

COMMITTEE HANDBOOK



FOR THE NEW MEXICO LEGISLATURE

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PREFACE

Someone once defined a committee as a collection of people who individually believe that something must be done and who collectively decide that nothing can be done. Whether or not this definition has merit, it is difficult to imagine the work of a legislative body being accomplished without reliance upon the committee system.

Every session, American legislative bodies are faced with thousands of bills, resolutions and memorials upon which to act. Meaningful deliberation on each of these measures by the entire legislative body is not possible. Therefore, the job must be broken up and distributed among the "miniature legislatures" called standing or substantive committees. In New Mexico, where the constitution confines legislative action to a specified number of calendar days, the work of such committees assumes even greater importance.

Because the role of committees is vital to the legislative process, it is necessary for their efficient operation that individual members of the senate and house and their staffs understand committee functioning and procedure, as well as their own roles on the committees.

For this reason, the legislative council service published in 1963 the first *Committee Handbook* for New Mexico legislators. This publication is the fifth revision of that document.

The *Committee Handbook* is intended to be used as a guide and working tool for committee chairs, vice chairs, members and staff. The practices and procedures outlined in it are based upon senate and house rules, practice and custom, parliamentary law and material contained in such recognized authorities as *Mason's Manual of Legislative Procedure*; *Robert's Rules of Order, Revised*; *Sturgis Standard Code of Parliamentary Procedure*; and the council of state governments' *Handbook for Legislative Committees*.

It should be noted that the rules of both the senate and the house provide that *Mason's Manual of Legislative Procedure* governs when not inconsistent with the rule of the legislative body.

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TYPES OF COMMITTEES

There are several types of committees, and while most rules and practices apply equally to all committees, there are some differences based on the nature of the committee.

Standing or Special Committees

The workhorses in both houses are the standing committees. The standing committees in each house are designated by the respective body's rules, and the name of the committee ("appropriations and finance", "judiciary", "education", "conservation", etc.) is often the best indicator of the topic matter with which the committee deals.

In the house, standing committees are further divided into "substantive" and "procedural" committees. A substantive committee is created to study, conduct hearings and make recommendations on legislation or specific problems. A procedural committee is one appointed to help the body function more smoothly in its organization or its day-to-day housekeeping operations. Examples of substantive committees are appropriations and finance; judiciary; and education. Examples of procedural committees are printing and supplies; and rules and order of business.

In the senate, there are two committees that are not considered standing committees: the committees' committee and the senate ethics committee.

A familiarity with the standing committees and, in the case of the house, those standing committees further designated as substantive committees, is important because some rules rely

on the designation. For example, a senator may not be appointed as the chair or vice chair of more than one standing committee (Senate Rule 9-1-2), and a member of the house may not be appointed as chair or vice chair of more than one substantive committee (House Rule 9-3).

Special committees are sometimes created by a legislative body to get a specific job done; once that job is completed, the committee is dissolved. Sometimes, special committees are referred to as "select" committees. A typical assignment of a special committee is the review and consideration of a specific matter in which the legislative body is interested, such as medicaid, property reappraisal or gaming.

Committee of the Whole

(House and Senate Rules 10-1 *et seq.*)

When the entire membership of the legislative body sits as a committee, it is called the committee of the whole. This permits discussion of bills and other matters of importance to the entire body.

Although the rules of the legislative body are followed in the committee of the whole, there is no time limit on debate, the yeas and nays are not recorded and testimony may be taken by the public as in standing committees.

When the body resolves itself into the committee of the whole, the speaker of the house or the president of the senate steps down. In the house, a chair is appointed by the speaker to preside. In the senate, the president pro tempore or a senator appointed by the president pro tempore serves as the chair.

Conference Committees

(Joint Rule 3-1)

The purpose of a conference committee is to iron out differences between the two houses on a particular piece of legislation. The procedures involved in a formal conference committee are essentially as follows.

If one house refuses to accept the amendments made by the other house to its legislation, the chief clerk sends a message to the other house saying, in effect, that it has rejected the amendments made by that house and asks the other house to recede from its amendments. If the amending house refuses to recede, a conference committee is appointed by the president pro tempore of the senate and the speaker of the house consisting of three members from each house.

The conferees from both houses meet to try to reconcile the differences of the two houses on the legislation and report back to their respective houses when agreement has been reached. Voting in the conference committee is by the respective houses, and a majority of the membership from each house is required for adoption of the committee's recommendations. A conference committee report cannot be amended by either house, but must be accepted or rejected in its entirety.

Committees That Determine Germaneness

During 30-day sessions and special sessions, when the type of legislation the legislature may consider is restricted by the constitution (New Mexico Constitution, Article 4, Section 5), legislation is usually referred to a committee to determine if

it is germane. In the house, it is the rules and order of business committee that usually makes that determination. In the senate, the task falls to the committees' committee (Senate Rule 9-1-6).

At the beginning of each 30-day session or special session, those committees often review guidelines, memoranda and legal opinions on what constitutes germaneness.

Interim Committees

An interim committee is a legislative committee authorized to operate in the period between the adjournment of one legislature and the convening of another, or between sessions of the same legislature.

There are two types of interim committees in New Mexico: those created by statute and those created by the legislative council. Examples of interim committees created by law are the legislative council, the legislative education study committee and the legislative finance committee. The duties, composition, reporting deadlines and staffing pattern of a specific interim committee may be spelled out in statute, if it is created in law, or by the legislative council, if it is created by the council.

With one exception, all interim committees consist of both house and senate members. The exception is the senate rules committee, which has been designated by the senate, pursuant to the constitution, to consider in the interim executive appointments requiring senate confirmation (New Mexico Constitution, Article 4, Section 42).

Interim committee procedures are not addressed here, but are usually addressed at the beginning of each interim.

SELECTION AND ORGANIZATION OF COMMITTEES

Selection

In the senate, the committees' committee makes all standing committee appointments. The following considerations enter into the making of such appointments: (1) the member's seniority; (2) the minority party's representation on each committee; and (3) when possible, the member's preference. Seniority is determined by continuous service in the senate. Appointments made by the committees' committee are subject to the approval of the senate (Senate Rules 9-1-1, 9-1-3 and 9-1-4).

Senators serve on two standing committees, except members of the finance committee, who serve only on that committee. Service on the committees' committee or the senate ethics committee is not considered service on a standing committee (Senate Rule 9-3).

In the house, the speaker, as is the case in most state legislatures, is the sole appointing authority for membership on committees, except when a committee is established by a resolution designating the committee membership.

All appointments made by the speaker must be announced in open session and recorded in the journal. Each house member is limited to service on two substantive committees. This does not bar a member's service on procedural committees (House Rules 9-1 and 9-3).

Organization

No procedure is provided for in the rules of either house for the formal organization of standing committees. Organization, however, is a simple matter, since the purpose and scope of the committee's activities are defined by the legislation referred to it; the chair has already been appointed; a recording clerk does not have to be elected (secretarial help is assigned by the chief clerk of each house); and standing committees usually do not adopt special rules of procedure. Once the chair has called the committee to order and determines that a quorum is present (customarily by roll call), the committee can proceed to the business of considering legislation.

Organization of special committees, particularly if formed for purposes of conducting an inquiry, may be a bit more complex. Depending upon the powers granted and the task assigned to it, the committee may have to adopt special rules of procedure covering the conduct of hearings, protection of rights of witnesses, summoning of witnesses, direction of staff and other general matters.

Quorum

In order for a committee of either house to transact business, it is necessary that a quorum of that committee be present. It is irregular for a committee to proceed in the absence of a quorum. One exception to this rule is the house enrolling and engrossing committee, which is authorized to function in the absence of a quorum.

A quorum of the committee is a majority of the members of the committee (House Rule 9-5-1 and *Mason's* Section 613).

COMMITTEE OFFICERS AND THEIR DUTIES

Selection of the Chair

In the senate, the committees' committee designates the chair and vice chair at the time it appoints the membership of the committee. A person selected as chair or vice chair of a committee may not serve in either position on any other standing committee. The president pro tempore is by rule the chair of the committees' committee (Senate Rules 9-1 and 9-1-2).

In the house, the speaker designates the chair and vice chair of a standing committee at the time the committee is appointed (House Rule 9-1-2).

Since each house of the New Mexico legislature is organized by the majority party of that house, committee chairs and vice chairs are almost always members of the majority party.

When the chair and vice chair are absent from a meeting, the most senior member of the majority party may preside (*Mason's* Section 609).

Role of the Chair

The role of a committee chair differs considerably from the role of the presiding officer of each house. Unlike the presiding officer, the chair of a committee is an active, participating member of the committee.

The chair may make all motions that any member of the committee may make, may propose amendments and need not rise to make motions or leave the chair in order to speak.

The chair may vote on all questions before the committee. In the house, the chair, like all members, is explicitly required to vote on all questions before the committee when the chair is present (House Rule 9-5-4). It must be emphasized that the committee chair, even though directing the committee, is an integral part of the committee membership and must take an active role in the operation of the committee in order for it to function properly.

Since the chair usually holds the position of committee chair because of reliability as a member of the majority party, the chair is expected to take an active role in the implementation of the party's agenda and policies. As a party leader, the chair must have ample opportunity to discuss and promote the party's programs in the committee; however, as presiding officer of the committee, the chair must be scrupulously fair in rulings and in the recognition of the rights of all members, regardless of party affiliation.

Duties of the Chair

The principal duties of the committee chair are to:

1. call the committee together to enable the committee to perform its functions properly;
2. notify committee members of committee hearings;
3. preside over committee meetings, maintain order and decide all questions of order, subject to appeal to a majority of the appointed committee;
4. determine if a quorum is present;

5. supervise and direct the clerical and other employees of the committee and help with the preparation of reports to submit to the committee; and

6. arrange for joint hearings, as necessary or appropriate, with the chairs of other committees (House Rule 9-10 and *Mason's* Section 611).

The house requires, in addition to the general duties listed above, that a chair sees that bills are discussed in the order they are referred to the committee, except when a majority of the committee agrees to some other procedure or when the schedule of the committee suggests that bills on the same subject should be heard together. In the absence of the sponsor of a proposal, a house chair must be prepared to explain the bill in the house (House Rule 9-10).

Senate rules specify no general duties of committee chairs. Certain duties, however, are provided for the chair of the judiciary committee (or a committee member designated by the chair). The chair of that committee has the duty to revise and correct the journal and to examine and correct bills referred to that committee for the purpose of avoiding repetition and ensuring accuracy in the text (Senate Rule 9-9).

In both houses, it is customary that the committee chair move the adoption of a committee's report when it appears on the legislative calendar.

Chair's Resignation or Refusal to Act

A committee chair may resign as chair and still retain membership on the committee (*Mason's* Section 610).

In the senate, when a standing committee chair refuses

to serve (as determined by the committee), the vice chair assumes all duties and prerogatives of the chairs (Senate Rule 9-7).

The house has no specific rule covering the chair's resignation or refusal to act. If a chair neglects or declines to call a meeting of the committee, a meeting may be held upon the call of a majority of its members (*Mason's* Section 610).

Vice Chair

The committees' committee and the speaker appoint the vice chairs of the senate and house committees, respectively. In the absence of the chair, the vice chair assumes the duties of the chair (House and Senate Rules 9-7).

COMMITTEE MEMBERS

Terms

Members appointed to committees of a particular legislature serve during the biennium for which that legislature is in existence. Should any special sessions be called during that biennium after a regular session adjourns, the committee assignments made in the first regular session usually apply.

Resignation from a Committee

No member of a senate committee, once the assignments have been approved by the senate, is permitted to resign from a committee unless that member has arranged to serve on another standing committee by trading assignments

with another member of the same political party and the committees' committee has approved the transfer. As in the case of original assignments, the transfer must be approved by the senate (Senate Rule 9-4).

House rules make no specific reference to resignation of committee members, but refer only to their removal. Under parliamentary law, any member of a standing committee may resign by submitting a resignation in writing to the appointing authority. In such a case, it would be left to the speaker's discretion to decide whether the resigning member would be assigned to a different committee.

Discipline of Members

Senate and house rules contain no provisions for the discipline of committee members. House rules do provide that a member cannot be removed from a committee except by a two-thirds' vote of the house.

A committee has no power to punish its members. It may, however, report any misconduct to the legislative body for action. Frequent absence of a member from committee meetings may also be reported to the legislative body (*Mason's* Section 619).

Nature of Proceedings

It is the tradition of legislative bodies that a member in any debate in the house or senate chamber may not refer to the proceedings of a committee unless that committee has formally reported its proceedings. Furthermore, by custom and tradition, members are not to make any statement in the course of the

debate concerning what was said or done in the committee unless it is contained in the written report of the committee that has been formally reported to the legislative body.

POWERS OF COMMITTEES

Committees Are Agents of House and Senate

(Mason's Section 615)

A committee is the agent of the legislative body that appoints it. The sole purpose of its existence is to carry out the will of the legislative body.

The senate or house cannot delegate its powers and responsibilities to one of its committees. Only when it adopts a report of one of its committees does that act of the committee become an act of the legislative body.

A committee can only recommend, and until its recommendations are adopted by the legislative body, the recommendations have no force.

A committee can make any recommendation it sees fit concerning legislation, or it can refrain from making any recommendation.

Jurisdiction

A standing committee has those powers necessary to make a proper recommendation on any bill, resolution, memorial or other matter that has been referred to it.

The committee has authority to call upon all state officers, heads of agencies and departments, employees of

agencies and departments and political subdivisions to furnish the committee information, records and documents necessary or proper to accomplish the purposes for which the committee was created.

The committee is not restricted to the matters referred to it, but may also suggest and initiate legislation respecting any matter that is within the general scope of the committee.

Each committee has the jurisdiction and duty to inquire into the condition and administration of the laws relating to the subjects it has in its charge. It has the authority to investigate the conduct and review the actions of all public officers and employees concerned with the area in which it operates. It may suggest measures that will correct abuses, protect the public interest and promote the general welfare.

Instructions to Committees

(Mason's Section 620)

Most of the proposals referred to a committee are referred without instruction from the legislative body. However, the legislative body has the right to attach instructions to the proposal being referred that may partly or completely restrict the committee's actions on the proposal. When a committee receives specific instructions, it must accurately carry them out.

When a bill is referred to a committee with instructions pertaining to only a part of the bill, it may not make recommendations as to the non-instructed parts of the bill.

Instructions may be given to the committee by a majority vote of the legislative body at any time before the committee submits its report.

Amendments

Since the committee has only the power of recommendation, it cannot actually amend or modify a proposal for legislation referred to it. It can only recommend amendments to the proposal, and these amendments are not effective until the legislative body adopts them (*Mason's* Section 616).

There is no limit to the number of amendments the committee can recommend for a bill as long as they are germane to the original purpose of the bill. However, if there are a great number of amendments proposed by the committee, consideration by the legislative body will be easier if the committee submits a substitute for the original bill.

Substitute Bills

(*Mason's* Section 617)

Substitutes may be made for any bill, resolution or memorial before it is enrolled and engrossed whenever it is open to amendment.

When a substitute bill, resolution or memorial is adopted, it takes the place of the original bill, resolution or memorial, and the substitute itself is open to amendment.

Since the substitute is technically considered an amendment to the bill, the subject matter of the substitute must be relevant to the title and subject matter of the original bill.

Executive Sessions

In general, executive sessions are not permitted by the rules of the house and senate.

The senate exceptions are made for matters relating to personnel, for matters adjudicatory in nature, for certain ethics hearings or for any legislative matter not yet presented to either house of the legislature. Meetings of a committee on general appropriation bills may also be closed by a majority vote of the committee (Senate Rule 9-5-6).

In the house, an exception is made for certain hearings on ethics matters (House Rule 9-5-6). The Open Meetings Act provides exceptions broader than the house rule (Section 10-15-2 NMSA 1978).

Subcommittees

(Mason's Section 650)

With the exception of the committee of the whole, any committee may appoint a subcommittee composed of members of that committee. The subcommittee has only the powers and duties conferred upon it by the parent committee. It reports only to the parent committee from which it was appointed. It cannot report to the legislative body.

The subcommittee is a convenient work device for committees having unusually heavy workloads. By distributing the hearing and discussion of bills among several subcommittees, the work of the committee may be made more efficient. The parent committee, nevertheless, must adopt or reject the subcommittee's recommendations before they become a part of the committee's recommendations to the legislative body.

Corrections and Style

Senate and house rules provide certain style requirements for bills introduced in the legislature.

It is the duty of each committee to see that any bill referred to it complies with these rules on style.

Oaths and Subpoenas

During any regular or special session, upon request of a standing committee and approval by a majority vote of the elected members of the house of which the committee is a part, the presiding officer of the senate or the speaker of the house is required to issue subpoenas to compel the attendance of any witnesses or to command a person to produce any books, papers, documents or tangible items designated at any investigation or hearing before the body issuing the subpoena.

Subpoenas are always issued in the name of the house or senate and never in the name of the committee.

The law provides that any person who does not comply with a house or senate subpoena is guilty of contempt of the legislature and, upon conviction, may be fined up to \$500, imprisoned for not more than six months or both (Section 2-1-10 NMSA 1978).

Oaths may be administered to a witness by any of the following:

1. the presiding officer of the senate;
2. the speaker of the house;
3. the chair of a committee of either house;

and

4. the chair of a joint committee of both houses (Section 2-1-2 NMSA 1978).

Committee Functioning After Adjournment

Unless given specific authorization by a joint act of the legislature, a committee may not function after adjournment (*Mason's* Section 628). *Sine die* adjournment puts an end to all business unfinished at the close of the session (*Mason's* Section 445).

HOW DO BILLS GET TO COMMITTEE?

When a bill is introduced in either house of the legislature, it is almost always sent to one or more standing committees of that house. This procedure of sending a bill to a committee is called "referral". If a bill is sent back to a committee after it has been reported out, the procedure is called "re-referral".

Methods differ in the two houses for determining where a bill will be sent. Senate rules state that the senator introducing the bill must attach a note to the bill indicating to which committee or committees it should be referred. If any member in the senate objects to this referral, the whole senate must decide the question. In the case of bills coming over from the house, the rules provide for the whole senate to make the referral. Actually, the referral is made by the senate leaders, usually acting through the majority leader (Senate Rules 11-14 and 11-14-1).

In the house, the speaker has the sole authority to refer bills to a committee or committees, whether or not they originated in the house (House Rule 11-14).

If the bill contains an appropriation or requires the expenditure of public money, the rules of both the house and senate provide that it be referred, in the case of the house, to the appropriations and finance

committee and, in the case of the senate, to the finance committee (House and Senate Rules 11-14-2).

If a bill is amended in a committee to provide for an appropriation or the expenditure of public money, or if the bill contains provisions that were overlooked at the time of its original referral, it is the responsibility of the committee to call this fact to the attention of its respective legislative body so that the bill may be referred to the proper finance committee.

Because most pieces of legislation deal with more than one issue area, bills, resolutions and memorials are frequently referred to two or more committees. In addition, a desire to balance committee workloads often results in referral of legislation to several committees. In those cases, the report of each committee of referral must be considered by the legislative body before the bill can be sent to a subsequent committee of referral. If the effect of the action of the legislative body on the report is to kill the bill, it is not sent to subsequent committees of referral.

COMMITTEE MEETINGS

Action Must Be Taken in Meetings

The only way a committee may properly transact business is in a meeting at which a quorum of the committee is present (House Rule 9-5-1 and *Mason's* Section 613).

Scheduling Committee Meetings

Senate standing committees generally hold regular meetings at a permanent time, place and day assigned by the

committees' committee. In addition to the scheduled committee meetings, committees may meet at other times for the transaction of business as long as the meetings are announced in open session by the chair (Senate Rule 9-6).

Such committee meetings must be called at reasonable times and places to enable the committee to perform its functions properly.

Because of the limited number of committee rooms and conflicts in membership on committees, there must be some coordination in the scheduling of regular, special and joint committee meetings in the house. This is frequently accomplished through the use of a house coordinator. The speaker of the house appoints a member of the house as coordinator. The coordinator acts as the speaker's agent in the matter of scheduling committee meetings to avoid conflicts in the use of committee rooms and, insofar as possible, to prevent conflicts because of dual membership on two committees meeting simultaneously (House Rule 9-6).

Meeting While Legislative Body Is in Session

(Mason's Section 628)

The limited sessions make it necessary for committees to hold meetings from time to time when the legislature is in session. The chair of a committee wishing to sit at such times should make a motion from the floor asking for unanimous consent to meet.

Whenever a committee is meeting when the legislative body initially goes into its daily session, the committee should immediately discontinue its meeting and attend the session

unless the committee has been previously excused or has obtained permission to continue meeting.

COMMITTEE PROCEDURE

Procedure

There are no special rules of procedure for committees. The house rules require that the rules of order of the house govern the parliamentary procedure of the house special and standing committees, which means that when the rules are silent, the committee will be governed by *Mason's Manual of Legislative Procedure*. The senate has no correlative rule, but since it, too, has adopted *Mason's*, its committees should refer to that manual whenever in doubt about procedure (Senate Rule 24-2). There are cases, however, in which the rules of both houses should not be rigidly applied (*Mason's* Section 632).

For instance, motions to limit debate should not be allowed, and there should be no limit on the number of times any committee member is permitted to speak. To limit debate or the number of times a member may speak would defeat the purpose for which a committee is created.

No appeal may be made to the presiding officer of either chamber from decisions on points of order made by a committee chair.

Other procedures that are more relaxed than those followed in either of the chambers are that:

1. it is not necessary to rise and address the committee before making a motion or before speaking;

2. the chair does not relinquish the chair to put a question or leave the chair's place in order to speak;
3. motions are not required to be seconded;
4. discussions are more informal, although questions of persons appearing before the committee should still be directed through the chair; and
5. a motion to table indefinitely is not necessarily a killing motion since the matter may be taken up again at any time with the majority vote of the committee (see **Reconsideration**).

Order of Business

The order of business is generally left up to the chair of the committee. With the exception of House Rule 9-10(e), which requires house committees to discuss bills in the order in which they are referred to committees (except when agreed upon by a majority of the committee), there are no official guidelines on how a committee shall proceed with its business.

One suggested procedure for getting the committee under way is:

1. the chair calls the committee to order;
2. the chair requests the secretary to call the roll;
3. upon the basis of the roll call, the chair makes a determination of a quorum;
4. the chair announces that the committee will proceed with the consideration of House (or Senate) Bill (or Resolution) _____;
5. the chair calls upon the sponsor to explain

the bill, after which an opportunity is usually provided for members of the public to speak on the measures; and

6. the chair opens the floor for debate by the other members.

Manner of Considering Measures

If the committee desires, the procedure followed in the committee of the whole may be used and the legislation may be read section by section or paragraph by paragraph. In this case, opportunity for discussion and amendment must be permitted on each section before the committee proceeds to the reading of the next section. When this method is used, the question is not put on each section separately, but is reserved until discussion on the entire piece of legislation is completed, and then the question is put on the whole document as amended.

When a committee originates a measure, the above procedure should be followed.

In some cases, the committee may not wish to read each section of the bill. The chair may simply ask, "Is there any discussion on, or amendment to, Section 1?... Is there any discussion on, or amendment to, Section 2?"... etc., until each section is covered and the question is put on the whole bill (as amended, if there are any amendments).

Generally in New Mexico, however, committees simply discuss legislation as a whole and not section by section.

Voting in Committee

A member may not cast a vote except during a meeting of the committee. The chair may not poll the members on a proposal outside the meeting. An individual member may not inform the chair, another member or the secretary on how the member wishes to vote, except in a duly constituted meeting. A member is not allowed to vote by proxy (*Mason's Sections 625 and 675 and House Rule 9-5-2*).

When the question is called, either by the chair or by a member of the committee, the chair should ensure that the motion is clear to the members.

The chair may put the question to a voice vote as follows: "Those in favor of the motion say 'aye'... Those opposed say 'no'...".

If there is no doubt in the mind of the chair of the result of the vote, the chair announces it by saying, "The motion is carried" or "The motion is lost".

If the chair is in doubt of the results of the voice vote, the chair may call for a show of hands by saying, "Those in favor of the motion, please raise your hand", or for the secretary to call the roll.

Any member of a committee has the right, following the announcement of a voice vote that is uncertain and before any other business intervenes, to ask for a roll call. The request for a roll call is not debatable (*House and Senate Rules 9-5-3*).

In a roll call, the names of the committee members are called in alphabetical order, with the chair's name called last. In beginning a roll call, the chair should state the question as follows: "The motion to be voted upon is... Those in favor of

the motion will answer 'yes' when their name is called; those opposed will answer 'no'. The secretary will call the roll."

When the voting is completed, the chair should announce the results by saying: "With ___ in the affirmative and ___ in the negative, the motion is carried (or lost).".

House and senate rules require the report of the committee to show the final vote of the committee on each bill, resolution and memorial; therefore, roll call votes on final action in committees are mandatory. In addition, house and senate rules provide that if a roll call vote is taken on amendments that are adopted by the committee, the roll call shall be shown on the committee report (House and Senate Rules 9-5-5).

Changing of Vote

There must be finality to a vote. In order to secure this, a committee member is permitted to change the member's vote only until the time the final vote is announced by the chair. Of course, if a vote has been improperly recorded, it may be changed upon the protest of the wronged member (*Mason's* Section 527).

Reconsideration

As long as a proposal remains in the custody of the committee, committee action upon it may be reconsidered. This provision is necessary in order for the legislative body to receive the considered judgment of the committee on the proposal (*Mason's* Section 634).

Unanimous Consent

Much of the committee work can be expedited by the use of the device known as "unanimous consent". For example, should it appear to the chair that there is no opposition to a proposed amendment, the chair may ask, "Is there any objection to the proposed amendment?", and if none is stated or if it is clear that only a minority objects to the amendment, the chair may state that the amendment was approved and proceed (*Mason's* Section 537).

Committee Action on Legislative Measures

Several courses of action are available to a committee on a piece of legislation referred to it by the legislative body.

1. If the committee is in favor of the legislation as it was referred, it may recommend in its report that the legislation "do pass".
2. If the committee is in favor of the legislation as a whole but deems it necessary to recommend amendments to certain sections, it may recommend that the legislation "do pass, as amended" and attach the proposed amendments.
3. If the committee does not approve of the proposed legislation, it may recommend that the legislation "do not pass".
4. If the committee does not approve of the proposed legislation in the form in which it was referred to the committee, but feels that legislation ought to be enacted covering the same subject matter proposed in the bill, it may recommend that the proposed legislation "do not pass", but that a substitute as drawn by the committee "do pass".

5. If the committee does not wish to make any recommendation upon a legislative proposal, it may make a report "without recommendation". This type of report is frequently used in those cases where the committee is in disagreement on a bill.

6. If the committee chooses simply not to report a bill out of committee, it may do so. This technique is not generally recommended by parliamentary and legislative authorities, who believe that the entire body should be given the opportunity to adopt or reject proposed legislation, but it is an effective device for filtering out unwanted or unneeded proposals.

Adjournment

Unless some provision has been made for a future meeting, a committee adjournment is always subject to the call of the chair.

The motion to "rise and report progress" is used only by the committee of the whole. It has the same effect on the committee as a motion to adjourn has upon the legislative body. The motion to "adjourn" is not in order in the committee of the whole.

COMMITTEE HEARINGS

Public Meetings

A committee may act only at a meeting and not by separate consultation and consent, and a committee has no

authority to report anything not agreed upon when actually assembled. The rules of both houses of the New Mexico legislature generally require all actions by a committee to be taken in a meeting that is open to the public. The exceptions to these rules are for certain ethics hearings, meetings on personnel matters and adjudicatory matters and meetings on appropriation bills when the committee decides to close the meeting. Open meetings, also, are not required on matters that have not been formally introduced as proposed legislation (House and Senate Rules 9-5-6).

Advantages in holding a public hearing on a piece of legislation include that doing so gives individuals and interest groups an opportunity to state their views on the issue, often produces pertinent information and data on the issue, aids the committee in its deliberations and builds public confidence in the lawmaking process.

Notice of Public Hearing

The rules of both the senate and house are quiet on notice of meetings. It is a general practice, however, to announce which items will be heard in a committee prior to the time of the meeting. Committee agendas are published, posted on the legislature's web site and frequently posted outside the committee's meeting room.

Special Rules of Procedure

If the committee deems it necessary to have special rules of procedure for conducting a hearing, the rules should be published and made available in advance of the hearing.

Several committees require sponsors of amendments to provide copies of the amendments prior to the scheduled committee hearing on the underlying legislation.

Joint Hearings

A joint hearing can be held with two or more committees of the same chamber or two or more committees of each chamber that are considering the same issue. Joint hearings are sometimes held to make it more efficient for a large number of people who will testify on the issue to appear just once before every committee that will hear the issue.

In a joint hearing, the chair of the committee that has custody of the legislation acts as chair of the hearing, and the chairs of the other committee or committees act as vice chairs.

Each committee retains its own identity and arrives separately at its own recommendation. Committees that do not yet have the legislation before them cannot make a recommendation until the recommendation of the committee to which the legislation was initially referred has been adopted.

Conduct of Hearing

There is no fixed procedure for the conduct of a hearing. Each committee may use any method it finds to be workable and fair.

One procedure is outlined below and may be used as a guide.

A. Call to order and announcements: The chair calls the committee to order and, after determining that a quorum is present, announces the name of the committee (in case any person is mistakenly appearing before the wrong

committee) and introduces the committee members and the numbers and subjects of the legislation being heard that day. The chair may also announce the procedure to be followed by the committee in hearing witnesses.

B. Roster of appearance: Any person who desires to appear before the committee on a measure being heard that day is asked to give the committee secretary the person's name and the name of the organization or group the person represents and to state whether the person wishes to speak for or against the measure.

C. Sponsor's presentation: The chair then asks the sponsor of the measure to explain it. After the sponsor's general review, the sponsor may be allowed to have one or more witnesses supplement the explanation.

D. Appearance of witnesses: Following the explanation by the sponsor and witnesses, each person who has given the person's name to the secretary is called upon in alternate order of those for and those against the bill. The chair may also call for testimony by others in the room who wish to be heard. The committee, in advance of the hearing, may place a time limit on the presentation of each witness. If a large delegation is present, all of whom are testifying in essentially the same vein, the chair, in the interest of time, may request the group to designate one or two spokespersons, and the chair may announce that the committee take notice of the size of the delegation.

E. Questions by the committee: After the sponsor and each person appearing as a witness have made their presentations, the chair gives committee members the opportunity to ask questions of them.

COMMITTEE REPORTS

Contents

A committee report may contain only that which is agreed upon by a majority of the committee and which has been acted upon in a meeting with a quorum present.

The report must include all amendments to the measure approved by the committee and its recommendation of the action that should be taken on the measure (*Mason's* Sections 663 and 664).

Preparation

It is the duty of the committee secretary to prepare the committee report; however, on occasion, it may be prepared by a member of the committee or, upon request of the committee, by the legislative council service.

Authentication

Committee reports are authenticated by the chair of the committee by the chair's signature in the space provided on the report form (*Mason's* Section 665).

Improper Committee Reports

Committee reports that are not considered at a regular meeting of the committee are improper reports. The presiding officer may refuse to accept any report on a bill or other measure when the presiding officer has knowledge that it was improperly acted upon.

Legislation not properly reported from a committee is not entitled to a place upon the legislative calendar and will be referred back to the committee (*Mason's* Section 675).

Minority Reports

The report of the majority on a committee is the report of the committee. It should not be referred to as the "majority report".

If a minority report is submitted, it has only the status of an expression of views of those persons on the committee submitting the report and may not be acted upon in the legislative body except upon the adoption of a motion to substitute it for the report of the committee.

ENROLLING AND ENGROSSING

Importance

Hallie Farmer, in her classic study of the legislative process in Alabama, says:

Probably no single step in the whole scheme of procedure points up the Legislature's indifference to efficiency, and its lack of respect for the quality of the legislative product, as does its attitude toward the engrossment and enrollment of its bills.¹

¹ *The Legislative Process in Alabama* (Bureau of Public Administration, University of Alabama, 1949), p. 73.

Here, in New Mexico, the importance of the enrolling and engrossing (E & E) process goes a great deal beyond serving as a measure of the legislature's efficiency and respect for quality. Our supreme court has held that in determining the content and validity of a particular piece of legislation, it will not look beyond the enrolled and engrossed bill.

This means that the E & E bill is the final authority. For example, if the E & E bill fails to include amendments adopted by the legislature and the error is not caught by the E & E committee, members of the legislature or the governor's staff before it is signed, then those amendments do not exist in the law. There is no recourse to the journals to prove that the amendments were actually adopted. The will of the legislature has in a direct sense been thwarted.

What Is Enrolling and Engrossing?

In New Mexico, the terms "enrolling" and "engrossing" are used jointly (and, incidentally, backward from the order of the process as commonly understood) to describe the preparation of the final authoritative copy of a bill passed by both houses of the legislature.

Technically, engrossing and enrolling are two separate processes occurring at different stages in the enactment of a bill.

"Engrossing" literally means writing in large letters.² As the term applies to the legislative process, it means preparation of a clean copy of the bill as it passed one house of the legislature. All the amendments are inserted in the

² In some states, amendments are actually set out in the engrossed bill by using a larger style of type.

engrossed copy, and the bill is correctly typed. This process normally takes place before the third reading in the house or senate, but in some states it may take place after the third reading and before the bill is sent to the opposite house. As the process is customarily understood in other state legislatures, the New Mexico senate and house do not engross their bills. Instead, the original bill is sent to the other house with all of the amendments attached separately.

"Enrolling" means preparation of the final authoritative copy of the bill as passed by both houses of the legislature. This copy is then substituted for the original bill, signed by the presiding officers in both houses and sent to the governor.

In New Mexico, this process is performed by the house of introduction and includes, for the first time, the incorporation of all amendments adopted and agreed upon by both houses.

Supervision

The actual work of enrolling and engrossing is done by the clerks in the enrolling and engrossing sections of the senate and house. Because of the importance of this task, the work of these clerks is supervised by a legislative committee.

In the senate, this is done by the judiciary committee serving in a procedural capacity. In the house, the supervision is under the enrolling and engrossing committee.

What Does the Supervision Consist of?

The job of the E & E committee primarily consists of proofreading the typed E & E bill to ensure that all amendments have been correctly inserted in the proper place in the bill, that

the bill has been properly typed and that the E & E bill is an accurate copy of the bill as actually passed by both houses.

At this stage in the legislative process, no changes can be made in the bill unless they are absolutely a matter of form, such as capitalization, margins, spelling or spacing. All corrections of this nature must be shown on a certificate of correction signed by either the chair or vice chair of the committee and attached to the E & E bill.

APPENDIX

PROCEDURAL COMMITTEES

Senate Committees' Committee

Membership: established by rule as the president pro tempore (chair); majority floor leader; majority whip; minority floor leader; minority whip; five members of the majority party and one member of the minority party appointed by the president pro tempore with the approval of the senate.

Functions:

1. appoints chairs, vice chairs and all members of standing committees;
2. assigns seats in the chamber;
3. lets contracts for printing;
4. approves all purchases of supplies and equipment;
5. approves hiring of all senate employees;
6. determines germaneness of legislation in 30-day and special sessions; and
7. pursuant to statute, appoints senators to interim committees.

Senate Judiciary Committee (serving in a procedural capacity)

Membership: as appointed by the committees' committee.

Functions:

1. enrolls and engrosses bills, resolutions and memorials originating in the senate;
2. revises and corrects the journal (specifically the duty of the chair or a committee member designated by the chair); and
3. examines and corrects bills for the purpose of avoiding repetition and ensuring accuracy (specifically the duty of the chair or a committee member designated by the chair).

Senate Rules Committee (serving in a procedural capacity)

Membership: as appointed by the committees' committee.

Functions:

1. proposes changes in the rules of the senate; and
2. considers and makes recommendations on confirmation of the governor's and other executive appointments.

House Enrolling and Engrossing Committee

Membership: as appointed by the speaker.

Function: enrolls and engrosses bills, resolutions and memorials originating in the house.

House Printing and Supplies Committee

Membership: as appointed by the speaker.

Functions:

1. approves all purchases of supplies and equipment;
2. lets contracts for printing; and
3. approves hiring of house employees.

House Rules and Order of Business Committee

Membership: as appointed by the speaker.

Functions:

1. proposes changes in the rules of the house;
2. determines whether legislation introduced in 30-day and special sessions is germane; and
3. considers ethics matters.