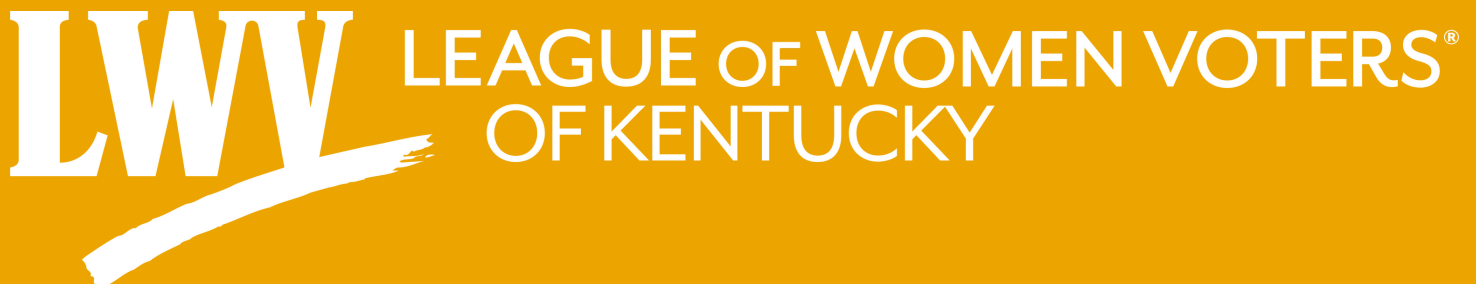




NOVEMBER 2023

How Can They Do That?

Transparency and Citizen
Participation in Kentucky's
Legislative Process



REPORT SUMMARY

In recent years, the League of Women Voters of Kentucky has become concerned by General Assembly procedures that make it increasingly difficult for citizens to be informed and active participants in legislation. Such participation is a core value of the League of Women Voters.

To deepen our understanding of those procedures, a League task force reviewed provisions of the Kentucky Constitution, the House and Senate Rules, and the legislative record for all bills that became law during seven 60-day legislative sessions: 1998, 2002, 2006, 2010, 2014, 2018, and 2022.

That review identified four procedural maneuvers that undermine citizen participation:

- Replacing original versions of bills with last-minute committee substitute versions, allowing little or no time for citizens to review or comment before the committee vote.
- Holding required “readings” of bills before any committee has considered the bill.
- Holding floor votes on bills the same day as committee action on those bills.
- Holding floor votes on free conference committee reports the same day the reports are filed.

These maneuvers make it hard or impossible for *citizens* to take timely action to:

- Analyze bill language.
- Provide pertinent testimony to legislative committees.
- Provide input through phone calls, e-mails, and visits.
- Alert their fellow citizens to issues of concern.

These maneuvers also make it harder for *journalists* to provide information to their readers, and they make it harder for *legislators* to review legislation for themselves and consider thoughts from citizens in deciding how they will vote.

The General Assembly can strengthen citizens' participation in our democracy in four ways:

- Hold required bill “readings” on three separate days *after* a standing committee sends the bill to the whole House or Senate for a vote.
- Make committee substitute bills available online at least one full day before the committee meeting where the substitute will be considered.
- Allow at least one full day between the last standing committee action on a bill and the House or Senate floor vote on the bill.
- Allow at least one full day between free conference committee revisions to a bill and the House or Senate floor vote on that changed bill.

The Task Force's full report introduces the League's concern, describes the official process for legislative action, and explains the four concerns and the steps that can reduce each one.

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INTRODUCTION

“The League of Women Voters believes that democratic government depends upon the informed and active participation of its citizens and requires that governmental bodies protect the citizen’s right to know by giving adequate notice of proposed actions, holding open meetings, and making public records accessible.”

From *With One Voice* (2023, League of Women Voters of Kentucky)¹

In recent years, the League of Women Voters of Kentucky (LWVKY) has become increasingly concerned with legislative actions that fast-track significant bills, including state budget bills and bills on controversial issues on which citizens may want to give input. The informed and active participation we value requires that citizens have realistic opportunities to analyze bill language and be heard. Very rapid action by the Kentucky Senate and House can deny those opportunities.

One way the LWVKY achieves its mission of promoting informed and active citizen participation is by monitoring Kentucky’s legislative sessions. We track legislation as it moves through the process, and we inform our members and citizens about bills that address important issues. When bills of interest are being considered, our legislative liaisons work through established processes to give input, including testifying at committee meetings and talking to individual legislators.

In recent years, however, League members and other Kentuckians have increasingly been unable to review key legislation in time to give input. For example, members have prepared to testify at committee meetings only to learn on the day of the meeting that the bill we reviewed had been replaced with a substitute bill. Other citizens and stakeholder groups, along with the media, have also voiced concern about increased fast-tracking of legislation².

The Democracy Principle

LWVKY’s understanding of democracy as depending on informed and active citizen participation can be named more briefly as “the democracy principle.” This democracy principle draws on many sources:

- Abraham Lincoln called on our nation to ensure that “government of the people, by the people, and for the people shall not perish from this earth.”³
- A *Declaration of Sentiments* signed at the first women’s rights convention in 1848 listed “repeated injuries and usurpations of man towards woman,” including that “He has compelled her to submit to laws, in the formation of which she had no voice”.⁴
- Nelson Mandela argued in his 1962 trial that “In its proper meaning equality before the law means the right to participate in the making of the laws by which one is governed.”⁵
- Disabilities rights advocates use the slogan “Nothing about us without us”⁶ to communicate that no governmental decisions should be made without the participation of those who lives are affected by those policies.

When the Kentucky General Assembly is in session, that voice in decisions requires time for citizens, stakeholder groups, journalists, and legislators to review and comment on legislation before it is passed. The democracy principle can be endangered by very rapid legislative action, often on bills that are of grave concern to some citizens and advocacy organizations.

Examples of Damage to the Democracy Principle

One example of damage to the democracy principle is 2018's Senate Bill 151, which initially addressed “local provision of wastewater services”. Very late in the legislative session, the House State Government Committee replaced the entire text of the bill with provisions that made major changes to state retirement systems. Both the House and Senate approved the replacement language the same day⁷. The Kentucky Education Association and others protested that they had not seen the bill nor been given a chance to testify about it.⁸ The bill was ultimately struck down in a unanimous decision by the Kentucky Supreme Court. The Court’s ruling stated that the process used to pass the bill violated a constitutional provision intended to assure that lawmakers and citizens have time to review and comment on a bill before its passage.⁹

Another example that breaches the democracy principle is 2023's Senate Bill 150. That bill set new limitations on how parents, medical providers, and schools treat transgender children and youth. Near the end of the legislative session, the House Education Committee called a special meeting with less than an hour’s notice. At that meeting, the Committee made substantial changes to the bill, and both House and Senate voted on the amended version the same day, before citizens (and even fellow legislators) could review and comment on the changes.¹⁰

The Senate Bill 150 process, along with several other actions during the 2023 legislative session, led one Kentucky columnist to summarize the legacy of the session in a single word: *disenfranchisement*, characterized by suppressing dissenting voices, depriving citizens of a meaningful opportunity to participate and be heard through “brazen trickery and deceit,” and “secrecy on an epic scale.”¹¹

When public participation processes are bypassed in this manner, citizens may believe that the only way to be heard is to disrupt the process. Indeed, when SB 150 was debated on the House Floor, protestors were asked to leave after shouting and chanting from the balcony. Ultimately, 19 people were arrested for criminal trespassing when they refused to leave.¹² If the legislature increases its use of maneuvers that undermine public participation, we can expect citizens to become disillusioned with the legislative process and increasingly engage in protest and disruptions as a way to be heard.

“It has always been this way.”

Some legislative leaders and rank-and-file members have defended their actions by claiming that legislative maneuvers that cut out the public are nothing new, and not unique to a particular party.

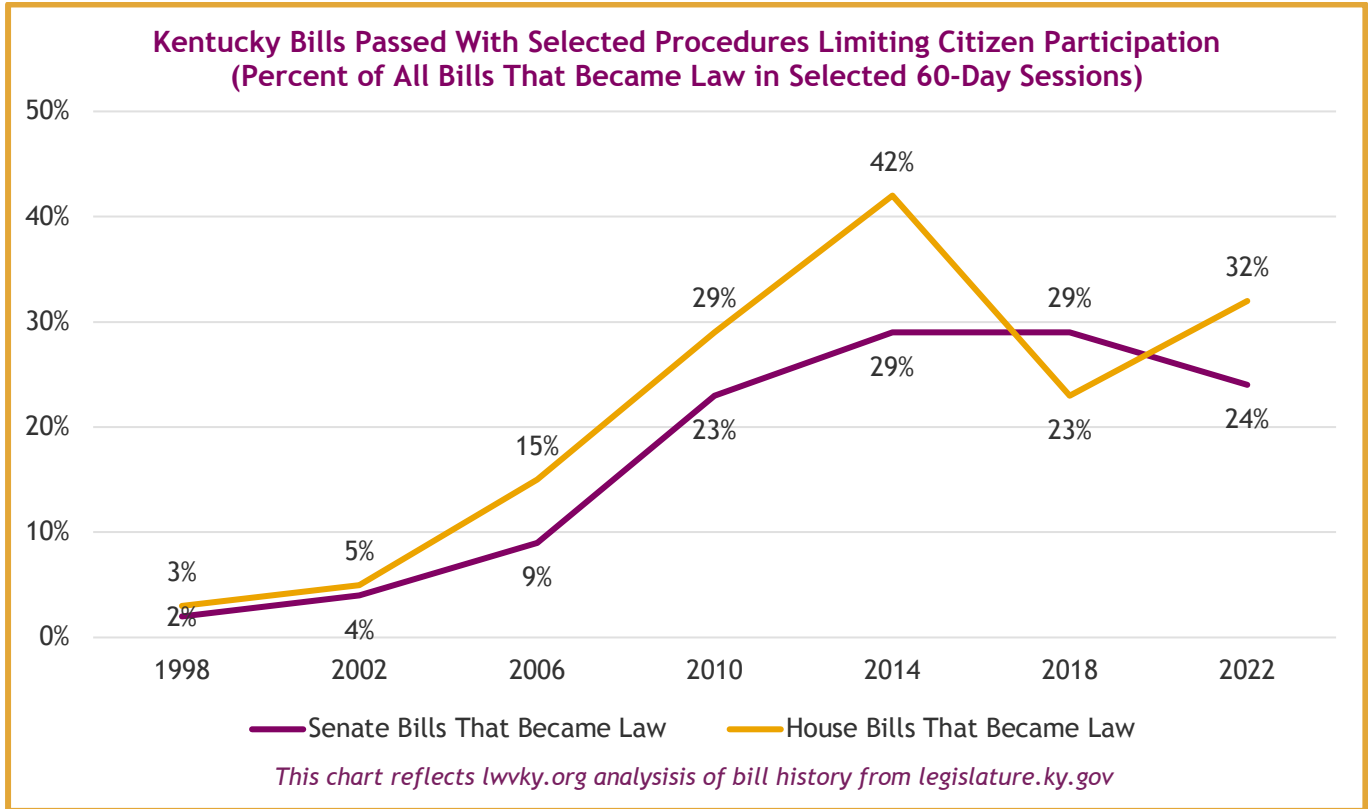
For example, when the Kentucky Educational Television series *Kentucky Tonight* recapped the 2023 legislative session, both Republican and Democratic legislators stated that fast-tracking bills to advantage the majority party has always happened. A Republican House leader harkened back to the days when Democrats controlled the House, commenting, “When I first got there and was serving in the minority, and I remember getting a letter for me to sign off for a commitment to vote for the budget bill prior to ever seeing [the] bill if I was to get coal severance projects in my county.... I have had to vote on bills before that the copies were so hot that you couldn’t hardly touch them.” A Democratic legislator agreed that it is understood that the majority party “can bend the rules,” and that, “it happens in every chamber across the country and in Congress. We all have procedural issues in the 11th hour... and I don’t think it’s going to change regardless of who is in the majority.”¹³

But has it always been this way?

To explore whether it really has always been this way, LWVKY commissioned a task force of League members. The task force compiled data on all bills that were passed during regular 60-day legislative sessions held in 1998, 2002, 2006, 2010, 2014, 2018, and 2022. From that data, task force members coded each bill based on the process used to pass it, identifying steps that did not follow the established process and steps that unduly limited public participation. At www.lwvky.org/how-can-

they-do-that, readers can see detailed description of the method used and data gathered in this analysis.)

That work identified four maneuvers that undermine the democracy principle and weaken citizens' voice in legislative decisions that affect them. Use of those maneuvers has risen sharply since 1998, as summarized in the figure below.



This graph shows the percent of bills passed with one or more of the four maneuvers discussed in detail in this report:

- Bill readings before any standing committee action.
- Committee substitutes adopted with little discussion or public comment.
- Floor votes held within a day after final committee action.
- Free conference committee reports adopted within a day after being released.

25 years ago, less than 5% of bills that became law used one or more of those maneuvers. In 2002, the percentage began to increase rather dramatically, to a 2014 high of 42% in the House and 29% in the Senate. There is indeed a pattern of increasing use of fast-track maneuvers that make participation more difficult.

In this report, we document those claims. First, we describe how the Kentucky Constitution and House and Senate Rules offer the public opportunities to give input on legislation while it is being considered. Then, we describe each of the four maneuvers, how they impede that input, and how their use has changed over the years. For each concern, we also identify ways to strengthen informed and active citizen participation.

THE LEGISLATIVE PROCESS

Kentucky's legislative process ought to provide time for legislative members and citizens to understand and comment on legislation. As explained in this section, Kentucky's Constitution sets starting requirements, and House and Senate Rules add more specific provisions.

What steps are required by the Kentucky Constitution?

In the Constitution of Kentucky, Article 46 sets key requirements for passing laws, saying in part:

No bill shall be considered for final passage unless the same has been reported by a committee and printed for the use of the members. Every bill shall be read at length on three different days in each House, but the second and third readings may be dispensed with by a majority of all the members elected to the House in which the bill is pending.

Article 46 also provides that if a committee does not consider a bill in a reasonable time, the bill may be called up by any member.

Here's a paraphrase of two key provisions in that language:

- A committee report (that is, a vote to send the bill to the full chamber) is almost always required. There is an exception for bypassing a committee that does not report on the bill in a reasonable time, but that is very rarely used.
- Readings on three different days are almost always required in each chamber. There is an exception for skipping the second and third reading by majority vote of all elected members, but that process is very rarely used.

For legislators, those steps give them time to learn about bills, hear input, and propose changes to the bill before the final floor vote.

For citizens, those steps provide time to learn about the bills and participate by sharing with their legislators their questions, information, and thoughts on whether the bill should become law.

What steps are specified in House and Senate Rules?

The House and Senate each establish procedures at the start of each session. In 2022, House Resolution 1 established “Rules of Procedure for the 2022 Regular Session of the House of Representatives,” and Senate Resolution 2 set “Rules of Procedure for the 2022 Regular Session of the Senate.”¹⁴ In the rest of this report, those documents are simply called House Rules and Senate Rules. This Rules analysis focuses on 2022 because that was the most recent of our seven sample years.

These provisions are key to those 2022 House Rules:

- ***Committees:*** The Rules set up sixteen standing House committees, each with a name and assigned issue responsibilities. For example the list included

Bill Readings: How Do They Work?

Kentucky's Constitution calls for three readings of each bill, but that does not literally mean the bill is read out loud. Instead, a legislative staff member reads each bill by name and title only. Readings happen quickly when the Senate and House convene in their respective chambers each day. The three readings have to occur on three different days. (There is an option to dispense with the readings by majority vote, but that is very rarely used. Over the seven sessions studied in depth for this study, the process was only used once: to adjust candidate filing dates after 2022 redistricting.)

an Agriculture Committee and an Education Committee. The House also set up a Committee on Committees to determine committee membership and assign each bill to committee, plus a Rules Committee to decide when bills would be scheduled for a vote, and an Enrollment Committee to produce final copies of bills before they were sent to the Governor. (See Rules 37, 38, 40, 41, and 43.)

- **Committee action on bills:** House Rule 46 directed Committees to report bills to the full House with a recommendation. These were the four recommendation options:
 - The bill should pass (called “reported favorably”).
 - The bill should pass with an attached committee amendment.
 - The bill should pass with an attached substitute version of the bill (called a committee substitute).
 - The bill should not pass.
- **First and second reading:** House Rules offered three paths for a bill to get its first two readings:
 - The main path for a bill to get first and second readings on the chamber floor was through a positive committee report: “When reported favorably by the committee, the bill shall then be given its first reading at length and shall be placed by the Clerk upon the Calendar and shall then be entitled to its second reading the next succeeding legislative day.” (Rule 48)
 - A second path applied when a committee reports that a bill should not pass: a majority vote of House members could place that bill on the calendar for consideration. (Rule 48)
 - A third path could be used when a committee had not acted: a discharge petition and a majority vote could move the bill forward if the time taken by the committee was “unreasonable.” (Rule 56)
- **Third reading:** After a second reading, the rules called for every bill to be sent to the Rules Committee. The Rules Committee was authorized to place the bill on the “Orders of the Day,” which is a published list of bills that can receive a third reading and be considered for amendments, debate, and final vote. The Rules Committee could also send the bill back to its original committee or to a different committee. (Rule 58)
- **Amendments:** No amendment could be made to a bill if the amendment was not relevant and directly related to the bill’s topic, and unless it had been printed and distributed to members of the chamber at least one legislative day prior to its consideration. (Rule 60)

The 2022 Senate Rules were very similar, except that the Senate had only twelve standing committees.

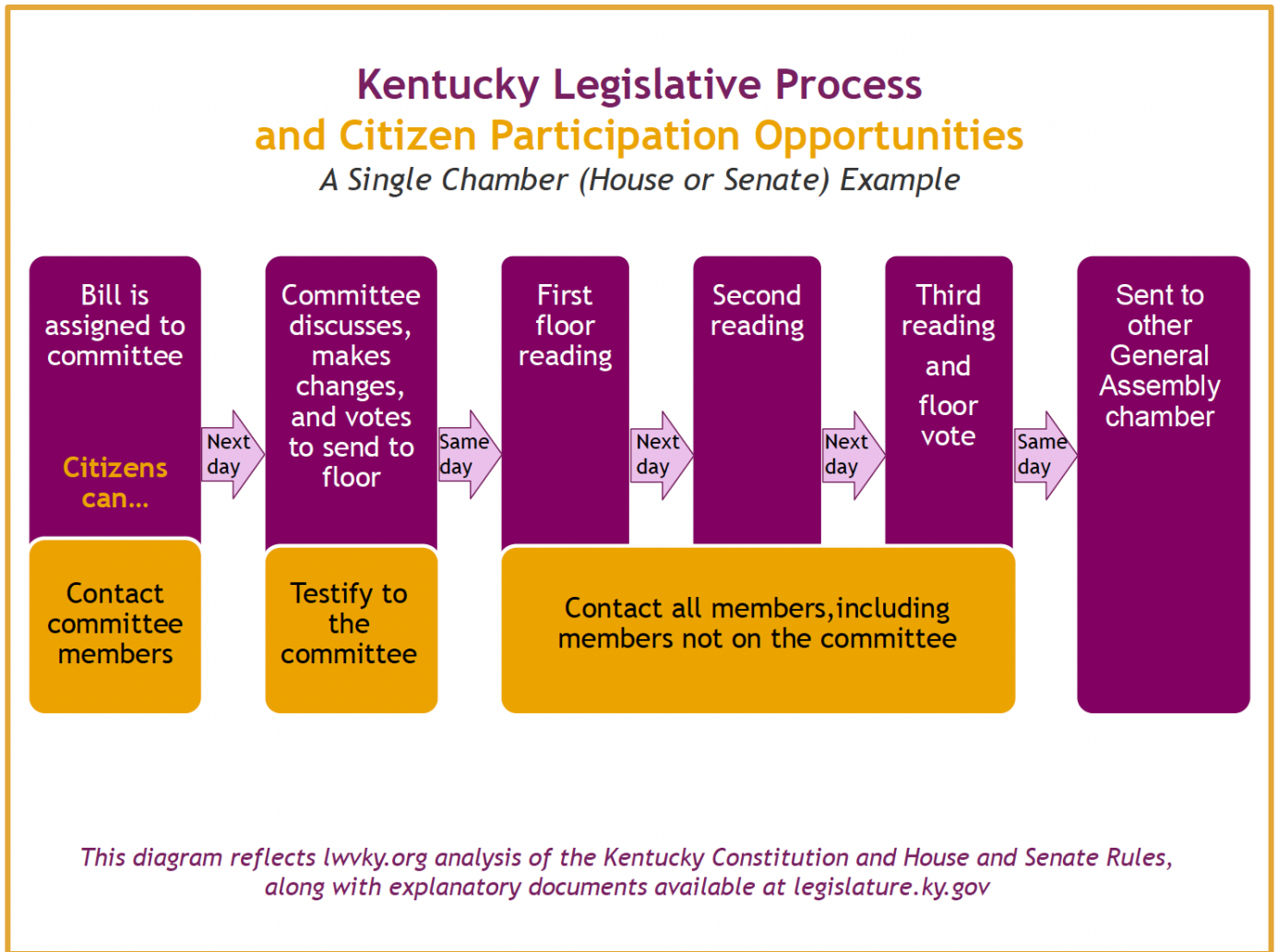
In summary, Kentucky’s Constitution along with House and Senate Rules require a legislative process that builds in time for legislative members and citizens to review and give input into legislation before it comes to a final vote. In each chamber, a bill moves toward becoming law with these steps:

- **Assignment to a standing committee** for consideration, allowing citizens to share thoughts and concerns with the committee’s members, including the chairperson.
- **Committee discussion** of the bill at least one day after assignment, allowing citizens to speak publicly to all committee members about the bill.
- **Committee vote** to recommend that the bill become law, either with or without changes.

- **First reading** of the recommended bill in the full chamber the same day as the committee vote.
- **Second reading** the next day, allowing citizens time to provide input to all members of the chamber.
- **Third reading** at least one day after the second reading (and often longer), allowing citizens further time to provide input to all members.
- **Floor vote** to pass the bill, held the same day as the third reading.

The LRC provides a full description of the legislative process¹⁵ as well as a graphic illustration of the pathways for bills to become laws¹⁶. The figure below shows the main steps of the legislative process and the opportunities for citizen participation.

In the sections that follow, we share results of our analysis of how often the legislature followed the established process. We also describe in greater detail the practices that make it harder for citizens to participate and harder for the democracy principle to be honored.



CONCERN 1: READINGS BEFORE COMMITTEE ACTION

Bill readings usually come *after* committee action. When a committee votes to advance a bill, the first reading happens the same day and the second reading a day later. The third reading occurs on a later day when the bill is called for its floor vote. Even if big changes are made to the bill during the committee deliberations, the reading process gives citizens time to give input to their legislators about the bill before the full chamber votes on it.

However, our analysis showed a rising number of exceptions, in which readings are held before any committee has considered the bill, allowed testimony, or held public discussions among committee members.

How do early readings work?

In recent years, and with increasing frequency, some bills have received first and second readings before any committee has acted on them. As discussed above, the House and Senate Rules provide only three paths for a bill to get to its first reading:

- A standing committee reports the bill out with expression that it should pass, sometimes with amendments or a committee substitute.
- A standing committee reports the bill out with expression that it should not pass, followed by a floor vote to move the bill forward.
- A standing committee has held the bill for an unreasonable length of time, followed by a discharge petition.

We genuinely do not understand how readings *before* any standing committee action (without an unreasonable hold) fit within the Rules. This process appears to be quite outside of the procedures the two chambers have established for their own work.

In some cases, the first and second readings happen before a bill is assigned to any committee. In other cases, the bill is sent to a standing committee and then taken back for readings before the committee has taken any action. Either way, the process does not appear to fit the Rules, and it definitely narrows time for citizen understanding and input, damaging the democracy principle. An example of this maneuver was 2022's Senate Bill 6, which provided new rules for rights to student athletes' names, images, and likenesses (often abbreviated as NIL). The *Legislative Record* shows that:

- On January 12, the bill was sent to Senate Education, taken back from that Committee, given its first reading, and returned to Senate Education.
- On January 31, the bill was taken from Senate Education again, given its second reading, and returned to Senate Education.
- On February 9, the bill was considered by Senate Education, which replaced the bill's

Readings Before Committee Action: Are They Unconstitutional?

Answering that question would require a type of legal research that we have not conducted. Article 46 of the Constitution of Kentucky calls for the committee report in the first sentence, and for the readings in the sentence after that. There may be room to argue that Article 46 requires committee first and readings after. However, evaluating that legal argument and reaching a conclusion would require study of Kentucky court precedents, Kentucky constitutional history, and maybe court cases from other states with similar constitutional language. Since we have not done that legal research, we do not know if there's a constitutional problem with this changed process. We know there's a citizen participation problem, and that's the focus of this report.

language with a committee substitute version. The same day, a floor amendment was filed to the committee substitute.

- On February 10, the bill received its third reading and was passed 37-0 with the committee substitute and the floor amendment.

Holding the readings *before* committee action meant the new committee substitute version was available for review only one day before the vote on the House floor. That sharply narrowed opportunities for citizens to be heard. In this case, those most affected by the legislation—student athletes—had little or no time to review the substitute version and comment before House passage.

How often has the maneuver been used?

This reading-before-committee-vote maneuver has been used increasingly over the last 25 years. It was not used at all in the 1998 regular session, and the method was only used by the Senate in 2002. Since then, there have been steady increases in both chambers, with the 2022 regular session having by far the highest use of any of the seven sessions we checked, as shown in the table below.

USE OF READINGS-BEFORE-COMMITTEE-VOTE IN PASSING BILLS THAT BECAME LAW				
Regular Session	Senate readings on Senate bills	Senate readings on House bills	House readings on House bills	House readings on Senate bills
1998	0	0	0	0
2002	0	5	0	0
2006	3	15	0	2
2010	3	27	6	1
2014	2	34	6	7
2018	4	29	7	8
2022	9	42	27	11

This table reflects lwvky.org analysis of bill history at legislature.ky.gov

Why are readings-before-committee-vote a concern?

The readings-before-committee-vote maneuver matters *mainly* because it allows bills to go to a floor vote very quickly once the committee does act. If the committee adopts a committee substitute version of the bill, legislators and citizens may have only an hour or two to find out what's in the substitute before it passes. Even if the bill is unchanged, citizens have little or no time to give input to legislators as the bill moves to the floor.

How can the bill readings work better for citizen participation?

Each chamber can hold the three required bill “readings” after a standing committee sends the bill to the House or Senate floor for a vote. Holding the three readings *after* the committee votes to approve a bill gives legislators and citizens time to learn about each bill. The readings allow them to hear from one another about the bill's strengths, weaknesses, and potential to help or harm various constituencies. That reading time provides an important opening for citizen participation, and we think it should occur after a committee has considered and perhaps revised the bill. Frankly, we think the House and Senate Rules require that order of business: readings *after* committee hearings and vote.

CONCERN 2: LAST-MINUTE COMMITTEE SUBSTITUTES

How do committee substitutes work?

A committee substitute (often shortened to “sub”) means a completely new text that may be as long or longer than the original bill. The substitute may add or subtract sections from the original, change a few lines or many lines, or be a completely fresh text on the subject. Over the seven legislative sessions we reviewed, committee substitutes were the primary way that committees changed bills. (The Rules allow committees to make smaller “committee amendments” that change only a few sentences in the original bill, but that method was rarely used in the sessions we studied.)

House Rule 60 and Senate Rule 60 each prohibit voting on amendments until the day after they are filed and available to members. We think those rules apply to amendments in committee as well as on the floor. And we think it applies to the big amendments known as “committee substitutes.” Our interpretation is based on the Kentucky Legislative Research Commission's *Glossary of Legislative Terms*, which states that, “... technically, the committee substitute is an amendment to the original bill.”¹⁷

Committee substitutes have been a frustration to citizens for decades. Those substitutes are rarely announced, published, or made available to Kentucky citizens before the committee hearing where they are voted on. Journalists and leaders of advocacy groups also struggle: they cannot report to their readers and members on the changes until they obtain copies of the changes being considered.

For citizens who sign up to comment on the bill at the committee hearing, committee substitutes can be especially frustrating because their prepared comments may no longer be relevant to the new language. And if they cannot see a copy of the replacement words before or during the committee meeting, they cannot adjust their comments to fit the new text.

When a committee substitute is used in combination with the readings-before-committee-vote maneuver discussed above, the democracy principle is further undermined. That's because the bill can come to a floor vote the same day the substitute is first mentioned in committee. That leaves only a couple of hours for citizens to give input on bill language that has just been introduced. Legislators, especially those who are not on the relevant committee, also have little or no time to analyze the bill and make informed decisions on their own votes.

When bills are considered by two committees, there can be a similar undermining effect. After a bill has received two readings, Rules allow bills to be sent to a second committee or back to the same committee for a second discussion. In that second round, committee substitutes can be added, and that process also means the bill can get its floor vote immediately. When that happens, citizen input on the substitute language is again nearly impossible.

Here's a 2022 example. [House Bill 8](#) was titled as “relating to revenue measures and declaring an emergency.” It contained provisions to lower Kentucky's income tax immediately and make added reductions in future years.

- On March 4, the House Appropriations and Revenue Committee adopted a committee substitute version of the bill. The House approved the substitute version (on a vote of 67-23) a few hours later, giving citizens no workable opportunity to see and comment on the substitute version.
- On March 29, the Senate Appropriations and Revenue Committee adopted *another* committee substitute for this bill. That same day, the Senate approved the substitute version (27-8) and the House concurred in the changes (70-24). Again, the rapid process made it essentially impossible for citizens to see or give input on the substitute language.

Why are committee substitutes a concern?

Committee substitutes are a concern when citizens cannot see the replacement language before or during the committee hearing. They are a greater concern when substitutes are introduced after two readings and then moved to a floor vote the same day, because there is no reliable way for anyone but legislators themselves to see the new version of the bill. Public participation is challenged even when a vote is held the next day because citizens usually cannot see the substitute until it is added to the *Legislative Record* late at night. This timeline leaves only a few morning hours for citizens to communicate their thoughts and concerns to legislators before the bill moves to a floor vote.

How can committee substitutes work better for citizen participation?

The House and Senate can make committee substitute bills available online for one legislative day before committee meetings. That availability can improve the committee discussion because it gives legislators time to identify questions and concerns and time to hear from citizens who leave messages, visit, or speak during the committee hearings. Our recommendations on bill readings and final votes can also strengthen opportunities for public responses to committee substitutes.

“In its proper meaning equality before the law means the right to participate in the making of the laws by which one is governed.”

Nelson Mandela

CONCERN 3: FLOOR VOTES IMMEDIATELY AFTER COMMITTEE ACTION

How do rapid floor votes work?

As explained earlier, when readings are held after the committee vote, citizens can rely on at least two days to give input to legislators before the floor vote by the full chamber. When two readings are held before the committee vote, there may still be time for citizen input if legislative leaders delay the third reading and floor vote for a few days. However, the third reading and floor vote are sometimes held the same day as the committee vote. When this happens, and even if the vote is held the next day, citizens may have as little as two hours or a maximum of 24 hours to review and provide input on a bill.

An example is House Bill 9, an education bill in the 2022 session that changed Kentucky's rules for public charter schools. The legislative record shows that:

- On March 2, the bill was taken from the House Committee on Committees for a first reading.
- On March 4, it was reassigned to Appropriations and Revenue, then pulled from that committee on March 14 for a second reading.
- On March 21, the bill was reassigned to the Education Committee.
- On March 22, the Education Committee reported the bill favorably with a committee substitute and title amendment.
- *Also on March 22*, the House gave the bill its third reading and final vote, passing it 51-46 with the substitute and title amendment.

That same-day action meant that citizens had no chance to see or comment on the substitute language before the floor vote, and even House members had only the briefest opportunity to skim the replacement language.

That same bill (HB 9) also received same-day voting treatment when it reached the Senate:

- On March 23 and 24, the bill received its first two readings before any standing committee action.
- On March 29, the Senate Education committee reported the bill favorably.
- Also on March 29, the Senate gave the bill its third reading and final vote, passing 22-14.

Without a committee substitute, the same-day action still made it quite difficult for citizens to share concerns with Senators who were not on the Education Committee. In the regular flow of legislation, legislators focus first on the bills before their own committees, evaluating other bills (and citizen concerns) mainly in the few days between committee action and floor vote. If there are no days between committee action and floor vote, there is only the tiniest

SAME-DAY FLOOR VOTES ALSO HAPPEN WHEN BILLS RECEIVE TWO COMMITTEE HEARINGS

Some bills reach same-day voting by having two committee hearings. In those cases, one committee reported the bill favorably, followed by first and second readings. Later, the Rules Committee sent the bill to either a new committee or the same one that considered it before. Finally, the second committee hearing approves a committee substitute and a floor vote is held on the substitute that same day or the next day.

This alternate process may fit the current rules, but still gives citizens little or no time to review the substitute version and give input before the chamber vote. It still violates the democracy principle.

window for those other legislators to consider the bill and thoughts submitted to them by others.

How often has the maneuver been used?

In the seven sessions we studied, each session saw an increasing number of bills and committee substitutes that received final floor votes the day they were reported out by a committee or the day after that. Here's a table showing those results.

USE OF FLOOR VOTES 0-1 DAYS AFTER COMMITTEE VOTE IN PASSING BILLS THAT BECAME LAW				
Regular Session	Senate Votes on Senate Bills	Senate Votes on House Bills	House Votes on House Bills	House Votes on Senate Bills
1998	0	0	4	0
2002	0	6	1	0
2006	3	12	1	2
2010	2	21	2	1
2014	2	27	3	7
2018	2	13	7	8
2022	6	35	18	11

This table reflects lwvky.org analysis of bill history at legislature.ky.gov

In addition to analyzing the number of times each chamber held rapid floor votes on bills, we also looked at how often the rapid-voting maneuver was applied to committee substitute versions of bills.

USE OF COMMITTEE SUBSTITUTES FOLLOWED BY FLOOR VOTES 0-1 DAYS AFTER COMMITTEE VOTE IN PASSING BILLS THAT BECAME LAW				
Regular Session	Senate Votes on Senate Bills	Senate Votes on House Bills	House Votes on House Bills	House Votes on Senate Bills
1998	0	0	0	0
2002	0	5	1	0
2006	3	8	0	0
2010	2	15	2	0
2014	1	14	3	4
2018	2	12	7	5
2022	2	21	15	7

This table reflects lwvky.org analysis of bill history at legislature.ky.gov

Why do same-day floor votes matter?

Citizen opportunities to participate are greatly reduced when floor votes are held the same day as the committee vote. Before the committee hearing, it makes sense for citizens to share concerns with committee members, but it rarely makes sense for them to contact other legislators (who will have

the opportunity to vote on the bill if it makes it to the floor) until the committee has acted. If there are only a few hours between committee and floor vote, that communication becomes almost impossible. If a committee substitute is passed by a committee on the same day it is introduced, citizens may not even know what's going to be voted on.

Legislators' bill *analysis* is also made more difficult. Until that bill reaches the floor, many legislators may not be familiar with the bill or may not have heard from constituents about the bill. When the bill is rushed to the floor after the committee vote, those legislators have only an hour or two to review the bill and decide how to vote, and it's extremely hard for their constituents to reach them in that brief interval. If legislators are able to review the substitute and want to *amend* it, they are blocked by the Rule that says amendments are out of order unless distributed on the previous legislative day. Of course, barring time travel, it is simply impossible to submit an amendment yesterday to a committee substitute that was only filed today.

On the next page, a second process diagram shows the ways citizens' opportunities to have a voice in decisions can be disrupted by same-day voting working in concert with readings before committee action (concern 1 above) and with last-minute committee substitutes (concern 2 above).

Why do next-day floor votes matter?

Even when a floor vote is not held until the next day, citizens face a tight timeline for participation. If a committee substitute is involved, the *Legislative Record* will not report what it contains until the evening of the committee vote—and sometimes quite late that evening. Citizens only have the late-night hours to read the bill and the morning hours to try to give input to legislators.

How can final votes on bills work better for citizen participation?

The House and Senate can hold the three required bill readings *after* a standing committee sends the bill to the whole House or Senate for a vote, as specified in the Rules.

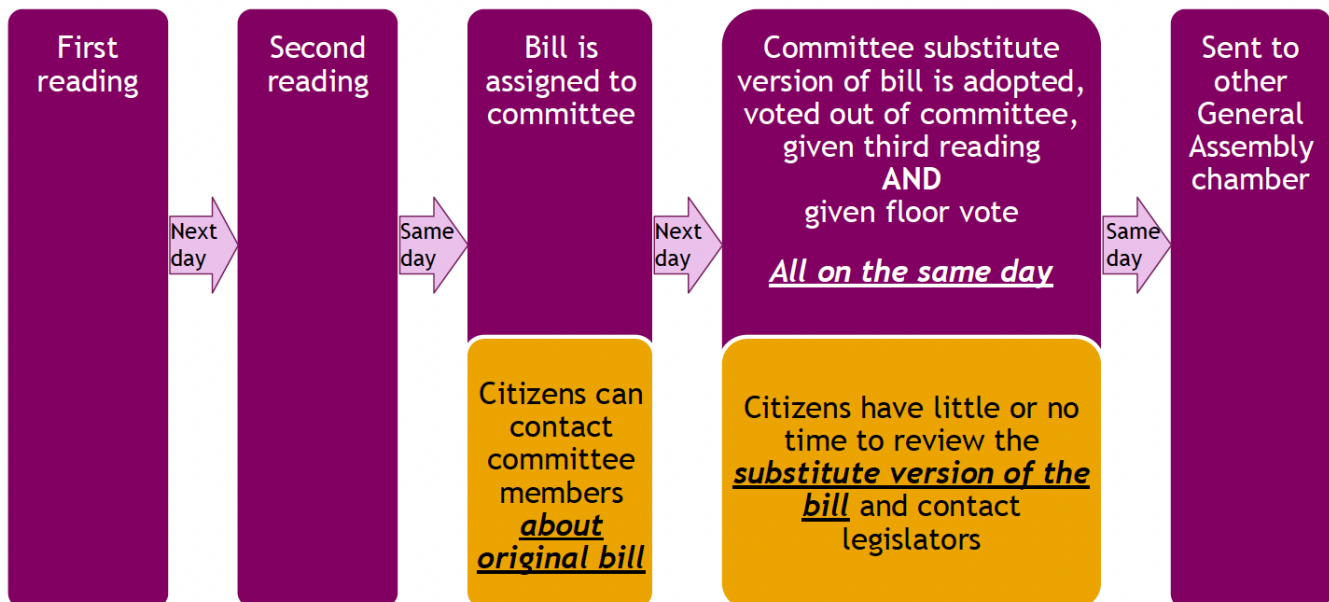
Each chamber can also allow a full day between the last standing committee action on a bill and the House or Senate floor vote on the bill.

Consistency on those two steps can greatly improve the opportunities for legislators and citizens to review the bills coming to a final vote and provide an opening for legislators to hear and consider citizen thoughts on those provisions.

“Nothing about us without us”
(a central demand of disabilities rights advocates)

Kentucky Legislative Process Maneuvers That **Shrink** Citizen Participation Opportunities

A Single Chamber (House or Senate) Example



This diagram reflects lwvky.org analysis of three Kentucky legislative maneuvers that cause concern: readings before committee action, last-minute committee substitutes, and floor votes immediately after committee action

CONCERN 4: FLOOR VOTES IMMEDIATELY AFTER FREE CONFERENCE COMMITTEE ACTION

One more strategy has long been an obstacle to citizen participation. This is the free conference committee process that is used when one chamber makes changes to a bill passed in the other chamber, and the chambers do not agree on how to resolve the differences. Unlike the three maneuvers described earlier, the free conference committee process is written into the Senate and House rules—and it has been decreasing rather than increasing in use. Even so, fast-tracked votes on brand-new legislative language undermines the democracy principle.

How do free conference committee reports work?

After one chamber passes a bill, the other chamber can amend it. There are four ways to sort out differences between the two versions:

- Often, the first chamber concurs in the amendments.
- Occasionally, if the first chamber rejects the changes, the second chamber recedes from its changes and agrees to go back to the earlier language.
- If neither chamber concurs or recedes, each chamber can name members to a Committee on Conference (or conference committee) to work out which version of each section will be used.
- If the conference committee cannot blend the two approaches, each chamber can send members to a Committee on Free Conference (or free conference committee). This committee can create new wording in the bill.

In the 2022 Senate Rules, Rule 44 allowed a free conference committee to propose any amendment to the bill, except it could not insert the text of a bill that had not passed both the House and the Senate, or include subject matter that was not previously considered at the session. The corresponding 2022 House Rule was even less restrictive, saying only that “A free conference committee shall propose no new appropriation or any appropriation above the level originally designed by either chamber.”

Crucially, the Rules in both chambers said that the “The free conference report shall be voted upon” and, if the report is adopted, the bill shall immediately be put to a final vote by the chamber.

In short, free conference committee reports can contain provisions that were not in either chamber’s version of the bill, and the reports can be moved to final votes the same day they are reported out.

Why do quick votes on free conference committee reports matter?

When a free conference committee report is filed, it includes new language citizens have not seen. Citizen participation is essentially impossible because final votes nearly always occur the same day as the reports. Also, because the reports are not available in the online *Legislative Record* until later that evening, journalists find timely reporting difficult.

The Rules in both chambers allow the free conference committee process, but its use weakens the democracy principle, because citizens have no chance to see the free conference committee report before it hurtles to a vote. Many legislators are in the same boat, in that they must vote on a version of the bill that they have little or no time to read.

This concern does not apply to conference committees that resolve differences without going to the free conference committee stage, because those committees are limited to choosing between older versions of the bill. As a result legislators and citizens have seen all of the wording that could move to a vote.

How often is the free conference committee report maneuver used?

Unlike our other concerns, the use of free conference committee reports that are voted on 0-1 day after they are issued has declined over the past 25 years, as shown in the table below.

USE OF FLOOR VOTES 0-1 DAYS AFTER FREE CONFERENCE COMMITTEE REPORT IN PASSING BILLS THAT BECAME LAW				
Regular Session	Senate Votes on Senate Bills	Senate Votes on House Bills	House Votes on House Bills	House Votes on Senate Bills
1998	4	6	6	4
2002	3	5	4	3
2006	1	4	4	1
2010	2	2	2	2
2014	0	4	4	0
2018	0	3	4	0
2022	1	2	2	1

This table reflects lwvky.org analysis of bill history at legislature.ky.gov

How can free conference committee reports work better for citizen participation?

Each chamber can allow a full day between free conference committee revisions to a bill and the House or Senate floor vote on that changed bill. That interval will allow legislators and citizens alike to participate in discussion of changes to the laws that may affect us all.

SAMPLE BILLS PASSED WITH THESE MANEUVERS

The bills adopted by these maneuvers have often had a powerful impact on Kentucky citizens.

Historically, these legislative maneuvers have been used most commonly to pass budget bills and tax bills, often using the Free Conference Committee process at the end of legislative sessions, holding readings before committee deliberations with last minute committee substitutes, or both. Examples included:

- 2010's [HB 293](#) judicial branch budget.
- 2014's [HB 235](#) executive branch budget.
- 2018's [HB 200](#) executive branch budget and [HB 366](#) making major changes in sales taxes.
- 2022's [HB 1](#) executive branch budget and [HB 241](#) transportation budget.

In recent years, the legislature has increasingly used these legislative maneuvers to pass a wider range of bills that make big policy shifts beyond budget and tax issues. For 2022 alone, bills passed in this manner included:

- [SB 1](#), changing school-based decision making council authority and other education laws.
- [SB 6](#), giving student athletes new opportunities to market their names, images, and likenesses.
- [SB 167](#), changing the appointment process for library boards.
- [HB 8](#), reducing state income tax rates and future state revenue.
- [HB 9](#), creating a public charter school funding mechanism.
- [HB 607](#), allowing pari-mutuel wagering.
- [SB 2](#), [SB 3](#) and [HB 2](#), changing the district lines for electing members of the U.S. House of Representatives, the Kentucky Senate, and the Kentucky House.

Those last three bills on redistricting had especially high stakes for Kentucky citizens' future participation in their own governance. Although we recognize a need to quickly define district boundaries during the 2022 session before candidates filed to run for office that year, the General Assembly could have provided robust opportunities for public input in the interim period between 2021 adjournment and the start of the 2022 session. Instead a House district map was released five days before the session began and just prior to a holiday weekend, offering no time for substantive public input. The maps for the U.S. House and Kentucky Senate only became available on January 4, and four days later those two bills had also passed both chambers. The League of Women Voters of Kentucky has long spoken for an open and transparent redistricting process with robust opportunities for public input. The 2022 process was the opposite of what we advocate, and it undermined the democracy principle.

Many of these bills were held until the last days of the sessions, possibly because legislators needed more time to work on them or perhaps purposefully. In any case, late session work should not result in a lack of opportunity for public input on such important policy decisions.

CONCLUSION AND RECOMMENDATIONS

In this report, we have identified several process changes that could strengthen citizens' ability to participate in decisions that affect them. Below we summarize our recommendations and also identify steps citizens can take to make sure the democracy principle of citizen voice is respected in how they are governed.

What the General Assembly can do

Based on the review above, the League of Women Voters of Kentucky has identified five steps the General Assembly can take:

- 1. Hold the three required bill “readings” *after* a standing committee sends the bill to the whole House or Senate for a vote.** Following the established process can give legislators and citizens time to review each bill and share thoughts before the floor vote.
- 2. Make committee substitute bills available online at least one full day before the committee meeting where the substitute will be considered.** Doing that can allow better informed and more relevant citizen feedback on the legislation being considered.
- 3. Allow at least one full day between the last standing committee action on a bill and the House or Senate floor vote on the bill.** When a bill receives more than one committee hearing, this step will ensure a brief opportunity for citizen input on the bill version sent for a floor vote.
- 4. Allow at least one full day between free conference committee revisions to a bill and the House or Senate floor vote on that changed bill.** Once again, this process change can create an opening for citizens to see the changes and be heard about how those changes may affect them and others.

What citizens can do

The key principle for democratic governance is to ensure citizens' access to and participation in decisions that affect their lives. Beyond voting, citizens have a right to participate in the deliberations about laws, and a right to be heard by their representatives. When legislative practices prevent public input, it is up to us, as citizens, to remind elected officials that they work for us, were elected to represent us, and must give us opportunities to let them know how we feel about proposed legislation that affects us.

To address the problems identified in this report citizens are encouraged to engage their legislators with the following steps:

- 1. Monitor each legislative session for opportunities to participate.**
- 2. Contact legislators any time legislation is rushed, limiting opportunities to participate.**
- 3. Support efforts to change these practices, joining with other groups in demanding that legislators follow their own rules—and change the rules as needed to strengthen opportunities for citizen participation. This messaging could be done via social media, petitions, letters-to-the-editor and calls or visits with legislators.**
- 4. Engage in peaceful demonstrations and protests.**
- 5. Vote for new representatives if the current ones ignore citizens or block citizen participation.**

Conclusion

We conclude this report where we began: The LWVKY operates on the principle that citizens should be informed and actively participate in government. We are concerned by the set of legislative maneuvers discussed in this report because they make citizen participation hard and sometimes impossible. Some of these maneuvers do not follow House and Senate rules. And all of the maneuvers we described undermine a basic principle of our democracy: ***the people have a right to a voice in decisions that affect them.***

If this trend continues, or worse yet escalates, citizens are likely to believe that the only way to make their voices heard is by protest and disruption. We call on legislative leaders and members to follow their own rules and ensure citizens' opportunities to give informed input into decisions that affect them.

The next page provides an appendix on citizen engagement. A technical appendix explaining the method used to analyze legislative data and listing the bills coded as raising one or more of the four concerns is available at www.lwvky.org/how-can-they-do-that.

APPENDIX A: HOW CITIZENS CAN ENGAGE IN THE LEGISLATIVE PROCESS

Monitor Bills

See any bill that has been filed during the current legislative session. Here's how:

1. At legislature.ky.gov, choose the [Bills](#) link from the dark blue menu.
2. When you see the long list of legislative sessions, choose the one at the top.
3. When you're on the page for that session:
 - a. Use the [Senate Bills](#) link or [House Bills](#) link when you already know the bill number.
 - b. Use [Bill and Amendment Index Headings](#) if you don't know the bill number yet or you want to look at all the bills on a topic.
4. When you get to the page for a specific bill:
 - a. Scroll down to see the bill history.
 - b. Use the [Current](#) link near the top to see the actual text of the bill.

Register for notifications when bills that interest you get a new legislative action. To do that at legislature.ky.gov, choose the [Bills](#) link in the dark blue menu, and then on the Bills page, choose [Bill Watch](#).

Contact Legislators

Speak to your legislator or request an in-person meeting by calling [1-502-564-8100](tel:1-502-564-8100) and asking to be put through to the office of a Senator or Representative.

Phone in messages for your legislators using the Message Line at [1-800-372-7181](tel:1-800-372-7181).

Send email messages:

1. At legislature.ky.gov, choose the [Legislators](#) window shade from the dark blue menu.
2. Use [Senate Members](#) or [House Members](#) link to find your legislators or use [Find My Legislator](#) to identify them.
3. Click on their names to see their individual pages.
4. Use the big email link to get their individual addresses.

Attend or Watch Meetings

Learn when committees meet by going to legislature.ky.gov and scrolling down to the bottom of the home page. Under [Calendars](#), the [Legislative Calendar](#) lists upcoming committee meetings and agendas, the [Regular Session Calendar](#) shows when the House and Senate will be in session and the [Interim Calendar](#) shows when committees meet.

Attend House or Senate committee meetings in person at the Capitol Annex (the large building behind the domed Capitol building), arriving a bit early to pass through a security check and find the right meeting room.

Attend House or Senate proceedings at the Capitol itself, again arriving a bit early.

View meetings online by going to legislature.ky.gov and scrolling down to [Live Streams](#).

Speak at Committee Meetings

Sign up to speak in person by arriving before the meeting and finding the sign-in sheet. You may only have one or two minutes to speak, so plan your comments to fit that limit.

Speak by internet connection if the Committee chair allows that method, contact the Committee chair's office to ask for that opportunity.

ENDNOTES

- ¹ *With One Voice* is available at www.lwvky.org/mission-1
- ² Bensenhaver, A. (2023, April 5). Commentary: Kentucky legislature excluded public from all but the most carefully orchestrated ‘debate.’ *Kentucky Lantern*. kentuckylantern.com/2023/04/05/kentucky-legislature-excluded-public-from-all-but-the-most-carefully-orchestrated-debate/?eType=EmailBlastContent&eld=7a24be21-97b9-4cdd-b83a-734c36cdb6e9
- ³ presidentlincoln.illinois.gov/visit/whats-inside/exhibits/online-exhibits/gettysburg-address-everett-copy/
- ⁴ www.nps.gov/wori/learn/historyculture/declaration-of-sentiments.htm
- ⁵ www.un.org/en/events/mandeladay/court_statement_1962.shtml
- ⁶ www.nytimes.com/2020/07/22/us/ada-disabilities-act-history.html
- ⁷ Senate Bill 151 history is listed at apps.legislature.ky.gov/record/18rs/sb151.html
- ⁸ Park, M. (2018, March 31). Kentucky teachers to skip work after lawmakers’ ‘bait and switch’ on pension reform. *CNN*. www.cnn.com/2018/03/30/us/kentucky-teachers-pension-bill/index.html
- ⁹ Staff report (2018, December 13). KY Supreme Court strikes down state’s pension reform law (‘sewer bill’) passed earlier this year. *Northern Kentucky Tribune*, reporting on *Bevin v. Commonwealth ex rel. Beshear*, 563 S.W.3d 74 (Ky. 2018) nkytribune.com/2018/12/ky-supreme-court-strikes-down-states-pension-reform-law-sewer-bill-passed-earlier-this-year/
- ¹⁰ Krauth, O. (2023, March 17). SB 150: What to know about the controversial anti-trans bill just passed in Kentucky. *Courier-Journal*. www.courier-journal.com/story/news/politics/2023/03/17/kentucky-senate-bill-150-anti-transgender-legislation-questions-answers/70020693007/.
<https://apps.legislature.ky.gov/record/23rs/sb150.html>
- ¹¹ Bensenhaver, A. (2023, April 5). Commentary: Kentucky legislature excluded public from all but the most carefully orchestrated ‘debate.’ *Kentucky Lantern*. kentuckylantern.com/2023/04/05/kentucky-legislature-excluded-public-from-all-but-the-most-carefully-orchestrated-debate/?eType=EmailBlastContent&eld=7a24be21-97b9-4cdd-b83a-734c36cdb6e9
- ¹² Álvarez Briñez, A, R. (2023, March 29). 19 people charged with trespassing while protesting anti-trans bill at Kentucky Capitol. *Courier-Journal*. www.courier-journal.com/story/news/2023/03/29/kentucky-senate-bill-150-protesters-arrested/70061465007/
- ¹³ Shaw, R., Kentucky Tonight (2023, April 3). Recap of the 2023 Kentucky General Assembly (Season 30, Episode 7, process discussion begins at 37:00) ket.org/program/kentucky-tonight/recap-of-the-2023-kentucky-general-assembly/
- ¹⁴ 2022 Regular Session House Resolution (HR) 1, Adopted January 4, 2022: apps.legislature.ky.gov/recorddocuments/bill/22RS/hr1/bill.pdf and Rules of Procedures, 2022 Regular Session Senate, Adopted January 4, 2022: SR 2: <https://apps.legislature.ky.gov/recorddocuments/bill/22RS/SR2/bill.pdf>
- ¹⁵ legislature.ky.gov/LRC/Pages/Legislative-Process.aspx
- ¹⁶ legislature.ky.gov/LRC/Publications/Documents/Road_to_Passage_2019.pdf
- ¹⁷ The glossary is available at legislature.ky.gov/LRC/Pages/Glossary-of-Legislative-Terms.aspx

The League of Women Voters of Kentucky, a nonpartisan political organization, is part of the League of Women Voters of the United States and includes six local chapters in Kentucky:




Bell County | Hopkinsville | Lexington | Louisville
Northern Kentucky | Southern Kentucky

The League of Women Voters:

- ▶ Encourages the informed and active participation of citizens in government;
- ▶ Works to increase understanding of major public policy issues;
- ▶ Influences public policy through education and advocacy.

As a nonpartisan body, the League takes action on issues but does not support or oppose candidates or political parties. The League supports diversity, equity and inclusion in membership and programming.

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