

PCHC Webinar: Getting Obscenity Exemptions Repealed

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Review of Obscenity Exemptions & Why They Need To Be Repealed

- Obscene: Material which deals with sex in a manner appealing to “prurient interest.”
- Not protected by 1st Amendment, can be banned.
- Supreme Court—even “fleeting” expletives are harmful to children and must be banned from broadcasts if children are in the audience.
- Federal agencies, Supreme Court, Congress and state legislatures paid particular attention to the effect of obscenity/indecency on children by adopting laws and regulations imposing additional fines, penalties, jail time for those who provide materials deemed “harmful to minors.”
- State harmful to minors laws initially included exemptions for law enforcement, medicine for needs for investigation of crimes, victims.

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- 44 states have expanded exemptions to provide no criminal liability if the materials are used for “educational” purposes, as part of courses of instruction and/or in libraries in K-12 schools, not just university research. Alaska, Arizona, Missouri, New Jersey, Oklahoma & Rhode Island do not have such exemptions.
- Five basic types, listed in table alphabetically, generally exempting either people providing the material or the institutions or both.
- Therefore, a person providing obscene/indecent materials to a child faces fines and jail time for “harming” the child, EXCEPT when the person is a teacher, librarian, lecturer, consultant, etc. providing the materials in an “educational” context.
- These educational exemptions originated in 1962 in the Model Penal Code, which was a template of proposed laws developed by consortium of legal, behavioral scientists, medical professionals, judges, etc.

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- Model Penal Code provisions, including obscenity exemptions, were drafted in response to Kinsey's books, which were hailed as "scientific" evidence of need to completely revise "outdated" morality based sex offense laws.
- In fact Kinsey's books were unscientific, unsound propaganda based on interviews with deviant populations and diaries from serial pedophiles.
- Kinsey's books also led to development of "sexology" field which trains "sex educators" who create materials advocating the Kinsey worldview that children are sexual from birth and should learn about all kinds of sex acts in explicit detail. They infiltrate the schools to replace parents as educators of children.
- Obscenity exemptions permit these materials to proliferate and expand to include "young adult" novels, lectures, films, textbooks and internet content in all subject areas. This means that "opting out" of "sex ed" does not protect children from these materials.
- We must act to protect children by repealing the exemptions.

Questions from First Webinar:

“Contemporary Community Standards”

The content of Social Media is now considered to be every community’s standard. Isn’t the internet dictating community standards regardless of what local citizens want?

- *The issue of contemporary community standards comes into play when determining whether particular materials are “obscene” or “harmful to minors” once the exemptions are repealed or if there are no exemptions in a particular state.*
- *The intent of the factor is that what is appropriate material should be based upon the average person in the community, as opposed to someone who is extra sensitive or someone who is desensitized. Generally, think of getting together 12 people in your local community and showing them certain material and asking them whether it is obscene either for adults or children.*
- *The Court specifically rejected applying a “national standard,” such as what social media considers “obscene,” noting that what is permitted in one part of the country, e.g., San Francisco, will be regarded as obscene in another community, e.g., Omaha, and such diversity should be respected so as to not dilute First Amendment protections.*

Questions from First Webinar:

Would the issue of "community standards" even come into play when we are talking about removing these exemptions? Couldn't we use the science on the brain?

- *Community standards are relevant to the question of whether something would be considered "obscene" or "harmful to minors" once the exemption is repealed, or if the state doesn't have an exemption. The factor would still have to be considered unless/until the Supreme Court changes the standard. Certainly, evidence of contemporary scientific, true scientific, findings on the harm done to children's brains by sexually explicit material would be valuable in making that determination.*
- *Such evidence would be particularly valuable in a community which has not been as affected by sexual indoctrination as another [if such places still exist] to show that for children in **that** community, exposure to the material in question would be particularly damaging, i.e., harmful.*
- *Courts have permitted expert testimony on contemporary community standards, although it is not required.*

Questions from First Webinar:

“Scientific Value for Minors:” Lacking “scientific value” for minors? In addition to “educational information,” can we use new emerging scientific information from brain science to fight obscenity based on its “lacking in scientific value?”

“Scientific value for minors” refers to the third factor in the Miller test for defining whether something is obscene for minors. This would come into play after an obscenity exemption is repealed, or if there is no exemption and we are trying to prove that the material in question is “obscene.” As well as proving that it appeals to the “prurient interest” in sex and that it is a patently offensive depiction, we would have to prove that the materials lack serious literary, artistic, political, or scientific value for minors.

It is a question of whether the book, image, internet posting, etc. viewed as a whole portrays something that teaches scientific (or educational, artistic, etc.) concepts that are valuable for the audience. For example, a cutaway drawing of the human body is scientifically valuable for learning anatomy, even if it depicts genitalia. However, a depiction of various sexual positions or a demonstration of how to put on a condom as a whole is not scientifically or educationally valuable, particularly in light of the brain research showing the harm such images cause.

Review of Selected Proposed Bills to Repeal Obscenity Exemptions

- Model bills available for all 50 states and D.C. prepared by Liberty Counsel summer intern and LU Law student.
- Proposed bills are state-specific and follow drafting conventions for each state. Provide a starting point for discussions with legislators. No “reinventing the wheel.”
- For 6 states without exemptions, bills have been drafted to specifically state that schools are not exempt from harmful to minors laws.
- Should be vetted with members of team and ideally with legislator or former legislator for best wording and presentation, i.e., which committee would be best to assign to for maximum chance of passage.
- Are drafted as part of the criminal law since that is where the obscenity laws and exemptions are located. Team could consider revising to create a civil action, such as a tort claim, if more likely to gain approval.

Proposed Bill To Remove Exemptions In Nebraska

TITLE: Remove defenses that allow the dissemination of obscene materials to minors in schools or libraries.

A BILL FOR AN ACT relating to obscenity offenses; to amend section 28-815, Reissue Revised Statutes of Nebraska; to remove defenses that allow a public or private school or a public or school library to disseminate obscene material.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-815, Reissue Revised Statutes of Nebraska, is amended to read:

It shall be a defense to a prosecution under section 28-813 that:

(1) Such person's activity consists of teaching in regularly established and recognized ~~educational institutions,~~ institutions of higher learning, college libraries, university libraries, or galleries or libraries, or the publication or use of standard textbooks, films, tapes or visual aids of any such institution, or the practice of licensed practitioners of medicine or of pharmacy in their regular business or profession, or the possession by established institutions of higher learning ~~schools~~-teaching art, or by public art galleries, or artists or models in the necessary line of their art, or to relevant references to, or accounts or portrayal of, nudity, sex, or excretion in ~~religion,~~ art, literature, history, science, medicine, counseling services, public health, law, the judicial process, law enforcement, institutions of higher learning, ~~education, public libraries,~~ or news reports and news pictures by any form of news media of general circulation

Proposed Bill Creating New Offense in New Jersey

Purpose: This bill would prohibit the exposure of obscene material or performances to minors in a public or private elementary, middle, or secondary school.

TITLE: Creates a new offense concerning the exposure of obscene material or performances to minors in a public or private elementary, middle, or secondary school; provides a penalty.

SUMMARY: Creates a new offence concerning the exposure of obscene material or performances to minors in a public or private elementary, middle, or secondary school and provides a penalty.

Be it Enacted by the Senate and General Assembly of the State of New Jersey:

....

b. A person affiliated with a public or private elementary, middle, or secondary school in an official capacity who knowingly disseminates to a student material which that person knows, or reasonably should know, to be obscene is guilty of a crime of the third degree.

c. It shall not be a defense to liability under this act that the materials disseminated were labelled as curriculum, approved for educational use, or otherwise described as for educational, scientific, or artistic purposes.

Proposed Bill Repealing Exemption in South Carolina

A BILL
TO AMEND SECTION 16-15-385, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DISSEMINATING HARMFUL MATERIALS TO MINORS, SO AS TO CHANGE EXEMPTIONS WHICH ALLOW THE DISSEMINATION OF MATERIALS HARMFUL TO MINORS AT AN ELEMENTARY, MIDDLE, OR SECONDARY SCHOOL, AT A PUBLIC OR ELEMENTARY, MIDDLE, OR SECONDARY SCHOOL LIBRARY, OR AT A CHURCH.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16-15-385 of the 1976 Code is amended to read

C) Except as provided in item (3) of this subsection, mistake of age is not a defense to a prosecution under this section. It is an affirmative defense under this section that:

(1) the defendant was a parent or legal guardian of a minor, but this item does not apply when the parent or legal guardian exhibits or disseminates the harmful material for the sexual gratification of the parent, guardian, or minor.

(2) the defendant was a ~~school,~~ **college, university,** ~~church,~~ museum, ~~public, school,~~ college, or university library, government agency, medical clinic, or hospital carrying out its legitimate function, or an employee or agent of such an organization acting in that capacity and carrying out a legitimate duty of his employment.

(3) the defendant was a pastor, clergy member, or religious leader affiliated with a church and was conducting a counseling, healing, or therapy session.

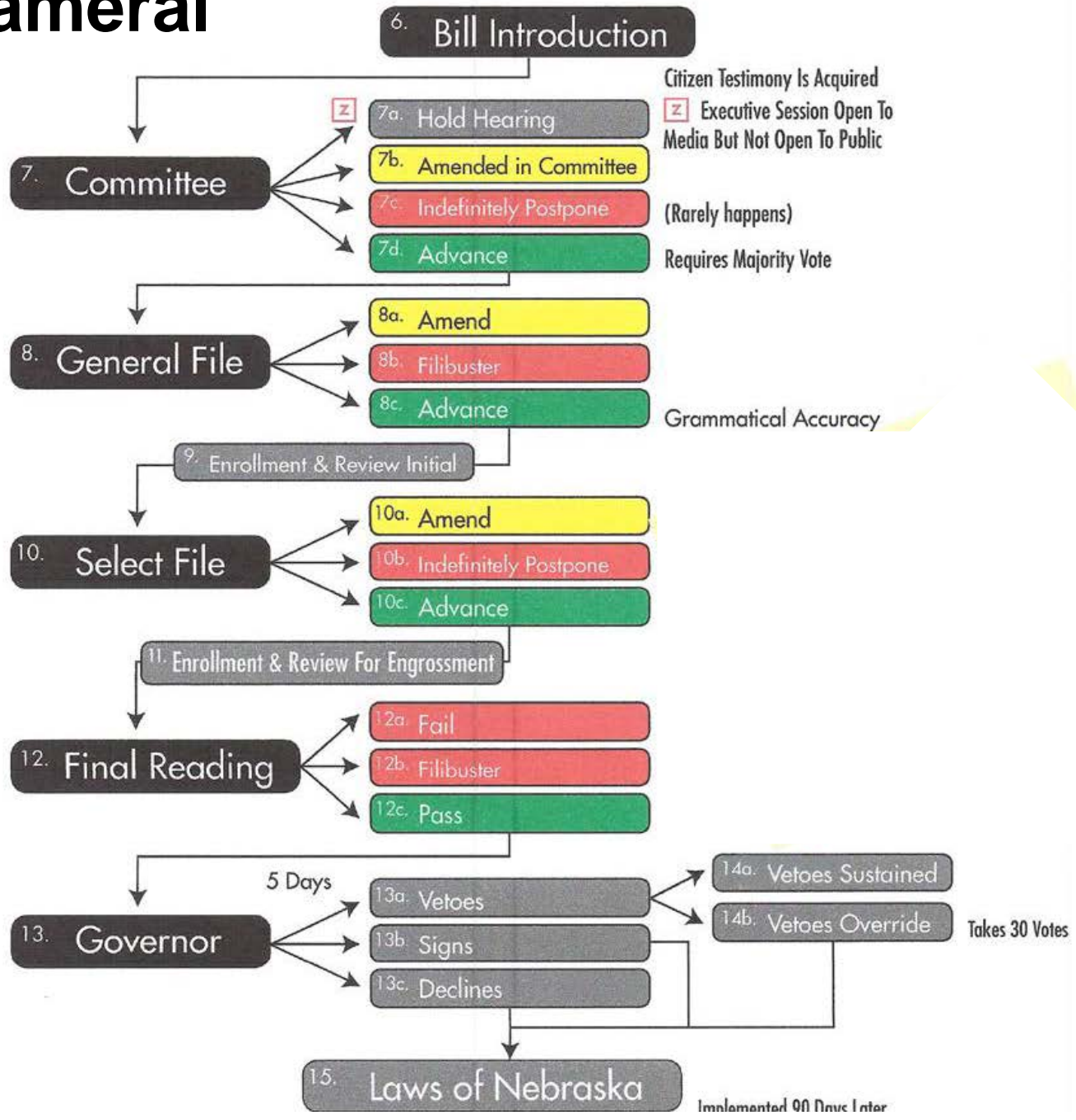
Presentation of Proposed Bill to Legislators

- Research legislators and decide on one or two best conservatives from each house of the legislature to approach and discuss the bill and possible sponsorship.
- Schedule a meeting with Legislator's staff with plan for meeting with Legislator (Webinar #4 will cover this in detail).
- Assemble documents to present to legislator to urge sponsorship of the bill:
 - Copy of current law;
 - Copy of proposed bill as edited by your team;
 - Copies of sample “bad” curriculum, books, internet screen shots, etc. to show what is being shown to students, *e.g.* copy of *It's Perfectly Normal*;
 - Any petitions or testimonials from parents in the state about the need to repeal the exemption.
 - News reports, articles about bad consequences of the materials—student on student assaults, increases in STDs, etc.
- Role play (see video Webinar #1) meeting until comfortable.

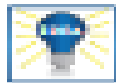
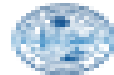
Legislative Process “How a Bill Becomes a Law”

- Unicameral Legislature— One House—Nebraska
- Bicameral Legislature—Two Houses—All others
 - Usually House & Senate comparable to House of Representatives and Senate in US Congress
 - Generally bills can be introduced in either house first and if approved is sent over to other house for consideration.
 - Strategic decision—which house would be most advantageous to begin with?
- Find Flowchart for your state (some examples follow). Google “how a bill becomes a law in [name of state] flowchart”—usually created by policy organizations or universities.
- Legislature Websites have narratives on process.

Unicameral



HOW AN IDEA BECOMES A LAW



Idea

Auditors, groups, or legislators propose ideas for a new law. A Representative then decides that the idea should be a bill.



House Bill Drafted

The Representative (also called a member) contacts House Bill Drafting Services and requests a bill to be drafted. The member may provide very detailed instructions or just the general idea. A bill drafter, called a "bill drafter," will meet with the member and his or her staff and the member is satisfied and a final draft is approved. Once approved, the idea receives a bill number (additionals only in the House) and is called a bill for the first time.



1st Reading is by Publication in the House Journal

In accordance with Article II of the Florida Constitution, all bills must be read three times before being voted on. The 1st Reading is by publication of the bill number, its sponsor, and a short one paragraph description of the bill, collectively, in the House Journal. The Speaker will also refer the bill to one or more committees or subcommittees in the House. Committees and subcommittees are groups of members appointed to review specific areas of government such as education, criminal justice, and agriculture, to name a few.



House Committee or Subcommittee Hearing

Once a bill is referred to a committee or subcommittee, it is added to the committee's agenda. The Chair of the committee or subcommittee will decide which bills should be heard. In 2019, of the 100 general bills filed, 488 "dead" bills in a committee or subcommittee never being heard. Once a bill has been heard satisfactorily by all of its committees or subcommittees, it is placed on a House Calendar signifying that it is available for 2nd Reading.



2nd Reading on the Floor is by consideration of the Special Order Calendar

Once a bill is on the House Calendar, that does not mean that the bill will be heard on the floor. The House has a special committee called the Rules & Calendar Committee that will determine when and if a bill will be sent to the floor for 2nd Reading. These bills are placed on a recommended Special Order Calendar. Each Special Order Calendar is voted on prior to the House considering these bills on a specific legislative day. Once a bill has been introduced and read on the Special Order Calendar, if completed, questions are answered about the bill, and amendments are considered. This constitutes a bill's 2nd Reading.



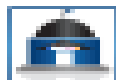
3rd Reading on the House Floor by consideration of the Third Reading Calendar

After a bill has been read a second time on the Special Order Calendar, it is taken up on 2nd Reading, generally on a subsequent legislative day. This is the final reading of the bill prior to being voted on. Once a bill has been read a third time, if it is explained again, questions are again permitted, and amendments may be offered at this point; amendments may only be considered by a 2/3 vote. The final action is for the bill to be read prior to the speaker making a closing statement. The bill is then voted on by the members of the House. Any bill not receiving a favorable vote "dies" on the floor.



Senate Consideration

Once the bill is passed by the House, it is sent to the Senate with a "message." The Senate's process varies slightly from the House's process. The Senate may vote to pass the bill without amendments and return the bill to the House, refer the bill to a committee for consideration, or defeat the bill on the Senate floor. The Senate may decide to further amend the bill and pass it. If this happens, the bill is returned to the House.



Return to the House

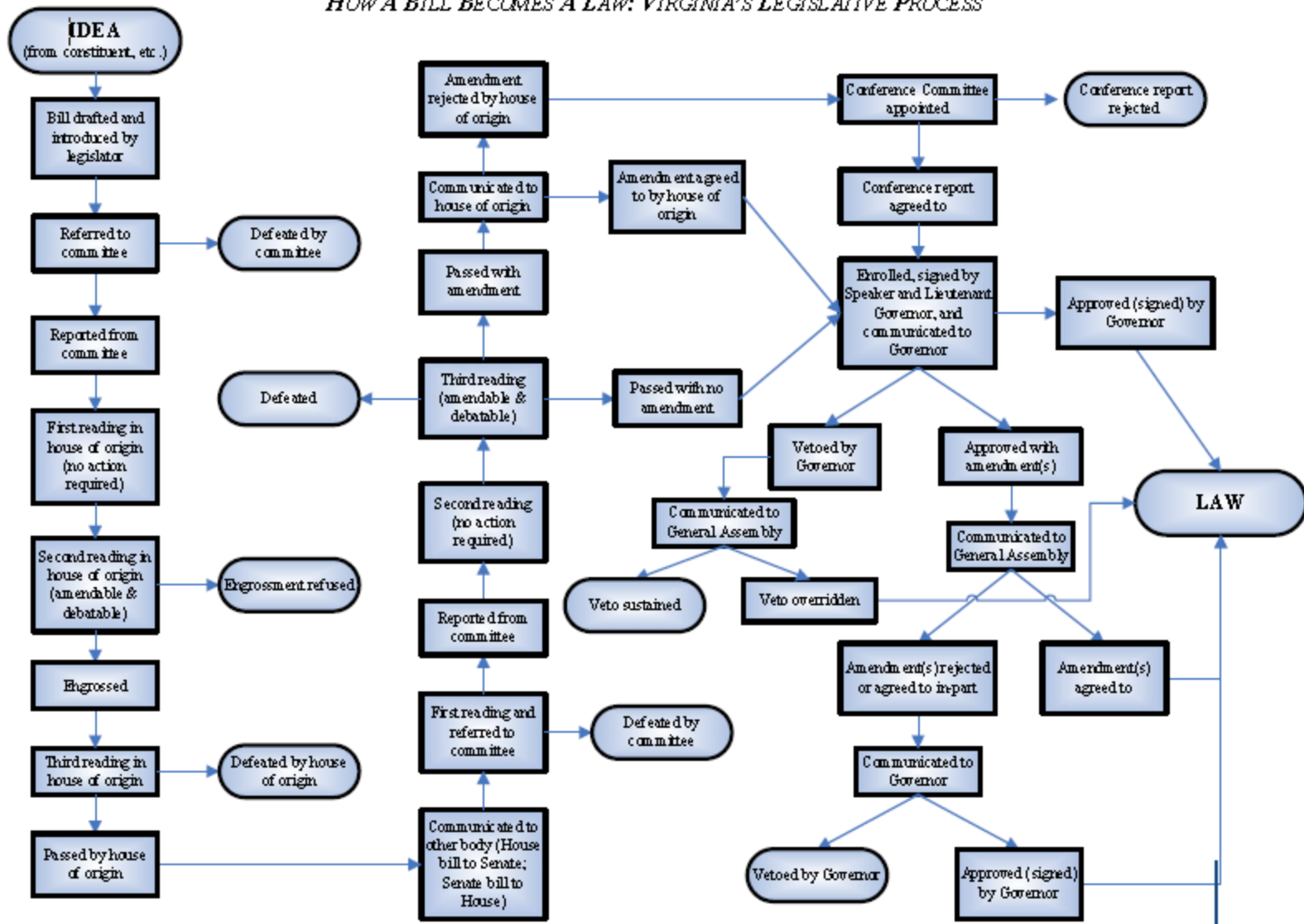
If the House has received a House bill having been passed by the Senate without amendments, it puts the bill in its final form called an "amended" version. The amended version of the bill is then sent to the Clerks for consideration. If the Senate has further amended the House bill, it is returned to the House for consideration of the Senate amendments. This "back and forth" consideration of the bill is an attempt to perfect the bill's language by working out the differences, but generally ends after several exchanges by each side. At any time after the Senate or the House may decide to abandon the effort of reaching an agreement and the bill dies. If the issue is important enough, however, the House and Senate may agree to appoint a conference committee comprised of Representatives and Senators to work out the details of the bill.



Consideration by the Governor

Generally, if the Legislature is in session and has sent the Governor a bill, he/she has seven days to consider the bill while the Legislature remains in session. If the bill is received after the Legislature has adjourned "over the" (the adjourn) session, the Governor has 15 days to consider the bill. The Governor may take one of three actions: sign the bill into law, allow the bill to become law without his/her signature, or veto the bill. If the Governor vetoes the bill, the Legislature may override his/her veto by a 2/3 vote of the Legislature during the next Session.

HOW A BILL BECOMES A LAW: VIRGINIA'S LEGISLATIVE PROCESS



Office of State Governmental Relations, University of Virginia

Continuing Support At Each Step of the Legislative Process

- Participate in committee hearings:
 - Appear with team members and other community members;
 - Testify if possible;
 - Line up witnesses if possible;
 - Obtain written statements to submit to the committee as appropriate.
- Floor debate:
 - Be present in audience with as many team members as possible and if possible for each vote
- Work with other house legislator to coordinate committee and floor debates
- Coordinate with governor's office staff to meet to discuss the bill and ask for signature.