I’m just a bill…
Let’s take a deeper look – House procedures and rules

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Now to the Senate
Let’s take a deeper look – **Senate procedures and rules**

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| **Referral to Committee** | 1. Typically by Senate Parliamentarian  
2. Referred to one committee; multiple referrals discouraged  
3. No rule requires committee consideration; majority and minority leaders can agree to move to floor  
4. Can also bypass committee by adding bill to another floor bill as amendment – **no germaneness rule** |
| **Referral to Subcommittee** | 1. No rule requirement for referral to subcommittee  
2. By chair |
| **Hearings** | 1. Again, not required  
2. Mark-ups – not on the record  
3. Reported favorably out of committee  
4. Committee report prepared |
| **Post-Committee Revisions** | 1. Common occurrence in Senate – a necessary prelude to build 60 votes needed for unanimous consent agreement  
2. By individual senators or leaders – not limited to sponsors or chairs |
Let’s take a deeper look – **Senate procedures and rules**

| Unanimous Consent Agreement | 1. No Rules Committee  
|                            | 2. Sets out procedures for considering bill  
|                            | 3. Any Senator can object  
| Filibuster                 | 1. 60 vote threshold  
|                            | 2. Place a hold (“costless”)  
|                            | 3. Can filibuster virtually any Senate action (with important exceptions re budget legislation)  
|                            | 5. Blue slips – now also limited by Judiciary Committee chair  
|                            | 6. Cloture petition – need 16 signatures; try try again if fails  
| Post-Cloture Debate and Passage | 1. Rule XXII – 30 hours  
|                               | 2. Again, no germaneness rule typically in debate, but cloture triggers requirements that amendments be both germane and filed prior to cloture  
| Passage                     | 1. In person  

Let’s take a deeper look – **Reconciliation and Approval**

| Conference Committee Referral and Selection | 1. Named by majority and minority leaders of each chamber  
2. Normally key participants in drafting and debate – committee referral choices come back to roost |
|---------------------------------------------|--------------------------------------------------------------------------------------------------|
| Conference Committee Scope and Report      | 1. Can only harmonize conflicting language  
2. Cannot add new provisions that don’t appear in either bill (unless waived by special rule for House delegates), but can be waived by either chamber if noncontroversial  
3. Conference reports tend to be pithy  
4. **Majority from each chamber must vote in favor** |
| Repassage by House and Senate             | 1. Conference Report presented to each chamber with no amendments, although debate allowed on new text  
2. Must on entire bill, up or down (unless House appropriation bill) |
| Presidential signature                    | 1. Signing statements  
2. Pocket veto? (Art. I, Section 7 – 10 days) |
| Veto Override                             | 1. 2/3 required for override in each chamber |
Breaking the Rules – the Rise of Unorthodox Legislation

• How would you reverse engineer around the filibuster?
Breaking the Rules – the Rise of Unorthodox Legislation

• Agree in advance behind closed doors

• Bundled deals in large-scale omnibus legislation

• “Statutized Rules” – budget reconciliation process, Congressional Review Act

• Avoiding conference committees through referral tactics and language harmonization

• Delegation of authority to executive (i.e., agencies)
And never forget – states do it too, and do it their own way…
Professor Tracy Hester  
University of Houston Law Center  

tdheste2@central.uh.edu  
713-743-1152 (office)