may be recognized and established is hereby declared: First. That all political power is vested in and belongs to the people.” This principle is still recognized. It was repeated on our constitution and it is exercised every time that we vote for someone to represent us in the legislative process. By actively participating in this process we can make it work well for the ultimate benefit of all.