

Legislative and Campaign Law Section  
State Bar of Texas

Legislative Drafting and Procedure Course

## **Overview of Legislative Procedure**

Ross Peavey, Austin  
Brady & Peavey, P.C

Friday, December 7, 2018  
Texas Law Center ~ Austin, Texas



# Ross O. Peavey

J.D., The University of Texas  
B.A., Texas A&M University

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Working in the Texas Legislature and politics for more than 15 years, Ross Peavey represents businesses, nonprofits, campaigns and other entities as an attorney and lobbyist. He currently serves as Vice Chair of the Texas Bar's Legislative and Campaign Law Section.

Peavey's extensive experience in both the Texas House and Senate helped him develop a keen understanding of legislative tactics and parliamentary procedure. Peavey is a co-editor of Texas Senate Practice, considered a core material supplementing the Senate Rules by the Legislative Reference Library of Texas. He serves as an advisor for lawmakers and diverse organizations on legislative and political matters.

He received his law degree from the University of Texas, where he received the Dean's Achievement Award in Election Law and was elected President of Student Bar Association. He worked his way through law school as staff for Texas House and Senate offices and in law office settings ranging from small firms to large entities. A Travis County native, he was raised in Austin and Liberty Hill, Texas.

# Understanding the House and Senate Rules

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ATTORNEYS & COUNSELORS AT LAW

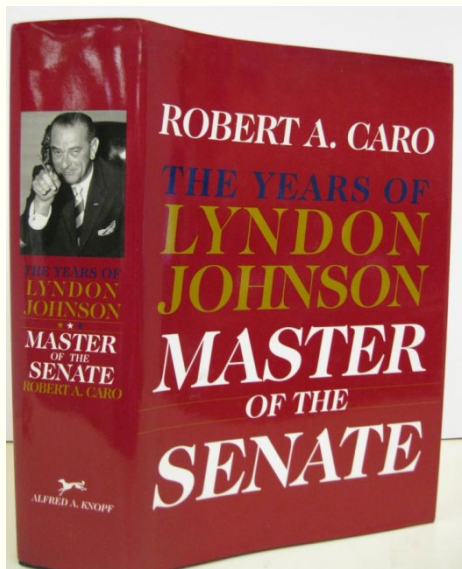
# Objectives



- Rules in Context
- Understanding Rules In Practice
- House & Senate Rules for Lawyers
- Identify Key Resources



# A Texas Tradition



# A Texas Tradition



“Oratory can’t hold a candle to  
parliamentary tactics.”

Read Granberry  
House Parliamentarian, 1949

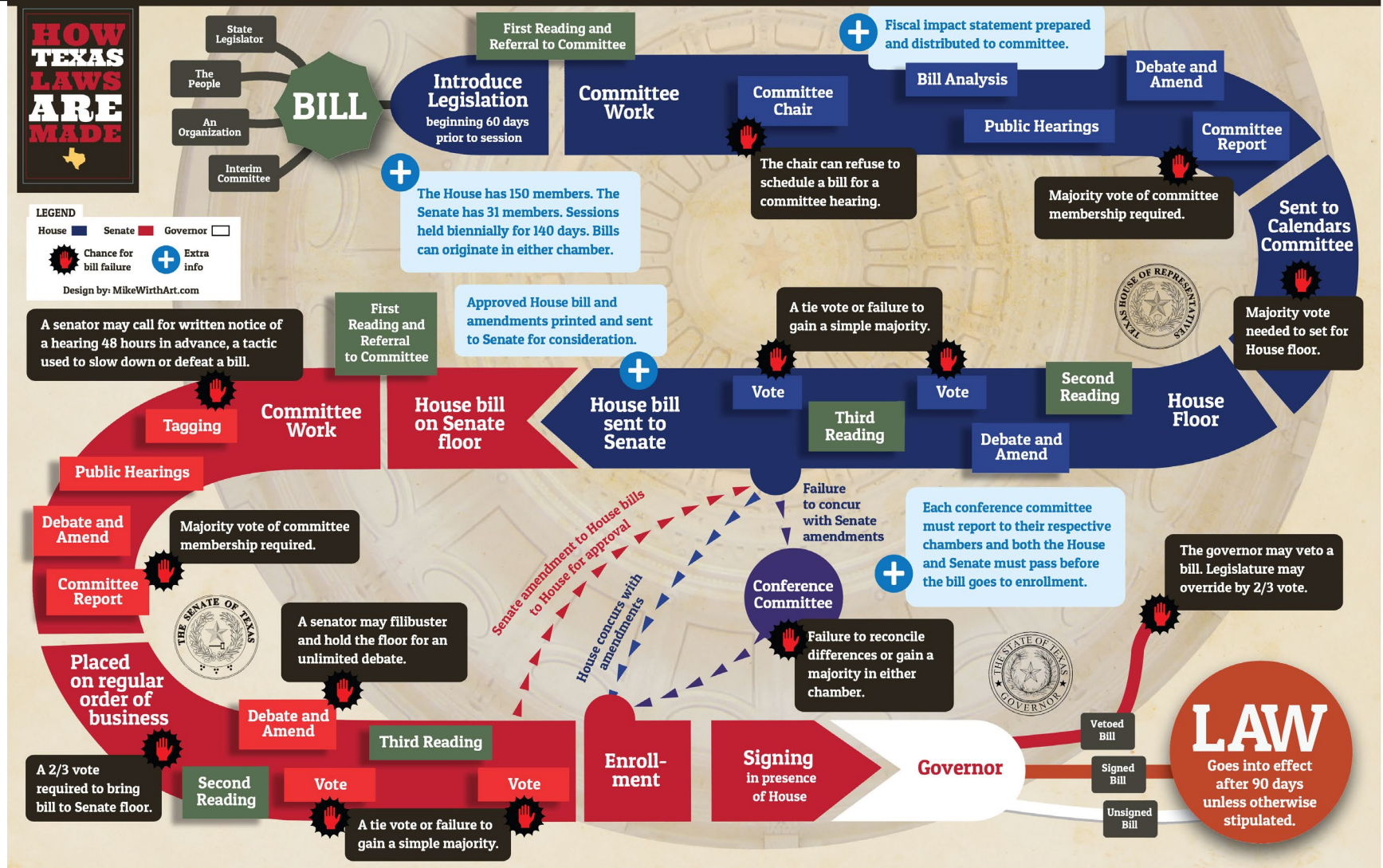
“Had Lyndon Johnson not been the leader of the  
Senate, the Bricker Amendment would be part of  
your Constitution today.

He was solely responsible, because of his  
parliamentary genius.”

Bobby Baker  
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# Starting Down the Road



# The Silent Killer



6,631 bills & resolutions filed



The Texas legislative process  
is similar to a giant funnel:  
6,631 bills get poured in the top  
Only 1,211 – or 18%– become law.

*The process is essentially designed to kill  
bills through procedural mechanisms rather  
than by taking actual votes.*



# The Silent Killer



## Bill Activity During 82nd Legislative Session

Click and drag in the plot area to zoom in

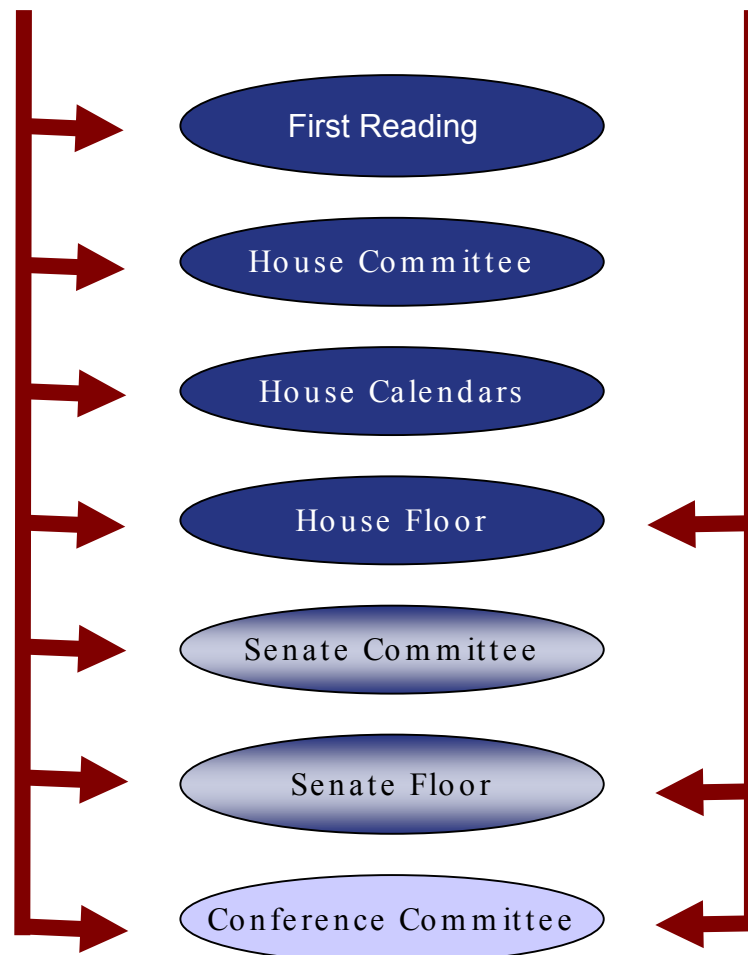


# Strategy: Ideas Become Law



## Traditional Strategy

The traditional legislative strategy is to shepherd bills through the complete process until they become law or die. This is a time consuming, resource intensive procedure.



## Amendment Strategy

An amendment strategy recognizes that key blocking points in the legislative process can be circumnavigated with germane amendments being added to existing legislation already in process. This strategy avoids many time deadlines and blocking procedures and allows ideas to become law.

# Legislative Procedure for Lawyers



- Presiding officers in each house decide questions of order.
  - i.e., the Speaker of the House and the President of the Senate (Lieutenant Governor)
- Parliamentarians and their offices are the primary advisors to the presiding officers in interpreting and applying the rules.
- Text, precedent, and practice informs and guides the interpretation and application of the rules.

# Legislative Procedure for Lawyers



- The Texas Constitution (art. II, I § 11) authorizes each house of the Legislature to adopt rules governing their own operations and procedures.
- Once a bill is enacted into law, it is ordinarily too late to challenge a bill for a violation of legislative rules during its passage. Courts usually decline to rule on legislative procedural questions.
- There are exceptions.



# Parliamentary Inquiry



- A question from the back microphone to the presiding officer by a member requesting clarification of the procedural situation on the floor.
- Under orderly procedure, the Chair does not answer hypothetical questions or render advisory opinions.
- Often remarks are reduced to writing and placed in the Journal.



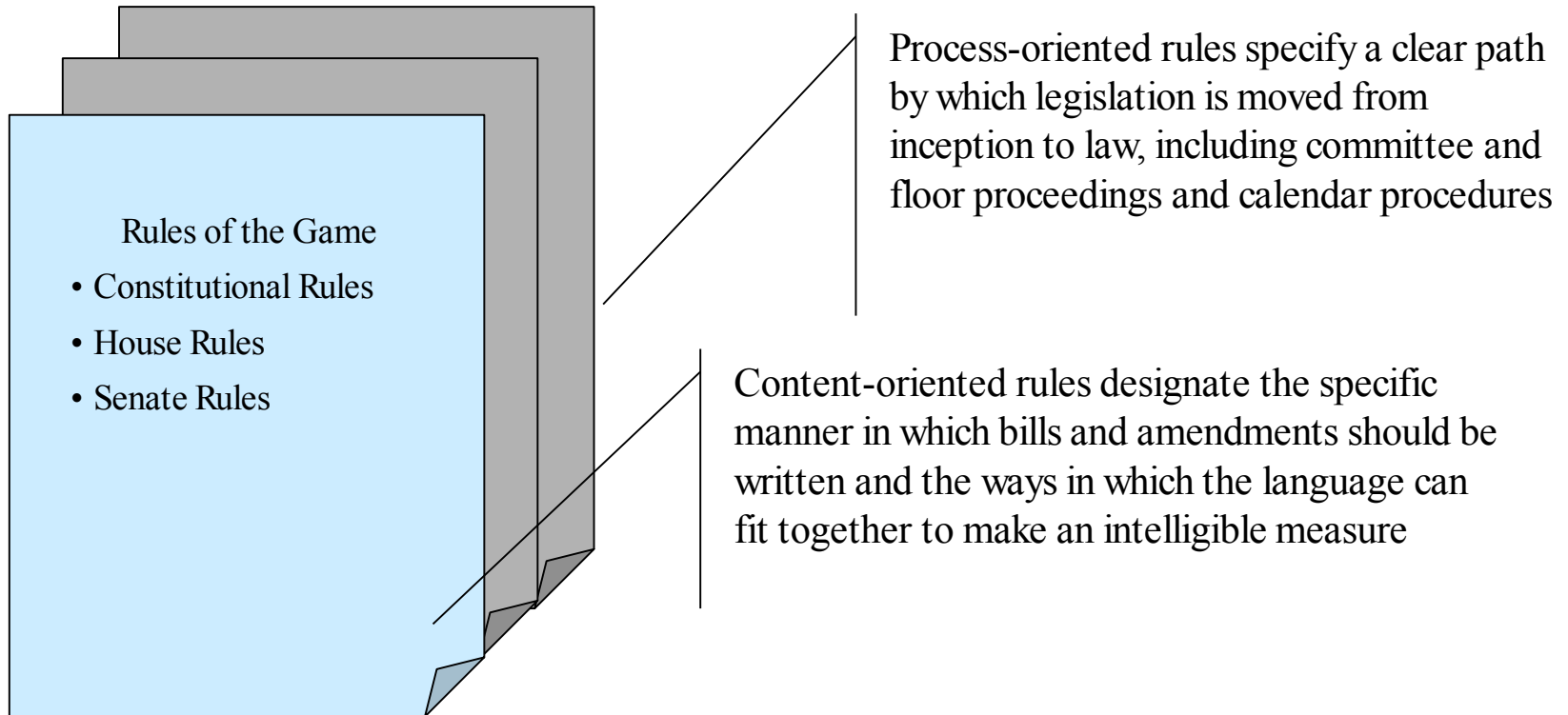
# Points of Order



# Points of Order Ain't Whole Game



A Point of Order is a procedural objection that a measure is ineligible for consideration because it does not comply with the requirements of the House or Senate Rules.



# Strategy: The Rules Rule



Knowing how the Rules work is the first step to understanding how they can be used to your complete advantage.

## Rules

- Committee Rules
- Floor Procedures
- Order of Business
- Motions
- Amendments

## Implications

- Explains committee procedure, what should be in the committee report, how a bill lives, dies or suffocates
- When a Member may speak, how debate works, the voting process
- House calendars and which one is most important; Senate Local & Uncontested
- Can you pass a bill on Monday and kill it on Tuesday?
- How do you get an amendment on a bill – and how do you keep one off

# Example



## Rule 4.03. INTERRUPTION OF MEMBER SPEAKING

*No member shall interrupt another Senator who has the floor or otherwise interrupt the business of the Senate...*

# Filibusters



Extensive precedents have developed around the simple rule...

- Reading from documents prohibited if it indirectly evades discussion of pending matter.
- Debate on an amendment must be confined to the amendment.
- Debate must be germane to the subject of the bill.





# Example



## Rule 11 § 2 MOTIONS ON A DIFFERENT SUBJECT OFFERED AS AMENDMENTS

*No motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate.*

# Germaneness



“The Rule’s brevity conceals the complex task of determining whether an amendment is germane. ‘[T]he asserted distinctions between the germane and non-germane sometimes [approach] the theological.’”

Texas House Practice 3d (newly rev.) ¶ 811

- Basics
- “Expanded” Germaneness

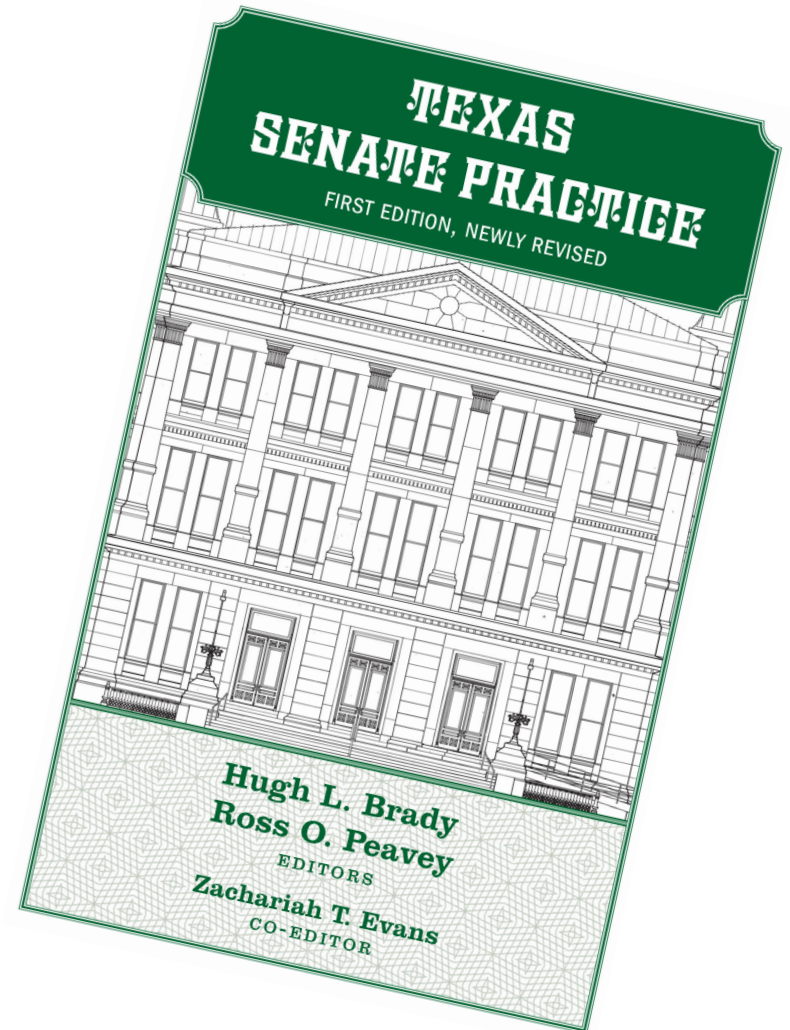
# Resources



- Rules of the House
- Rules of the Senate
- Texas Constitution

## Core Materials to Supplement the Rules

- Texas House Practice
- Texas Senate Practice
- Congressional Precedents
- Mason's Manual
- Braden's Annotated Constitution





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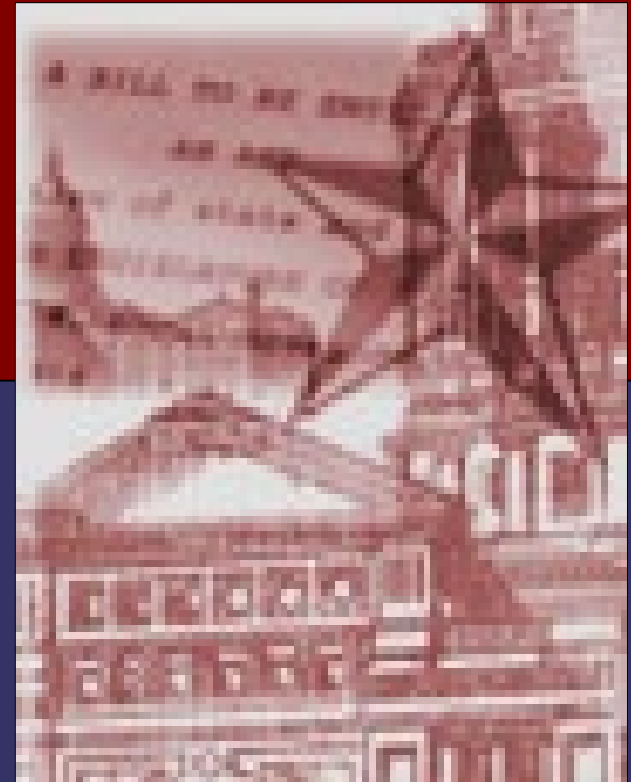
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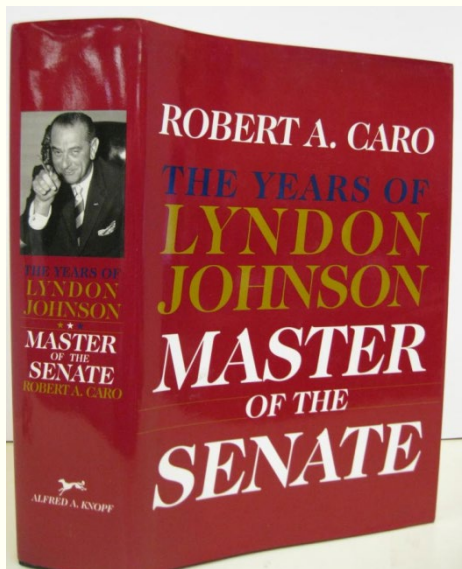
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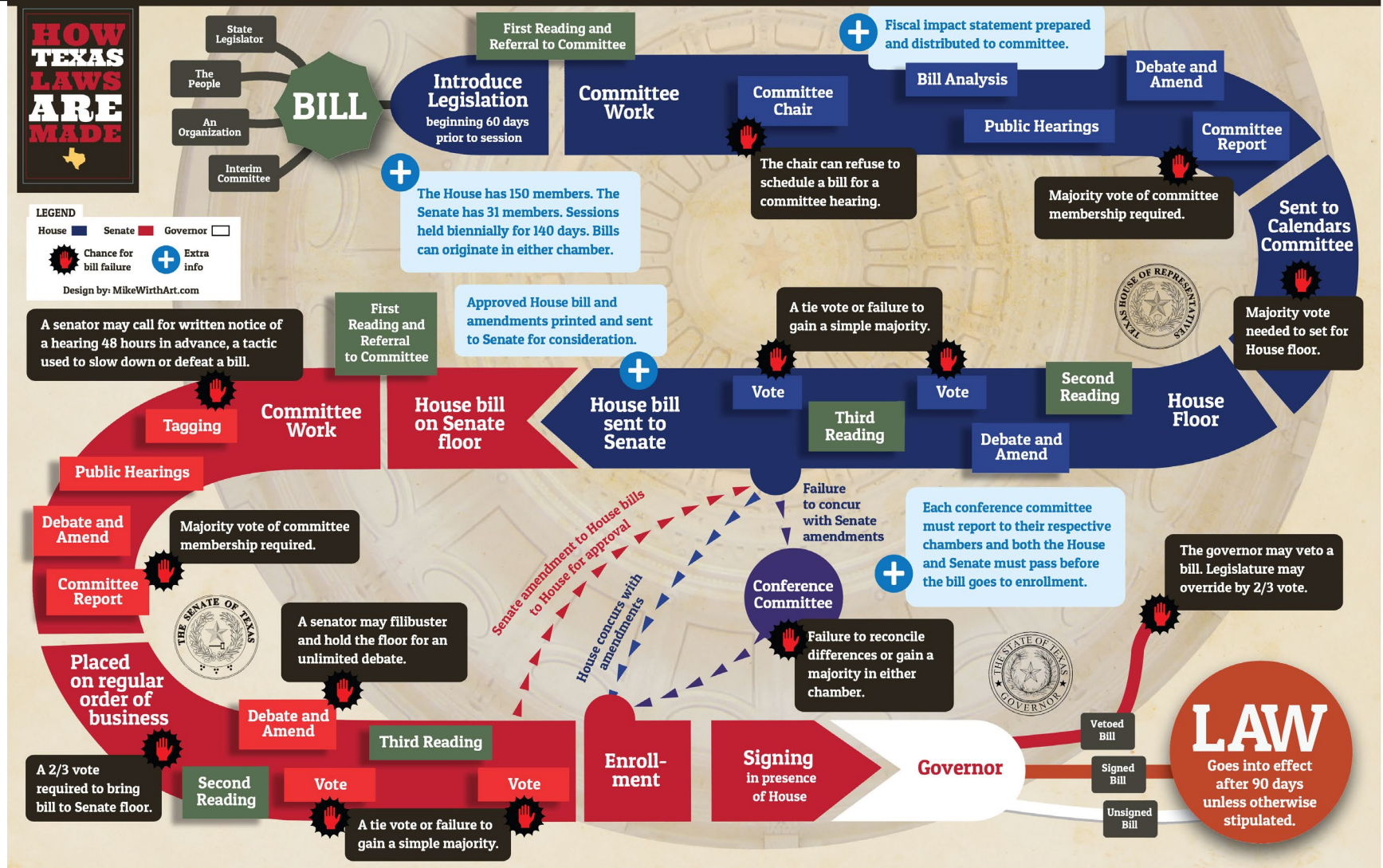
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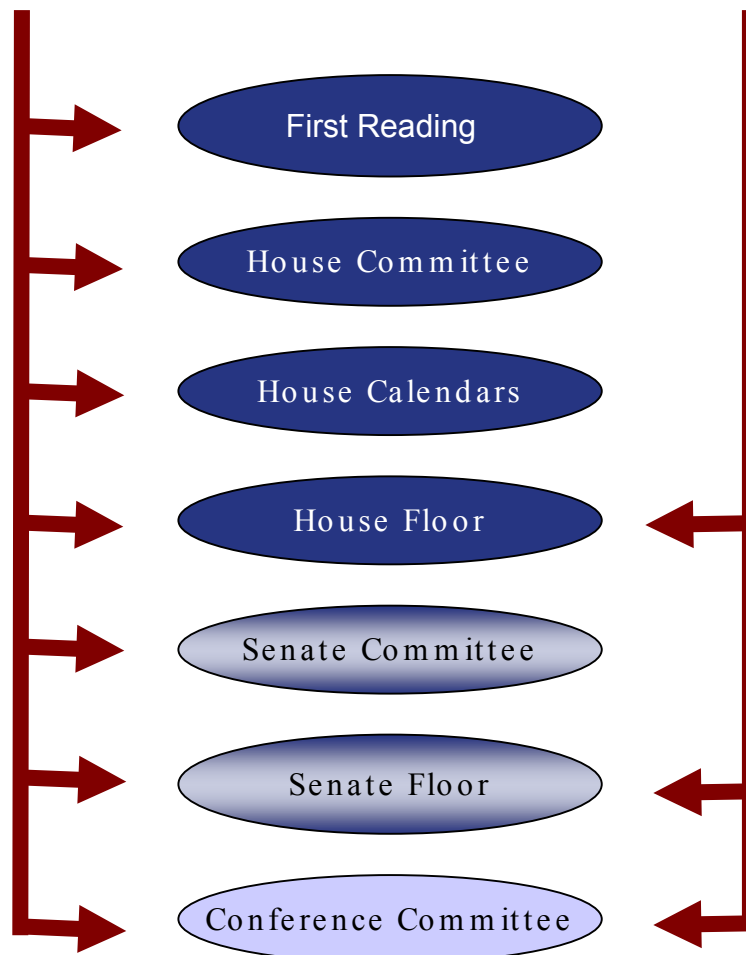


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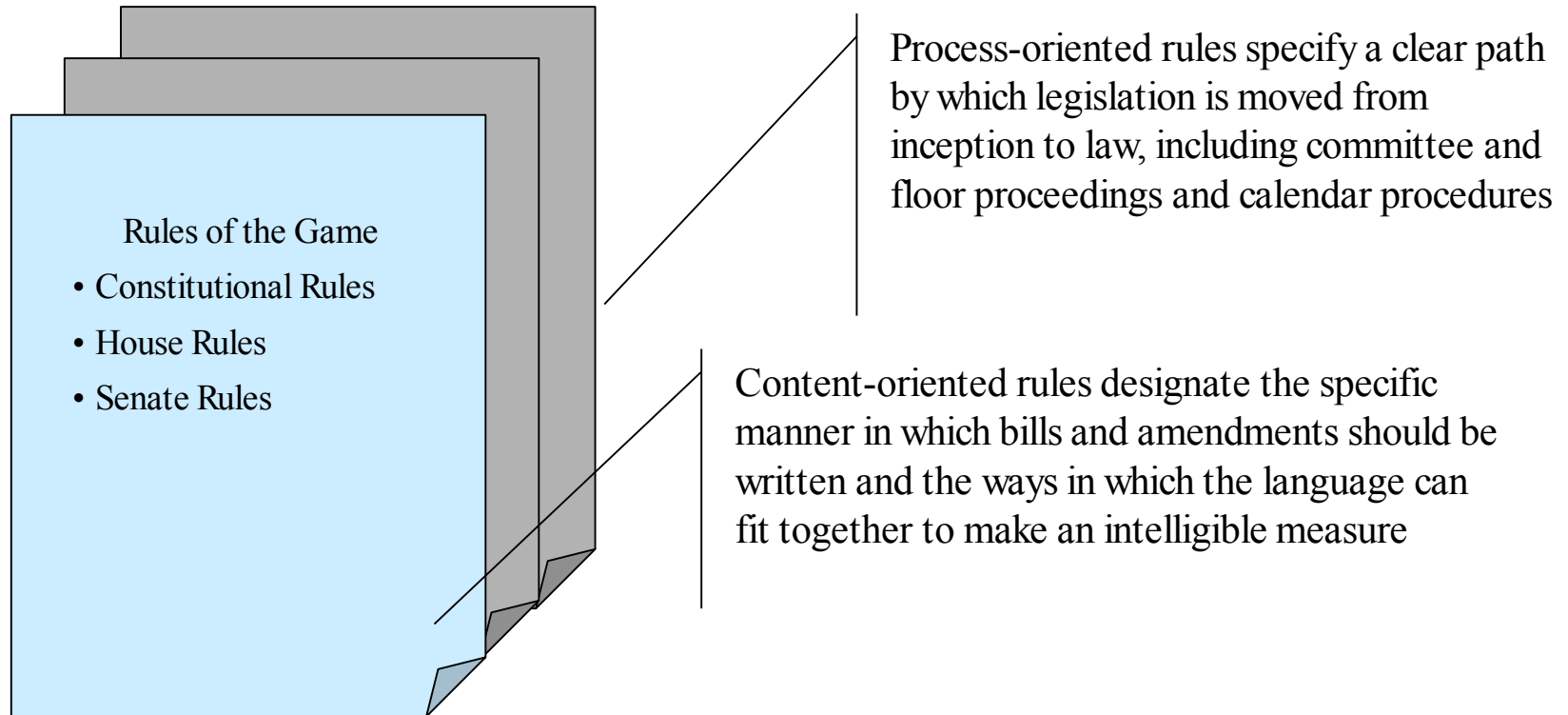
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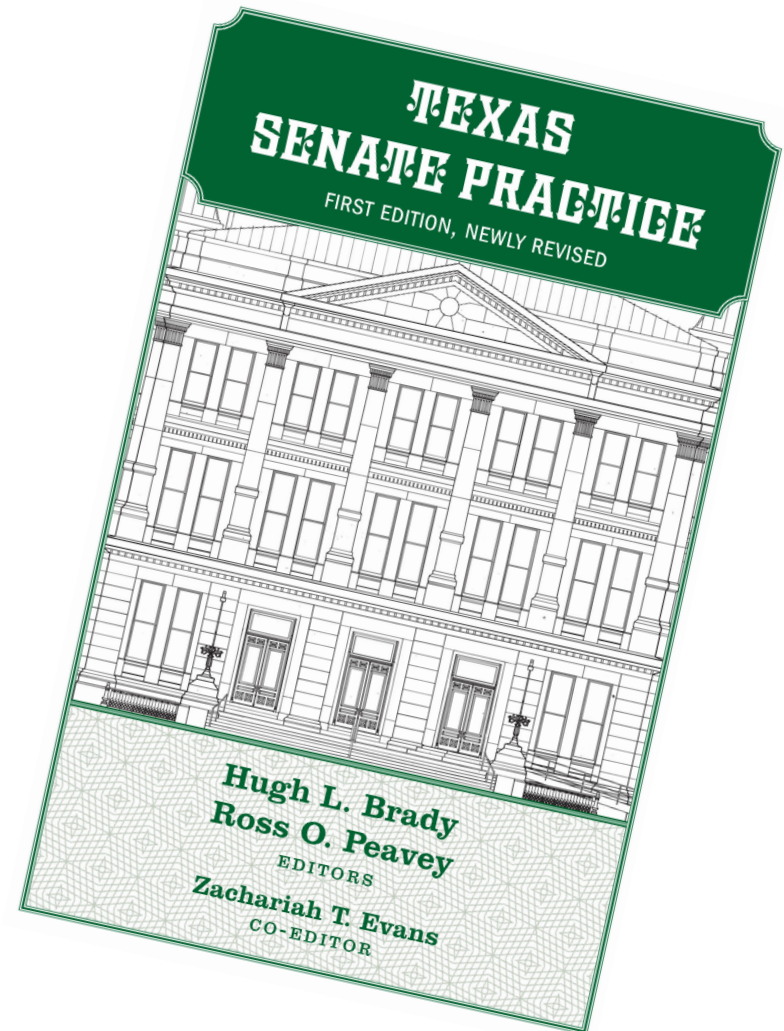
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