

THE LEGISLATOR AS LAWMAKER – THE INTERIM

How Committees and Legislators Can Be Effective Between Sessions

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THE LEGISLATOR AS LAWMAKER – THE INTERIM

How Committees and Legislators Can Be Effective Between Sessions

Overview

The time between legislative sessions, known as "**the interim**", can be just as important as the session. Committee studies, including oversight, are among the most important functions of the lawmaking process. For the individual member, the time between sessions is used for working with constituents and getting ready for the next session.

An effective interim standing committee system and the ongoing activities of individual members provide a year-round presence of the legislature in state government. This can make the legislature a more effective partner in the three branch system of government.

The **committee system** in the House consists of 16 standing committees. Committee subject matter jurisdiction is defined in the House Rules (House Rule 6.6). Standing committees use the interim effectively when they fully utilize their interim authority.

Committees can study and prepare for session by examining problems and issues within their own jurisdictional areas and by development of proposed legislation.

Committees can use the interim for oversight of state government programs and operations within their subject areas, seeking to ensure that legislative intent of laws that have been enacted is carried out. They review and approve or disapprove proposed agency rules. Committees sometimes visit state facilities and hold public hearings outside Baton Rouge.

The **individual legislator** uses the interim to prepare for the next session – to gather information and seek possible solutions to problems, to develop draft legislation, and to plan for the session.

Many resources are available to both committees and to individual members to help them use the interim effectively.

THE COMMITTEE SYSTEM – THE INTERIM BETWEEN SESSIONS

How the Legislature Functions Through Committees

The interim activities of standing committees are critical to the role of the legislature as a co-equal branch of state government. The authority of the legislature as policymaker is exercised during the interim through the standing committees, essentially through studies, oversight, and pre-session hearing of legislation.

Composition

The standing committee system of the House of Representatives is comprised of the 16 House committees. The committees and the specific subject matter jurisdiction of each are established by House Rules (House Rules 6.1 and 6.6).

House Standing Committees

- Administration of Criminal Justice
- Appropriations
- Agriculture, Forestry, Aquaculture and Rural Development
- Civil Law and Procedure
- Commerce
- Education
- Health and Welfare
- House and Governmental Affairs
- Insurance
- Judiciary
- Labor and Industrial Relations
- Municipal, Parochial and Cultural Affairs
- Natural Resources and Environment
- Retirement
- Transportation, Highways and Public Works
- Ways and Means

The chairman and members of each committee are appointed by the Speaker of the House (except that certain members of the Appropriations Committee are elected as provided by House Rules [House Rule 6.4]).

Types of Interim Committee Studies

The standing committees can engage in several kinds of interim studies, all having significance for legislative policymaking. These include: studies of problems and possible solutions, often with a view toward proposed legislation; oversight of the implementation of laws previously enacted, including review of proposed agency rules; and pre-session hearings of proposed legislation and prefiled bills.

Research Studies

Committees have the authority and responsibility to conduct research studies for the legislature.

House Rule 14.16 authorizes each standing committee to "study and hold hearings between sessions of the legislature on matters, subjects, or problems" within its subject matter jurisdiction as directed by the legislature or the House or by a majority of its own members. Interim meetings are subject to specific notice requirements.

Such studies may be for the purpose of examining the scope of particular problems within the committee's jurisdiction; gathering data and information; obtaining testimony and opinion; developing and evaluating alternative solutions; and drafting and considering proposed legislation. Committee activities may include on-site visits to facilities around the state that pertain to committee subject matter as well as committee hearings to receive public testimony and opinion on matters of concern to the committee and the public.

Studies may be conducted jointly with the corresponding Senate committee having jurisdiction of the subject matter or by the House committee only.

Many studies are directed by a study request, a legislative instrument requesting the committee, or a joint committee to study a particular problem. However, a committee may determine on its own initiative (subject to the Speaker's approval), that it will undertake a particular study.

Oversight

Committees have the authority and responsibility to oversee the implementation of law.

"**Oversight**" is a much used and somewhat misunderstood term. It refers not only to the statutory authority of committees to review proposed agency rules, but also to the entire scope of all types of legislative activity that are directed to assure compliance with legislative intent in the implementation of laws.

House and Senate committees are authorized by the Administrative Procedure Act (APA) to review rules proposed by agencies within their subject matter jurisdictions. Since agency rulemaking authority is actually the delegation of the details of lawmaking to executive branch agencies, the legislature has retained authority, subject to gubernatorial override, to disapprove proposed rules. Detailed procedures for review of agency rules are specified by the APA (R.S. 49:950 et seq.).

House and Senate committees are required by Joint Rule 16 to "conduct legislative oversight of the administration of laws and programs by agencies supported ... by state funds ...". Committees may conduct in-depth program evaluations to ensure that program purposes are valid and are being served and they may also do less extensive evaluative research related to the operation of programs. They may also develop related proposed legislation.

The Sunset Law (R.S. 49:190 et seq.) abolishes executive branch agencies on specified dates unless they are re-created by the legislature prior to such dates. Standing committees are required to evaluate the agencies within their jurisdictions and the agencies' programs to determine if their legal authority should terminate. The law authorizes the committees to select particular entities or programs for more extensive evaluation.

Hearings on Prefiled Legislation

Committees have the authority to conduct hearings on prefiled legislation prior to the session and to determine the committee report on such legislation. If the committee determines its report at a pre-session hearing, then during the session the committee must report the bill in the same way, unless the committee requests permission to change its report and the House permits the change, all within certain time frames. House Rules carefully regulate these procedures. Prefiling and pre-session hearings are intended to allow more time for committee hearings, particularly for complex and controversial matters, and to relieve the busy committee agendas

during session. Committees have seldom used this authority in recent years.

Committee Broadcasts

Committee meetings are broadcast on the Internet and on closed circuit television accessible via cable television in the State Capitol complex. Internet broadcasts of meetings are archived on the House website for later viewing. See **Information Resources for Constituents** beginning on page G-1 and **Broadcast of Legislative Proceedings** on page E-21.

INTERIM ORGANIZATION AND FUNCTIONS OF COMMITTEES

Committee Planning and Staffing Between Sessions

Planning

Effective committee study requires careful planning. Rules require committees to submit statements of study scope, anticipated meetings, and estimated cost to the Speaker for approval. Productive use of committee and staff time is best assured by an overall plan for the committee interim, including the matters to be studied by subcommittee, if any, and a plan for each study.

Subcommittees

Each standing committee chairman is authorized to establish subcommittees which may take action subject to approval of the committee. In addition, each standing committee has this authority. Committees often assign studies to appropriate subcommittees.

Effective Committee Study/ Use of Staff

The committee chairman should use staff expertise in planning each study. Such plans should include identification of the problem(s) and the questions the committee seeks to answer; the kind of information necessary to define the problem and answer the committee's questions; the methodology necessary to gather the information and the time required to gather it; and how the time for each committee meeting will be fully and productively used, including research findings to be presented and testimony to be given.

Committees should seek as much information on the topic as time permits. Longer range planning will result in obtaining better information.

Research studies by committees which examine problems and alternative solutions should include such staff research as: staff preparation and presentation (written and/or oral) of background information (such as data and information relative to the scope of the problem, present laws and programs related to the problem, experience, or laws of other states); staff interviews of department personnel and other interested or affected persons who may testify before the committee in order to assure that informed testimony will be provided to the committee; preparation, submission, and analysis of data from questionnaires submitted or administered to affected agencies or persons; drafting suggested questions for members to use during hearings.

Review of proposed agency rules by a committee should include such staff preparation as: examination of the legal authority for the rule and legislative intent related to the rule; explanation, written and oral, of the change proposed by the new rule; research into related legislative activity, particularly whether the committee has considered similar or related bills or rules; information related to possible effects of the rule. The Legislative Fiscal Office staff must review and approve the fiscal impact statements and economic impact statements prepared by the agency concerning proposed rules that the agency is required to submit with its statement of intent to adopt rules. The agency is also required to prepare a family impact statement concerning each proposed rule which must include certain specified information about the effect of the rule on family formation, stability, and autonomy.

In-depth program evaluation research requires considerable staff effort and continuing direction by the committee. It involves identification of program goals and objectives as established by the legislature or by program administrators and gathering of objective information and data to indicate how well such goals and objectives are met. It often examines the cost-effectiveness and efficiency of the program and its management. This can include such methodology as staff analysis of records and data of the program or gathering of new data, interviews, administration of questionnaires or surveys to affected persons, and other more traditional research into provisions of law and comparisons with other states. The Legislative Auditor and the Legislative Fiscal Office have been charged by law with conducting performance audits and program evaluations for the legislature.

Limited program evaluation research methods may also be used to examine specific questions related to program operations. This type of research may use some of the same methodology, although of a less extensive nature, as does a full program evaluation. It can aid in an immediate and effective committee response to problems which arise in program or department operations.

Sunset studies are useful in informing committees about agency programs and activities and in determining whether the agency and/or its programs continue to be needed. The sunset law outlines specific determinations the committee is required to make as part of its study to decide whether an agency should be re-created or allowed to "sunset" and cease to exist. Committee sunset activities may include a review of the indicators of program effectiveness and any audits or reports prepared by the legislative auditor.

THE INDIVIDUAL LEGISLATOR – THE INTERIM

What a House Member Does Between Sessions – Committee Work and Session Preparation

To be effective, activities of individual House members during the interim between legislative sessions require planning and attention. It is particularly important that each member give careful consideration to the preparation of his or her personal legislative program and to all steps necessary to assure the successful handling of that program.

Primary Areas of Interim Activity

There are four primary areas of interim activity for the individual House member:

- **Service on committees:** This includes participation in committee activities such as oversight of proposed agency rules, oversight of the effectiveness of previously enacted legislation, studies by committees of problems in their subject areas, and development and adoption of proposed committee legislation.
- **Constituent communications:** This means following through with constituents on their interests and problems. This includes discussion, development of information, and possibly research and drafting of legislative proposals related to interests or problems identified by constituents.
- **Political subdivisions and local officials:** This includes working with local governing bodies and officials in addressing their problems, including the preparation of needed legislation, as well as providing for publication of notice of local or retirement bills and meeting any other procedural requirements.
- **Personal legislative program:** This requires the development of ideas, research, and drafts of legislation relating to the member's own particular areas of interest. The bills he or she will introduce comprise the member's personal legislative program or package.

Guidelines

Certain guidelines must be followed to assure serious and favorable consideration of the member's proposed legislation by the legislature. Substantive, complex legislation requires special preparation, attention, and handling. The following guidelines apply particularly to such legislation, although any bill may have aspects which require that many of the following steps be followed.

These essential rules should be observed in the preparation and presentation of a member's legislation:

- **Know the content of your bill.**
- **Be generally knowledgeable of the subject matter.**
- **Be prepared to answer questions.**
- **Be willing to consider possible amendments.**

It is critical that the member fully understand his or her bill and be generally knowledgeable of the subject matter, using self-education and staff briefings and research. The staff can be a great help. No member can be an expert on everything, and no member will be accepted or recognized as an expert on everything.

Preparation must begin in a timely manner. Complex legislation requires time for research, drafting, and familiarizing oneself and potential supporters with the provisions of the proposal.

How to Use Staff

Get to know staff having expert knowledge of the subject matter and seek their assistance to develop expertise and to become as specialized in knowledge as is necessary to handle one's bill.

The staff will provide objective, nonpartisan research and will try to develop the idea and draft the bill as the member instructs. It is important to **communicate the request to staff clearly. Contact staff as early as possible**, even when the idea is only in the formative stages, and further consultation with staff should occur as the member develops the idea. Staff members can provide information about the history of similar legislative proposals, suggestions for implementation, and ideas for alternative approaches. Staff can advise on procedural requirements, such as session subject matter limitations and requirements for publication of notice. It can be advantageous to invite staff to any meeting where your idea for a bill is being discussed.

Staff does not make policy. Although staff will try to provide as much assistance as is requested and as time permits, the bill is the member's responsibility and staff needs direction from the member.

Difficult, substantive **research takes time.** Development of the legislation may require obtaining laws of other states, information

from public bodies and private agencies, and coordination of information and ideas from many sources. The earlier a bill is requested, the more time the staff will have to devote to it. A bill requested too late for thorough research and drafting may generate questions, require substantial amendment, and may not be properly considered during session. If the bill is a local or retirement bill required to be advertised prior to introduction, it is imperative that staff assistance be requested before the deadline for submission of the notice to the newspaper; if the deadline has passed, it is possible that the bill cannot be introduced.

Developing Legislation

There are a number of key elements to consider in developing legislation. The author should review these elements in working with the drafter during the preparation of the bill itself and in obtaining the support of other members and interested groups. He or she should determine which elements apply to the bill and be fully prepared on each of them in relation to the bill. Staff can assist in obtaining information in this regard. This preparation should be completed well in advance of the session.

What is the problem that is being addressed? This is a practical statement of the actual problem that makes the bill necessary. Carefully done, this can assist the member and the drafter in removing unnecessary and unworkable provisions from the bill. It also assists the member in explaining the bill to others.

Is legislation the proper approach to solving the problem? Does the solution require a change in existing law or the granting of authority to implement the solution? Does sufficient authority exist to solve the problem by administrative action? These issues are crucial to the draft and to any explanation of the bill's importance.

What does the bill do? Does the bill go beyond the solution sought? Does the bill have unnecessary and unwanted effects? How is it to be implemented in practice? What cost impact does it have?

How does the bill solve the problem? What is the actual result of the legislation? What is the actual effect on the particular problem?

Does the bill have the support of others? Other legislators? Interested and affected groups? The provisions of the bill to which potential supporters object may be changed before the bill is introduced if the questions on this list are answered. The answers to these questions also affect other support the bill might receive.

Can examples of similar solutions be cited? Citing similar statutes used successfully to solve similar problems may attest to the workable nature of the solution.

Can likely objections be answered in advance? Careful preparation includes anticipation of probable objections or opposing arguments to the legislation and the preparation of answers in response to such objections and arguments, including data and information. Identifying and possibly speaking with the likely opponents may be important when doing this.

The degree of development of the legislative proposal will determine how the legislator will **initiate staff efforts** in preparation of a bill:

If the idea or need for legislation is formulated and the member is ready to give instructions on drafting the bill, instructions should be clearly given to the drafter, and the drafter's questions answered. In developing the concept with the drafter, the author may find that factors exist (such as current law or practical requirements of implementation) that require changes in the initial approach.

If the legislative proposal is only a concept, the member needs research to determine the extent of the problem, possible alternative solutions and their implications, and specific provisions that might be incorporated in a solution. Staff can assist in formulating the questions to be answered and the kinds of factual information necessary to answer them, as well in suggesting solutions and raising questions about details of the proposed law. The staff does not make the decisions; the contents of the bill ultimately are the responsibility of the member.

To Develop Effective Legislation, a House Member Should:

- Begin preparation of legislation well in advance of the session.
- Request preparation and drafting of legislation as ideas are being generated and discussed, not after proposals are developed.
- Give staff the time necessary to do a good and thorough job.

Member Responsibility

When it is complete, it is important for the member to review the bill draft in detail. The member should ask the drafter to point out areas which the drafter thinks are particularly important. The author must read the entire bill closely and ask questions about any part that is not clear. Clarity of language is a hallmark of good legislation. It will also make the bill easier to explain.

Developing Support for the Bill

Pre-session efforts to gain support and eliminate opposition may include:

- **Meeting with supporters** in order to generate publicity and enthusiasm for the legislation.
- **Meeting with other legislators** interested in the subject in order to gain their assistance and incorporate their ideas. Adding co-authors to a bill is often helpful.
- **Publicity.** Such actions as contacting interested groups, issuing press releases, and mentioning legislation in public forums will make the media and the public aware of the proposal.
- **Floating a trial balloon** involves identifying someone affected or potentially opposed and obtaining an initial response to the idea. One possible approach is to contact the affected state agency which will be required to implement the law and ask for comments on the proposal.
- **Anticipating and trying to work out problems.** This means identifying the likely opposition and including or removing provisions to make the legislation more palatable, or providing information to those opposed to disprove their objections.
- **Redrafting.** If necessary to make technical corrections, to make the implementation more workable, or to answer objections of supporters or would-be opponents, the language and provisions of the bill can be rewritten. Changes to the bill are best done before the bill is filed.
- **Preparing responses to the opposition.** When the opposition is identified and the arguments against the proposal known, arguments and information to refute the objections can be prepared.

HOW STAFF ASSISTS COMMITTEES AND MEMBERS DURING THE INTERIM

What Staff Can Do to Make Committees and Individual Members More Effective Between Sessions

Overview

Legislative staff provides a variety of types of assistance to legislators in the interim to aid them in their lawmaking role and in their capacities as representatives and as overseers of the departments and programs of state government. The most effective members of the legislature take best advantage of the staff services available. Research, legislative oversight, and bill drafting services for individual members and committees are provided by House Legislative Services. The Legislative Fiscal Office and the Legislative Auditor also provide research, data, and information to members. Although the discussion below focuses on House Legislative Services staff, much of what is said also applies to other staff.

The preceding sections of this guide describe how individual House members and standing committees make effective use of the interim period between sessions of the legislature. It is the mission of House Legislative Services (HLS) to provide the type of assistance to both committees and individual members that assure productive and effective use of this time between sessions.

Staff assistance can be generally categorized as: research, legislative oversight, and bill drafting. The interim activities of both individual legislators and legislative committees require these kinds of staff assistance.

Research

Individual members and committees may request information from HLS about any matter within their legislative responsibilities. Staff research to respond to such requests for information may include:

- **General background** – including descriptions of governmental programs, statistics, provisions of current law, and information about a problem.
- **Specific information and data** – including information and data specific to the particular problem or programs.

- **Legislative history** – detailing prior legislative action on the subject in Louisiana.
- **Court decisions** – reflecting the content and significance of particular decisions as they relate to the matter under study.
- **Federal laws or laws of other states** – including descriptions, comparisons, and in the case of federal law, requirements for state action or prohibitions on it.
- **Alternative solutions and their pros and cons** – listing of alternative solutions to problems under study and explanation of their advantages and disadvantages.
- **Evaluation** – including objective indicators of whether and how well governmental programs have been implemented and information about possible impact of proposals.

Such research may be handled quickly or may be in-depth, depending upon the nature of the matter under study and the time available. In many cases, staff will try to provide a written response in memorandum form in the detail required; but, if time does not permit, a quick answer based upon findings only from readily available sources can be provided by telephone or e-mail. In some cases, the staff will provide copies of material from other sources.

Committee Studies

In addition to the general research types listed above, legislative staff can play an important role for committees in the interim by assisting in the scheduling of meetings and hearings, identifying and briefing persons who can provide committee testimony, briefing committee members, preparing memoranda or research papers, outlining major alternatives, collecting and evaluating information about state agency performance, and preparing draft legislation.

Legislative Oversight

Legislative oversight can take many forms. While the more in-depth oversight activities which require large investments of staff time, often in the nature of program evaluations or other types of extensive studies, are usually undertaken by committees, each individual legislator can use staff to obtain good information about how and how well programs have been implemented.

Oversight-Related Questions

Examples of oversight-related questions legislators and committees may ask staff to research concerning state programs are:

- What regulations have been proposed or adopted and what evidence is there that they are based on legislative authority and reflect legislative intent?
- Have changes in state needs made programs and/or organizational units obsolete?
- What information is there on how many and what type of people have been served by the program and what is the cost per person of providing the service? What information is available to demonstrate whether the program is or is not cost-effective?
- What measures of performance are being used by the implementing agency to determine if the program is successful? State law (R.S. 39:31) requires departments and agencies to revise and update a strategic plan as part of the performance-based budget process (See **Budget Planning and Preparation** beginning on page F-12). The plan must include specific and measurable performance indicators for the objectives included in the plan, including indicators of input, output, outcome, and efficiency.
- What information is there that the program is successful? How does this information compare with that of other agencies and/or states that have a similar program?
- What might be done to improve the program?

Performance audits/program evaluations

Studies of the efficiency and effectiveness of state government programs that employ objective methodologies to measure real program effects, to demonstrate in factual terms results or effects as related to program objectives, and to measure program operations and administration against objective standards are performance audits. The legislative auditor is charged by law with performance audits, program evaluations, and studies to enable the legislature and its committees to evaluate the efficiency,

effectiveness, and operation of state programs and activities. The Louisiana Performance Audit Program of the legislative auditor's office has been established for this purpose. It conducts a number of performance audits each year. Subject to the direction of the Joint Legislative Committee on the Budget, the Legislative Fiscal Office is responsible for continuous review of programs and agency budgets, for calling attention to inefficient practices, and for performing, at the direction of either house or any committee, in-depth studies of programs.

Bill Drafting

Although related to session activity, most bill drafting takes place before legislative sessions. Some bills are the product of committee studies and are drafted by staff assigned to the committee working with the committee members. Most bills, however, are drafted at the request of individual members. Perhaps the most critical part of the drafting process is the request the member makes that the bill be drafted. The drafter will prepare the proposed law as the member requests; therefore, careful and accurate instructions are important. The drafter will assist the author in formulating his or her ideas if the proposal is only a concept when requested. In the case of a complicated bill, the author will work with the drafter to explore the legal and practical ramifications of the various options that are available and give instructions to the drafter about the direction the legislation should take. The legislator should take time to review with staff the practical effects of the legislation, who will implement it, what cost is involved, and similar considerations. The drafter will propose specific language; will try to make certain that all constitutional requirements are met, that no constitutional prohibitions are violated, and that no conflict exists with other statutes or federal requirements. Language needs to be carefully crafted to prevent possible misinterpretation, and all potential problems or loopholes which might result from the enactment of the legislation need to be considered. In short, drafting legislation of technical and substantive quality takes time, both for the drafter and the author.

Remember

All requests for research or for bill drafting are confidential until the House member makes them public.

Effective Use of Staff Services

Suggestions for the most effective use of staff services include:

- **Plan ahead** and give staff time to do the thorough job necessary for good research and bill drafting.
- If you have asked different staff members to work on the same issue, inform the staff that you have done so. This will avoid potential conflicts and allow for collaboration instead of duplication.
- If it is possible, inform the drafter **why the information is requested or what the bill draft is intended to accomplish** – all such information is treated as confidential. Likewise, **all requests for research or for bill drafting are confidential until made public by the member**. If the drafter knows why the bill has been requested, he or she can tailor the draft to the purpose and may be able to suggest a more workable means of accomplishing the same end than that requested by the member.
- **Discuss** the issue or problem with a staff person knowledgeable about the subject to develop a basic understanding as a first step in research.
- Don't hesitate to **ask for basic information** – often the basic question is critical to a clear understanding of the information wanted or the best solution to a problem.
- **Let the staff know if the research provided was useful** or if something else is needed or would have been more helpful.

The best legislative staff work is done during the period between sessions when committees and individual members follow the principles discussed here for effective staff use. Staff and legislators have more time to give to each individual matter in this interim period than they do as the session nears. Legislators will find it beneficial to use this time – and to use staff assistance – to do the research, analysis, and evaluation necessary in order to understand problems, weigh alternatives, formulate proposed solutions, develop proposals, evaluate programs, and complete clear, thorough, and workable bill drafts.

HOW AN IDEA BECOMES A BILL

