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Washington State Sausage Making: Attempting to Measure the Efficiency of the Legislature

Two weeks before I started working at the Washington State legislature as an intern, I found myself reflecting on why I had applied for this position in the first place. I wanted to gain the experience and the college credit that came with the job. I was also looking forward to networking—well, at least getting my face out there. But what I was really reflecting on was ‘why this job?’ I could have just taken my capstone and gained experience later, after graduation. However, I knew that this opportunity would be a unique chance to take part in the state legislature, relatively risk free. Throughout my life, family, friends, acquaintances, and even strangers have told me how they felt about “the government” and, more often than not, it was negative. Words like “inefficient,” “corrupt,” “dishonest,” and “selfish” are commonly used, albeit usually in a more colorful way. And before the internship I had similar feelings, specifically on the efficiency of the legislative process. As I reflected, I thought to myself, “Why does the government seem to be so slow?” and “Is all the bureaucratic tape really necessary?” This led me to my reason for taking this internship: I wanted a peek behind the curtain to see if my assumptions of inefficiency had any merit. But perhaps one of the most striking lessons I learned during my time as an intern is that government efficiency is complicated and difficult to measure.

I started by immersing myself in the legislative process and quickly found some methods that seemed inefficient at first glance. So, I dug deeper, trying to uncover why the legislature has these strict formalities it must follow. As I traveled down the legislative rabbit hole, I interviewed representatives and senators, participating in mock committees and floor debates. As I conducted daily tasks for the representatives I

worked for, I began to see some of the methods to the madness. It became apparent that, in order for me to even begin attempting to measure the efficiency of the state legislature, I would not only have to gain a deeper understanding of the legislative process. I would also have to understand what it was attempting to produce. Any textbook would state that the legislature's job is to create laws that govern the community, but that description does not help us to understand the methodology behind each piece of the process or to offer any kind of objective and useful measure of efficiency.

During the first week of my internship, three full days were solely dedicated to orientation. Orientation is made up of a handful of condensed versions of educational courses that cover state legislative processes and procedures, history, vocabulary, writing, committees, ethics, agencies (both legislative and executive), netiquette, and, of course, our job responsibilities. As we interns, tried to catch our breath from this firehose of information, the civic education team would remind us that all of these components are key for the legislature to do its job, which they would summarize as "creating good legislation." This may seem similar to the definition offered on the Washington State Legislature (2022b) webpage, which states the legislature's job is to "create new laws, change existing laws, and enact budgets for the State." Yet the devil lies in the details. I've learned that simply adding the adjective "good" to "creating legislation" makes a world of difference when attempting to measure efficiency.

It's fairly easy to argue that in simply "creating new laws, changing existing laws, and enacting budgets for the State," the legislature is fairly inefficient. There are other forms of government that can create laws with just some simple words from the ruler.

However, if the goal is to create “good legislation,” then what truly matters is quality, not quantity. Yet I find the word “good” to be too subjective—“refined” might be a better word. As I continued through the 2022 legislative short session, I started to see the true purpose of the Washington State Legislature as attempting to produce refined legislation, which is the result of a process that attempts to balance the will of the majority against the oppression of the minority, through a representative democracy. This process is one in which anyone can at the very least have their voices heard and where constitutional rights are upheld, similar to the way Alexander Hamilton and James Madison envisioned the union of the newly independent United States in the *Federalist Papers No. 9 and 10*.

The expression, “Laws are like sausages. You should never watch them being made,” was credited to Otto Von Bismark by Claudius O. Johnson (1933) in his book *Government in the United States*. However, Johnson follows it with the statement: “With reference to the laws, a knowledge of how they are made may increase our respect for them and their makers; and if it does not, we are at least able to express our dissatisfaction in an intelligent manner” (p. 321). After spending 60 days attempting to measure the legislature’s efficiency, I have come to a similar conclusion: that my goal of at least proposing a way to measure the efficiency of the legislature was not going to be obtainable.

The problem comes in trying to determine what inputs are necessary to create this refined legislation. Inputs such as: why this legislation is needed, how it will affect different areas of the community, ensuring the language of the bill is adequate to the currently established law, consideration for the cost of implementing the legislation, and

mitigating unforeseen consequences as best as possible are all important for refined legislation. However, due to the limited time and scope of this paper, examining the prioritization of these inputs is unachievable. However, developing a way to measure the efficiency of the legislature in a representative democracy must include more than the production of a bill into law. It must also include the components of representation. So, if you were hoping I would be able to provide an answer to whether the state legislature is efficient or not, you will be sadly disappointed. Yet I believe this experience has shown me where to start looking and why a deeper understanding of the legislative process is necessary.

Prioritizing the inputs of creating legislation and trying to determine if a representative democracy, like the one we have in Washington State, is actually one of the best forms of government to produce said legislation is simply too broad and subjective. No system is perfect, but if we want to improve it then I believe Claudius O. Johnson is pointing us in the right direction. Knowledge of how laws are made will at very least allow us to express our dissatisfaction in an intelligent, and possibly constructive, manner. However, Johnson only captured half the story. The way in which a bill becomes a law is important, yet the way a bill dies is equally important. In measuring efficiency, the way in which a bill dies may actually be the more important of the two.

So, this is where I believe we should start looking when attempting to answer questions such as “why does the government seem so slow?” This internship taught me the ways in which a bill can die in the legislative process not only set the political arenas in which decisions are made but can also shine some light on the areas that are weak in

the process and may even provide an avenue for measuring the legislature's efficiency. To better understand this conclusion, I broke this paper into two parts. Part 1 summarizes the legislative process, highlighting the ways in which a bill typically dies in a normal session. Part 2 explains how a bill's death shapes the political arena and how it relates to producing refined legislation.

Part 1 - The Ways in which a Bill Dies During a Normal Session

Section 1 - Important Components of the Washington State Legislature

Before we delve into the ways in which a bill can die, there are some key aspects of the Washington State Legislature that need to be established first. The Washington State Legislature is bicameral, which means it is broken up into two houses or chambers: the House of Representatives and the Senate. Each legislative district has two representatives and one senator. There are 49 legislative districts in Washington State resulting in a total of 98 representatives in the House and 49 senators in the Senate. The Washington State Legislature is considered a citizen legislature. This means that the members of each chamber are not full-time politicians but have full-time occupations outside of the legislature. For this reason, the regular legislative session is limited to a specified number of days.

The Washington State Legislature works on a biennium or two-year cycle. The legislative session is broken into two parts, a long session and a short session. The biennium starts in odd-numbered years. with a long session that starts on the second Monday in January and lasts for 105 days. The short session takes place the following year, also beginning on the second Monday in January and lasts for 60 days. Except in the case of a special session, any bills that have not made it through the legislative process by the end of the short session are truly considered dead and if the idea at the roots of the bill are to be resurrected, then the entire process will have to begin again in the next biennium. Effectively, every individual bill has a maximum of a two-year life span. Within those two years, a bill will either become a law, be voted down by one of the chambers, never be fully deliberated, never be fully agreed upon by the two

chambers, or be vetoed—or partially vetoed—by the governor. Out of those six possible outcomes, only two result in a bill becoming a law, and only one can produce a potentially unedited form of the bill's original draft.

Four of the potential outcomes for a bill result in its death. If every outcome were equally likely, then the probability that a bill dies somewhere in the process is twice as likely as its becoming a law. However, the actual odds are even worse than that. In the previous biennium, approximately 80% of the bills introduced did not become law. According to data compiled from Legislative Explorer (University of Washington and Schema, n.d.), a data tracking web page on the legislative activities of congress and Washington State (see Figure 1), bills that were never fully deliberated on make up the bulk of these deaths. At least 75% of the bills introduced in the 2019-2021 legislative session ran out of time before they could be fully deliberated.

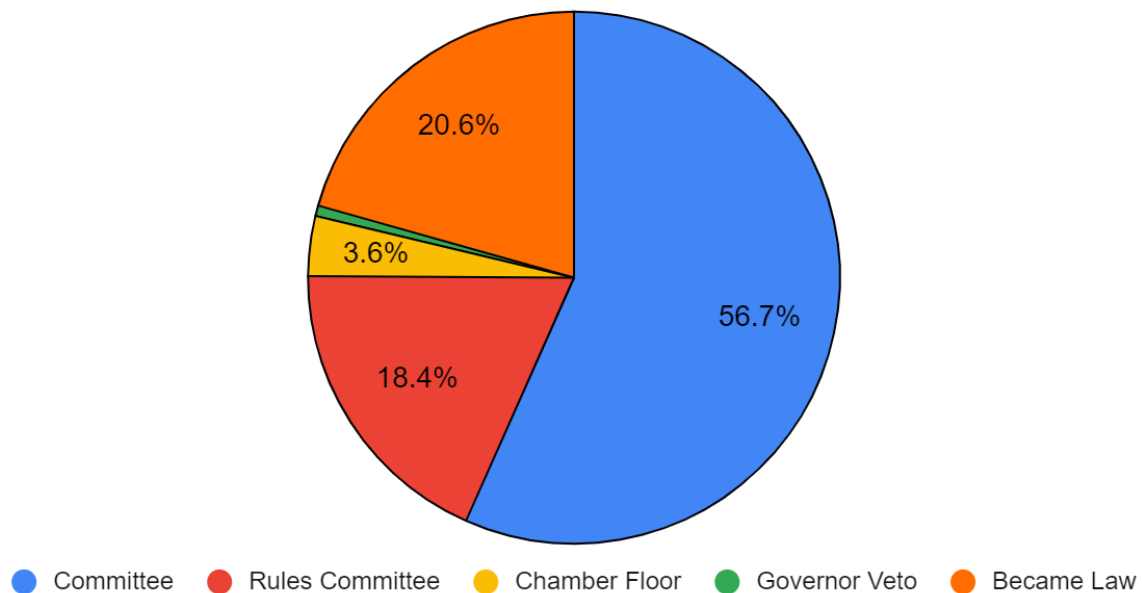
Each long and short session is managed by cutoff dates. Seeburger (1997) noted: "Cutoff dates are deadlines within the sixty or 105-day session established by the Constitution or the Legislature itself by which certain actions must be taken" (p. 51). Each of these actions relates to a particular part of the process. If a bill has not completed the action by the cutoff date, it is no longer eligible to become law, although, there are, of course, exceptions. The current session cutoff calendar of the Washington State Legislature (2022a) states that these exceptions are current "initiatives and alternatives to initiatives, matters necessary to implement budgets, matters that affect state revenue, amendments, differences, and business related to the interim or closing the session." Seeburger (1997) explains that due to the large number of bills introduced, the purpose for these cutoffs is to "provide a logical outline to the session in

order to complete its work in the time allotted” (p. 52). To help illustrate these cutoff dates, the dates for the 2022 short session are listed in footnotes in the following sections. Keeping all that in mind, we can now delve into the process.

Figure 1

Location of Bills after Session Adjourned

2019-2020 Legislative Session



Section 2 - **Going from an Idea to a Bill**

The process in which a bill becomes a law in Washington State is a long and difficult trek, with many perilous turns and twists along the way that keep a bill from becoming a law. To better understand, let's start with an imaginary bill that everyone likes. Let's call it House Bill (HB) 0001. This imaginary bill starts as an idea for a new law. The idea can come from anywhere and anyone. However, before it can become a bill, there are three things that it needs: a sponsor, a title, and a number. Seeberger

(1997) states “The title is determined by the Code Reviser’s Office and the number is assigned when the bill is delivered to the Chief Clerk of the House or the Secretary of the Senate” (p. 52). Both of these are determined in a nondiscretionary and procedural manner, in order to provide consistency and legal accuracy. However, a sponsor is a different story. Only a representative or senator of the Washington State Legislature can sponsor a bill. There must be billions of ideas that people have had on how to better shape the laws that govern us, from the average Joe thinking that this road's speed limit is too low (or too high) to a CEO believing that current labor laws are restricting company growth. We have all thought about ways in which our community would be better if it just did this or that, but only those that a representative or senator chooses to sponsor have a shot of becoming a law.

Let’s say that the idea for HB 0001 is picked up by a representative who agrees to sponsor it. The sponsor then becomes the advocate for that bill on the inside, whether it was their own idea or one that came from a constituent or lobbyists. Sponsors work with the Code Reviser’s Office to create a draft of the idea. The draft has to meet a certain legal standard and cannot conflict with current law or constitutionally established rights. According to the Washington State Office of the Code Reviser (2022), the state constitution also requires that “No bill shall embrace more than one subject, and that shall be expressed in the title” (Article II, Section 19). After the bill has a sponsor, a title, and a number, it can be introduced for consideration in its chamber of origin through what’s called a “first reading.” This first reading marks the official transformation of an idea into a bill. From here, the bill gets assigned to a committee by the chamber’s majority leader. In the 2019-2020 Washington State legislative session,

approximately 75% of the bills introduced never made it out of the committee process (see Appendix A).

Section 3 - Committees

There are several kinds of committees created by the legislature. However, standing committees are my main focus because they are the “main working committees of the Legislature” (Washington State House and Senate Civic Education Programs [WA State Civic Programs], 2019 p. 19). Other committees are not typically part of the process; instead, they are used in more niche situations. These committees include: conference committees, which are used to settle differences between the two chambers on a bill that has passed both of them but with variations; special/select committees, which are created to “consider a particular topic with a limited period of time,” and joint committees, which have members from both chambers (Seeberger, 1997, p. 39).

According to the *Washington State Guide to Lawmaking* produced by the House and Senate Civic Education Programs, standing committees are created to examine a bill's merit and the potential impacts that it may have on the citizens. The idea behind these committees is to create work groups, consisting of a few members, that can focus on a specific area of governance or address a special situation. Take for example the Environment & Energy Committee, which focuses its attention on bills that have to do with the environment or energy. This committee's job would be to look at the merits of the bill and attempt to address areas of concern with amendments. Amendments can range from simply changing a few words to replacing or adding entire sections to the bill. However, according to the Washington State Constitution, “No amendment to any

bill shall be allowed which shall change the scope and object of the bill” (Article II, Section 38). Standing committees are broken into two categories: policy committees and fiscal committees.¹ The majority floor leaders of each chamber do their best to match bills to committees based on subject matter. If there is a fiscal impact over \$50,000, the bill will also go to a fiscal committee for consideration. “Fiscal Committees typically deal with 3 types of bills: bills that appropriate money to state agencies, bills affecting revenue sources, and bills that have a cost to state or local government” (WA State Civic Programs, 2019, p. 19). There are currently a total of 20 standing committees in the House, 16 policy and 4 fiscal, and 15 standing committees in the Senate, 13 policy and 2 fiscal.

This paper does not go into great detail on how committees are formed and who determines which bills get assigned to which committees. However, for some context, I will summarize the general procedure. Standing committees are formed at the beginning of each regular legislative session and last for the entire two-year cycle. Immediately after the November election of even numbered years, “the four caucuses (House Democrats, House Republicans, Senate Democrats, and Senate Republicans) hold reorganization meetings to elect or reelect their leaders” along with determining which members will be assigned to which committees (Seeberger, 1997, p. 41). Ultimately, the committee structure and the number of members each party will place on the various committees is determined by the majority party.

¹ For reference the 2022 short session cutoff dates for bills from house of origin: policy committees, Feb 3rd; fiscal committees, Feb 7th.

Now, let's say our bill, HB 0001, is focused on the economic recovery of businesses. Since this bill is imaginary, why not make it a unicorn, perfectly balancing the concerns and issues of all parties involved? Even so, it must still follow the path that every bill must follow. So, first HB 0001 will go to a House policy committee: the Consumer Protection and Business Committee. As mentioned earlier, in the 2019-2020 legislative session, fewer than half of bills assigned to a committee made it out alive. A standing committee is a dangerous place for a bill, even one as 'worthy' as HB 0001.

In both policy and fiscal standing committees, the process is relatively similar. First the chair must put the bill on the schedule for a public hearing. Each committee receives more bills than it can go through in a session, so chairs have to prioritize which bills get heard and which ones do not. This obviously gives the chairs of committees a lot of power and, subsequently, makes the position highly sought after.

The public hearing is an important part of the process because it is the only chance for concerned citizens and lobbyists to make official, public comments on the bill and make their position known. Typically, the sponsor of the bill will start the public hearing by explaining the scope and intent of the bill. This is followed by testimony, if there is any, from citizens and lobbyists. Throughout the hearing representatives can ask questions and get a better idea of how this bill will impact the community. As they listen to the testimony, both for and against the bill, they begin to finalize their opinion. After the public hearing, a bill then goes to an executive hearing. Sometimes this will be on the same day or even in the same meeting, but typically it takes place during a following meeting of the committee.

The executive hearing is where the committee members decide what to do with the bill. While the hearing is open to the public, only the elected members are allowed to discuss what action to take. Committees can either offer a substitute bill, refer the bill to another committee, refer the bill to the Rules Committee, or take no action. This hearing starts with a motion to report the bill out of committee with a do-pass recommendation. A do-pass recommendation means that the committee approves of the bill and is recommending that the bill becomes a law. The chair then seconds the motion and asks if there are any amendments. The committee then goes down the list of proposed amendments to the bill and vote on whether to adopt them or not. Amendments, just like bills, have to be sponsored and proposed by an elected member of the chamber. If there are several amendments adopted, committees will typically roll them into a substitute bill. A substitute bill is basically the bill rewritten to incorporate the adopted amendments. The bill, or substitute bill, is then voted on by the members of the committee. Members can vote either “Aye,” confirming that they do want to pass it out of committee with a do-pass recommendation, “Nay-Do Not Pass (DNP),” meaning that they want to pass it out of committee with a do-not-pass recommendation, or “Nay-Without Recommendation (W/O),” meaning that they are passing it out of committee without a recommendation. It's important to remember that committees do not determine whether to pass legislation; they only give recommendations. The vote of approval for a bill can only be done by the entire chamber, which is done on the floor during a bill's third reading.

Remember that HB 0001 is a perfectly written piece of legislation, so it of course soared straight through the policy committee. The bill is now on its way to a fiscal

committee, and in this case, it is assigned to House Appropriations. Now things start to get a little tougher for HB 0001. As scary as policy committees are for bills, fiscal committees are even worse. The problem is that the merits of the bill are no longer being measured by how it will affect the community. Instead, its merit is simply determined by the cost. The structure and procedure of the fiscal committees are the same as policy committees, first going to a public hearing and then an executive one. The only real difference is through what lens the bill is discussed, whether policy or fiscal. Not every bill has a fiscal impact, but many do. Another important factor is that by law, RCW 43.88 to be exact, the budget has to be balanced. If there is not enough money in the budget for the bill, then the societal impact of the bill is moot. The legislature could always raise taxes or take on more debt, but these options weigh heavily on both the legislature and the people of Washington State.

Imagine HB 0001 made it through the Appropriations Committee, but just barely. The bill may be great, but it does require a cost be paid, meaning it didn't come out unscathed. A few amendments were proposed and adopted that would decrease the cost, at least for some, and most likely decrease its effectiveness as well. Because of these amendments, HB 0001 becomes Substitute House Bill (SHB) 0001, sort of. Technically, "amendments can only officially be adopted by the entire body of the House or Senate," so what the committee really sends out is HB 0001 with the recommendation that SHB 0001 be substituted it (WA State Civic Programs, 2019, p. 9). The official adoption of the substitute bill doesn't happen until after the bill makes it to the floor of the chamber for its second reading. However, before a bill gets its second

reading it has to make it through the Rules Committee. This is exactly where HB 0001, with the recommendation to substitute SHB 0001 for it, is headed.

Section 4 - The Rules Committee

The Rules Committee is a unique committee. Both the House and the Senate have rules committees and neither really have anything to do with rules. Instead, the Rules Committee is a chokepoint all bills must make it through in order to become law. The Rules Committee determines which bills, among those that have made it this far, will be eligible to have their second and third readings. When a bill first arrives at the Rules Committee, it is placed on a list of bills to be reviewed, called the “white sheet” in the Senate and the “review calendar” in the House. Members of the committee are given a predetermined number of bills that they can move from this first list to a second list that consists of bills that are being considered for floor debate, called the “green sheet” in the Senate and the “consideration calendar” in the House. This action of moving a bill from the first to second list is called a “pull” and the number of pulls that each member of the committee is allocated is determined by the “leadership [of each chamber] before each meeting” (WA State Civic Programs, 2019, p. 21). The pulls from the white sheet to the green sheet in the Senate and/or from the review calendar to the consideration calendar in the House are typically not voted on or discussed. Members are given full control over which bills they want to move from one list to the other.

Members of the Rules Committee are given another set of pulls that are used to move a bill from the green sheet/consideration calendar to their respective chamber’s floor calendar for its second reading. However, these pulls are slightly different. First, a member will choose a bill to pull, then “the entire committee votes whether it will move

on to the floor calendar” (WA State Civic Programs, 2019, p. 21). There are no amendments proposed, nor are there any debates on policy or fiscal impact. The only question before the Rules Committee is whether to move the bill to the floor or not. The only other outcome for a bill in the Rules Committee is to refer a bill to another committee for further consideration or to just have the bill wither away as it waits to be pulled. The Rules Committee is commonly known as “the gatekeeper,” which seems fitting because it is the last obstacle a bill must overcome before it is truly considered for adoption by the entire chamber. Luckily, SHB 0001 has made it through the committee and is scheduled for a second reading on the floor of the House of Representatives.

Section 5 - The Floor

Each chamber annually adopts a set of rules that establishes the standard procedures for that year.² These rules cover definitions, the duties and responsibilities of the various positions in the chamber, the details of the committees for that session, and the order in which business is to be conducted on the floor. Both chambers’ rules are very similar. However, they do vary in small, yet incremental, ways. For example, there are eleven orders of business in the House and nine in the Senate. However, due to the scope of this paper, the second and third readings of bills will be the main points of focus. These readings are the sixth and seventh order of business, respectively (according to *House Rules*, Rule 15: Daily Calendar and Order of Business; and *Senate Rules*, Rule 17: Order of Business). The second reading is given in its official form, and there are particular rules of debate that every member must adhere to, also outlined in the chamber's rules. The purpose of this reading is to propose further amendments to

² For reference the 2022 short session cutoff date: last day to consider bills in house of origin, February 15th.

the bill, called floor amendments. This gives every member of the chamber a chance to address their concerns about the bill. Floor amendments are submitted to the leadership prior to the meeting. House Rule 11(B): Second Reading states, “No amendment shall be considered by the house until it has been sent to the chief clerk’s desk in writing, distributed to the desk of each member, and read by the clerk” (*Washington State Legislature, House of Representatives*). Meanwhile, Senate Rule 64: Second Reading/Amendments states, “No amendment shall be considered by the senate until it shall have been sent to the secretary’s desk in writing and read by the secretary” (*Washington State Legislature, Senate Administration*).

The second reading of a bill starts with a clerk’s reading, although the bill is not typically read in its entirety. Then a motion to adopt a substitute bill is made, if applicable. According to the civic education team, this motion is rarely challenged because the majority party would not have allowed it to go to the floor unless they were going to adopt it. Next, there is a motion to adopt floor amendments. Floor amendments are motioned, read, debated, and voted on one at a time. In my experience, it typically follows a process whereby one member, usually the sponsor of the amendment, would move to adopt the amendment. They would then discuss why they believe the chamber should adopt this amendment. From there, members would rise (or raise a virtual hand), wait to be recognized by the presiding officer, and speak for or against the amendment. When there is no further discussion, the entire chamber would vote on whether to adopt the amendment or not. Again, the procedure and rules differ slightly between chambers. However, in both chambers, members must be recognized by the presiding officer before talking on the floor, must address their speeches to the presiding officer, are

limited on how many times and how long they may talk, and cannot impeach the motives of another member.

During the second reading of the now officially adopted SHB 0001, two floor amendments were proposed and the chamber ended up adopting one of them. With the adoption of the floor amendments, SHB 0001 now becomes Engrossed Substitute House Bill (ESHB) 0001. If there were no amendments adopted on the floor, then its name would have remained SHB 0001. Usually, the bill is immediately “bumped” to its third reading, where it will be voted on by the entire chamber to determine whether it passes that chamber or not. While, “[t]echnically, after second reading the bill must be returned to Rules; ... it is common practice in both chambers to ‘bump’ the bill.” (WA State Civic Programs, 2019, p. 25). In the Senate, this is done in the form of a motion on the floor. The sponsor of the bill, or chair of the committee that offered the substitute bill, will say, “Mr. President, I move that the rules be suspended, that Engrossed House Bill 0001 be advanced to the third reading, the second reading considered the third, and the bill be placed on final passage” (Washington State Senate). The president of the Senate would then confirm this motion and the bill would begin its third reading. In the House, the presiding officer will make the motion by stating, “with the consent of the House, the rules will be suspended and Engrossed House Bill 0001 will be advanced to third reading. Hearing no objections, so ordered” (*TV Washington*).

The procedure of the third reading is very similar to that of the second, yet the question now is whether or not to pass the bill out of the chamber, effectively saying that this chamber recommends this bill become law. The sponsor or chair of the committee sponsoring the bill will speak to the merits of the bill first and then others can add their

two cents, if they choose. This is the final chance that members have to comment on the bill before it goes to a vote. If a bill receives a constitutional majority, Article II, Section 22 of the state constitution states “a majority of the members elected to each house [must] be recorded thereon as voting in its favor,” meaning the bill passes and is moved out of its chamber of origin, destined to repeat the process again in the opposite chamber.

Section 6 - Opposite Chamber

Now ESHB 0001 must take the same path through the Senate: from a policy committee, to a fiscal committee, to the Rules Committee, and then to be debated on the floor. It will have both public and executive hearings, and will need its three official readings all over again. Only this time, this will all take place in the opposite chamber of origin.³ The assignments of committees for ESHB 0001 are determined by the majority leader, just as in the House. However, standing committees do not match one for one between the chambers. This means that the committees in the Senate will be analyzing and debating the bill with a slightly different lens than the House. This slight difference already presents a challenge for bills before even considering the difference in individual members that make up the committees. For these reasons and more, the bill is likely to be amended at least once in the opposite chamber. The Washington State Civic Education Programs *Guide to Lawmaking* explains that “while the opposite chamber may amend a bill, it may not pass a substitute bill.” They can pass what is called a “striking amendment,” which, for all intents and purposes, is a substitute bill in amendment form (p. 27).

³ (For reference the 2022 cutoff dates for bills from the opposite house: policy committees, February 24th; fiscal committees, February 28th. Last day to consider opposite house bills: March 4th.)

Along that line, there are a few other interesting shifts in the legislature around this time. This is due to the cutoff dates that were explained in Section one, Part 1. As the legislature passes the cutoff for consideration of bills from their house of origin, the influx of new bills takes a steep nosedive. Except under unique circumstances, like bills necessary for the budget (NFTB), no new bills are introduced. Instead, chambers are only focused on bills that originated in the opposite chamber. Seeberger (1997) explains the purpose of these cutoffs: they help set the priorities and ensure that the legislation doesn't stagnate. The first half of the legislative session for the year is primarily dedicated to bills that originated in their respective chambers. The second half is spent in a similar way, except on bills from the opposite chamber.

Section 7 - Concurrence and The Governor

Our imaginary bill, ESHB 0001, made it through the opposite chamber. However, the Senate did adopt a striking amendment. Since the bill was amended by the opposite chamber, the chamber of origin has to decide whether it will concur with the amendments.⁴ At this point there are four paths ESHB 0001 could end up taking. First, the chamber of origin agrees to the amendments and the bill passes the legislature. Second, the chamber of origin can disagree with the amendments and ask the opposite chamber to recede their amendments. If they do, then the bill passes the legislature. Third, the house of origin doesn't put the bill on the concurrence calendar or doesn't get to it before the session closes; then, the bill is held till the second half of the biennium or dies if the legislature is already in the second half. The fourth path comes when the chambers cannot settle their differences and one of the chambers requests a

⁴ (For reference the 2022 cutoff dates: Sine Die, March 10. The 2022 short legislative session is adjourned.)

conference committee. This committee attempts to work through the differences and, if an agreement is met, offers each chamber a conference committee report. However, this report still needs to be approved by both chambers. “If one chamber does not adopt the conference committee report (whether by vote or inaction), the bill does not pass” (WA State Civic Programs, 2019, p. 28).

With our imagined bill, however, the House concurs with the striking amendment offered by the Senate on ESHB 0001. It passes the legislature, but even after all that is still not yet law. A bill gains the designation of an enrolled bill once it has “passed both chambers and contains all amendments adopted by both houses and a certificate of enrollment, including the date passed, votes cast on the bill, and the certifying officers’ signatures” and are then sent to the governor for consideration (WA State Civic Programs, 2019, p. 5). While the legislature is in session, the governor has five days to act. However, if the legislature is within 5 days of adjournment, the governor has 20 days. Contrary to the federal government, after the deadlines listed above, all bills not acted upon become law. That is, there is no pocket veto in Washington State. The governor has three options to consider upon review of the bill. They can sign the bill into law, veto a specific section of the bill, or veto the entire bill. The legislature can override a veto, but it takes a two-thirds vote in both chambers to do so. If the legislature is already adjourned, they can either attempt to overturn the veto during a special session or can address it in the next regular session. Don’t worry though, our imaginary bill ESHB 0001 was signed on the same day that it was sent to the governor and has now officially survived its journey, that is, at least until another bill comes along, works its way through the process, and renders this law obsolete in one form or another.

Part 2 - Framework for the Political Arena

Section 1 - Relationships

As you can see from Part 1, the process in which a bill becomes a law is fraught with danger, and that doesn't include some of the more rare or nuanced paths a bill could take. Imagine how a bill's path might temporarily shift if a member challenges an amendment to a bill under the scope and object provision in Article II, Section 38 of the constitution. Or what about bills passed during a special session? How would their routes differ? With the requirements of Washington State's constitution being the guide to these unique situations, the procedure would be similar. However, there would still be some small, yet incremental differences. While exploration of these avenues may provide some intriguing results, I believe it would be more fitting to gain a deeper understanding of the more common paths first. Therefore, this part will stay limited to the political arena that arises around the more common ways in which a bill dies as outlined in Part 1.

There are multiple, often overlapping, interests and priorities that legislators have to keep in mind in order to achieve their legislative goals. These interests and priorities can come from constituents, lobbyists, other members, caucus leadership, chamber responsibilities, the executive branch, the judicial branch, and their own precedence. Through my interviews with elected members, my research into the state legislature, and my own experience working as an intern, I discovered a theme of the public sector. The theme is that the public sector is small and, as such, relationships matter. In order to get what you want, respect and common courtesy go a long way. It's very similar to Richard Nuestadt's (1991) "power to persuade" rhetoric (p. 212). In his book

Presidential Power and the Modern Presidents, Nuestadt argued that due to the design of the federal government, with its division of power, the president's power really boils down to the power to persuade. In the Washington State Legislature, members have to persuade one another that this bill, these priorities, or this amendment are the right course of action. However, just as Nuestadt discussed, it goes a little further than that. In order to persuade people whose priorities differ, legislators need more than just a good argument. They have to create healthy work relationships with everyone in the public sector. This is particularly true when considering the way in which people move from one position to another within the governmental sphere. In order to achieve their legislative goals, legislatures have to be patient, respectful, and willing to compromise. As Secretary of State Steve Hobbs put it when he came to speak to the interns, “You never know, the legislative assistant that you were rude to may end up becoming the Speaker of the House or the Governor.”

The structure of the legislative process, as outlined in Part 1, shows that most bills don't die because they are voted down. Instead, most die because they are unable to make it through the process in time. These hard deadlines create one of the areas where relationships matter and where these relationships can be strained or tested. Legislatures have to usher their bills through committees, floor debates, the opposite chamber, and the governor in order to get the idea that they value into law. During the process they also need to keep other agencies and interests in mind if they truly want to have any impact with their legislation. For example, Luce (2005) wrote about the importance of an inside and outside strategy that is necessary in the fight for a living wage initiative (p. 89). In a similar context, legislators have to not only think about

getting their bill into law, but also how that law will be received and enforced. To some degree, the legislative process was designed with this in mind. By requiring a bill to go through such a large number of checks before allowing it to become a law, it forces legislators to consider the priorities of others. This also allows observers to see the possible areas of contention throughout the legislative process by paying attention to the way in which a bill dies.

Section 2 - The Political Landscape of the Chamber

Though not the most common reason, bills also die because of disagreements between chambers. Since Washington State has a bicameral legislature, both the House and the Senate have to agree on a piece of legislation before it can be sent to the governor's office. As the bill makes its way through both chambers, each will shape the bill through amendments to align more closely with their priorities. When one party has a majority in both chambers these priorities tend to align fairly well, but there are still areas of contention. For example, on March 7, during the 2022 short legislative session, the House refused to concur with the Senate amendments to Engrossed Second Substitute House Bill 1099, even though both chambers' majorities are currently held by the same party.

Negotiations can be attempted in a conference committee, as discussed in Section seven of Part 1. Conference committees are constructed with three members from each chamber, which are intended to represent the two sides of the dispute. These members are typically chosen by leadership from each chamber and are typically composed of two members from the majority party and one from the minority party. These members come together with the ability to rewrite the entire bill to address the

differences; of course, the result still has to be within the scope and object of the title of the bill. Legislators who are not part of the conference committee, but still really invested in the bill, will have to rely on the relationship they have with the members that are or the leadership of the chamber.

Ultimately, the conference committee report still has to be adopted by the chamber; therefore, it will still go to a vote. Members that are not a part of the conference committee will be able to express their position on the report through their vote but will not be able to directly influence the report itself. As former Representative Larry Seaquist explained to me during an interview, the House Democrats used to have an expression that captured this relationship. The saying was, “The Republicans are the opponent, but the Senate is the enemy!” (personal communication, January 27, 2022).

Section 3 - The Political Landscape of the Caucus

The Washington State Legislature is currently composed of two political parties. Members come from either the Democrat Party or the Republican Party. This two-party structure results in what is known as the four corners of the legislature. They are the Senate Democratic Caucus, Senate Republican Caucus, House Democratic Caucus, and House Republicans Caucus. Within each chamber, caucuses tend to have different ideologies and priorities. Each caucus elects its own leadership and then the leadership determines which members will be assigned to which committees and sets the general legislative priorities for the session. The caucus with the majority has the most power within their respective chambers. During the 2021-2022 session, those caucuses were held by the Democrat Party in both the Senate and House. As discussed in Part 1, Section 3, the majority caucus determines how many seats each caucus gets for the

various committees and also appoints the chair of each committee. This also allows them to control the overall priorities for the entire chamber.

However, even with the bulk of the power, the majority caucus leadership must consider the concerns and issues of its members. Without members' support, their leadership will most likely be short lived. While the same can be said in the minority caucus leadership, the dynamic between the caucuses is a little different. With the control of the agenda in the hands of the majority caucus, the conflicting priorities of the minority caucus have very little chance of making it through the legislative process. That's not to say that these issues are not pursued, because they most certainly are. Members of the minority caucus still sponsor bills that are completely contradictory to the majority party's agenda, even if they know it won't go anywhere.

However, in reality the minority party is fighting an uphill battle. They have to find a way to have their priorities incorporated into the agenda set by the majority. This can come in the form of an amendment to a bill, which attempt to address a key area of the bill in a way that aligns more with the proposer's priorities. Or it can come in the form of debate on the floor and the votes recorded on the roster sheet. Similar to how the leadership of each caucus must consider the priorities of its members, the majority caucus has to respect and consider the minority caucus' priorities. It may be true that they do not need the votes, but the minority does have the advantage in time and public accountability.

To some degree, constituents know which party currently has control of the chambers. As such, the minority party typically finds it easy to allow the majority party to take the criticism for unpopular legislation or funding decreases from popular programs.

In fact, when it comes to the budget, minority members will often propose what Seeberger (1997) claimed are sometimes called “hero amendments” in order to make these budget cuts even more transparent to the constituents (p. 86). These amendments are proposed to the budget with the intent of forcing the majority party to publicly say no. In regards to time, the majority party's priorities are what set the agenda, and the legislative session is never long enough to address all of the issues that the party wants to get to. The minority party can use this knowledge to their advantage by dragging the process out in floor debates, committees, and proposed amendments. This may not be enough to stop a bill entirely on its own, but it does force the majority party to work with the minority in order to get to other priorities.

Section 4 - The Political Landscape of Committees

In my opinion, moving bills through committees can be one of the most grueling and difficult steps that legislators have to overcome. As Figure 1 in Part 1, Section 1 illustrates, over half of the bills that were introduced in the 2019-2020 legislative session were left in one of the various committees as the session ended, and that's not including the ones left in the rules committee. First, sponsors have to convince committee chairs that their bill is worthy of receiving a public hearing. From the interviews I conducted, I learned that for some chairs, all a member needs to do is ask, while others may require a bit more persuading. Former Representative Seaquist explained that committee chairs tend to operate somewhere between a totalitarian manner or a facilitating manner. The totalitarian chair has their priorities set for the session and tends to only hear bills that align with those priorities. On the other hand, a facilitating chair tends to welcome all

bills that members seem passionate about, while keeping their caucuses priorities in mind (personal communication, January 27, 2022).

The executive hearing has to be scheduled and thus gives another potential power chokepoint to the chair of the committee. However, if the chair was willing to schedule the bill for a public hearing, then they had typically already planned on it going to executive hearing, even if it's a "hero bill or message bill." Hero/message bills are a type of slang term for a bill that is introduced that has very little potential to actually go anywhere. They are used by members so they can bring something back to their constituents, showing that they at least tried. One of the few things that was shared across the various interviews was that the chair most certainly has some sort of agenda in mind for the committee they manage. Now, whether or not the other members of the committee know the agenda depends on each individual chair and their chosen leadership style.

Another important component that legislators have to consider is that they may not be a sitting member of the committee that ends up hearing the bill. As a non-member, they may still be able to testify to the merits of the bill they are sponsoring, but they do not have any power within the committee. On top of that, even if the sponsor is a member—or even the chair—of the committee, the bill will still have to be heard in the opposite chamber's committees, thus still putting sponsors of bills in a position with very little power. This just reinforces the importance of relationships between members. A sentiment that was shared by the majority of the interviewees, but not all, was the idea that good committee chairs would know the outcome of the bill before going to the executive hearing. This is not to say that surprises don't happen, but chairs that work

with both caucuses to pass legislation usually know how the various members will vote on a particular bill before the vote actually takes place.

If a bill has a fiscal component to it, this can add another point of contention. Estimates for the fiscal note of a bill are compiled from the agency that will be impacted by the legislation. An agency that does not like a particular bill may exaggerate their estimates, making the bill less appealing, and the reverse is possible for bills that the agency does support. This means that legislatures will have to acknowledge other agencies' perspectives and work with them to help foster the fiscal components of the bill or attempt to justify the use of another source of the estimate with their fellow legislators. It is true that nonpartisan legislative staff will review these estimates before they are attached to the bill, but they will still need the input from the agencies that will be administering the new law. No matter what the price tag is, however, sponsors will still have to sell the value of the bill to the fiscal committee. As mentioned in Section 3 of Part 1, the budget has to be balanced. If funds were not already budgeted for the bill, then the money will have to come from somewhere.

Section 5 - The Political Landscape of the Rules Committee

Lastly, the Rules Committee brings with it its own barriers that legislators have to overcome. The Rules Committee is heavily monitored by the leadership of each chamber since this is how the floor calendar is set. This is where members will have to justify their bill to the leadership of the chamber. They typically won't let a bill make it through the Rules Committee that won't pass on the floor and/or that they don't want to be heard. However, this justification is not done in the actual committee due to the fact

that the committee does not debate any of the merits of the bill. Instead, members will have to reach out on their own in order to get leadership on board.

Members that do not have a seat on the committee must get one of the members of the committee to commit one of their valuable pulls to their bill. According to Seeberger (1997), it's common practice in both chambers to not allow committee chairs to simultaneously serve as one of the members of the Rules Committee (p. 59). This design feature adds one more layer to the importance of maintaining good relationships.

The chair of the Rules Committee is the Speaker of the House of Representatives. Chairs may have the power to determine which bills are heard in their committee, but in return get very little say about what bills are heard on the floor for their second and third reading. No matter what dynamic you look at—chambers, caucuses, or committees—the design of the state legislature requires members to work with each other in order to get their legislation passed. The lobbyist panel that came and spoke with the interns towards the end of the session explained that their legislative goals can take years to come to fruition. An issue that is not well known or not well understood takes time to explain and work out. Any advancement in the conversation or understanding that they can make during a legislative session is a win to them. The various lobbyists that spoke on the panel understood the importance of maintaining good relationships with the public sector.

Conclusion

The way a bill dies can reveal a lot about the legislature. It can highlight the areas of contention between members, reveal how the division of power requires members to create and maintain healthy relationships, and help create a viable way to

measure the efficiency of the legislature. In my opinion, the debate on which form of government is the best is a bit moot. Instead, I think we should stay focused on what we do have and work on improving that. However, my time as an intern taught me that just because the legislature is slow does not mean that it is inefficient. The slowness of government is not only intentional, it is necessary for our democracy. We have to have an avenue where everyone can share their opinions and concerns while at the same time not bogging down the system.

I don't have an answer for the efficiency of the legislature because there is a delicate balance between the rule of the majority and the oppression of the minority that needs to be considered. Any change made to the structure of the legislative process shifts this balance. Perhaps in some areas it should, but careful consideration must be taken. For example, I am concerned about the amount of time and resources wasted on hero bills and amendments. If the sponsor knows it's not going to go anywhere, then what's the point? Yet there is still value behind these actions. They give a voice to the minority and allow members the ability to show their constituents that the majority disagreed. They also add a degree of transparency and accountability to the process.

Another area where I have concern is in the sheer number of bills. In the 2019-2020 legislative session over 3,900 bills were introduced, but only 810 became law. Approximately 80% of the bills introduced did not make it out of the legislative process. About .6% of them were vetoed by the governor and 3.6% were left on the floor of one of the chambers. The other 75.1% were stuck in one of the committees: 18.4% in one of the rules committees and 56.7% in either a policy or fiscal committee (see Appendix A).

However, creating limits on the number of bills introduced could create numerous inequities and may only stifle creativity.

If I could, I would suggest removing what I believe is an unintentional façade that seems to cover the legislative process. The majority has most of the power and they set the legislative agendas, so why not make those agendas more transparent? One of the members I interviewed suggested having committee chairs and chamber leadership publicly post a sort of mission statement or their top priorities for the legislative session. This would then make it easier for representatives, senators, lobbyists, and constituents to focus their bills and ideas to fit within those priorities. It doesn't have to, and probably shouldn't, contain any political ideologies, but instead could just list the types of issues they hope to address during the session. I think this may help to decrease the number of bills introduced in a way that does not actually set any formal limit. It also may help bring some more transparency to those that are not engrossed in the legislative process.

If the overarching objective of the legislature is to produce refined legislation, then the ways in which a bill dies can help us understand how that legislation is refined. As daunting and mundane as the procedure may seem, I believe that this is important in order to offer any kind of constructive criticism. Yes, the government is slow, but is that really a bad thing? Without first understanding the process, there is no way to know. The criticism seems to come from every direction, yet I don't think criticism is a bad thing; in fact, I believe the opposite is true. However, blind criticism rarely solves anything. Instead, if we actually want to create change in the government, then we need to offer constructive criticism. It might be a bit overwhelming and overpowering to watch

the “sausage” being made, but, as Claudius O. Johnson (1993) suggested, we may actually gain a deeper appreciation for what it takes and at very least be able to “express our dissatisfaction in an intelligent manner” (p. 321).

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Appendix A

The 2019-2020 Legislative Session

Final Resting Place of Bills at the End of Session Chart

3927

Total number of bills introduced

2225

Number of bills stuck in either a policy or fiscal committee at the end of session

724

Number of bills stuck in either the House or Senate Rules committee at the end of session

143

Number of bills stuck on one of the chambers floors at the end of session

25

Number of bills vetoed by the governor

810

Number of bills that became a law

Location at the end of the Biennium	Number of Bills	Percent of total Bills introduced
Policy/Fiscal Committee	2,225	56.66%
Rules Committee	724	18.44%
Chamber Floor	143	3.64%
Governor Veto	25	.64%
Became a Law	810	20.62%
Total	3,927	100.00%

*Data collected from “*Legislative Explorer*.” University of Washington and Schema. 2019-2020 Washington State Legislative Session. Retrieved on February 15, 2022 from <http://www.legex.org/wa/process>.