The Virginia General Assembly: big changes ahead

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EXECUTIVE SUMMARY

The 2017 General Assembly session will be remembered as the end of an era. Later this year, the General Assembly Building, the cobbled-together structure that has been home to legislator offices and meeting rooms for committees and subcommittees, and a place where the public, advocates, lobbyists and government officials have mixed and mingled, will be torn down to make way for a new building in 2021. For the next few years, the action will shift down the hill from the Capitol to the Pocahontas Building, the former home of the Office of the Attorney General.

Another era that will come to an end is the tenure of House Speaker William J. Howell. Howell has been in the House of Delegates representing parts of Fredericksburg and Stafford County since 1988 and took up the gavel as speaker in 2003. He announced his retirement in mid-February. Early indications are that current House majority leader Del. Kirk Cox of Chesterfield County will succeed him in the speakership.

And finally, Lt. Governor Ralph Northam, who has presided over the Senate for the past four years, is running for governor and will not return to that body next year. Virginians will elect a new lieutenant governor in November, and that individual will lead the action in the Senate in 2018.

Amid this backdrop, members of the volunteer group known as Transparency Virginia, again met on a regular basis during the 2017 legislative session and continued to monitor the same three areas of transparency we have followed since the group's formation in 2015.

1. Notice of committee and subcommittee meetings.
2. Consideration of all bills.
3. Recorded votes when defeating bills.

Among our findings this year.

- ★ Only 12.1% of the 636 bills the House of Delegates defeated or left in committee or subcommittee received a roll-call vote, meaning the remaining 87.9% of the bills that were defeated were done so by voice vote where it is impossible to know who voted for or against the bill.

- ★ 85% of the bills defeated or left in the Senate received recorded votes. All but 13 of the bills that died without a recorded vote were defeated by the Senate Rules Committee.
- ★ Fewer House bills died on unrecorded votes in 2017 than in 2016, but the number is greater than in 2015. More Senate bills died on unrecorded votes than in the previous two years.
- ★ Eighty-five of 140 legislators signed a letter to the clerks of the House and Senate asking that electronic voting be built into all committee and subcommittee rooms in the new General Assembly Building, and if possible, into the Pocahontas Building.

The Senate installed electronic voting boards in one of its committee rooms, which was a positive step, though putting the boards in both committee rooms would have had a greater impact.

Two other developments, though somewhat outside the scope of TVa's stated areas, made this year's session noteworthy.

First, Speaker Howell announced at the start of the session that video of each day's House floor session would be archived on the General Assembly's website, and that the videos would be searchable by keyword or bill number.[1] Now, the public can watch the session live, which it has been able to do for years, or people can come back at any time to view parts of or an entire session. This will give many a window on their elected officials and the entire legislative process that they previously never had.

A few days into the session, the Senate followed the House's lead on the video archive, but it did not implement the search capabilities.[2]

The other development was not from within the General Assembly but came from a third party. Progress Virginia, an advocacy group, organized volunteers to video record committee meetings and some subcommittee meetings. Armed with little more than a smart phone, a tripod and a plug-in microphone, volunteers turned the camera on at the beginning of the meeting and turned it off at the end, without offering comment on any bill being presented. The videos were live streamed to the group's website.[3] The quality wasn't always the best,

[1] The House video stream can be found here: http://virginia-house.granicus.com/ViewPublisher.php?view_id=3.

[2] The Senate video stream can be found here: http://virginia-senate.granicus.com/ViewPublisher.php?view_id=3.

[3] Progress Virginia's legislative committee meeting channel: http://eyesonrichmond.org.

and searching the archives can be somewhat difficult, but their effort proved that a system to broadcast the daily workings of the General Assembly to the general public need not be fancy nor expensive to have an impact.[4]

The letter signed by the 85 legislators (mentioned above) also asked the clerks to wire the committee and subcommittee rooms in the new General Assembly Building and the Pocahontas Building, if possible, for audio-visual capabilities. (See APPENDIX A)

A REVIEW OF PROCEDURES AND MOTIONS

As detailed in TVa's first two reports[5], proposed legislation is given a number and is assigned to committee by the Speaker of the House and the Clerk of the Senate. The chairs of the standing committees in the House and Senate decide whether a bill should be further assigned to a subcommittee for consideration.

In the House, the subcommittees are where the real work gets done. Bills heard in subcommittee either get forwarded on to the full committee (**reported**) or they are defeated. It is highly unusual for bills killed in subcommittee to be placed on the docket for the full committee.

In the Senate, there are far fewer subcommittees and subcommittee members cannot take final action on a bill. They take testimony like their House counterparts, but they only recommend passing the bill or defeating it. The full committee makes the final decision on bills.

According to House Rule 18(a), a committee or subcommittee chair may call for a recorded vote (where all members present must be on record as having voted yay or nay), but is not required to call for one. One-fifth of a committee or subcommittee's members also may call for a vote. In a subcommittee of seven, just two people have to ask that there be a recorded vote.

Senate Rule 20(d) states that "all votes on bills shall be recorded."

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[4] As noted in "Virginia legislature behind other states on streaming," by Travis Fain, Daily Press, Dec. 28, 2016, Virginia is one of only nine states that do not broadcast audio or video from at least some of the legislature's committee meetings. http://www.dailypress.com/news/politics/dp-nws-evg-legislative-streaming-virginia-20161223-story.html.

[5] See "The Virginia General Assembly: The case for improved transparency," April 14, 2015, https://transparencyvirginia.files.wordpress.com/2015/04/transparencyvareportreleased.pdf, and "The Virginia General Assembly; transparency over time," April 20, 2016. https://transparencyvirginia.files.wordpress.com/2016/04/transparency-va-2016.pdf.

A bill that advances from a subcommittee is said to be reported (or recommended to report, in the Senate). The full committee can then defeat the bill or can report it to the House or Senate floor. When a bill reports from a committee, it must have a recorded vote. All bills heard on the floor of either chamber must receive recorded votes, including those that are defeated.

In committee (or House subcommittee), a bill may be defeated in one of several ways. Typical motions include:

- ★ Motion to pass by indefinitely (or just pass by), also known as PBI;
- ★ Motion to table (lay on the table, lay gently on the table); and
- ★ Motion to report (but fails).

A bill that has been tabled or PBI'ed isn't technically dead until the committee concludes its work. Furthermore, the history of a bill listed on the **Legislative Information System** (LIS)[6] may say that the full committee **"left"** the bill in committee, even though it was the subcommittee that voted to table the bill. A bill that has been PBI'd may be reconsidered. (*See sidebar, right*).

A bill is dead if a motion to report fails to get a second or does not receive a majority of votes after being seconded. A bill also fails if there is a tie vote on a motion to report.

The curious case of HB 1546

Like many bills, HB 1546 was assigned to a House committee and then to a subcommittee.

According to the bill's history on LIS, the subcommittee recommended laying the bill on the table by voice vote on Jan. 23.

On Feb. 1, however, the LIS history notes that the same subcommittee considered a substitute bill and advanced it, 11-0, to the full committee. The full committee and the full House them passed the bill unanimously.

In the Senate Courts of Justice Committee, the bill was defeated on Feb. 13 on a motion to PBI. But on Feb. 15, the committee voted to reconsider its prior vote, then it advanced the bill on a 9-6 vote. The full senate passed the bill, 21-19.

Whether the parliamentarians among us say we all should have known better, the general public was twice led to believe by the General Assembly's own information system that the bill was finished for this year. Not once, but twice. They would have had no way of anticipating further action unless (and even then, not necessarily) they were there in the General Assembly Building.

A motion to table cuts off further discussion, including questions from committee members or comments from the public. A vote is required at that point. The finality of such a motion can sometimes cause bad blood, as TVa observed in one subcommittee: A member made a

[6] www.lis.virginia.gov.

motion to table a bill, but the chair had already recognized another member who wanted to ask a question. The first member challenged the second member's right to ask the question since the motion to table had ostensibly cut off discussion. A testy exchange ensued.

Because motions to table bring discussions to a halt, some committee and subcommittee chairs may delay making or accepting such a motion. Frequently the chair will say he or she is "taking the temperature" of the committee members to gauge their general leanings. If there is not enthusiastic support for a bill, the motion to table is made.

Regardless of whether a motion to table is preferable to a motion to pass a bill by indefinitely, or to have a bill die because no one seconded the motion to report, there is absolutely nothing that prohibits votes on that motion from being recorded as to each member.

Furthermore, there is absolutely nothing prohibiting any committee or subcommittee member from asking that a vote — any vote — be recorded for each member. Such was the case when a member of a House subcommittee asked for recorded votes on several Senate proposals that were similar to House measures that had already been defeated on voice votes.[7]

OBSERVATIONS 2017

Meeting notice

As noted in Transparency Virginia's 2016 report, the meeting notice system implemented by the House of Delegates at the start of last year's session was a major, positive development. Anyone can sign up to receive notices electronically from any of the 14 committees or 54 subcommittees.

The notices announce meeting times and agendas. If a time, location or agenda is changed to add or subtract bills to be heard, subscribers receive another alert with that update.

Knowing when a subcommittee is going to meet is absolutely critical in both chambers, but especially so in the House since a subcommittee has the power to kill a bill. In fact, 78.1% of the bills defeated in the House this year were killed or left in subcommittee. Further, the chairs of many standing committees prefer not to reopen testimony on bills that make it out of the

[7] "Virginia redistricting reform efforts dead for the year as House kills bipartisan Senate proposals," by Graham Moomaw, Richmond Times-Dispatch, Feb. 14, 2017. http://www.richmond.com/news/virginia/government-politics/virginia-redistricting-reform-efforts-dead-for-the-year-as-house/article_29711020-7228-5448-bfeb-f2b383d58ab7.html.

subcommittee, meaning if someone isn't present at the subcommittee meeting to testify in support of or in opposition to a bill, that person may have lost his or her only chance to be heard before the bill continues on through the House process.

The Senate still does not have a meeting notice system. On the one hand, the lack of a notice system does not present as many problems as it would on the House side. There are just 18 subcommittees serving 11 committees, and 13 of those subcommittees serve just the Finance and Education & Health Committees. Additionally, subcommittees cannot kill bills in the Senate, and much of the public input on bills comes during the full committee. Plus, the full committees in both the Senate and the House meet at generally reliable times and places. The real drawback, then, to the Senate not having a notice system like the one used in the House is that agendas for a particular meeting, or changes to them, are more difficult to track. Changes in meeting times would be caught only by constantly refreshing the LIS meetings notice page, and the docket changes may or may not be reflected online.

For the House notice system to be the most effective, the notice must be timely. Usually it is. However, there were some notable instances during the 2017 session where notices were updated to add bills either immediately before the meeting began or, occasionally, even while the meeting was underway. Only those already at the meeting or immediately nearby would be able to observe action on these last-minute additions.

Consideration

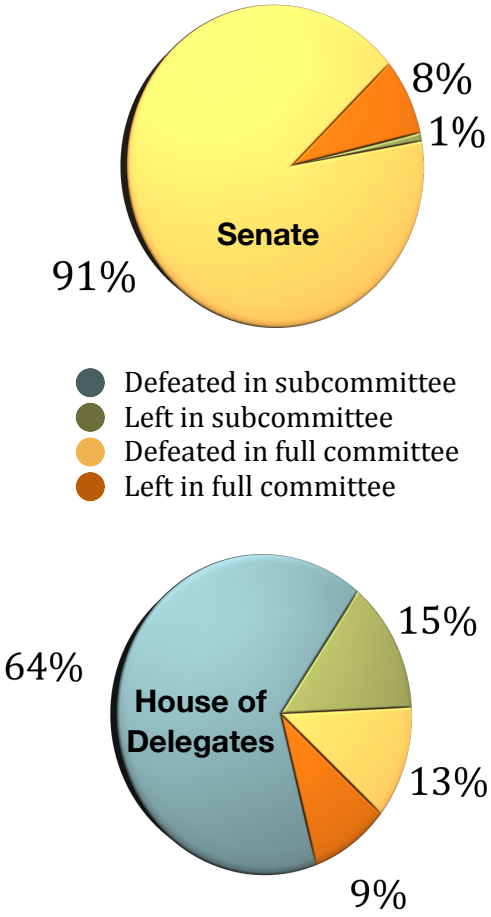
As in past years, bills continue to be left in committee or subcommittee without ever being taken up for consideration. It is the legislative equivalent of the pocket veto, which is when a governor or other executive allows the deadline for action on a bill to expire without either signing or vetoing it. The bill dies without the executive having to take an official position. Approximately 23.9% of the bills defeated in the House and 9.4% in the Senate were those left behind in the full committee or a subcommittee without any action being taken.

It has been common practice over the years for block votes to be taken on the floor of the Senate and, to a lesser extent, the House. However, block votes have become more common in the full committee meetings of both chambers.

This year, Transparency Virginia observed several occasions where bills that had not yet been presented to the committees by their patrons or with input from committee members or the public at large, were bundled together and voted on. For example, a House committee

bundled 20 bills from patrons of both parties having to do with amendments to the Virginia constitution into one block and defeated them all in one vote. None of the 20 received individual consideration. In another instance, in anticipation of a block vote in a House subcommittee on several Senate measures, a delegate asked that each legislator record his or her vote.[8]

Percentage of bills defeated or left in full committee or subcommittee 2017



Block voting is nothing new. It was common when Democrats had control of both chambers, as was sending a bill to a committee that never met.[9] No matter which party is doing it, voting to kill measures in a block leaves the public in doubt about where their legislator stood on the bill.

Another development TVa observed for the first time this year, was a letter written from the chair of a committee to both Republican and Democratic patrons of controversial bills informing them that their bills would not be heard by any committee or subcommittee.[10]

The bills did not "have a realistic chance of becoming law," the letter stated, because the liberal ideas would be defeated by the Republican-majority House, and the conservative ideas would be vetoed by the Democratic governor. Instead, the letter said the committee needed to spend its limited time on issues that "actually have a chance to become law."

When considering a bill, it is good to know exactly what the bills says. That isn't always as easy as it sounds.

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8 "With single vote, House subcommittee kills more than 20 proposed Va. constitutional amendments," by Alex Rohr, The News & Advance, Jan. 30, 2017, http://www.newsadvance.com/news/local/with-single-vote-house-subcommittee-kills-more-than-proposed-va/article_e366e4fa-e706-11e6-b145-d73eb1907ec5.html.

9 "Era of the Iron Fist: How Did Democrats Rule the House of Delegates," by Michael Lee Pope, Connection Newspapers, Feb. 16, 2017. http://www.connectionnewspapers.com/news/2017/feb/16/era-of-the-iron-fist/.

10 https://i2.wp.com/transparencyvirginia.files.wordpress.com/2017/03/alboletter.jpg?ssl=1&w=450

Some bills are introduced for the session after months of work by interested parties and stakeholders. By the time the session begins, many of the major sticking points have been ironed out or are at least well known. Most bills, however, are introduced without extensive pre-session vetting, meaning that some (certainly not all or even most) are worked on extensively during the session. Consequently, by the time some bills come up for a hearing in committee or subcommittee, the patron is no longer offering the bill as originally drafted, but is offering instead a **"substitute,"** that may take a radically different approach.

As a concept, substitutes are not problematic: That's part of the sausage-making process. What is problematic is when interested parties are not aware that a substitute is in the works. Often times citizens, lobbyists and advocates are prepared to speak to the bill as drafted, only to arrive at the committee or subcommittee to find that their points inapplicable to a new substitute.

Furthermore, copies of a substitute bill may not be made available prior to the meeting, either in paper or online. Even the committee and subcommittee members are caught flat-footed when presented at the meeting with a brand new bill and are expected to vote on it within minutes.

Recorded votes

Members of a House subcommittee raise their hands to record their votes.

In the House of Delegates, legislators did not record their votes on 87.9% of the bills that were defeated during the session. That number is down from the nearly 94.6% of bills defeated on an unrecorded vote — or no vote at all — in 2016, but up from 76.3% in 2015 and leaps and bounds ahead of the 3.3% of unrecorded votes in 2005.

The Senate killed 15.0% of its bills without a recorded vote — or no vote at all — which represents a steady climb up from 7.2% in 2015 and 10.2% in 2016. In contrast, 50.5% of the bills defeated by the Senate in 2005 were done so without recorded votes.

Going a bit deeper into the numbers, it is notable that 100% of bills in two House committees were left or defeated without recorded votes. The House Appropriations Committee handles all the expenditure bills, while the House Rules Committee handles powers and duties of

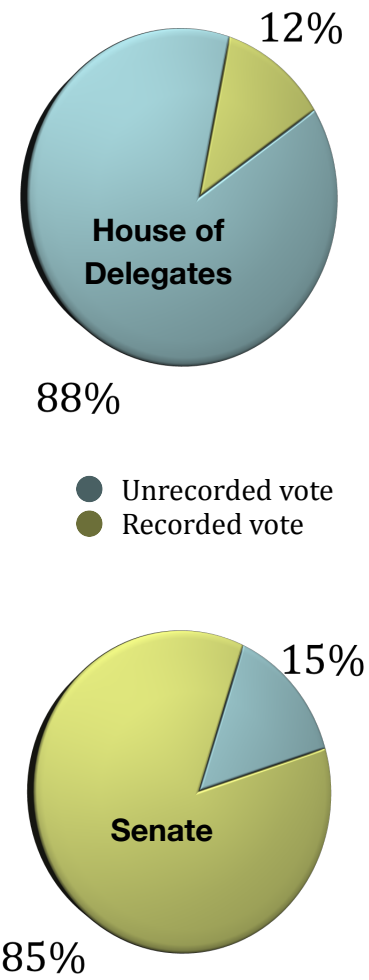
legislatively created bodies, as well as study requests, operational procedures and resolutions. Together, the two committees disposed of 22% of the bills defeated in the House.

The House Courts of Justice Committee, where 17% of all bills in the House are assigned, defeated 21% of all bills killed by House committees and subcommittees. There was no recorded vote on 92.7% of them. This is down slightly from the 97.9% of bills killed without recorded votes in 2016.

The House Privileges & Elections Committee, and the House Counties, Cities and Towns Committee had the lowest rates for unrecorded votes, with 56.7% and 61.5%, respectively. In 2016, these same committees pegged in at 94.7% and 96.4%, respectively, a vast improvement.

The House Science and Technology Committee looks at first glance like a great outlier, with 0% unrecorded votes. Further examination reveals, however, that the committee did not actually defeat any bills. Only seven bills were referred to the committee all session. The one bill that is counted on LIS as having failed was one that was withdrawn from consideration by the bill's patron. TVa does not count bills stricken by the patron or incorporated into other bills in their count of votes, hence a tally of zero bills defeated.

Percentage of bills defeated in full committee or subcommittee without a recorded vote 2017



Just over three-quarters (78.1%) of the bills defeated in the House are disposed of in subcommittees, that ranges from 94.6% of the bills in the General Laws Committee to 48.1% in the Rules Committee.

In the Senate, the overall percentage of bills defeated without recorded votes (15%) would have been considerably lower if the numbers from the Senate Rules Committee were not counted. That committee did not record votes on 80% of the bills it defeated. Without that

The irony of HB1677

Transparency Virginia actively supported HB 1677, which would have required all legislation to be considered by the committee or subcommittee it was assigned to and to receive a recorded vote. The bill was identical to a bill filed in 2016, and both bills were killed on an unrecorded voice vote.

In 2016, the committee members asked about exactly which actions taken on a bill had to be recorded, in particular budget amendments and commending and memorial resolutions. Some speculated that having to record votes by name would increase the legislature's workload by 50%.

The committee did not seek testimony on the bill, though there were several present who were prepared to speak. After the meeting, the committees chair said he didn't know why no one spoke, only that "I guess no one stood up and said they wanted to speak."

committee's numbers, the Senate as a whole would have defeated just 5.7% of its bills without recorded votes. In 2016, the Rules Committee's unrecorded vote rate was 55.1%.

Three Senate committees — Commerce & Labor, Rehabilitation & Social Services and Transportation — recorded votes on all of the bills it defeated, the same as in 2016. In 2016 three other Senate committees had perfect records — Education & Health, General Laws and Privileges & Elections — but this year had unrecorded votes on 7.7%, 19.0% and 13.0%, respectively, of bills defeated.

Less than 1% of the bills disposed of in the Senate were done away with in the subcommittees.

It should be noted here that Senate vote counts can be somewhat deceptive. Committee members are on record on the LIS system, but that doesn't necessarily mean they were present to cast whatever vote that's been attributed to them.

The Senate makes frequent use of **proxies**, whereby a senator can leave instructions with a fellow committee or subcommittee member about how to vote on certain measures during the senator's absence. This sounds straightforward, but because bills can be amended in committee, or substitutes may be adopted, it may be difficult for the member present to ascertain how the absent senator may or may not have voted. Further, LIS does not indicate which votes were cast by proxy, meaning citizens do not know for sure whether their senator was present for a vote or not.

The complete chart of defeated bills in the House and Senate can be found in APPENDIX B.

CONCLUSIONS

Two new chamber leaders and a new office building will no doubt change the way business is conducted in both the House and the Senate, but how and to what extent cannot guessed. Transparency Virginia will continue to monitor the General Assembly for challenges and improvements to transparency, and it is our hope that every year sees improvements in some way or another.

TVa's recommendations for 2017

- ★ All bills should receive consideration.
- ★ Motions to defeat a bill, no matter which motion is used, should be accompanied by a roll-call vote (electronically recorded or noted by hand).
- ★ The Senate should approve a meeting notice system similar to the one used by the House.
- ★ A substitute bill should be posted online or otherwise made available well in advance of the meeting where it will be presented.
- ★ The Senate should adopt search capabilities for its floor session video archive.
- ★ Committee and subcommittee meetings should be audio- and/or video-recorded and archived.

APPENDIX A

Commonwealth of Virginia

GENERAL ASSEMBLY

RICHMOND

The Honorable G. Paul Nardo,
Clerk of the Virginia House of Delegates
and Keeper of the Rolls of the Commonwealth

The Honorable Susan Clarke Schaar,
Clerk of the Senate of Virginia

February 13, 2017

Dear Clerks Schaar and Nardo,

The Mission Statement of the bi-partisan, bi-cameral Virginia Transparency Caucus is as follows:

> *Our goal is to increase public awareness of the inner workings of Virginia Government and the legislative and political process, in order to make Government more easily accessible to citizens throughout the Commonwealth.*

Our members keep records of their votes in subcommittee and committee, which is standard practice in the Senate. Furthermore, the "gold standard" for our members is to film every hearing held on our bills when they go before committee or subcommittee. This approach has proven effective in bringing our constituents a direct and unedited view as to how the bills they care about are debated, amended, and sometimes ultimately determined before they reach the House or Senate Floors. Now the Caucus would like to expand this effort and bring the full business of committees and subcommittees to all Virginia citizens.

The Transparency Caucus formally requests the new General Assembly Building (and, if possible, the interim Pocahontas Building) maintain full audio and visual recording capability, as well as transparent vote recording machines for all Committee and Subcommittee hearing rooms in both the Senate and the House of Delegates. We request the same standard that currently applies to video recordings of sessions on the House and Senate Floors apply to all proceedings before committee and subcommittee.

We appreciate your consideration of this matter and look forward to hearing from both of you with regard to your intended steps in this regard.

Sincerely,

The Virginia Transparency Caucus

Amanda Chase

Senator Amanda Chase

Mark M Levine

Delegate Mark Levine

The letter was signed by 83 other delegates and senators

APPENDIX B

HOUSE

Committee	Number of bills referred to committee	Total number of bills that failed	Bills stricken by patron or rolled into other bills at full or subcommittee	Bills defeated in subcommittee	Bills left in subcommittee without action	Percentage of bills that died in subcommittee	Bills defeated in full committee	Bills left in full committee without action	Percentage of bills that died in FULL committee (J+K/F)	Bills defeated or left in subcommittee without a recorded vote	Bills defeated or left in full committee without a recorded vote	Percentage of unrecorded votes in FULL and SUBcommittee on those bills that were defeated
Agriculture, Chesapeake & Natural Resources	88	27	2	20	2	88.0%	3	0	12.0%	20	1	84.0%
Appropriations	171	77	1	57	8	85.5%	0	11	14.5%	65	11	100.0%
Commerce & Labor	117	54	4	24	2	52.0%	20	4	48.0%	25	22	94.0%
Counties, Cities & Towns	70	15	2	8	3	84.6%	2	0	15.4%	7	1	61.5%
Courts of Justice	326	146	22	91	7	79.0%	5	21	21.0%	92	23	92.7%
Education	137	31	3	17	2	67.9%	5	4	32.1%	16	8	85.7%
Finance	123	53	5	41	3	91.7%	4	0	8.3%	42	2	91.7%
General Laws	205	47	10	30	5	94.6%	1	1	5.4%	28	2	81.1%
Health, Welfare & Institutions	156	23	2	18	1	90.5%	0	2	9.5%	18	2	95.2%
Militia, Police & Public Safety	79	39	4	22	10	91.4%	2	1	8.6%	29	3	91.4%
Privileges & Elections	116	70	3	55	4	88.1%	4	4	11.9%	33	5	56.7%
Rules	125	79	2	0	37	48.1%	33	7	51.9%	37	40	100.0%
Science & Technology	7	1	1	0	0	0.0%	0	0	0.0%	0	0	0.0%
Transportation	121	40	5	21	9	85.7%	1	4	14.3%	23	4	77.1%
TOTAL	1841	702	66	404	93	78.1%	80	59	21.9%	435	124	87.9%

SENATE

Committee	Number of bills referred to committee	Total number of bills that failed	Bills stricken by patron or rolled into other bills at full or subcommittee	Bills defeated in subcommittee	Bills left in subcommittee without action	Percentage of bills that died in subcommittee	Bills defeated in full committee	Bills left in full committee without action	Percentage of bills that died in FULL committee (J+K/F)	Bills defeated or left in subcommittee without a recorded vote	Bills defeated or left in full committee without a recorded vote	Percentage of unrecorded votes in FULL and SUBcommittee on those bills that were defeated
Agriculture, Conservation & Natural Resources	78	18	11	0	0	0.0%	6	1	100.0%	0	1	14.3%
Commerce & Labor	99	34	7	0	0	0.0%	27	0	100.0%	0	0	0.0%
Courts of Justice	302	81	20	0	0	0.0%	58	3	100.0%	0	3	4.9%
Education & Health	252	48	22	0	0	46.2%	24	2	53.8%	0	2	7.7%
Finance	269	83	5	0	0	0.0%	76	2	100.0%	0	2	2.6%
General Laws & Technology	171	26	5	0	2	9.5%	17	2	90.5%	2	2	19.0%
Local Government	77	12	5	0	0	0.0%	6	1	100.0%	0	1	14.3%
Privileges & Elections	109	47	24	0	0	0.0%	20	3	100.0%	0	3	13.0%
Rehabilitation & Social Services	83	18	6	0	0	0.0%	12	0	100.0%	0	0	0.0%
Rules	108	44	4	0	1	2.5%	26	13	97.5%	1	31	80.0%
Transportation	116	26	9	0	0	0.0%	17	0	100.0%	0	0	0.0%
TOTAL	1664	437	118	0	3	4.7%	289	27	95.3%	3	45	15.0%