

VOLUME IV

The Temple Papers on the Pennsylvania General Assembly

A Discussion of Topics Related to the
Continuing Evolution of the Pennsylvania General Assembly

"...the legislature's job consists of three principal functions: representing,
lawmaking, and balancing the power of the executive."
Alan Rosenthal in *Heavy Lifting: The Job of the American Legislature* (2004)

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Megan Mullin
Nathan Shrader

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VOLUME I The Pennsylvania General Assembly Before and After the 1968
Legislative Modernization Commission: The Evolution of an Institution

VOLUME II The Pennsylvania General Assembly's Greatest Achievements and the
Parties' Roles in Enacting Important Laws 1968 – 2008

VOLUME III The Rules of the Game: How the Constitution Affects Lawmaking
in Pennsylvania

FORTHCOMING

VOLUME V Literature Review: Findings from Academic Research on State
Government Institutions and Reforms

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Foreword

The Heinz Endowments and William Penn Foundations provided funding to Temple University's Institute of Public Affairs (IPA) to research and document the institutional history of the General Assembly and to investigate various topics under discussion in its continuing evolution. Temple's IPA is making the accumulated research available to legislators and the public in a series of working papers. This is Volume IV in the series. With the support of the two foundations, the authors and their colleagues on the Pennsylvania Policy Forum¹ also have assisted the General Assembly in organizing two symposiums based on their research. The first was held on February 28, 2011 on the subject of "The Pennsylvania General Assembly: Representing, Lawmaking, and Balancing Executive and Judicial Power." The second took place on October 25, 2011 on the subject of "The Constitutional Foundations of the Lawmaking Process."

Collectively titled *The Temple Papers on the Pennsylvania General Assembly*, these studies are intended to give readers an understanding of the legislature's evolution as an institution, the constitutional context in which it operates, and many -- though by no means all -- of the ideas that could change the way it operates in the future. The papers are intended to inform discussion and are not indicative of an agenda of either the two foundations or the authors, or for that matter, the General Assembly itself. They are deliberately not advocacy documents. Rather they are intended to inform advocates and others in future deliberations on how the institution might evolve.

Volume I expands upon the content of the first symposium; it is entitled "The Pennsylvania General Assembly Before and After the 1968 Legislative Modernization Commission: The Evolution of an Institution." This paper explores the historical origins of the General Assembly's two predominant characteristics: its large size and high degree of professionalism. The study discusses the impact of these characteristics on its ability to balance the other branches, represent citizens, and make laws, including the enactment of state budgets. Noting that the General Assembly is often criticized as the nation's largest full-time legislature, the concluding section attempts to identify the values embodied by these dimensions and the trade-offs inherent in reducing its size and/or returning it to part-time status.

Although not a product of the foundation-supported research, Volume II -- "The Pennsylvania General Assembly's Greatest Achievements and the Parties Roles in Enacting Important Laws" -- complements the institutional history by providing a policy history of the General Assembly over the same time period. Inspired and carried out by Van Huynh and Shelly Forrester -- Temple undergraduates who served as interns in the university's Pennsylvania Capital Semester program in the fall of 2010 -- this paper attempts

¹The Pennsylvania Policy Forum (PPF) is a consortium of faculty members and academic leaders from public and private Pennsylvania colleges and universities who share an interest in generating ideas, analyses, and symposiums that might prove useful to citizens, elected officials, and civic leaders in addressing major issues confronting the Commonwealth and its local governments. As educators who have helped train students for careers in public policy, members also share an interest in helping to improve the skills, knowledge, and tools of leaders in the public and civic sectors.

to identify the most important legislation enacted since the adoption of the 1968 constitution. Amidst abundant criticism of the legislature, Van and Shelly's work provides a useful reminder that even in periods of economic hardship and divided government, the General Assembly has enacted laws that were both important and beneficial to the people of Pennsylvania.

Volume III -- "The Rules of the Game: How the Constitution Affects Lawmaking in Pennsylvania" -- includes three papers that flow from the second symposium. Two were made available to symposium attendees: a background lecture by Michael R. Dimino, associate professor of law at Widener University School of Law, and a research note by Michelle J. Atherton, assistant IPA director. Professor Dimino's paper discusses changing court interpretations of several key provisions governing lawmaking and also explores the novel issue of whether the constitutional power of each chamber to determine its rules might provide the General Assembly with a new measure of flexibility in conducting its business. Atherton's research note identifies 32 constitutional provisions affecting lawmaking in Pennsylvania, far more than are found in the US Constitution and more than in all but four other states. The third -- and capstone -- article is authored by symposium participant John Krill, Jr. Entitled "Constitutional Constraints and Prerogatives of the Pennsylvania Legislature," it explores the constitutional provisions affecting lawmaking in greater depth and breadth than was possible in the symposium format.

Volume V -- "Literature Review: Findings from Academic Research on State Government Institutions and Reforms" -- supports and informs the earlier papers but also stands alone as a concise and useful summary. Authored by Megan Mullin, associate professor of political science at Temple University, this volume is a commentary on more than 190 studies of how the 50 states are organized and conduct their business, with an eye toward lessons for Pennsylvania.

Volume IV -- this volume -- explores subjects that might be deliberated upon as the General Assembly continues to evolve as an institution. Data and opinions about the possible advantages and disadvantages of changes are organized under 28 topics. This volume and others in the series are based not only on extensive research but on dozens of interviews with current and former members of the General Assembly, current and former senior legislative staffers, leading scholars who study state legislatures, and our legislature's sharpest critics. We thank all for their willingness to share their candid and thoughtful perspectives. Although all were promised confidentiality, one national expert stepped into the limelight as the keynote speaker in the first symposium: Professor Alan Rosenthal of the Eagleton Institute of Politics at Rutgers University, who is widely recognized as the dean of state legislative scholars.

We also thank the leaders, members, officers, and senior staffers of the Georgia General Assembly and the governor's office, as well as business, foundation, and university leaders in Atlanta and Athens, who helped us understand the bipartisan and bicameral educational programs their legislature provides for their members with the support of the Carl Vinson Institute of Government at the University of Georgia. Our special thanks to Steve Wrigley and Jim Ledbetter, leaders of the Vinson Institute at the time of our visit,

for their hospitality and help. Professor Rosenthal and the National Conference of State Legislatures have described the Georgia programs, which are discussed in this report, as the best in the nation.

Volume IV is co-authored by the entire team that supported the research project. Richard A. Stafford, distinguished public service professor at the Heinz College of Public Policy and Management at Carnegie Mellon University, was my co-principal investigator for the overall project and is the lead author of this volume. Michelle Atherton served as senior writer, researcher and editor for the series. Professor Mullin's broad and deep knowledge of state politics and policy made her an invaluable team member. Nathan Shrader, a candidate for the PhD degree in political science at Temple University who also has practical political and legislative experience, contributed his impressive research and analytical skills.

Although this series would not have been possible without the support of the two foundations, Temple University also supported the project with its own funds, largely through in-kind contributions. We also thank members of the Policy Forum and the distinguished speakers and panelists in the two symposiums for volunteering their efforts. Finally, we do not doubt that errors of fact and omission have found their way into reports that attempt to cover so much ground over so many complex issues covering so many decades. We accept responsibility for mistakes and welcome comments and corrections from all.

Joseph P. McLaughlin, Jr., PhD, Director
Temple University Institute for Public Affairs

INTRODUCTION

As is noted in the Foreword, this paper is Volume IV in the *Temple Papers on the Pennsylvania General Assembly*. It is a companion, in particular, to Volume I, “The Pennsylvania General Assembly Before and After the 1968 Legislative Modernization Commission: The Evolution of an Institution,” by Joseph P. McLaughlin, Jr. Volume I explored the historical origins of the General Assembly’s dominant characteristics: its large size and high degree of professionalism. That volume concluded with a discussion of the values embodied by those dimensions and the tradeoffs that could be expected in changing both or either.

The purpose of this volume is to provide useful background on other selected subjects relevant to how the General Assembly might continue to evolve. The subjects were gleaned from research and interviews conducted by the authors with the support of the Heinz Endowments and the William Penn Foundation. This paper does not make recommendations. Rather we hope to aid the readers in understanding both the relevant research and the views of others with respect to institutional issues and in drawing their own conclusions.

To assist in this goal, we present both data and opinion on each subject. Our methods of data and opinion gathering are reviewed in the first section. Opinions on almost every subject varied sharply pro and con. There seemed to be two primary explanations. First, the experience within and understanding of the “system” varied among the sources. The statement “where you stand depends upon where you sit”² applies. In an attempt to explain where people sit when in the legislature, we review the overall framework in which the General Assembly operates in the second section.

² Credited to Nelson Mandela.

Second, the ideas about which institutional objectives are important varied among sources.

In the third section, we identify and categorize the variety of those institutional objectives we gathered through our study.

Subsequent sections address selected subjects under five broad topics that represent challenges for the management of the institution and its continuing evolution:

1. “Managing Institutional Time.” Time is the critical constraint on individual legislators as well as the institution. These subjects deal with ideas for improving use of this critical resource.
2. “Budgeting.” The most important and most visible lawmaking process that the legislature undertakes each year is the enactment of the budget and the dozens of related bills required to implement budget decisions. Volume I recounts important institutional changes that have been made in the budget process since 1968 and assesses the legislature’s record with respect to the timeliness of the annual budget legislation. This volume repeats some of that institutional history but also assesses changes in state budgeting that have been recommended by legislators, critics, and scholars or that have been tried in other states.
3. “Oversight.” This group of subjects addresses mechanisms for the legislature itself and the public to regulate the behavior of the institution and its members.
4. “Elections and Public Participation.” Ultimate power in the Commonwealth is derived from the people, largely through elections as specified in the constitution. How wisely the power is exercised depends partly on the fairness of the election process and the participation of an informed public.
5. “Institution Building.” Of all the clusters of ideas put forward in the ongoing discussion of the evolution of the General Assembly, this is the group that gets the least public discussion but has perhaps the greatest potential for comprehensively addressing how the institution should operate and evolve. It deals with the education and development of the members and a comprehensive examination of the institution.

As will become apparent, many of the subjects discussed could fit under more than one of these broad topics. We simply chose the area that we thought most appropriate. For each subject, we provide both data and opinions we gleaned from our research. It proved sometimes difficult to separate data from opinion and vice versa. Nonetheless we found some evidence that was sufficiently quantitative, observationally based and/or carefully studied and documented to be deemed “data.” If it did not pass this filter, we considered it “opinion.”

We do not attempt to “pass judgment” on any of the subjects discussed herein. However, our final section provides some concluding and cautionary remarks with respect to how to address the overall process of the continuing evolution of the institution. In short, have the facts and air the opinions before instituting changes that may later turn out to have unintended consequences.

DATA AND OPINION GATHERING METHODOLOGY

The authors gathered data on the topics from a number of sources:³

- A search of legislation introduced during the 2009-10 session of the General Assembly
- An extensive literature review, which is documented in the bibliography and summarized in Volume V of this series of papers
- An extensive search of the web
- The research of various organizations dealing with public affairs and in particular state governments and legislatures
- In-depth consultations and interviews with several dozen individuals – all of whom were promised confidentiality – to solicit and discuss their candid views on the topics and the continuing evolution of the General Assembly.

Interviewees were sampled from several categories:

- Current and former legislators and leaders
- Current and former legislative staff
- Current and former executive staff
- Current and former judges
- Academics, political scientists, and political commentators
- Lobbyists
- State interest groups
- National governmental associations
- Government reform advocacy organizations
- Think tanks

What we learned has informed each of the papers referenced in the Foreword. In particular, for this paper, it led us to the selection of 28 subjects grouped under five broad topics as listed in the Introduction section.

Our discussion of each topic is organized into two sections. In the spirit of “In God we trust; all others must bring data,”⁴ we assigned what we judged to be relevant evidence to a section on “Data.” We drew data primarily from organizational websites and sources and public policy and academic studies.

A second section entitled “Opinions” reports on the opinions we gathered. While as academics, we value data, as political observers, we believe opinions, particularly of experienced participants, are also valid in helping readers reach their own conclusion regarding a subject. Opinions will matter perhaps more than data in the political processes that determine the evolution of the institution. Indeed, the data often point to different conclusions. Moreover, many different objectives for the institution are held and conclusions on particular subjects will depend on the weight an individual puts on each objective as compared to others.

³ Much of our data is presented as of the end of the 2009-10 session of the Pennsylvania General Assembly and does not reflect the current 2011-12 session.

⁴ Credited to W. Edwards Deming.

After reading the data and opinions in the report, we hope readers will come to their own conclusions on each subject and find themselves more prepared for future discussions of the continuing evolution of the General Assembly.

Evaluating the data and opinions discussed in this report requires an understanding of the political environment and structural framework in which the General Assembly and other American legislatures operate today. Readers who lack such an understanding will find a discussion of these factors in Appendix A. Current and former members of the General Assembly, their staffs, Capitol news reporters, executive branch officials who work with the legislature, lobbyists, and scholars and students of state politics may well find the appendix unnecessary.

INSTITUTIONAL OBJECTIVES FOR THE GENERAL ASSEMBLY: A VARIETY OF VIEWS

During our research, we encountered time and again differences of opinion and emphasis on what the objectives should be for the General Assembly as an institution. We have attempted to summarize and classify those different views below. The length of the list and the potential for conflicts among them serve as evidence that even those who are serving or have served in the General Assembly or who have given a great deal of thought to these matters are not unanimous in their view of the institution's appropriate objectives or of specific changes that could or should be adopted. Nonetheless, the objectives serve as a useful checklist against which the reader might grade various ideas for the evolution of the institution.

1. Attract the best possible talent to lawmaking. For both elected lawmakers and staff, the more committed to public service, the more hard-working, the more thoughtful, the better. The system also should encourage talented citizens to run for elective office.
2. Protect the ability of the legislature to balance the power of the executive and the judiciary. Be careful not to “tip the balance” provided by our state constitution and on which our democratic system is based.
 - Protect the public will. The system should facilitate a legislator's full and faithful representation of his or her constituents' views or best interests while providing the data to take into account any “greater good” for the Commonwealth as a whole.
 - *Improve transparency.* For the system to work, constituents should be able to readily obtain information about their representatives' views and actions, and about the legislative process itself, and be able to make their views known to their representatives before decisions are made.
 - *Improve accessibility.* The public should be given meaningful opportunities to engage in the public policy making process.
 - *Ensure the availability and integrity of the information necessary for the accountability of decision making.* Members of the public must have the information necessary to exercise their electoral choices intelligently.
3. Protect the ability to negotiate an outcome. Negotiations are essential to the law-making process, and the need for decision makers to hammer out a compromise must remain an integral part of the lawmaking process even as the transparency of the process increases.
 - *Encourage and support responsible legislative leadership.* For leadership to lead, they need both the skills and the tools to manage the process in a fair and effective manner.
 - *Reduce excessive partisanship.* Partisanship is a way to assure that different views are presented and the public has a choice. Excessive partisanship, however, puts the quest for and maintenance of power before fair and informed debate that can serve the public interest.

- *Encourage civility.* Disagreement, if civil, can preserve the relationship between parties and members that is necessary to confront the next issue productively.
 - *Ensure the availability and integrity of the information necessary for intelligent debate and decision making.* Elected lawmakers cannot be expected to “know it all.” Staff resources and access to experts and petitioners are essential to ensuring that individual lawmakers can be effective in the lawmaking process.
 - *Improve “deliberativeness” in the system.* Deliberation helps ensure that legislation is based on a public consensus on the need for, as well as the type of, change.
 - *Encourage the lawmakers, including the governor, to work together.* While there will surely be irreconcilable disagreements on policy, many issues can be resolved by working together rather than in the separate silos of the House caucuses, Senate caucuses and governor’s administration.
4. Increase the sense of institutional responsibility for “getting the job done.” An institution that can only make an affirmative decision through a majority cannot make a decision without compromise of at least some of each member’s narrowest self-interest. Lawmakers must be encouraged to take responsibility for the content and results of legislation, and voters must be supported in their efforts to judge lawmakers on their efforts.
 5. Improve the “fairness” of the system. As one observer put it, folks should feel that “even if I lose, it was a fair fight.” The system should encourage and support careful review of legislation, which ensures that both advocates and opponents understand the implications of proposed legislation.
 6. Improve the quality of the legislature’s work product. Ultimately, any proposal should promote the achievement of more efficient and effective public policy.
 - *Encourage and support policy innovation.* The system should welcome innovation to address the new challenges and opportunities that the constantly changing world brings.
 - *Improve the productivity of the lawmaking process.* Improved productivity is not passing more laws, but rather reducing unnecessary costs, unnecessary delays, or unnecessary barriers in considering legislation.
 - *Improve understanding of legislative intent.* Sufficient data during the course of legislative consideration must be documented to allow courts and administrative agencies to interpret the law accurately and justly.
 - *Balance flexibility and stability.* Laws should be flexible enough to address changing conditions yet stable enough to ensure continuity and predictability.
 7. Enhance the public trust in the lawmaking system. Public trust in the lawmaking system is the foundation for respecting the law itself. Essential to promoting public trust is ensuring integrity: lawmakers and the lawmaking process must be influenced only by the data and the legitimate representation of interests, not by personal enrichment.

MANAGING INSTITUTIONAL TIME

Every organization is constrained in what it can accomplish by the time it has available. Organizing to make the most efficient use of time is a constant challenge. For the General Assembly, the number of issues with which it must deal in its representing, lawmaking and balancing power functions overwhelm the amount of time available. Thus the effective use of committees, oversight functions, floor time, and control of legislative process are topics of constant concern. While no means exhaustive and while no means exclusively related to managing institutional time, the subjects in this section have the common element of affecting the institution's management of time.

Legislative Committees

In the 2011-12 session, the Pennsylvania House has 25 standing committees (not counting Ethics and Rules), with the majority Republicans having 15 seats and the minority Democrats 10 on most committees, a ratio exceeding the floor ratio of 112-91 in favor of the Republicans. The Senate has 22 standing committees, with most having 7 majority Republicans and 4 minority Democrats. The Senate committee ratio also exceeds the ratio of the floor, where Republicans have 60 percent of the seats. Appropriations Committees in both chambers are larger, with the majority party having supermajorities (21-14 in the House and 14-9 in the Senate). The Rules Committees in both chambers consist largely of caucus leaders and exercise control over the floor agenda in the House and of bills on concurrence and executive nominations in the Senate. All House and Senate committees have partisan staffs.

Most observers agree that the Appropriations Committees are the most relevant and powerful since they “control the purse” for all functions of state government and sometimes are the “graveyard” where bills opposed by the majority leadership are buried. The subject of whether and how to strengthen the role of the remaining standing committees was frequently raised by members and observers alike during our research.

Data

The role of committees varies across legislatures, between chambers in the same legislature, and across committees within the same chamber. Much of the variation reflects differences in the abilities, energy, and style of committee chairs and minority chairs, as well as the relationship, or lack thereof, between the majority and minority chairs. Some of the variation, however, has to do with institutional design, rules, and customs. A number of specific steps have been suggested to strengthen committees, including:

- a. Change the number of committees (usually, this means reduce the number);
- b. Change (reduce) the number of members on committees and manner of appointment to committees;
- c. Change from partisan to non-partisan committee staffing;
- d. Refer bills to multiple committees;
- e. Encourage more joint (House and Senate) committee hearings and meetings;
- f. Require committees to file written reports and to make hearing transcripts available to all members;
- g. Require all bills to get a public hearing and/or be on the committee agenda for a vote or require bills to get a committee vote when a threshold number of citizens petition for a vote;
- h. Allow each member to designate one bill in each session that committees would be required to report and that leaders would be required to bring to a vote by the full chamber (discussed more fully in the section dealing with Legislative Calendar);
- i. Require all bills to be reported to the floor for a vote with a committee recommendation for or against passage;

- j. Reorganize legislative schedules to dedicate certain weeks to committee work, with little or no voting on the floor (discussed more fully in the section dealing with Legislative Calendar);
- k. Give standing committees a role in reviewing and authorizing programs and recommending funding levels to the Appropriations Committees for departments and agencies within their areas of jurisdiction (discussed more fully in a separate report in this series on the budget process).

Compared to seven other states with professional legislatures, Pennsylvania falls roughly in the middle in the total number of House and Senate committees and is roughly average in the number of committee assignments per legislator.

Standing Committees in “Professional” Legislatures as of 2009

State	Number of Committees		Average Number of Committee Assignments per Legislator	
	Senate	House	Senate	House
California	24	30	2	4
Illinois	29	55	2	2
Michigan	19	24	2	5
New Jersey	13	22	3	4
New York	32	37	2	4
Ohio	15	27	2	4
Pennsylvania	21	27	2	8
Wisconsin	19	36	2	3

Sources: Standing Committees via *The Book of the States* 2011 published by the Council of State Governments; Average Number of Committee Assignments per Legislator based on total number of members per chamber and total number of committees per chamber.

In a 2000 study, 25 of 91 chambers had an explicit rule mandating that party representation on committees be proportional to party representation in the chamber as a whole. In 45 chambers, the practice was followed without an explicit rule (Squire and Hamm 2005). (As noted above, the Pennsylvania House rules for the 2011-12 session specified a ratio of 15 majority to 10 minority members, exceeding the floor ratio. A Pennsylvania Senate rule required that party representation “reasonably reflect” the membership of the chamber and that committee and floor ratios be in agreement.)

According to a 1998 study by the American Society of Legislative Clerks and Secretaries and the National Conference of State Legislatures,⁵ the minority leader appointed party members to standing committees in just 18 chambers and recommended party members in another 22 chambers. In most of the remaining chambers, the presiding officer

⁵ See American Society of Legislative Clerks and Secretaries, in cooperation with the National Conference of State Legislatures. 1998. “Inside the Legislative Process.” Denver, CO.

formally appoints committee members of both parties, although in practice he follows the recommendations of the minority leader in appointing members of the minority party. In Pennsylvania, the speaker appoints majority chairs and the minority leader minority chairs. In the Senate, all chair appointments are by the president pro tempore, but he typically follows the recommendations of the minority leader when appointing minority chairs. In a 2000 study, respondents to a survey on committee jurisdiction indicated that 19 of 91 chambers had no rules delineating which committee received what kind of bills, including the Michigan House, Ohio House, and Wisconsin Assembly. Pennsylvania has no such rules. Primary committee assignments are at the discretion of the presiding officer, although, as noted below, the chamber itself can refer bills reported from a primary committee to a second or even third committee.

We could find no data on the extent to which other states routinely refer bills to multiple committees. Virtually all states, including Pennsylvania, permit either the presiding officer or the chamber itself to refer bills reported by one committee to another committee. Squire and Hamm (2005) find that Connecticut, Maine, and Massachusetts operate almost exclusively with joint standing committees, a feature that appears to be viewed as successful by both members and observers.

According to NCSL, committees in 22 chambers must hear all bills.⁶ In all others, the chair determines whether bills are considered, although undoubtedly the chair is influenced in many, if not most, instances by his or her perception of sentiments of a majority of committee members. In 18 chambers, committees have to report all bills out; the rest can let a bill die. As noted elsewhere in this report, Pennsylvania is not an outlier among comparable states in the number of bills introduced. Our research found little support for limiting bill introductions.

Chairs in states with term limits are lame ducks from the get-go. One study found that fewer bills are screened out in the committee process in the states with term limits. With less experience and expertise, committee reports are often not regarded as significant to a bill's fate. In these states, the majority party caucus often calls the shots. In short, where there are term limits, there are weaker committees and more partisanship. We have heard anecdotally from staffers who worked in both chambers that Senate committees do a better job of preparing legislation for the floor, partly because of stronger leadership staff support for, and expectations of, committee staffs. On the other hand, the Senate holds fewer public hearings than the House, perhaps partly because with so few members on each committee, assuring "adequate" attendance is a problem. (A Senate hearing with 33 percent attendance will have three senators; a House hearing with 33 percent attendance, eight representatives.) The House also has required, since 1979, the retention and central archiving of committee reports and public hearing transcripts, while Senate records are not systematically preserved. Both House and Senate committees now report committee actions, including roll call votes, online soon after they occur.

⁶ <http://www.ncsl.org/documents/legismgt/ILP/04Tab4Pt5.pdf>.

Opinions

Our opinion research found general agreement that the caucuses of the Pennsylvania General Assembly on balance have somewhat more influence and committees less. This may be a symptom of the intense political competitiveness of the state and therefore difficult to change. Among both scholars and those familiar with the operations of the House and Senate, few believe the number of House and Senate committees is a major problem, but few also would create as many as now exist if they could start with a clean slate. We found little support for reforms that arguably would weaken the tools available to leadership for managing committee and chamber agendas.

One serious complaint is that caucus leaders sometimes direct committees to discharge bills before they have been thoroughly vetted for a variety of reasons, including: to advance party political strategies, to provide specific members with publicity opportunities, or as part of a deal in which members agree to withdraw floor amendments to a bill on the calendar in exchange for a promise that their bill will be reported out. The feeling is that reporting bills hastily for such reasons devalues committee work and results in poorly designed legislation taking up floor time.

Although strengthening the role of committees does not appear to be a high priority for groups advocating legislative reforms, many feel that such a step would improve lawmaking and might reduce excessive partisanship. Committees generally are seen as a more important venue for decision making based on policy considerations, while caucuses are seen as the more important venue for political considerations. Because committees are small bipartisan groups with frequent interaction and access to common information, an ethic of reciprocity and consensus-building seems more likely to develop, other things being equal. One national scholar argues that strengthening committees is among the most important steps that legislatures can take to improve deliberation.

As reported in Volume I of this series, the Pennsylvania General Assembly's Commission on Legislative Modernization, in its 1969 report *Toward Tomorrow's Legislature*, recommended that the House and Senate develop parallel structures of 13 standing committees arguing a number of reasons: reducing the number of committees would increase the importance of each committee, decrease the number of committees on which each legislator serves, and would allow members to develop greater expertise in select areas. The commission also argued that fewer committee memberships for each legislator would make it easier for members to avoid scheduling conflicts. Although the commission did not endorse non-partisan staffing of committees, some familiar with the operation of committees today favor this change.

Although research has documented that committees in the Congress and in state legislatures are sometimes heavily influenced by narrow special interests, some have suggested that fewer committees with broader policy jurisdictions might counter this tendency. Fewer committee chairs with broader jurisdictions might also exercise more influence in caucus deliberations. On the other hand, opposition was expressed to reducing the number of committees since it would reduce the number of chairs and minority chairs, which represent opportunities for talented and hard-working legislators to learn leadership skills.

Some argue that imposing majority-minority floor ratios to committee membership would increase confidence in the fairness of the committee system. On the other hand, the argument was advanced that reducing the ratio of majority versus minority members weakens leadership tools and may cause chairs to cancel meetings when committee control is threatened by absentees. Balancing the partisanship differences, we heard opinions that Democratic and Republican partisan committee staffs work cooperatively and professionally with each other and do not aggravate partisanship among members.

Both chambers are now putting committee reports, including committee votes, online soon after they occur. The view is that requiring legislative committees to publish reports and transcripts will disseminate committee-developed information more widely among members and for the press and public, and enhance deliberation.

Opinions were expressed that committees are more likely to be influenced by special interest groups within their jurisdictions (agriculture committees by farm groups, education committees by teachers unions, etc.). Caucus leadership influence is needed to balance these tendencies, either by referrals to more than one committee, sending bills to committees where they might get a fairer hearing or by ordering committees to discharge bills that have party, but not committee, support.

Some argued that requiring bills to have hearings and/or committee or floor votes by rule, in response to voter petitions, or by allowing each member to designate a bill that must be considered, will increase member and public confidence in the fairness of the committee system. These steps also will inhibit the ability of arbitrary or biased chairs and leaders to bury bills that deserve to be considered on their merits or that have ardent supporters who believe their views are being ignored. On the other hand, some felt that requiring committee votes when citizen petitions reach a certain threshold would favor organized special interest groups with large memberships more than average citizens and taxpayers. Also the power of chairs or committees to effectively kill bills by refusing to send them to the floor for a vote by the entire chamber can be a hedge against proposals with short term popularity but long term negative consequences.

It should be noted that requiring all bills to be given a hearing and/or brought to a vote in committee is already an option for chairs who want to adopt such a policy. However, requiring all bills, or those designated as a priority by individual members, to be reported to the floor also could waste floor-time on bills that have little support. According to an analysis using Temple University's Pennsylvania Policy Database (www.temple.edu/pa-policy), roughly 18,000 of the 25,000 bills introduced in the Pennsylvania Senate between 1979 and 2006 were never reported from their primary committee. Had the Senate been required to vote on each of these bills, enormous amounts of time would have been spent on legislation that almost certainly had little support or was of little importance to the Senate as a whole, let alone the House. Consideration of these bills would have curtailed time available to develop important but complex legislation that had a significant chance of passage.

House and Senate rules already permit majorities or slight supermajorities of committee members to force chairs to call meetings and to place a bill on the committee agenda if the

chair does not. They also allow majorities of elected members on the floor to discharge a bill from a committee that will not report it. These occurrences are rare, suggesting that members see merit in allowing chairs and leaders to structure their workload. On the other hand, committees on rare occasions do report bills to avoid being ordered to do so through a discharge resolution.

Multiple committee referrals and joint committee hearings both within and across chambers are currently available under House and Senate rules and are held when chairs or leaders deem them beneficial. The feeling was expressed that joint hearings within and across chambers might have the potential to broaden the perspectives brought to bear on complex legislation, enhance deliberation and foster bipartisanship.

As to committee size, the argument was made that smaller committees would provide leaders with fewer opportunities to broaden perspectives on committees by adding members with fewer ties to special interests.

Sunset Review

During the 1980s, most of Pennsylvania's state agencies were subject to a "sunset" law first enacted in 1980. The law required that the agency or program would terminate on a specific date unless reenacted by the legislature. The law scheduled the sunsets on a rotating schedule so that only a portion were up for review every year and each would be subject to review every five years. To support the process, the Legislative Budget and Finance Committee completed a performance audit of the agency or program prior to consideration by the General Assembly. The law expired in 1991 after the courts struck down a provision that allowed legislative leaders to extend an agency's life if the sunset review could not meet the statutory schedule. Legislators apparently concluded that sunset reviews consumed more time and resources than their benefits warranted.

The Pennsylvania General Assembly now exercises regular oversight of most agencies through its Appropriations Committees hearings and staff studies of their budgets. Other House and Senate standing committees from time to time conduct oversight hearings. In addition, the Independent Regulatory Review Commission, an agency established by statute, reviews and approves or disapproves proposed state departmental and agency regulations for consistency with legislative intent. The five-member commission is appointed by the four caucus leaders and the governor, making it responsive to the General Assembly. The commission works with standing House and Senate committees and issuing agencies in a complex and lengthy review process. Commission disapproval does not terminate regulations unless the General Assembly supports the commission's recommendation to terminate by adopting a concurrent resolution signed by the governor or overriding the governor's veto.

Data

Almost every state adopted some sort of sunset legislation at one time or another. Currently, 32 states have authority to sunset agencies. However, in many states that authority is limited, such as Colorado where only regulatory agencies are subject to elimination. In a number of other states the authority sits idle. In 12 states sunset legislation was repealed or the process suspended (see Council on Licensure, Enforcement, and Regulation (CLEAR): The most common outcomes of sunset reviews were not terminations of agencies and boards as predicted but administrative and structural changes. According to CLEAR, *"What is more common at this time is the statutory inclusion of sunset provisions in new laws as well as the periodic examination of agencies through performance audits, also known as legislative or evaluation audits. In some states, the process is carried out through the state auditor's office, while in others a branch of the legislative research agency conducts the reviews."*

The following three states illustrate the sunset process:

Florida. The 2006 legislature enacted the Florida Government Accountability Act that established an agency sunset review process to be used by the legislature to determine if a public need exists for the continuation of a state agency, its advisory committees, or its programs. The Florida Government Accountability Act provided for the creation of the Joint

Sunset Committee to oversee the independent review process and make recommendations to abolish, continue, or reorganize the agency under review. The act also provides that the Senate and House may conduct independent reviews regarding the scheduled agency sunsets. The Florida Government Accountability Act requires reports and assistance from state agencies. The Office of Program Policy Analysis and Government Accountability (OPPAGA) creates a schedule to abolish state agencies and advisory committees and sets criteria to be used in the sunset review process. An agency subject to review by the legislature is to be abolished on June 30 following the year of the agency review, unless continued by the legislature.

Texas. In 1977, the Texas legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The commission seeks public input through hearings on every agency under sunset review and recommends actions on each agency to the full legislature. In most cases, agencies under sunset review are automatically abolished unless legislation is enacted to continue them.

Colorado. The sunset process provides that the Department of Regulatory Agencies (DORA) review the functions of a state regulatory agency, division, or board (all referred to as "agencies"), or a specified function of a state regulatory agency and determine if such regulation should continue with or without modifications to the regulatory system. The scheduled review date by DORA is prior to the termination of such regulation on a specified date. The General Assembly must act by bill to continue the regulation provided by an agency. If the General Assembly fails to act, the regulation provided by such state agency goes into a one year wind up period. Not all agencies and functions are subject to the sunset process. Primarily, the process applies to the agencies in DORA, including the boards and agencies in the division of registrations that regulate professions and occupations, and certain other boards, agencies, and functions as specified by statute. The process also applies to advisory committees. As a general rule, the sunset process does not apply to principal departments of state government or fundamental governmental functions (e.g., tax collection).

Related to the concept of a sunset law are less dramatic steps to improve legislative oversight, such as establishing a special oversight body similar to Virginia's Joint Legislative Audit and Review Commission (JLARC). Virginia is considered a leader in legislative oversight and accountability. The commission's mission is to ensure that appropriated funds are used effectively and efficiently by state and local agencies. Legislative oversight is also how the General Assembly assesses the performance of the agencies and programs it creates. The commission is composed of nine members of the House of Delegates, at least five of whom also serve on the House Appropriations Committee, and five members of the Senate, of whom two also serve on the Senate Finance Committee. Delegates are appointed by the speaker of the House, and senators by the Senate Rules Committee. The chair is elected by a majority of commission members and traditionally has rotated every two years between the House and Senate. The auditor of public accounts is a nonvoting, *ex officio* member.

The commission has a full-time staff. The staff director is appointed by the commission and confirmed by the General Assembly for a six-year term of office. The objectives of the legislative oversight function performed by JLARC are:

- Program and Agency Savings. Includes program cost savings opportunities for savings that may result from the implementation of recommended efficiencies or adoption of program alternatives.
- Improved Efficiency and Effectiveness. JLARC is required by statute to make recommendations on ways state agencies may achieve greater efficiency and effectiveness in their operations.
- An Informed Legislature. Oversight studies help inform citizen legislators about agencies, programs, and activities.
- Compliance with Legislative Intent. The oversight function helps ensure that laws are being carried out as the legislature intended.

Opinions

The record shows that few programs have been terminated, though some were changed, not just in Pennsylvania but nationally. However, proponents of “sun-setting” agencies and programs argued that it improves both the effectiveness and efficiency of government through regular review of their operations and objectives in the context of the changing environment. Otherwise, many of them will continue operating through bureaucratic momentum and lack of attention. Moreover, even if significant changes aren’t made, agencies will be continually aware that someone will be looking over their shoulder with the ability to terminate or expose ineffective administration.

Because legislative oversight is important but often tedious work with few rewards for legislators, it requires institutional time and organization to insure it is carried out on a regular basis. Critics contend the sunset process that was in place in Pennsylvania was too cumbersome and ineffective, and the rate of return on the time and effort too low. Many legislators did not take the opportunity seriously. Legislative staff expended significant resources to perform the audits and agency staff expended effort in complying with audit staff resulting in more studies on the shelf. The benefit is unclear since the extent of improved performance due to oversight was not measured.

Critics also point out that House and Senate Appropriations Committees already exercise oversight over state agency spending, and other standing committees are free to hold oversight hearings. Also the Independent Regulatory Review Commission and agencies like the Joint State Government Commission, Local Government Commission, Legislative Budget and Finance Committees and Independent Fiscal Office are available to conduct oversight studies if so requested by a resolution adopted by the House or Senate or both.

One national expert described sunset laws as “a failed experiment.” Others said legislative oversight should be strengthened but thought the Virginia model was a wiser approach than re-enacting sunset laws.

Balancing Floor and Committee Time

Full-time, professional legislatures like Pennsylvania's generally intersperse committee meetings and hearings with floor sessions during the same work week. Thus the two compete for the attendance and participation of members which can detract from the efficiency of both.

Data

While not applicable to Pennsylvania's full-time legislature, states with part-time legislatures and limited sessions use interim periods to focus on committee work. Committees can use these extended interim periods to study major issues and draft complex legislation that will be on the floor calendars when they return for floor sessions.

In 1975, Pennsylvania House Speaker Herbert Fineman reserved the first 10 weeks of the year for committees (there were virtually no floor sessions) and then alternated between committee weeks and floor weeks. Fineman argued that the early weeks of a session were relatively barren of important legislation, in any event, and that committee chairs and members often complained that they lacked sufficient time to work on complex legislation and that members often were faced with scheduling conflicts. By Mid-March of 1975, he reported, the House had surpassed the total number of bills passed in the same time period under the previous system, including a number of important and contentious bills that might otherwise have come to a vote later in the year. Although the new scheduling system was favorably reviewed by members, the press, and a visiting scholar engaged to evaluate its effectiveness, it was abandoned after Fineman left the legislature in 1977.

Opinions

Some felt that the current practice does not give sufficient time to committee work. In their view, enhancing the role of committees would improve the quality of deliberation and lawmaking and perhaps also realize a number of the other important goals, such as reducing excessive partisanship and inducing more press coverage of committee activity. Moreover, increasing the amount of time available to committees would dramatize leaders' commitments to committee work, send a strong message to chairs and to members that their work is valued, and might induce the press to cover committee meetings that are now virtually ignored in favor of floor action when both occur during the same week.

However, there was no groundswell of complaints from committee chairs or members about the constraints of the current schedule. The Senate, where the typical member serves on five committees, already has a scheduling matrix that reserves certain time periods for specific committees in an effort to reduce scheduling conflicts. The House has had such a structured matrix in the past but lacks one now. It could easily adopt a matrix that minimizes conflicts.

The observation was made that during weeks when the legislature does not hold floor sessions and committees meet or hold hearings, the press generally ignores these events.

“Lame Duck” Session

“Sine die” or “lame duck” sessions occur after the general election and prior to the swearing in of the newly elected members of the General Assembly. Therefore, a number of members are “lame ducks,” meaning they will not be returning for the next session and therefore cannot be accountable for their votes during the final days of their careers. The rest of the members have just been reelected and are therefore two years away from the next time that the electorate will have an opportunity to hold them accountable for any vote they make during the “lame duck” session.

The Pennsylvania Senate has made it a practice in the past two sessions not to reconvene as a “lame duck” body, although it did allow a post-election vote on legislation dealing with public employee pensions and establishing the Independent Fiscal Office in 2010, arguing that the bill had passed in a different but similar form prior to the election. Proposals have been introduced to go further and enact legislation or amend the constitution to eliminate this period of time during which legislation may be enacted.

In 2012, the majority leaders of both chambers announced that they would not hold “lame duck” sessions after the November elections.

Data

The issue of lame duck sessions is of little concern to legislatures in most states. Pennsylvania is currently one of only twelve states that do not prohibit lame duck sessions. Most states eliminate the possibility of lame duck sessions in their constitution by designating the end of session well before the election. Most states don’t meet in lame duck session by rule or by tradition. A small number regularly use the lame duck session to conduct business. The chart below summarizes the states in these categories:

States with No Constitutional Mandated End of Session as of April 2009			Session Ends Before New Legislature Is Elected by Constitutional Mandate
Generally Meet in Lame Duck	Normally do not Meet in Lame Duck	Do not Meet in Lame Duck by Rule	
Illinois Ohio Michigan New York Pennsylvania New Jersey	Idaho Oregon North Carolina Rhode Island Vermont Wisconsin	Arizona California Massachusetts	All other states (35)

Source: Staff at the National Conference of State Legislatures.

Thus, Pennsylvania is one of six states that have generally met in lame duck session over the years. Not surprisingly, the states that have met in lame duck session are among the largest, and most are in the full-time category as defined by the National Conference of State Legislatures. Two states that are considered to have a full-time legislature end their session before the general election: Florida and California.

Opinions

Some strongly believe that institutional accountability will increase by ending lame duck sessions to prevent legislators who no longer have to answer to the electorate from influencing legislation. The opinion is also prevalent that elimination of lame duck sessions will prevent the enactment of controversial legislation that would not have passed otherwise.

On the other hand, some argue preserving the lame duck session gives the legislature the option to meet and enact necessary legislation near the end of a session without having to convene a special session. Indeed, given the procedures to organize a special session, the time may not be sufficient.

The most prevalent opinion favoring lame duck sessions is that it is one of the few existing legislative “pressure points” that force legislative leaders and the governor to compromise. These “pressure points” (the only others accompanying the annual passage of the state budget) are important because they provide the legislative leaders with leverage to force compromises on difficult issues.

Limits on Number of Bills

In a typical session of the General Assembly over 4,000 bills are introduced and less than 10 percent are enacted. Some observers maintain that bills are frequently introduced just for “credit” and with no serious expectation of enactment. While this practice may seem harmless, critics argue that it is a waste of resources.

Data

Limits on the number of bills and methods of control vary. Some states such as the Arizona House have no limit on the number of introductions for the first 29 days of the session but impose a seven bill limit for all days after the first 29. California limits senators to 50 bills, house members to 40.⁷ At the other end of the spectrum, Colorado limits legislators to five bills, except for appropriation bills and some other special legislation.⁸

A study of the New York legislature by the Brennan Center for Justice, released in 2004, was aided by survey data from other states. The following table summarizes data for bill introductions and enactment rates for “professional” legislatures in 2002.

State	Bills Introduced	Bills Enacted	Percent Enacted
Michigan	1112	767	69.0%
Ohio	324	167	51.5%
California	5162	2118	41.0%
Illinois	8717	746	8.6%
Wisconsin	497	42	8.5%
Pennsylvania	4356	353	8.1%
Massachusetts	7924	525	6.6%
New York	16892	693	4.1%
New Jersey	5004	134	2.7%

Source: Creelan, Jeremy M., and Laura M. Moulton. 2004. *New York State Legislative Process: An Evaluation and Blueprint for Reform*, Brennan Center for Justice at the NYU School of Law.

The table shows that while Pennsylvania legislators introduce a large number of bills, legislators in several other states in the comparison are more active.

Opinions

- Several opinions were advanced arguing that a limit on the number of bills that can be introduced would be a positive, to wit:
- Significant amounts of proposed legislation now never see the light of day, nor were they expected to when they were introduced.
- The large number of bills only clutters the system not only with large amounts of paper, but they also require some degree of procedural consideration and

⁷ *California Legislative Handbook*: http://www.leginfo.ca.gov/pdf/Ch_09_CaLegi06.pdf.

⁸ The Bell Policy Center. “The Legislative Process in Colorado.” Found at <http://bellpolicy.org/node/1209>.

action which adds to the cost of running the legislature.

- Limiting the number each legislator could introduce would force legislators to prioritize and focus deliberation of the legislature on issues having greater policy meaning.
- A limit would give legislators more time to read and understand bills.

On the other hand, opinions to the contrary included:

- Every legislator is duly elected to represent his or her constituency. Their ability to represent their citizens shouldn't be limited by an artificial number that doesn't necessarily have a relationship to the number of problems and concerns of a legislative district or the state as a whole.
- Bills are ideas, and the legislature should not limit ideas for the sake of relatively small savings, particularly because modern technology reduces the actual burden and cost to the system of bill introduction.
- Repeated introduction of the same bill in subsequent sessions is one way a legislator can build support for legislation over time.
- House and Senate members not infrequently introduce the same legislation in their chambers as a way of demonstrating bicameral support and facilitating bicameral consideration.
- Limits may lead to a tendency for bills to be longer and more general in nature and scope rather than targeted to specific problems, not actually reducing the workload.

Guaranteed Vote through Designation

Citizens and members of the General Assembly alike lament the fact that legislation they feel important is “buried” and never voted on in committee or on the floor of a chamber. This has led to the proposal to allow every member of the General Assembly to designate one of his or her bills as a “priority.” “Priority bills” would be assured a hearing by the committees to which they have been assigned, as well as a committee vote, and if approved by the committee, consideration by the full House or Senate.

Data

According to the National Conference of State Legislatures (NCSL), there are no states with a direct requirement that one bill from every member of the legislature be brought up for a vote.

There was a proposal introduced in the Pennsylvania House in 2009-10 that would allow every member to designate one of his or her bills as a “priority,” and it would receive consideration by the standing committee to which it has been assigned. Only one bill per member per session could be designated for the priority status.

Opinions

Several opinions were advanced in support of guaranteeing a legislator a vote on a designated bill:

- Once a bill is introduced and referred to a committee, there is no guarantee, no matter how significant a public policy matter, that the bill will ever be considered for a vote by the committee. Committee chairs have the sole authority to determine which pieces of legislation are brought up for deliberation and a vote in their respective committees. Committee chairs should not have the power to simply “bury” significant policy proposals.
- Whether the vote is up or down, the proposal should get its “day in court” and the public will be able to hold the legislators accountable for their vote.
- The procedure of allowing every legislator to designate one bill that gets consideration retains the judgment of what is a significant policy proposal in his or her hands while also assuring that there is an overall limit on the number of bills to be so considered.
- As a representative of a significant portion of the public, every legislator should be allowed to have at least one piece of legislation debated and voted upon.
- This procedure could promote and infuse new ideas into the legislative process that might otherwise never be voted upon.

On the other hand, opinions questioning the idea include:

- This process would eat up enormous time and resources, overburdening the system by requiring a larger number of bills to move through the legislative process.
- The legislative time that all 253 “priority” bills would require would almost certainly take a significant amount of time away from the study and deliberation of

more pressing legislative matters.

- Not every issue deserves the same level of priority, and the committee chairs and legislative leaders should have the ability to control deliberations.
- While “require a vote” may force a vote on some measures that would otherwise not have been brought up, there is no data that “require a vote” would result in a better legislative product.

Guaranteed Vote through Automatic Calendar

In Pennsylvania, a bill can be reported out of a committee and reach the floor calendar, but never be actually voted upon by the legislative body as a whole since the majority party leadership controls the sequencing of legislation that will be brought up for deliberation and a vote by the entire chamber. The idea of an “automatic calendar” has been advanced to ensure that every bill reported is required to be voted on within a specified period of time.

Data

Other states use one of the following three general methods to calendar bills for floor debate. According to NCSL

1. *Bills are listed automatically in numeric sequence, alphabetical order by committee name or the order reported from committee; this is the automatic calendar.*
2. *A specific order is set by the presiding officer or another individual leader.*
3. *The priority is determined by a calendar, rules or management committee.*⁹

Some states use a combination of the different measures depending on the type of legislation involved. In Pennsylvania, all bills now reported from committee cannot be denied a vote except with the consent of a majority of members, who can overrule leadership efforts to table or recommit legislation if they so choose.

Opinions

Proponents of the automatic calendar argue that its use ensures that all legislation deemed by committee majorities as appropriate for passage get full consideration by the entire house. Otherwise, important and sometimes controversial legislation can be buried by leadership for a variety of policy and political reasons. Moreover, requiring all bills reported by committees to be voted on by the full house of origin will reduce the ability of legislative leadership to “kill” legislation by not allowing a vote. By guaranteeing a vote on all legislation reaching the floor, all legislators will then be on record for their constituents to evaluate.

Those who opine against it suggest that it would eat up large amounts of floor time and resources, flooding the entire legislative body with legislation that has little chance of passing at the expense of more detailed and difficult bills that are of greater importance. Responding to this problem, a requirement to vote on all committee-reported bills might have unanticipated consequences. Given the need to control the body’s deliberations and make sure important legislation flows smoothly, leaders may put pressure on committee chairs to refrain from scheduling hearings, votes, etc. on bills to make sure a smaller number reach the floor. Meanwhile, members would have even greater incentives to “trade” votes in committees in order to get their bills to the floor.

⁹ <http://www.ncsl.org/documents/legismgt/ILP/98Tab5Pt4.pdf>.

Consolidation of Pennsylvania Statutes

Alone among the states, according to the Pennsylvania Bar Association, Pennsylvania has not consolidated its statutes into a code of law. Consolidation has been defined as “the process of revising and restating the general and permanent public statutes into a concise code of laws that is clear, consistent, and organized.”¹⁰ The law on related subjects is placed together and the language is simplified into a more understandable format.¹¹

Data

One expert source estimates that only about 25 to 35 percent of Pennsylvania law has been codified, whereas in other states between 90 and 95 percent of statutes are codified. Although the General Assembly in a 1970 statute set codification as a goal, there is no systematic effort to complete this task. The Bar Association recommends that the General Assembly renew its commitment to consolidation, establish a unit within the Legislative Reference Bureau dedicated to that task, and provide the unit with substantial resources and highly skilled lawyers to pursue consolidation on a continuing basis.

Opinions

Several opinions were advanced in favor of the consolidation of Pennsylvania’s statutes:

- Consolidation would improve the lawmaking process, making it more understandable and transparent, leading to efficient use of the time available for deliberation.
- According to the Pennsylvania Bar Association, the principal advocate for statute consolidation, Pennsylvania’s failure to codify its law is a national embarrassment to the legal profession in the Commonwealth, exposes lawyers and their clients to unnecessary expense and risks in interpreting the law, complicates the legislature’s task in amending statutes, and hinders transparency and public accountability in the lawmaking process.
- The Bar Association criticizes “the current chaotic non-arrangement of the unconsolidated statutes” and “the abysmal technical quality of much of our current statutory law.”
- Consolidation would represent a durable and achievable commitment to an institutional rather than partisan goal.

¹⁰ “Consolidation” and “codification” are often used interchangeably, but the former term describes more accurately this proposal. Many Pennsylvania statutes are codified in the sense they are included in a “code” but are not consolidated because they are not included in the Pennsylvania Consolidated Statutes; three examples of codified but unconsolidated statutes are the Education Code of 1949 (act of March 10, 1949 (P.L.30, No.14); 24 P.S. § 1-101 et seq.); the Pennsylvania Election Code (act of June 3, 1937 (P.L.1333, No.320); 25 P.S. § 2600 et seq.); and The Administrative Code of 1929 (act of April 9, 1929 (P.L.177, No.175); 71 P.S. § 51 et seq.).

¹¹ Pennsylvania Bar Association. 2000. “Report of the Statutory Law Committee on the Need for Codification.” February 4.

On the other hand, several concerns were raised, to wit:

- Consolidating Pennsylvania law would require a continuing commitment of substantial legislative time and resources, perhaps over several decades to complete. Meanwhile, although consolidation might be welcomed by lawyers and judges, it is unlikely to be of much interest to the public.
- Consolidation could open the door to mischievous and unintended changes in law by exposing large bodies of current statutes to subtle changes by drafters or to popular but ill-advised amendment on the floor.
- Consolidation might limit leaders' options in accomplishing controversial but desirable changes in law to the degree it discourages the bundling of unrelated issues in omnibus legislation (such as the Administrative Code) to maximize chances for passage or to avoid "killer" amendments. On the other hand, the converse argument might apply, that is consolidation would discourage accomplishing mischievous goals through either the bundling of unrelated issues or the enactment of isolated and unconsolidated statutes.¹²

¹²Note that as reported in Volume III, the Pennsylvania Supreme Court has ruled that amending multiple provisions into consolidated statutes alone does not free the General Assembly from the constitutional requirement that bills must have a single purpose (*City of Philadelphia v. Commonwealth*, 838 A.2d 566 (Pa. 2003)).

BUDGETING

Enacting a state budget is the most important policy making exercise of the state legislature. The state budget influences not just the services and programs of state government, but those of local government as well.

For a state legislator, the budget process represents the intersection of the three functions of representing, lawmaking and balancing the power of the executive. The legislator must represent the needs of his or her constituents. At the same time, he or she must make policy judgments as to whether those needs can be met within the constraints of and demands upon the resources of the entire Commonwealth. As for balancing executive power, the process starts with a governor's proposal, one that the legislator has a duty to question and not "rubber stamp."

The three functions frequently collide at the intersection. The special grant that helps one legislator's district collides with another legislator's view of "pork." The governor's proposal to cut a program collides with the needs the legislator perceives for his or her district. The desire to create a new program collides with the unwillingness to cut some other program or raise some tax to pay for it.

The collisions at the intersections help explain why budgets can be tough to enact in a timely manner. Meanwhile the public has little understanding and less empathy when the members of the General Assembly get caught in these collisions. The public wants the intersection regulated and accident free. The subjects in this section deal with the process and major ways in which it is regulated.

Budget Process

The budget process is governed by a set of rules. Some are constitutional. Some are statutory. Others are the rules of one or both of the chambers. It is also heavily influenced by unwritten practices and, of course, the nature of the job of the legislator.

Data

The public and the budget process

The Pew Center for the States and the Public Policy Institute of California (PPIC) released a study in October 2010 entitled “Facing Facts: Public Attitudes and Fiscal Realities in Five States.” The five states were Arizona, California, Florida, Illinois and New York. These states are sufficiently similar in size and complexity to merit our attention in Pennsylvania as to how the public feels about the basic choices that confront state legislatures when it comes to budget and taxes. Consider the response to the question, “Which approach would be your first choice to balance the state budget?” (page 44):

	Cutting Spending	Raising taxes and fees	Borrowing	Don't know
California	67%	17%	10%	6%
Arizona	77%	14%	5%	4%
Florida	71%	15%	10%	4%
Illinois	73%	19%	6%	2%
New York	71%	13%	11%	5%

Cutting spending is by far the first choice of the public and borrowing by far the last choice. While expressing a preference for cutting spending to balance a budget, the public expresses grave concern about the impact of cuts in the responses to the question, “How concerned are you about the effects of state spending reductions on government services?” (page 9):

	Very	Somewhat	Not too	Not at all	Don't know
Arizona	40%	43%	11%	5%	1%
California	46%	38%	10%	4%	2%
Florida	40%	41%	11%	7%	1%
Illinois	47%	41%	8%	4%	–
New York	45%	41%	9%	4%	1%

When asked what areas of spending would you most like to protect, the respondents in all five states chose the areas of the most spending in the state budget, i.e. K-12 education and Medicaid. Thus, the biggest areas for cutting are those the public does not want to touch.

When asked about taxes in lieu of spending cuts, the dichotomies continue. The study found the public supporting increases in corporate, and alcohol and cigarette taxes. But increases in these taxes were insufficient to close the budget gaps in these five states.

Meanwhile the public was significantly opposed to increases in sales or income taxes. Increases in either of these taxes, on the other hand, are sufficient to close the budget gaps.

One might conclude that the public does not understand state budgets and taxes sufficiently to reach conclusions that match their spending priorities with their taxing preferences. Nonetheless, those surveyed did express a clear opinion about reforming the budget process:

Overwhelmingly, Californians (77 percent), Illinoisans (75 percent) and New Yorkers (72 percent) say their state's budget process—the way the state taxes and spends money—requires “major changes.” Fifty-three percent of respondents in Florida and 63 percent in Arizona also feel that way. Fewer than one in 10 in any state believe their state's budget process is “fine the way it is.” And more than three in four respondents in every state say their elected leaders should “take action now” on long-term budget reforms, rather than wait until the economy improves.” (page 29)

This support for process reform was likely born out of the difficulty state lawmakers in these states (and others) have had in resolving recent budgets. On the other hand, the difficulty state lawmakers have had in resolving budgets regardless of the process was likely born out of the dichotomy within the public of not wanting cuts in substantial programs, but also not wanting to accept increases in substantial taxes. One or the other or both is necessary in states with balanced budget requirements. Pennsylvania is one.

Budgeting processes in the states

The National Association of State Budget Officials published *Budget Processes in the States* in the summer of 2008. While a few years old, the study provides detailed comparative data of the budget practices and processes of Pennsylvania and other states. Most states (as does Pennsylvania) have July 1 to June 30 fiscal years and therefore similar time schedules and milestones to pass a budget. Major exceptions include states that have a different fiscal year – Alabama (October), Michigan (October), New York (April) and Texas (September). The process generally contains the following steps:

- Budget instructions and guidelines are sent to the agencies. This is accomplished in July and August.
- Agency requests go to the governor in the September-November timeframe and agency hearings are held before the end of the year.
- The governor submits his budget recommendations to the legislature. This can occur as early as November (Arkansas). Most states use the January/February time frame. Twenty-three states extend the budget submission deadline for new governors.
- In the majority of states, the legislature adopts the budget in the months of April and May. This is due more to the mandated end of the legislative session rather than efficiencies in the budget process. Five states require a supermajority to pass the budget.

Pennsylvania's budget process

We will not attempt to repeat the level of detail and statutory basis for the budget process here. A detailed description of the Pennsylvania budget process is provided by the Governor's Office of the Budget in a report entitled *The Budget Process in Pennsylvania*.¹³ The foundations for the budget process start with the Pennsylvania constitution. Article VIII, Section 13(a) requires the "balanced budget":

(a) Operating budget appropriations made by the General Assembly shall not exceed the actual and estimated revenues and surplus available in the same fiscal year.

Article VIII, Section 12, of Pennsylvania's constitution sets additional ground rules:

Annually, at the times set by law, the Governor shall submit to the General Assembly:

(a) A balanced operating budget for the ensuing fiscal year setting forth in detail (i) proposed expenditures classified by department or agency and by program and (ii) estimated revenues from all sources. If estimated revenues and available surplus are less than proposed expenditures, the Governor shall recommend specific additional sources of revenue sufficient to pay the deficiency and the estimated revenue to be derived from each source;

(b) A capital budget for the ensuing fiscal year setting forth in detail proposed expenditures to be financed from the proceeds of obligations of the Commonwealth or of its agencies or authorities or from operating funds; and

(c) A financial plan for not less than the next succeeding five fiscal years, which plan shall include for each such fiscal year:

(i) Projected operating expenditures classified by department or agency and by program, in reasonable detail, and estimated revenues, by major categories, from existing and additional sources, and

(ii) Projected expenditures for capital projects specifically itemized by purpose, and the proposed sources of financing each.

The "times set by law" are embedded in the Administrative Code (aka the Budget Code) along with a number of other statutory requirements. One requires the governor to provide the legislature with a budget briefing in December. Another requires the governor to propose a budget for the next fiscal year the first week of February (March for a newly elected governor). The code also requires the governor give a budget briefing emphasizing the status of revenues in mid-December.

Article III, Section 24 of the Pennsylvania Constitution provides:

No money shall be paid out of the treasury, except on appropriations made by law and on warrant issued by the proper officers; but cash refunds of taxes, licenses, fees and other charges paid or collected, but not legally due, may be paid, as provided by law, without appropriation from the fund into which they were paid on warrant of the proper officer.

¹³ It is available online at http://www.budget.state.pa.us/portal/server.pt/community/office_of_the_budget___home/4408.

The fiscal year for which funds from the current budget have been appropriated ends on June 30th. Under Article III, Section 24, and subsequent statutory law, the authority for spending for any purpose ceases as of July 1 unless a new appropriation has been enacted for that purpose. Thus, while there is no explicit constitutional requirement that the legislature and governor have enacted a new budget by June 30th, if not enacted on June 30th or earlier the budget is considered “late” and payments for various purposes may not be made.

Pennsylvania’s comparative record enacting “late” budgets

Late budgets impose great uncertainties and real costs on the operations and programs of state agencies, local governments and schools, non-profit service providers, and therefore on citizens. The table in Appendix B (reprinted for the reader’s convenience from Volume 1 of this series) shows those years in which that debate resulted in the late resolution of the state budget. Research by Karl Klarner, Justin Phillips, and Matt Muckler (2010) found that from 1961 to 2006, over 15 percent of all state budgets were late and at least 10 other states had an average days late equal to or greater than Pennsylvania’s average of 33 days late. Kentucky was highest with an average of 261 days late and New Hampshire (a state with a citizens’ legislature ranked last in professionalism) was second with an average of 86 days late. California’s Fiscal 2008-09 budget was 85 days late, and the state was unable to make payments to vendors, local governments, and schools. New York went 21 consecutive years without an on-time budget, and it continued to miss deadlines even after enacting a law that suspended legislative pay when the budget was late, a remedy that is occasionally discussed in Pennsylvania. Michigan, Illinois, and New Jersey also have missed deadlines in recent years, and so has the Congress. Most of the states performed far better than the Congress. Although the federal budget structure and process are different, between 1961 and 2006, the average federal appropriations bill was 73 days late, more than twice the 30 day delay of the average state budget. In only four years did Congress complete its budget work on time.

There are likely many explanations of why Pennsylvania has had late budgets. Pegging the date the general appropriations act is signed by the governor as enactment and the modernization year as 1973, late budgets have occurred less frequently since the modernization of the state legislature. Scanning Appendix B, one finds that from 1956 to 1972, 10 of 14 budgets were late by an average of 99.9 days. From FY 1973 through FY 2011, 15 of 39 budgets were late by an average of 29.3 days (counting the FY 2004 budget as late).

Closer analysis suggests that late budgets tend to be associated with two factors. One is divided government (i.e. one of the House, Senate or governor’s chair is in the hands of a different party than the other two). The other is when tax rates were increased particularly in periods of recession when revenue growth stalls. Our constitutionally mandated balanced budget requirement then forces the legislature and governor into making hard choices between raising taxes and/or cutting programs and services. Both of these factors were also cited by Klarner and his colleagues in their study of all states.

Finally, there are different perspectives brought to budget negotiations between the executive and the legislature. As one might expect given their respective roles, research

confirms that governors are apt to bring a broad statewide perspective to their spending proposals. Legislators tend to focus on spending proposals that relate to particular geographic constituencies. Thus, governors use their influence over the budget process to deliver a higher proportion of benefits to statewide constituencies rather than more localized constituencies (Barrilleaux and Berkman 2003).

Lacking a budget by July 1, Pennsylvania operates under what scholars call “shutdown rules,” namely, much state spending simply stops. Budget shutdown rules are associated with higher state spending, as legislatures present governors with take-it or leave-it decisions (Primo 2007). The threat of shutdown also is, in Pennsylvania, the rationale legislative leaders use for maintaining in their own accounts large surpluses (currently in the range of \$183.5 million) from previous year’s appropriations (called “slush funds” by the press) so they can continue legislative operations past the deadline if the governor vetoes their funding in the new budget. As is recounted in Volume I, this is an event that has occurred in the past and is a symptom of the state’s history of intensely partisan budget battles. On the other hand, budget crises and deadlines sometimes provide the governor and leaders with the leverage needed to force reluctant legislators to accept compromises on important policy issues that might not have been possible without the deadline pressure (Loomis 1994).

Klarner and his co-authors recommend four steps to mitigate late budgets: shorten sessions; require government shut-downs when the budget is late; move the start-date of the fiscal year later in the calendar year; and switch from biennial to annual budgets. Pennsylvania already has shutdown rules and an annual budget. As the authors acknowledge, all of these changes may have other costs and have to be evaluated in the context of their effects on other aspects of the policy process. Longer sessions, for example, have been found to produce policy more in line with voter preferences.

Despite consistently late budgets during the past decade, Pennsylvania’s fiscal house is not viewed as one in chaos. A November 2009 report from the Pew Center on the States entitled “Beyond California: States in Fiscal Peril” found Pennsylvania was the least fiscally imperiled in the Northeastern United States and among the least nationally. Moreover, the state ranked 25th among the 50 states in debt per capita according to a 2010 report by Moody’s Investors Service. S&P considers states to have a low debt burden if the ratio of debt to personal income is below 3.0 percent. Pennsylvania’s was 2.5 percent.

Opinions

Interviewees critical of the current budget process argued that additional deadlines should be imposed on the governor and legislature to ensure timely and more effective budget making. Proposals include: setting caps for spending early in the process; requiring appropriation hearings be completed earlier; mandating a report from Appropriation Committees to the full chambers at a specified date; and penalties for missing the June 30th date. The critics believe that these deadlines will ensure passage before the end of the year because the legislature will react to deadlines. They argue that statutory or even constitutional deadlines will be conducive to a better budget product since each step will be taken

in a more orderly and more open fashion, in contrast to what they observe to be a discussion behind closed doors with minimal public deliberation and through only a few key legislators.

Others argue that the ultimate deadline, the end of the fiscal year, is the only deadline that matters. They suggest that while the current system has its flaws, most often the budget is passed within a week of the beginning of the fiscal year, in time for employees to get paid and bills to be paid. They believe that if other interim deadlines are concocted, the legislature will find ways to comply while still making the final decisions in a manner similar with the current process. Or counter-intuitively, while further deadlines may enhance public trust and transparency, they also could inhibit flexibility and add an unnecessary regulatory burden to the lawmaking process, making it more complex and contentious.

Proponents of the status quo also argued that the late June and even early July decision making allows legislators to take into account later revenue estimates for the present and future budget years which are likely to be more accurate. The substance of the process, differences in policy positions and spending philosophies would likely remain unchanged and final deliberations would take place in a manner and time similar to recent years.

The Center for Public Integrity provided in March 2012 an assessment of Pennsylvania's budget process that resulted in a grade of F. The assessment, which has attracted widespread attention, is based at least partly on flawed or outdated information, judgments, and criteria. The center gave Pennsylvania high marks for legislative accountability (disclosure), and it accurately rated the state low for timeliness of its budgets. It scored Pennsylvania a zero for not having a non-partisan budget agency despite the fact that it has established an Independent Fiscal Office, apparently because the office had not yet been staffed at the time of the survey. It incorrectly gave Pennsylvania a zero for failing to provide information on tax expenditures, which are required by law and are included in the governor's budget. And finally, the center gave Pennsylvania no credit for publishing consumer-friendly information about the budget, despite the long history of the Budget-in-Brief series prepared by the governor's budget office. It also gave the legislature no credit for making budget legislation and fiscal notes on all legislation affecting state and local government costs available to members and the public on its website. On the whole, the center's criteria appear to underestimate the value of having competing partisan analyses. Done by very competent partisan Appropriations Committee staffs, these analyses serve as checks on each other and on a single "non-partisan" analysis.

One other observation was often made by our interviewees. The governor is part of the process and can be a cause for delay. Some interviewees felt the legislature is often blamed for late budgets when the executive (the "254th legislator") had the greater responsibility and should have been held more accountable by the public.

Information for Policy and Budget Making

Policy and budget making is decision making. Good decision making requires informed decision makers. To be informed, legislators need good, reliable information. It may be the best antidote to the challenge of resolving budgets in a timely manner. In addition to their own expertise and that provided by constituencies and interest groups, legislators have available multiple official sources (i.e. taxpayer financed) of information for policy and budget making.

Data

Information from the executive branch

Pennsylvania legislators get information from numerous sources. The most obvious, of course, is the executive branch. Under Pennsylvania's Open Records law, legislators and the public have a right to access government records with few exceptions, largely designed to protect the privacy of individuals. The burden of proof rests with the government office to justify a refusal to provide access. House and Senate Appropriations Committees have subpoena power to compel the production of records.

Typically executive agencies will respond to requests. For example, the Governor's Center for Local Government Services in the Department of Community and Economic Development is an important source of information for legislators considering legislation affecting local governments, although as noted below, the legislature also has its own Local Government Commission (LGC).

Executive branch agencies produce and circulate analyses of bills that affect their powers or operations. These analyses are frequently points of discussion between the two branches as policy and budget decisions are considered.

The governor's budget document contains extensive information beyond dollars. It has program descriptions, plans and measures of performance as well.

Some state programs, such as PennVest, require grant applications to include analyses addressing their consistency with state planning goals. The legislature could add such requirements to other programs, providing them with a handle for evaluating future funding for such programs.

Looking towards the longer time horizon, the Pennsylvania State Planning Board was established by statute in 1929 and reauthorized in 1989. It resides within the governor's office, which largely determines its agenda and provides it with resources, generally from other executive branch agencies. The board includes 15 gubernatorial appointees who are confirmed by the Senate and serve four-year terms. It also includes secretaries or their designees from six Commonwealth agencies and four legislators, one from each caucus. The board's mission is generally to develop long-range strategic plans and programs to enhance the welfare of the Commonwealth and to recommend steps, including legislation, it deems advisable. It is not required -- nor necessarily expected -- to comment on legislation that might be construed to lie within its broad areas of interest and expertise. On the other hand, it is free to analyze and comment on pending legislation at will, and legislators are free to ask for the board's analysis and comments as needed.

Information from legislative caucuses

Given its role in balancing the power of the executive, the legislative branch needs sources independent of the executive. In both chambers, there are caucus and committee staff for the majority party members and a separate staff for the minority party members. Each of the four caucuses has a policy staff serving the entire caucus with policy information and development. Committee staffs typically produce analyses of legislation from relevant perspectives, and the information in these analyses is often discussed in caucus and used in floor debates on bills.

The 1969 report of the Commission on Legislative Modernization recommended that fiscal analyses be attached to all bills coming to a vote in the legislature. The partisan staffs of the House and Senate Appropriations Committees prepare these fiscal notes. A bill requiring fiscal analysis that moves through both chambers will have up to four fiscal notes, one prepared by each party in each chamber. The majority staff prepares the fiscal note that satisfies the rules of each chamber. House rules are far more specific as to the contents of fiscal notes:

The Appropriations Committee shall be limited in its consideration of any such bill to the fiscal aspects of the bill and shall not consider the substantive merits of the bill nor refuse to report any such bill from committee for reasons other than fiscal aspects. The fiscal note shall accompany the bill and provide the following information in connection with the Commonwealth and its political subdivisions:

- (a) The designation of the fund out of which the appropriation providing for expenditures under the bill shall be made;*
- (b) The probable cost of the bill for the fiscal year of its enactment;*
- (c) A projected cost estimate of the program for each of the five succeeding fiscal years;*
- (d) The fiscal history of the program for which expenditures are to be made;*
- (e) The probable loss of revenue from the bill for the fiscal year of its enactment;*
- (f) A projected loss of revenue estimate from the bill for each of the five succeeding fiscal years;*
- (g) The line item, if any, of the General Fund, special fund or other account out of which expenditures or losses of Commonwealth funds shall occur as a result of the bill;*
- (h) The recommendation, if any, of the Appropriations Committee and the reasons therefore relative to the passage or defeat of the bill; and*
- (i) A reference to the source of the data from which the foregoing fiscal information was obtained, and an explanation of the basis upon which it is computed.*

In obtaining the information required by these rules, the Appropriations Committee may utilize the services of the Office of the Budget and any other State agency as may be necessary.

It should be noted that the Governor's Office of the Budget is required to do fiscal notes under the Administrative Code on administrative actions. The House rules on fiscal notes closely parallel those governing the Office of the Budget, an example of coordination between the branches.

House rules also require an actuarial analysis of legislation that affects state or local retirement systems:

Any bill proposing any change relative to the retirement system of the Commonwealth or any political subdivision thereof, funded in whole or in part out of the public funds of the Commonwealth or any political subdivision, shall have attached to it an actuarial note. Except for the provisions pertaining to the content of fiscal notes as set forth in paragraphs (a) through (i) of subsection (3), all the provisions pertaining to and procedures required of bills containing fiscal notes, shall, where applicable, also be required for bills containing actuarial note. The actuarial note shall contain a brief explanatory statement or note which shall include a reliable estimate of the financial and actuarial effect of the proposed change in any such retirement system.

Both chambers also require analyses to identify costs associated with the proposed disposition of Commonwealth-owned land. Although the House version is quoted below, the two chambers have identical requirements:

No bill granting or conveying Commonwealth lands or taking title thereto shall be reported by any committee to the House unless there has been filed with the Chief Clerk and the chair of the reporting committee a memorandum from the Department of General Services indicating the use to which the property is presently employed, the full consideration for the transfer, if any, a departmental appraisal of the property, including its valuation and a list of recorded liens and encumbrances, if any, the use to which the property will be employed upon its transfer, the date by which the land is needed for its new use, and the legislative district or districts in which the land is located. The memorandum shall contain a statement by a responsible person in the Department of General Services indicating whether or not the administration favors the transfer which is the subject of the bill under consideration.

Information from bicameral agencies

Currently, the Pennsylvania General Assembly has a number of bicameral research and information agencies that can study the need for legislation and that can analyze and comment on already proposed legislation. For example, the Legislative Budget and Finance Committee (LBFC) conducts longer-range research on specific topics when asked to do so by a resolution adopted by either or both chambers of the General Assembly. It is overseen by a bipartisan committee of House and Senate members. In addition to its technical staff, it contracts with outside experts on particularly challenging studies. The LBFC is not called upon for quick analysis on pending policy and budgetary legislation. Some of its in-depth studies have taken years to complete.

In the latest development, similar to the Congressional Budget Office, the bicameral Independent Fiscal Office (IFO) was enacted in 2010. Its mission statement (from <http://www.ifo.state.pa.us/About.cfm>) reads:

The Independent Fiscal Office (IFO) provides revenue projections for use in the state budget process along with impartial and timely analysis of fiscal, economic and

budgetary issues to assist Commonwealth residents and the General Assembly in their evaluation of policy decisions. In that capacity, the IFO will not support or oppose any policy it analyzes, and will disclose all methodologies, data sources and assumptions used in published reports and estimates. The IFO will seek to establish collaborative relationships with the General Assembly, executive agencies and various non-governmental organizations that have an interest in the policy making process.

As an agency of the legislature, the IFO requires a bipartisan committee of the appropriation chairs and leaders of the four caucuses along with the Speaker and President Pro Tem to determine the method for selecting a Director who in turn selects the staff. The IFO Director serves for a six-year term (similar to the Congressional Budget Office director). The Director can only be removed during the term by a concurrent resolution and may be reappointed after serving a full term.

While the specifics vary, legislative financial offices have been found to offer valuable background for legislative policy making. They are strongest when given a mandate to evaluate budgets and make recommendations to the legislative bodies early in the budgetary process (Hoffman 2006). While most legislative finance offices serve both chambers, where each chamber has its own LFO, there tends to be competition and growth in staff (Chadha, Permaloff, and Bernstein 2001).

In addition to the LBFC and the IFO, other General Assembly agencies include the Joint State Government Commission, the Local Government Commission, the Joint Legislative Air and Water Pollution Control and Conservation Committee, the Center for Rural Pennsylvania, and the Pennsylvania Commission on Sentencing. These agencies are governed by bipartisan committees of House and Senate members and are generally more focused on providing information, conducting long-term studies evaluating enacted legislation or laying the groundwork for future legislation in their respective domains. They typically do not analyze and comment on pending legislation, unless it is requested by the legislature or of particular importance to their domains.

Taken as a whole, the bipartisan, bicameral agencies serve the legislature just as three bipartisan agencies created by Congress do: the Congressional Research Service, which responds to individual member inquiries; the Government Accountability Office, which investigates and analyzes government programs and agencies at the request of Congress; and the Congressional Budget Office, which assesses the economic implications and likely costs of major federal policy proposals.

The Commission for Legislative Modernization recommended in its 1969 report that:

“The General Assembly study the feasibility of coordinating and consolidating the several joint standing study commissions and service agencies (Joint State Government Commission, Local Government Commission, Budget and Finance Committee, Legislative Reference Bureau, Data Processing Center, Senate Library), and also to the relationship of these agencies to the Committees of both the House and Senate, with the objective of achieving maximum utilization of and productivity from all available research and service organizations.”

As reported in Volume I of this series, it is not clear whether this study was done, but no consolidation has taken place.

Bicameral agency examples from other states

Oregon. Oregon has adopted a multi-level approach to measuring state government performance and societal outcomes. At the broadest level, *Oregon Shines* and *Oregon Shines II* are the strategic vision. To monitor progress in achieving the strategic vision, the state adopted the Oregon Benchmarks. The benchmarks are a series of quantifiable measures that can be monitored over time to track progress in addressing economic, social and environmental issues.

Linked to and supporting the Oregon Benchmarks, state agencies use performance measures to track and report their effectiveness and efficiency in carrying out their respective missions. These performance measures are used by all agencies, subject to the governor's budget authority, and the results are reported to policy makers as part of the budget development process. Though not the only factor, performance measurements help policy makers decide how to allocate state resources. As part of the budget development process, the legislature adopts performance-measurement targets based on funding levels approved in the agency budgets.

Recognizing that agencies may need to revise or add performance measurements, the Legislative Fiscal Office, the Oregon Progress Board and the Budget and Management Division adopted a set of criteria that agencies must meet in developing measures. Measures must: 1) gauge progress toward goals and mission; 2) use standard terminology and definitions; 3) be few in number; 4) identify performance targets that would be achieved during the biennium; 5) use accurate and reliable data sources; 6) measure customer satisfaction; 7) have an assigned organizational unit responsible for achieving the target; and 8) address comparable information where possible. During the Ways and Means process, the legislature will approve, disapprove, and/or change each agency's proposed performance measures.

Texas. Since 1993, state agencies have been required to develop long-term strategic plans. An agency must issue a strategic plan each even-numbered year; and the plan covers a five-year period. Among the items to be included in the plan are a statement of the mission and goals of the agency, performance measures, the persons or entities served by the agency, an analysis of the resources necessary for the agency to meet its goals, and an analysis of expected changes in services or programs due to changes in the law.

As a part of the strategic planning process, agencies develop performance measures.

Performance measures are quantifiable indicators of achievement. Texas uses four types of measures:

- outcome - indicates the effect on a stated condition;
- output - counts the services produced by an agency;
- efficiency - gauges resource cost per unit of product; and
- explanatory/input - provides information to help assess reported performance.

Over two years, an agency collects data on its performance measures and reports this information quarterly. As part of the data collection process, an agency must establish controls to ensure the data is properly collected and reported. The Legislative Budget Board, the primary budgeting agency in Texas, is one of the primary recipients. A separate agency audits performance measures and certifies those measures. The audit report on performance measures includes a report on the adequacy of controls in reporting data and the accuracy of agency reporting on actual performance.

Strategic planning is an important part of fiscal planning in state agencies. In particular, performance measures developed as a part of strategic planning can affect the amount an agency is appropriated by the legislature. The appropriations bill contains the actual performance measures associated with each appropriation.

California. The California Legislative Analyst's Office is known for its fiscal and programmatic expertise and nonpartisan analyses of the state budget. The office serves as the "eyes and ears" for the legislature to ensure that the executive branch is implementing legislative policy in a cost efficient and effective manner. The LAO is overseen by the Joint Legislative Budget Committee (JLBC), a 16-member bipartisan committee. The office currently has a staff of 43 analysts and approximately 13 support staff.

Historically, one of the most important responsibilities of the LAO has been to analyze the annual governor's budget and publish a detailed review at the end of February. This document, the *Analysis of the Budget Bill*, includes individual department reviews and recommendations for legislative action. A companion document, the *Perspectives and Issues*, provides an overview of the state's fiscal picture and identifies some of the major policy issues confronting the legislature. These documents help set the agenda for the work of the legislature's fiscal committees in developing a state budget. Staff of the office work with these committees throughout the budget process and provide public testimony on the office's recommendations.

More generally, the office is a staff resource to all legislators. The LAO also performs the following functions:

Budget "Control." The LAO reviews requests by the administration to make changes to the budget *after* it is enacted. These reviews are used primarily by members of the JLBC and the fiscal committees.

Special Reports. Throughout the year, the office prepares special reports on the state budget and topics of interest to the legislature.

Initiatives and Ballot Measures. The office estimates the fiscal effect on state and local government of all proposed initiatives (prior to circulation) and prepares analyses of all measures that qualify for the statewide ballot.

Forecasting. The LAO forecasts the state revenues and expenditures.

Maryland. The Maryland Office of Policy Analysis in the Department of Legislative Services is a centralized, bipartisan office of policy analysis. This unit, which has a \$15.4 million budget and authorized staff of 144, supports legislative committees; it includes a

fiscal unit that analyzes operating and capital budgets, processes budget bills, prepares fiscal notes, and provides staff support to the fiscal committees and various statutory and special committees of the General Assembly. It also collects and reports local government financial information, prepares forecasts of revenues and expenditures, undertakes management studies and program evaluations, researches and reports on fiscal policy issues, taxation, operation of governmental units and programs, and fiscal relationships of the state and local governments.

Information technology, availability and transparency

Although many of the studies produced for the legislature undoubtedly rely on sophisticated computer technology and modeling, legislators rarely have, or even want, direct access to the underlying technology. A number of studies have shown that when legislators are deciding how to vote on bills, they rely most heavily on information conveyed orally by colleagues whom they trust and whom they regard as particularly well-informed, such as bill sponsors and committee chairs. More sophisticated information probably influences legislative voting through the medium of these well-informed legislators more than through direct access by individual legislators to technological tools.

Nonetheless it seems likely that sophisticated computer models will be increasingly used by staff to analyze complex policy decisions and the results made available to the legislature either by state agencies with programmatic responsibilities or interest groups.

One such model, the Pennsylvania Tax Blueprint Project, was constructed by business organizations interested in providing the Commonwealth with the ability to quickly understand the complex interactions of changes in state and local taxes. The project faded during the Ridge administration for lack of an agreement between the executive and legislative branches on where it should be housed.

As a more recent example, during the Rendell administration, an online software tool was developed to help school districts quickly evaluate potential partners in cost-sharing or consolidation efforts along a wide variety of dimensions, including test scores, tax bases, district demographics, etc.

The General Assembly is subject to the Open Records law but does not have to provide access to communications between legislators and their constituents. Many of the analyses available to the legislature from their own committees or the agencies cited above can be accessed online. The results of surveys to measure public opinion on various policy issues are subject to disclosure as well.

Opinions

Some interviewees opined that the problem isn't information. Legislators have access to multiple and varied sources of analysis, and they can use these sources as they see fit. The problem is information overload and confusion. In a legislative process that is already considered by many as frustrating, complex, and cumbersome, they argued that there is such a thing as too much information and too many procedural hurdles.

Other interviewees opined that the General Assembly would benefit from broader and

more systematic non-partisan (or bipartisan) analysis of budget issues and pending legislation. One proposal suggested was the creation of a single nonpartisan (or bipartisan) fiscal and legislative analysis office similar to Maryland. (Note: some legislators, former legislators, and senior staff members prefer the term bipartisan to nonpartisan, believing that there is no such thing as “nonpartisan” offices or information, just biased views that either are not connected to one of the major parties or really are but wear the mask of nonpartisanship.) Advocates thought the office would improve the credibility, quality, and consistency of the analyses and might serve to reduce partisanship. But some expressed doubts that such an office would replace partisan caucus and committee analysts. Rather, unless it consolidated existing offices, it would be another unit of the government and another layer of analysis.

Another observer pointed out that generating information costs money. Consistent with the view that the General Assembly should undertake a broader effort to reduce its costs, the argument was made that a management study should be done of the potential duplication among the four partisan committee staffs as well as the number of bipartisan bicameral agencies described in the “Data” section above. Undertaking an initiative to map and analyze the information flows and then rationalize their organization has the potential to result in better information at lower cost. Even if no change is recommended out of such a study, he argued that the public needs to be assured that unnecessary duplication will be minimized.

Somewhat to the contrary, one interviewee noted that the positive feature of a partisan approach to staffing the legislature is that competition among the caucuses will spur them to search for improvements in compiling and analyzing information.

Interviewees generally favored upgrading the quality of analyses. Suggestions included using sophisticated computer models and adding socio-economic and environmental impact analyses to the fiscal analysis requirements. However, others were wary of mandating socio-economic or environmental notes. The fiscal note requirement frequently slows down legislation, and adding more rigid procedural requirements to the passage of legislation is, in their view, unnecessary and unwise.

One other suggestion was requiring the State Planning Board to produce a state plan with the caveat that if the legislature is to be persuaded to give more weight to such plans, the planning board should probably be independent, rather than part of the governor’s office. Proposed legislation would then be benchmarked against the plan similar to Oregon’s process. The idea was proposed to improve the coherence of state lawmaking and help insure that longer-range policy impacts were considered and could be more easily evaluated after the fact. However, others had little enthusiasm for the wisdom of creating state plans and less for enforcing them.

A few more opinions offered by one or more of the interviewees:

- Research and committee staff analysts would benefit from additional and more rigorous training.
- More emphasis should be placed on performance based budgeting.
- Few thought there was a need to revisit the general subject of transparency, given recent amendments to the Open Records law.

Role of Standing Committees in Budgeting

Standing committees have jurisdiction over substantive legislation in their areas. However, in Pennsylvania they have no role in the annual budget process that sets funding levels for programs and agencies within their jurisdictions. That is the domain of the Appropriations Committees of the House and Senate.

Data

The U. S. Congress

The primary example of a legislative body that gives standing committees a role in the budget process is Congress where three committees ultimately have a say in funding levels for specific programs. Standing committees handle legislation authorizing programs within their jurisdictions. These statutes provide the legal basis for departments, agencies, and programs. They also may set a targeted amount of spending over some period of time, often five fiscal years.

Some of these statutes drive direct spending, such as the major entitlement programs, which do not therefore require appropriations. For discretionary programs, however, the statutes sometimes authorize spending up to a specific dollar amount, but they do not legally trigger spending of the funds. The amounts that actually will be spent within a given fiscal year are in bills handled by the appropriations committee. These amounts may be less than what is set forth in the authorizing statutes. They are identified in the appropriations acts for the various departments and agencies. Unlike the authorizing statutes, these acts typically have a life span of one fiscal year. The appropriations committees have subcommittees that roughly correspond to the jurisdictions of the standing committees and ideally work with the standing committees in coordinating statutory authorizations and budget appropriations.

Finally, under reforms enacted in 1974, when the House and Senate Budget Committees and the Congressional Budget Office were created, the budget committees recommend overall spending limits for the federal budget. These limits, which are set forth in concurrent resolutions, can have the effect of forcing actual spending (budget outlays) below the recommendations of both the standing committees and the appropriations committees through what is called the reconciliation process. The work of all of these committees is subject, of course, to revision on the floor.

Pennsylvania General Assembly

In Pennsylvania, what we think of as the state budget consists largely of a General Appropriations Act that is almost exclusively the work of the House and Senate Appropriations Committees. These committees exercise the roles played by both the Congressional Appropriations and Budget Committees. They determine actual spending levels for specific departments, agencies, and programs as well as coordinate overall fiscal policy. In Pennsylvania, the latter role means insuring that the budget is balanced, as required by the constitution.

Some of the spending in the General Appropriations Act is driven by formulas in statutes that have a longer life than a single year, but these statutes are not reviewed on

regular cycles as in Congress. While these statutes may govern the distribution of funds, they do not identify or authorize target spending levels. The statute that comes closest to the congressional model is probably the Pennsylvania school code, which is revised annually to spell out how education funds will be distributed among school districts. The General Appropriations Act will specify the amount of total spending that will be driven by these formulas. The school code revisions are passed simultaneously with the General Appropriations Act and reflect the overall budget agreement. In general, both the total amount of school spending and the distribution of funds among school districts are determined in budget negotiations by legislative leaders and the appropriations chairs and staffs, with the Education Committees having little or no role.

As an example of movement to decrease the dominance of the Appropriations Committees, some House members have pressed for rules changes that prohibit the Appropriations Committee from amending the substance of legislation when the amendments have no fiscal impacts.

Some steps have been taken to include standing committees in the budget process. The House Appropriations Committees have recently invited the majority and minority chairs of the various standing committees to participate in hearings on the budgets of departments within the standing committee jurisdictions. Thus, the chairs of the Education Committees are invited to participate in hearings on all of the programs administered by the Commonwealth's education departments and agencies, as well as hearings on the budget requests of the state-related universities.

Opinions

One of the criticisms of the General Assembly recorded from both outside advocates and rank-and-file members is that budget negotiations and legislation are controlled by the chamber and caucus leaders including the appropriations chairs. One interviewee argued that giving the standing committees a stronger and formal role in the budget process could lead to better policy results for a number of reasons. First, members who now resent being left out of budget negotiations will have a more positive attitude toward that process and will learn more about the tradeoffs ultimately involved in determining spending levels. Second, Appropriations Committee members will be exposed to the longer range perspectives of standing committee members and will learn more about the policy ramifications of budget decisions. Third, members may be less interested in earmarks and perks of office if they are given a more substantive role in the most important legislation enacted each year.

Another argued that enhancing the role of standing committees as opposed to caucus leaders may lead to more emphasis on bipartisanship and cooperation, given that trust and cooperation are often facilitated by committee venues where members of both parties have repeated interactions.

On the other hand, one thoughtful longtime observer opined that budget negotiations are difficult enough in Pennsylvania without expanding the number of participants. The observer suggested that standing committees are more subject to special interest influence and less concerned about overall fiscal policy than are Appropriations Committees.

Using the Education Committees as an example, he felt that they are heavily influenced by teachers unions, school boards, and university lobbyists and will almost always recommend more spending than the state can afford. In other words, he argued that the current system is not broken.

Revenue Estimates

Article VIII, Section 13(a) of the Pennsylvania Constitution reads:

Operating budget appropriations made by the General Assembly shall not exceed the actual and estimated revenues and surplus available in the same fiscal year.

As earlier referenced, this provision is frequently referred to as the “balanced budget requirement.” In order to meet this constitutional requirement, the question of how to arrive at “estimated revenues” must be addressed.

Data

Benchmarking other states

States vest several different types of agencies with the task of revenue estimating. Page three of *Budget Processes in the States* (National Association of State Budget Officials 2008) provides a good summary:

In 29 states, a council of economic advisors provides the assumptions for the revenue estimate to be included in the governors’ budget. The councils may consist solely of the budget office staff, but may also include representatives from private corporations, state revenue departments, labor departments, tax offices, or private forecasting firms. The revenue estimating agencies then use these assumptions to make the estimate.

The agency responsible for applying the assumptions and producing the actual forecast differs across states. The budget office is solely responsible for revenue forecasting in 13 states, while a board or commission is solely responsible in 11 states, and the revenue office is solely responsible in 3 states. The remaining states employ a combination of agencies or boards to develop forecasts. Many times the independent panel consists of a combination of executive and legislative representatives or appointees.

States may revise revenue estimates prior to finalizing the governor’s budget recommendations. This is typically done to provide more up to date information and greater accuracy to the governor’s revenue and expenditure projections. Upon release of the governor’s budget proposal, the legislature may also develop revenue estimates that may be revised and updated throughout the legislative process.

Florida is one example of a combination approach. It uses a “Consensus Revenue Forecasting Conference” to produce its revenue forecast. The structure of the conference and the use of its results are specified in statute. The conference is comprised of one member from each of the staffs of the governor, the Senate, the House of Representatives, and the Division of Economic and Demographic Research. These four representatives, or principals, must arrive at a consensus in order to have an official revenue forecast. If agreement is not achieved, then there is no official state forecast. Once a forecast is adopted, it is used in all planning and budgeting actions of the state. Any principal may bring a forecast to the conference. In addition, the principals also have the authority to request that

outside parties bring information or forecasts of their own to assist in the discussion. The conferences are open to the public and the results are released to the public at the end of each conference. A major purpose for the conference is to provide a common ground with respect to the funds available for budgeting. Thus, both houses of the legislature and the executive office begin with the same revenue forecast in developing their proposed budgets.

What Pennsylvania does

Under current law, the official estimate is developed by the Department of Revenue in consultation with the Secretary of the Budget. When the governor is about to sign the appropriations bill, he must also sign a letter from the Secretaries of Revenue and Budget certifying the official revenue estimate. Under the constitutional balanced budget requirement, appropriations plus estimated surplus cannot exceed the official revenue estimate. If the legislature does send the governor legislation with appropriations in excess, the Constitution has provided the governor the power to remedy the imbalance, the line item veto. Article IV Section 16 provides for “Partial Disapproval of Appropriation Bills:”

The Governor shall have power to disapprove of any item of any bill, making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of other bills over the Executive veto.

Throughout the ensuing year, actual spending cannot exceed the official revenue estimate. Moreover, the estimate cannot be changed unless a new revenue measure is enacted during the year.

Recent legislation has added a twist to revenue estimating. Act 120 of 2010 creating the Independent Fiscal Office (IFO) also uses the term “official estimate,” placing the following requirements on the IFO:

§ 4105. Revenue estimates.

(a) Initial revenue estimate.--By May 1, the office shall submit to the General Assembly an initial revenue estimate for the next fiscal year.

(b) Official revenue estimate.--

(1) By June 15 of each year, the office shall submit an official revenue estimate for the next fiscal year.

(2) A revenue estimate submitted under this section shall be considered by the Governor and the General Assembly as the amount of revenue which may be considered for the General Appropriation Act for the ensuing fiscal year unless the General Assembly or the Governor determines that revenues are greater than or less than the estimate provided under this section. The office may amend the revenue estimate under this section if changes in law affecting revenues and receipts are enacted or proposed to be enacted with the annual State budget or unless significant changes in economic assumptions occur prior to June 30. The office shall submit the amended revenue estimate to the General Assembly within ten days of the change.

(3) The office shall publish the methodology used to develop revenue estimates.

The fiscal year 2012-13 General Appropriation yet to be enacted will be the first during which this procedure will be fully in effect since the IFO was not in operation during the budget process for fiscal year 2011-12. With two different “official estimate” procedures, there are a few scenarios to consider.

If the IFO and the administration “official estimates” are identical, there appears to be no conflict. If the IFO is lower than the administration’s estimate and the General Assembly appropriates to that number, then the governor can sign the appropriations with assurance that the balanced budget criterion will be met. If the IFO estimate is higher than the administration’s and the General Assembly appropriates to that number, the governor can exercise his line item veto power to reduce the appropriations to assure that the balanced budget criterion is met. It seems unclear what happens if the governor decides to accept a higher IFO estimate and accepts appropriations in excess of the administration’s estimate.

Opinions

Interviewees lack understanding regarding the current dual responsibility procedure for revenue estimating. Those who do understand it are inclined to give some time to see if the respective professionals at the IFO and the administration work towards a common resolution. The new procedure may give the process greater transparency and inclusion. Others suggested that revenue estimating should be the exclusive domain of the executive. It gives the governor an important tool in balancing the legislative branch in the budget process. The governor can only veto or item veto appropriations passed by the General Assembly, which might prove insufficient leverage in preventing the enactment of popular but imprudent tax cuts. Setting the estimate adds an additional point of leverage.

Others further argue that the Department of Revenue is best equipped to complete an estimate. It administers most of the revenues and has daily access to the necessary data including models for estimating changes in tax rates and tax bases. Revenue estimating is an integral part of the budget process and should be trusted to those involved in the process and responsible for the results. “Outsiders” who have little or no stake in the process might not act in a manner most conducive to getting a sound budget passed. The revenue estimate may become one more budget-related issue to be solved thereby bogging down the process.

Revenue and Expenditure Limits

Proponents of limiting the growth of government point to constitutional and legislated limits on revenues by requiring a supermajority of the legislature to pass revenue increases, and spending pegged to an index of demographic and/or economic growth factors as part of the solution. Pennsylvania has no such limits either constitutionally or statutorily.

Data

Bills have been introduced in the current 2011-12 session of the Pennsylvania General Assembly to impose an “appropriation limit” (SB 7 and HB 974) based on the lesser of the growth in personal income or the growth in inflation and population. If revenues exceed spending, the excess would go into the Rainy Day Fund and returned to taxpayers through a reduction in the personal income tax rate. The appropriation limit could be exceeded upon request of the governor and by a two-thirds vote of the General Assembly after publishing a notice in newspapers in every legislative district in the state. Neither bill has been reported from committee to the date of this report.

According to *Budget Processes in the States*, published by the National Association of State Budget Officials (NASBO) in 2008, most states with spending limitations enacted them during the 1980s and 1990s. Most were not the result of voter referenda but were created through the non-initiative constitutional and statutory processes. States have enacted a variety of different limitations on revenue and spending. These limits are found in statutes (12) and in state constitutions (12) or both (6). On the spending side, the most common limitation pegs increases to economic or demographic factors. The most common is personal income. A few states use population growth and inflation. A number of states combine two or more of these factors. Four states rely on under-spending limits based on estimates of revenues. They limit appropriations to a percentage of the official estimate (between 95 and 99 percent, depending on the state).

States haven't placed limits on revenue growth directly. However, 11 states require a supermajority to pass revenue increases. These supermajorities range from three-fifths to three-quarters of the votes.

The table below summarizes these limitations (NASBO 2008: 46). Note that the number totals greater than 50 because several states employ a combination of two limiting methods.

Method of Limiting Increase of Revenues/Spending	Number of States
Economic/Demographic Factors	25
Percent of Revenue Projections	4
Supermajority for Revenue Increase	11
No Limits	15

The formula for calculating limits can be complicated. In Maine for example, spending growth is limited to:

Base year appropriation multiplied by one plus average real personal income growth, but no more than 2.75%, plus average population growth, or multiplied by average real personal income growth plus forecasted inflation plus average population growth, depending on state ranking of state and local tax burdens compared to other states. (NASBO 2008: 46)

Some evidence suggests that tax and expenditure limits may increase state indebtedness and cause states to become more reliant on other mechanisms for financing public services, such as special districts and lottery systems (Bahl and Duncombe 1993; Clingermayer and Wood 1995; Glickman and Painter 2004). California's recent budget crisis has generated calls to eliminate its supermajority requirement to raise taxes.

Opinions

Some interviewees opined that spending limits lead to lower taxes and less government overall. They argue that government policy makers would be required to make tough choices with limited dollars and therefore restrict spending to core programs and eliminate waste. Proponents also argued that economic growth would increase as less money is redirected to government through taxes and more into the private sector economy.

Those opposed to limits opined that limits on spending and revenue result in a decline in essential government services. The limited resources pit competing programs against each other. For example, growth in crime requires more money for law enforcement and prisons, often at the expense of other programs such as education and health care. Limits also virtually eliminate the possibility of funding many programs that address new and unmet emerging needs. Many spending and revenue limits are in place as means to keep the spending habits of elected representatives in check. This is an apparent mistrust of the democratic process since elected representatives theoretically "represent" the public in their decision making.

The view was also expressed that experimenting with tax or spending limits by amending the Pennsylvania Constitution could prove especially dangerous. If the experiment proves flawed, reversing the amendment cannot be done in a timely manner.

Biennial Budget

An annual budget forecasts revenues and makes appropriations accordingly for the next fiscal year. A biennial budget does so for the next two fiscal years.

Data

In the first half of the 20th century, a biennial budget approach was the norm for states. However, as the role and power of state legislatures increased, so too did the trend towards annual sessions. With the shift to annual sessions (only four states still have biennial sessions), so too came the shift to annual budgets (Snell 2011). As part of that trend, Pennsylvania adopted a constitutional amendment (Article VIII, Section 12, previously cited) in 1959 requiring the governor to propose a budget annually. Pennsylvania's first annual budget was enacted soon thereafter in 1961.

However, a substantial number of states – nineteen – still use biennial budgeting (Snell 2011). Of those, three have population size comparable to or larger than Pennsylvania, namely North Carolina, Ohio and Texas (NASBO 2008).

The Texas legislature must pass a biennial budget due to its biennial session schedule. An annual budget isn't possible since they meet only every other year. Ohio's biennial budget is actually two budgets in one. The biennium is broken into two separate fiscal years. The governor proposes and the legislature enacts two one-year budgets during the first year of the biennium. Each budget consists of separate appropriations for each of two fiscal years. A controlling board consisting of six legislators and the budget director can transfer or increase a line-item appropriation within a fiscal year and within certain limitations set in law. Each fiscal year budget within the biennium must be balanced. North Carolina uses a similar system.

Fewer considerations of the budget by the legislature could cede additional power to the executive through less public oversight of the most critical public policy document in state government and the need for the executive to have authority to make periodic adjustments to the plan (US GAO 1984, 1987; Higgins 1988). Two studies show that states with biennial budgets have higher spending per capita than states with annual budgets (Kearns 1994; Crain 2003).

A recent National Council of State Legislatures' study (Snell 2011) looked at the pros and cons of biennial vs. annual budget cycles and concluded:

There is little evidence that either annual or biennial state budgets hold clear advantages over the other. The evidence is inconclusive on the question whether biennial budgeting is more conducive to long-term planning than annual budgeting, although some evidence indicates that biennial budgeting is more favorable to program review and evaluation. Biennial budgeting is likely to reduce budgeting costs somewhat for executive agencies, but it also is likely to reduce legislators' familiarity with budgets. States with biennial budgets and biennial legislative sessions do not appear to give greater authority over budget revision to governors than other states. Forecasting is likely to prove more accurate in annual budget states than in biennial budget states, possibly reducing the need for supplemental appropriations and special legislative sessions. This study has found no

convincing evidence that the length of the budget cycle, in itself, determines how efficiently a state enacts a budget and whether it requires extensive change during the course of its administration.

Opinions

Those arguing for a return to Pennsylvania's past use of a biennial budget pointed out that passing a budget is an intense, contentious, and drawn-out process. Going through this process half as often could reduce friction in the legislature and may allow more time for other important legislative business that is now crowded out or subsumed by the budget consideration. Committees could deliberate in a more meaningful fashion over complicated issues. More time would be available for floor debate and deliberation on significant legislation. Budgets could be passed in non-election years promoting a less politicized and fairer consideration of the spending issues. They point out that since about three-fourths of the budget is actually spent by those not directly under the control of state government -- such as school districts and social service recipients -- two years of budgets would help to provide certainty in planning and smooth out revenue fluctuations and spending patterns.

On the other hand, those reasoning for the status quo pointed out that two years is a long time to plan spending. Economic conditions change significantly requiring changes to the spending plan and revenue estimates. The legislature would have to return to the budget to consider changes to account for new conditions. They argue further that while the budget is a contentious process, it is a major pressure point that forces decisions and allows for issues to be considered that otherwise wouldn't surface. Many of these issues only have a tangential relationship to the budget but are included in the process as a means to reach a compromise on the spending package. In sum, they proffer that the budget is the most important policy and lawmaking responsibility of the legislature and it deserves annual oversight and deliberation.

Earmarks

The term earmarks are used in two senses that are somewhat contradictory. Both will be discussed in this report and are also discussed in Volume V. Earmarks can mean the establishment of dedicated revenues to provide funding stability on a long term basis for well-established programs that are typically found in the executive budget.

Legislative earmarks, on the other hand, are one-time grants that have been advocated by legislators and typically agreed to by the executive during the legislature's consideration of the budget. Although the grants sometimes have statewide significance, they often confer benefits in the districts of individual legislators.

Earmarks as Dedicated Funding

Data

As Megan Mullin reports in Volume V, in 1997, according to one recent study (Jackson 2011), the average state earmarked 24% of its revenue by dedicating it to a specific purpose. The variation across states is substantial, with state figures ranging from 5% to 87% of total revenues earmarked for a specified use. Pennsylvania ranked among seven states with the least amount of earmarking, 8% of its revenues.¹⁴ The academic literature assessing earmarking in the sense of dedicated funding is quite small and largely focuses on the question of whether it in fact substitutes for general fund spending. Conventional economic analysis would argue that because money is fungible, ultimately earmarking does have a substitution effect, although it may temporarily increase spending not just on the targeted function but overall. Many public policy analysts also would agree that earmarking can achieve efficiencies if those who pay a new tax are also those who benefit from it.

Politically, earmarking is often used as an argument to facilitate the raising of new revenues, although the original rationale often fades with time. The single largest example of earmarking in Pennsylvania is the so-called sales tax for education, which is the second largest revenue source supporting the general fund, although there is no formal link between this revenue source and the funding of education programs. Perhaps because the Commonwealth spends more for education than the sales tax raises, the lack of a formal link has not been an issue. Similarly, the Johnstown Flood liquor tax, enacted in 1936, no longer provides relief to victims of that disaster but supports general fund programs.

The most prominent example of earmarking in Pennsylvania is the constitutional requirement that gasoline taxes and fees for drivers' licenses and vehicle registration be deposited in the Motor License Fund and be used for road and bridge construction and repair. Earmarking has been used by the General Assembly to provide stable funding for a wide variety of purposes, including mass transit capital projects; senior citizens prescription drug, property-tax rebate, and reduced-fare transit programs (the lottery); health care for uninsured children (the cigarette tax); health care research (tobacco settlement funds);

¹⁴ According to Jackson (2011), earmarking in Pennsylvania fell from 63% of revenues in 1963 to 8% in 1997, paralleling a decline in the national average from 43% to 24% over the same period. The expansion of general fund spending following the adoption of the personal income tax in 1971 almost certainly explains most of the relative decline in Pennsylvania. Since 1997, however, the General Assembly has earmarked additional revenues, most notably gaming revenues, as indicated below.

environmental and cultural programs (realty transfer tax revenues); local government pension relief (foreign fire insurance premium taxes); school property tax relief, the horse racing industry, and economic development projects (gaming taxes and fees); and game and fish programs (hunting and fishing license fees), among others.

Opinions

Pennsylvania has continued to earmark revenues since the study of the practice as of 1997. We did not ask interviewees to respond to the question of whether earmarking as a general practice should be evaluated in a comprehensive fashion. At the time we initiated our study, earmarking was not perceived as an important issue. Even today, most opinions on earmarking pro and con seem tied to very specific program decisions rather than general principles. Arguments against earmarking are that it reduces legislative oversight and that it tries to tie the hands of future legislatures, although in severe circumstances, legislators have either suspended or revoked earmarking decisions made by their predecessors. To the extent that basic services are contingent upon the payment of fees, earmarking also can raise questions about equity. Pennsylvania does provide lesser fees for certain services for certain groups, like veterans, senior citizens, and the disabled.

As the state's general fund has experienced revenue shortfalls and increased spending demands due to the 2008 economic recession, governors of both parties have recommended the transfer of dedicated resources to support general fund programs, often drawing severe criticism from advocates and legislators who support the special funds being redirected. Although categorical programs are technically not "earmarks" in the sense used here, combining them into block grants within the general fund raises some of the same questions as ending earmarks insofar as legislative oversight is concerned. In both education and social services, the Corbett administration has recommended new block grants that de-categorize funding previously distributed through formulas that presumably were related to specific measurable needs. The argument for block grants is that they allow front-line officials actually delivering services to operate programs more efficiently and that they can reduce both state and local overhead costs. On the other hand, block grants complicate the legislature's role in overseeing service delivery and complicate the ability of local officials and non-profit service agencies to engage in long-term planning due to increased uncertainty about future funding levels. If used as a strategy to soften funding cuts, care must be taken not to overestimate efficiency gains.

Legislative earmarks (WAMs)

Legislative earmarks have proven difficult to define. It can be said that you know an "earmark" when you see one. Or it can be said that an "earmark" is in the eye of the beholder. What for an individual legislator or group of legislators is viewed as a legitimate expenditure of public funds to aid a special project or constituency may be an "earmark" to others. Thus we begin the discussion with information on the difficulty of defining what an earmark is.

Data

Definitions of legislative earmarks

The greatest and most intense discussion of legislative earmarks and therefore the most effort extended to define what they mean has been at the federal level. Earmarks are derisively called “pork.” They are often targets of strident criticism by watchdog groups, the press, and some politicians, among the most prominent, US Senator John McCain, the 2008 Republican presidential candidate. Some lobbyists and members of Congress have been accused of corrupt arrangements, such as steering earmarks to projects associated with family members or campaign contributors or accepting bribes in exchange.

One group, Citizens Against Government Waste (CAGW), publishes each year a volume called “The Pig Book,” identifying earmarks. For fiscal 2010, the book contained 9,129 projects totaling \$16.5 billion (Citizens Against Government Waste 2010). CAGW’s definition of a pork project, aka an earmark:¹⁵

A “pork” project is a line-item in an appropriations bill that designates tax dollars for a specific purpose in circumvention of established budgetary procedures. To qualify as pork, a project must meet one of seven criteria that were developed in 1991 by CAGW and the Congressional Porkbusters Coalition.

- Requested by only one chamber of Congress;
- Not specifically authorized;
- Not competitively awarded;
- Not requested by the President;
- Greatly exceeds the President’s budget request or the previous year’s funding;
- Not the subject of congressional hearings; or
- Serves only a local or special interest.

The Office of Management and Budget definition is fairly consistent with CAGW’s:

The Administration defines “earmarks” as “funds provided by the Congress for projects, programs, or grants where the purported congressional direction (whether in statutory text, report language, or other communication) circumvents otherwise applicable merit-based or competitive allocation processes, or specifies the location or recipient, or otherwise curtails the ability of the executive branch to manage its statutory and constitutional responsibilities pertaining to the funds allocation process.”¹⁶

In 2008, both presidential candidates vowed to end, restrict, or make transparent legislative “earmarks.” Yet in both the federal and state governments, legislative earmarks have proved remarkably resilient. President Bush’s emergency economic recovery legislation failed in the fall of 2008 but then was passed on the second attempt after lobbyists had added special interest provisions to the bill. Early in 2009, President Obama was criticized for signing legislation that included thousands of such earmarks. He rationalized his decision

¹⁵ See <http://www.cagw.org/reports/pig-book/2010/>.

¹⁶ From http://earmarks.omb.gov/earmarks-public/earmarks_definition.html.

by noting that the congressional commitments in the bill had been made under his predecessor, and he vowed to reform the process in the future. To students of history, such resilience would not be surprising. The use of the term “pork” to describe such spending pre-dates the Civil War and virtually every president since Abraham Lincoln has promised to eliminate pork (Cohn 2006).

Legislative earmarks in Pennsylvania

In the halls of the Pennsylvania Capitol, legislative earmarks have been commonly known as WAMs (Walking Around Money). Political columnists and newspaper editorials also use this unsavory epithet in criticizing the practice. In his campaign for governor in 1994, Tom Ridge vowed to end WAMs but eventually settled for “reforming” them by establishing the formal grant application process described below. Although the precise amount of WAMs is difficult to determine (partly because what constitutes a “WAM” is in the eye of the beholder), there is little doubt that it has run into the hundreds of millions of dollars.¹⁷ Many, but not all, of the appropriations to support WAMs have been in the annual operating budget of the Department of Community and Economic Development (DCED). Local government agencies and non-profit organizations had to submit applications for grants under these programs, which have very flexible criteria. WAMs may benefit single legislative districts or have statewide impact, such as aid for acute-care hospitals. Legally, only the executive branch agency could make such awards. In reality, legislative sponsorship was a determining factor in which groups get funded. Capital projects, particularly in the redevelopment assistance program that can fund local governments and non-profit organizations, also have been considered a form of WAMs, in that such grants confer highly localized benefits.

Although criticism of WAMs has almost always focused on the legislature, the governor has been complicit in this process. Unlike the president, the governor of Pennsylvania (and governors of most other states) has the power to veto specific line items in an appropriations act and to impound funds. Essentially, a governor could veto just the WAM appropriations and sign the rest of the bill. However, the president must either sign or veto the entire bill if he wants to take a stand against earmarks. Even if the legislature over-rode by a two-thirds vote a line-item veto of WAM appropriations, the governor could impound (refuse to spend) the funds, and the legislature would have no formal recourse.¹⁸

¹⁷The Commonwealth Foundation claimed in its 2006 *Pennsylvania Piglet Book* (jointly published with Citizens Against Government Waste) that the governor’s proposed budget for 2006-07 included \$4.3 billion in “waste, walking around money, and corporate welfare.” The book identified \$411.5 million in the Department of Community and Economic Development as falling under these combined categories and defined \$48 million of that amount as WAMs (Benefield and Snyder 2006). Legislative earmarks in the enacted budget very likely exceeded that amount.

¹⁸ By agreement, governors have also had, at times, control of a portion of the appropriations set aside for WAMs. From the legislature’s point of view, of course, executive discretion over spending is so sweeping that, colloquially, legislators often regard the entire budget as the executive branch’s “WAM.” Their argument is that as a co-equal branch of government responsible for raising all revenues and approving all expenditures, the legislative branch should have the ability to direct a relatively small amount of discretionary spending.

Such confrontations rarely have occurred, because WAMs have almost always been part of the budget “deal” between the executive and the legislature. Before sending the general fund budget to the governor, legislative leaders have extracted a commitment that WAM agreements will be honored throughout the fiscal year. Also understood, however, has been that if the legislature subsequently breaks the budget deal (by, say, sending the governor an unwanted tax cut that undermines the official revenue estimates), the governor might terminate or suspend the distribution of WAMs, although this has rarely occurred. Typically, the governor’s executive budget proposal has reduced or eliminated funding for WAMs to force the legislature to bargain for their inclusion or expansion in the enacted budget.

Earmarks have disappeared from Pennsylvania budget making, at least for the current fiscal year. Campaigning for governor in 2010, Tom Corbett vowed to eliminate WAMs. Shortly after taking office, he agreed to honor WAMs that had been included in the 2009-10 budget enacted before took office. However, the 2011-12 budget passed by the legislature and signed by the governor contained no WAMs by mutual agreement of the legislative leaders and governor. Some observers felt this issue was especially salient given the difficult fiscal situation facing the state government.

The amount of money dedicated to “earmarks” (as they are referred to in the U.S. Congress), “pork” (as referred to in general), “turkeys” (in Florida), “member items” (in New York), or “Christmas tree items” (New Jersey) is a tiny part of the state budget. In some states, such as New York, the total amount is set aside in advance. Here each year the legislature sets aside \$200 million: \$85 million for the senate, \$85 million for the assembly and the rest for the governor. The majority leader in the senate and the speaker in the assembly have the power to divvy up their allotments as they see fit. In other states, such as New Jersey, decisions as to the total bill for pork are made from budget to budget. Still, leaders have some discretion in how much is distributed to each member.

From time to time – and on budget bills in particular – leaders offer district benefits in return for the member’s vote. The bartering arrangement is clear. More often, however, if the leader asks persuasively, a member will go along (unless conscience and/or constituency pull strongly in the other direction); that way there is no question of receiving benefits for the district then and also in the future. Moreover, a number of legislative leaders adhere to the principle that if a member votes against the budget, he or she is not entitled to any provision within the budget. No vote for the majority party, no pork for the district. (Rosenthal 2009: 402-03)

Although there is a fair amount of social science literature about distributive spending by Congress, very little empirical work examines such spending by the states, partly because defining and identifying legislative spending is so difficult. One of the few state studies shows that parties direct distributive spending to counties that give them the strongest electoral support, not to electorally pivotal counties, as might be expected (Ansolabehere and Snyder 2006). This study uses overall state transfers to counties. However, the authors

can't sort out discretionary line items from programmatic spending. Another study found that the 23 states with "shutdown" budget rules (meaning most if not all spending stops if the budget is late), like Pennsylvania, spend more per capita on state and local government than states with less severe reversion budgets (Primo 2007). This finding suggests that the threat of a government shutdown causes governors to be more willing to agree to liberal spending plans proposed by legislators. But again, this study did not attempt to sort out legislative earmarks from programmatic spending. Another possibility is that biennial budgeting may increase distributive spending by reducing the costs of lobbying for interest groups and reducing the visibility of the budget process (or at least how frequently the process is visible).

Although some advocates for smaller legislatures argue that fewer members will result in less distributive spending like WAMs, research suggests that such spending is more influenced by the size of state senates rather than state houses and that state senators are less likely to pursue "pork" to the degree that they have more house districts within their districts (Gilligan and Matsusaka 1995; Primo 2007; Primo and Snyder 2008; Chen 2010). Although this research is far from conclusive, it suggests that the size of the Pennsylvania House may not be a strong driver of the volume of WAM spending.

It also is difficult to say that eliminating WAMs would reduce spending overall, because it is possible that legislators concerned about problems or constituencies in their districts would insist on creating -- or increasing funding for -- more expensive bureaucratic programs to address those needs. The result could be not just the higher overhead costs associated with such programs but their spreading to districts with lesser needs, because bureaucratic programs are difficult to contain within very narrow geographic boundaries. Further, new bureaucratic programs, or increases in such programs, tend to be built into the base of future budgets, whereas the case for WAMs is reargued every year. In a sense, WAMs are like bonuses; they address needs on a targeted and temporary basis.

Despite harsh criticism by reformers and editorial writers and even voters themselves who may lament the practice in the abstract, elected officials have reason to believe that voters reward the results. In a national survey conducted in early October 2010 by the Pew Research Center and *National Journal*, 53 percent of voters said they would be more likely to support a candidate who "has a record of bringing government projects and money to your district" as opposed to 11 percent who said they would be less likely to support such a candidate. Thirty-two percent said it would make no difference to them.¹⁹

Earmarks are a form of what economists call "selective incentives." They strengthen the hands of legislative leaders who control the budget process. Leaders can use them as incentives to persuade legislators to make tough votes, often for larger and important public policy needs. In European-style parliaments, leaders can marshal support for tough votes because losing a vote of confidence can force the entire party to stand for an election on relatively short notice, a highly effective selective incentive. In US legislatures, where members run on regular two, four, or six-year cycles and are increasingly independent fund raisers and policy entrepreneurs, leaders have used other tools like earmarks to persuade

¹⁹ See <http://people-press.org/report/661/>.

members to take the risks that tough votes often require. As two commentators wrote of such federal grants, “Favoring legislators with small gifts for their districts in order to achieve great things for the nation is an act not of sin but of statesmanship” (Cohn 2006). Some highly regarded scholars, like Doris Kearns Goodwin of Harvard University, have ascribed the leaders’ loss of control of earmarks as a contributing factor to the failure of congressional leaders to break gridlock.

Opinions

Although there are some allegations that Pennsylvania WAMs have been used fraudulently, the most frequent criticism of interviewees was that they fund unnecessary projects with low or non-existent cost-benefit ratios, contribute to higher spending and taxes, and primarily serve to secure the re-election of incumbents, thus diminishing electoral competition. Critics asserted further that earmarks reward groups who can afford lobbyists and can afford to make campaign contributions; divert legislators from more important policy issues; and strengthen the hands of legislative leaders, who can then control budget and policy negotiations with less member and public input.

Critics argued that if it proves infeasible to eliminate WAMs altogether, they should be made more transparent so they can be better monitored. They pointed out that although the recently enacted Open Records law makes most state records subject to public scrutiny, there is no central register that identifies all WAMs both in the aggregate and individually by sponsoring member. As noted above, however, a large proportion of these grants were funded through DCED, however, where they could be easily identified.

Those interviewees less critical of WAMs argued they almost certainly represent less than two percent of the state budget. Therefore their contribution to overall state spending is not substantial. Defenders also pointed out their elimination may lead to demands for more expensive programmatic spending by legislators. In their view, statewide programs would be invented to address the needs that geographically more selective WAMs may meet. Meanwhile, WAMs have lower overhead costs than many, if not most, state programs. They often leverage private and local government matching funds and volunteer efforts by the groups that receive them. The overwhelming majority of WAMs have been used for worthy purposes, from grants to small town arts centers to funding for museums that draw thousands of visitors from other states and even foreign countries.

Defenders also argued that WAMs are already transparent. Recently enacted state legislation requires all state contracts to be posted on the website of the state treasurer of the issuing agency within 10 days of execution of the contract. (Many WAMs are simply purchase-of-services contracts.) Far from hiding their WAMs, individual members typically announce them in press releases and public check presentations. WAMs also are subject to audit by both the funding agency and by the state auditor general. Further, if WAMs are abused, they become a target of criticism by the press and by political opponents of individual legislators. Creating a central registry of WAMs might have the effect of increasing demand for such grants, as individual legislators were inspired to imitate projects their colleagues had secured.

Against the criticism that WAMs are somehow suspect because they were not included in the governor's executive budget, supporters argue that such grants reflect the constitutional authority of the legislature to make changes to the executive budget. On the other hand, the threat of not implementing an earmark provides the governor, who normally worries more about overspending, with a tool to enforce the overall budget agreement.

Supporters argue that although WAMs are sometimes unseemly and undoubtedly in some contexts costly to the legislature in terms of its reputation, research about the practice in Pennsylvania, at the federal level, and in other states fails to make a convincing case that they are entirely dysfunctional and should be eliminated altogether. Although WAMs may detract from some policy goals, by reinforcing incumbency, for example, eliminating them may detract from other goals, denying leaders tools for more effective leadership and taking away one of the means a member has of representing his or her district's interests.

However, even defenders of the use of WAMs agreed that their aggregate size should be constrained. They offered improved transparency, stricter audits of grants and tougher laws prohibiting or limiting campaign contributions by grant recipients as actions that would hold down the overall spending on WAMs.

Critics and supporters alike observed that the process of eliminating or limiting earmarks, or making them more transparent, is relatively straightforward. Leaders recently have accomplished this simply by announcing their elimination as a matter of policy. Rules or statutes could be enacted to bar, reduce, or make public WAMs. The point was repeated by several interviewees that implementing any of these changes encounters the problem of defining a WAM. What is a deplorable WAM to one person might seem a worthy project to another. One observer's summary was that given their long history of resilience in budgeting at all levels of government, it seems unlikely that WAMs can be permanently eliminated. Limiting them in size and volume, making them more transparent, strictly auditing the use of funds, and prosecuting wrongdoing are in the view of some interviewees more realistic approaches.

OVERSIGHT

The events and public opinion research chronicled in the institutional report in this series (Volume I) clearly demonstrate the public's concern with individual behavior on the part of members of the General Assembly. That concern has motivated an ongoing discussion of topics related to regulating and overseeing matters like integrity, lobbying, and compensation. By our count, 37 bills dealing with these matters were introduced during the 2009-10 session.

Public Integrity

Data

With respect to regulating the behavior of individuals in government, the commonly espoused goals are eliminating corruption, fraud, waste, and abuse. These very things are what legislative candidates campaign against and promise to stop. Fundamental to improving public trust in the General Assembly as an institution is the need to ensure honesty and integrity in office.

The problem

We can think of corruption in politics as taking two forms: “soft” corruption, in which entire governments or societies fail to protect the public good (such as by burdening future generations with excessive debt), and “hard” corruption, in which individual government officials engage in self-serving behavior at the public’s expense. Although the costs of “soft” corruption are often far costlier to society, we are concerned here with hard corruption, which can be defined as the abuse of a public role for private benefit, where the law serves as the standard against which to measure degree of abuse (Johnston 1983). Three levels of analysis can be applied to corruption: the personalistic, the institutional, and the systemic. Those who hold a personalistic perspective believe corruption comes from “bad people.” For those with this view, getting rid of the office-holder is enough to remove corruption. Institutional explanations blame the organization, or perhaps the system of laws, for corruption. Reform the institution, remove excessive partisanship and the like, and corruption will go away. Those who hold the systemic view of corruption believe that corruption is endemic to politics, because politics, at its core, is the allocation of scarce resources.

Some scholars believe corruption is more prevalent in state government, as opposed to the federal or local governments. Why do they believe this is the case? According to James Q. Wilson (1966), the higher level of administrative professionalism found in the federal government can do some of the explaining. Those in Washington hold offices with higher visibility and are more likely to be attuned to the needs of reelection and stay out of trouble. In addition, they receive more oversight by their superiors, more attention by the press, and are more closely examined by nearby watchdog groups. Alternatively, state capitals are located, for the most part, far from states’ major metropolitan areas, and in turn, receive less attention from the press and the public. State governments also have more money than local governments, so there is greater potential for gain. Local governments, according to Wilson, are less vulnerable to corruption because they are closer to the citizens they represent and the press that covers local governments’ actions. State politics often seems far afield to most citizens, except when there is something negative to report.²⁰

²⁰In a faculty working paper posted on Harvard’s John F. Kennedy School in May 2012, Felipe Campante and Quoc-Anh Do find support for Wilson’s theory that corruption in the states is related to the distance of their capitals from major metropolitan areas (Campante and Do 2012). The authors present statistical evidence showing that more isolated state capitals have higher levels of corruption, as measured by federal prosecutions of state officials between 1976 and 2002. For example, they find less corruption in state capitals in large cities like Boston than in isolated capitals like Albany. Their analysis also suggests that the effect is

Given the high profile indictments and convictions of state legislators, it's not a surprise that the public sees the legislature as in need of ethics reform. The 2005 pay raise vote took a toll on the perception of the legislature, and the public exacted its version of reform at the voting booth in the following election cycles. As of the start of the 2011-12 session, 42 percent of the House members and 41 percent of Senators who voted for the pay raise 2005-2006 were still in the legislature at the start of the 2011-2012 session.

Measuring the level of corruption in any state is difficult. Corruption by its very nature hides, and those who witness it--let alone engage in it--may not speak up. Scholars have commonly assessed corruption levels by calculating the number of officials indicted for corruption by federal prosecutors in proportion to the total number of federal, state and local officials in that state (Meier and Holbrook 1992; Goel and Nelson 1998; Schlesinger and Meier 2002; Maxwell and Winters 2004, 2005). Using this measure, characterizing corruption convictions relative to the number of governments, an average increase of 10 governments leads to one additional Department of Justice conviction (Maxwell and Winters 2004, 2005).

One can also look at the number of elected officials as a predictor of corruption. Illinois, for example, has 30 percent more elected officials than the second ranking state, Pennsylvania. Still, Illinois ranks 25th on the list for Department of Justice convictions of elected officials. Instead, the Illinois numbers might reflect a higher real rate of undetected corruption. Where the citizens are educated and engaged in civic life, corruption is less prevalent. In states that are highly urbanized, corruption increases. Studies disagree as to the effect of the size of the government workforce being positively related to corruption (Meier and Holbrook 1992, Maxwell and Winters 2004, 2005).

No study using Department of Justice data has been able to link higher budgets per state employee or mean government salary to increased levels of corruption. Earlier studies link the size of government with increased corruption, but later analyses finds no such correlation. In fact, Maxwell and Winters (2004, 2005) find that as the number of governments in a state increases, the number of convictions falls. Of course, this could be because the size of the spoils shrinks, or because the gains are smaller and smaller, the ambitions of the US Attorney to pursue such a possibly piddling case decreases. They also used the Department of Justice statistics to show that as diversity increases in a state, so does corruption. It is not the presence of any certain combination of ethnic groups, just that the state is more heterogeneous, leading them to posit that corrupt officials feel they are taking from people unlike themselves, a trend shown to be true cross-nationally (Mauro 1995, LaPorta, et al. 1999).

As Boylan and Long (2003) indicate, the Department of Justice conviction measure is troublesome because it includes such cases as public officials indicted for use of cocaine, not something normally considered an abuse of "public trust." Still, data presented by the Department of Justice in a 2008 article by Bill Marsh for *The New York Times* puts

partly due to less press coverage and accountability in isolated capitals. The authors do not discuss Pennsylvania, but their 50-state data show Harrisburg as somewhat above average (but far from the top) in both isolation and corruption. As reported in Volume I, many legislative reforms and official prosecutions in Pennsylvania were provoked by investigative news reports.

Pennsylvania 17th on the list of most corrupt states by conviction rates per million residents per year. At the time, there were 4.5 public official convictions for every million residents. These statistics include the U.S. territories and Washington, D.C., all of which rank above Pennsylvania in convictions per resident, D.C. being number one.

Other scholars have surveyed state legislators about the frequency of corrupt or improper behavior (Peters and Welch 1978). Still, in such studies as this, large states appear more corrupt simply because they have more public officials. Using this method, Marsh's article in *The New York Times* places Pennsylvania as the 4th most corrupt state with 555 convicted public officials between 1998 and 2007, right behind Florida, New York, and Texas, other large states.

Using a different method, Boylan and Long (2003) surveyed state house reporters to compare perceptions of corruption across the United States. Reporters were also asked to what extent federal prosecutors extend their efforts in each state, as prosecution data alone is a flawed measure of corruption. Low prosecutorial effort amidst corrupt officials skews the results when it is only the total number of prosecutions taken into account. Prosecutions could also indicate state resources to prosecute corruption. In addition, the recent "bonus gate" scandals in Pennsylvania were not federal prosecutions, but initiated by the state Attorney General's office and investigating all four caucuses. Such studies that focus solely on federal prosecutions miss this data.

In Boylan and Long's survey of journalists, Pennsylvania is the 13th most corrupt state. The results, however, do not include responses from reporters in Massachusetts, New Hampshire, or New Jersey, so these states were not in the overall rankings. Boylan and Long also found that the presence of college-educated voters, all else being equal, leads to less corruption.

The Center for Public Integrity describes itself as a nonprofit, nonpartisan investigative news organization. Purporting to measure "corruptibility" rather than corruption itself, in March 2012 the Center graded Pennsylvania (see <http://www.stateintegrity.org/pennsylvania>) with a C minus and ranked it 18th in laws to promote transparency and accountability and to deter corruption. New Jersey (B plus) was ranked first, Vermont (D minus) 25th, and Georgia (one of eight states to get an F) last in this survey.

To anyone who has followed recent New Jersey news of corruption prosecutions, the New Jersey and Vermont rankings must seem counter-intuitive. The center explained the results by reasoning that states with extensive histories of official corruption are more likely to adopt anti-corruption measures while those without such histories may not have seen the need for such policies. Noting that no state was given an A, only five received Bs, 19 Cs, and 18 Ds, the center reported that "state governments are largely doing a poor job delivering transparency and accountability to their citizenry. Meanwhile, statehouses remain ripe for corruption and self-dealing."

Pennsylvania received a C and was ranked 10th best in legislative accountability, which involves the ability to hold legislators accountable for their actions. Its overall ranking was pulled down by Fs in judicial accountability, political finance, the state budget process, and redistricting, the last two obviously legislative functions.

Using methodology developed by Global Integrity, a nonprofit with extensive experience in measuring and promoting transparency and accountability in more than 100 countries, the Center ranked the states on the gap between anti-corruption laws and practice. Pennsylvania was ranked 10th worst in the size of this gap.

Interestingly, in a survey of 148 current and former legislators, governors' aides, reporters and academics reported in Volume II of this series, former Temple Capital Semester interns Van Huynh and Shelly Forrester found that accountability and transparency enactments were regarded as among the 25 greatest achievements of the Pennsylvania legislature since 1968. The sunshine or open meetings law ranked 7th, the state ethics act 15th, and the lobbyist regulation and open records laws 18th.

Although not designed specifically for this purpose, Daniel J. Elazar's typology of American political subcultures presents a theory of why there might be different levels of political corruption in the states. The late Temple political scientist identified and mapped across all 50 states three subcultures: moralistic, traditionalistic, or individualistic (1970, 1972). In the states with predominantly individualistic subcultures like Pennsylvania, Elazar argued, politics is regarded as more the business of professionals than citizens, and this is where corruption most easily takes hold and where higher levels of corruption are more likely to be tolerated. However, using any of the aforementioned standards for measuring corruption, the most corrupt states are not the individualistic ones. Johnston (1983) found that federal anti-corruption efforts in states and regions seem to be influenced by these political cultures, however. But there is more to Johnston's findings. Other key determinants include multiple political cultures competing for dominance, such as urban versus rural; close party competition; and an elite political culture where politicians expect to see corruption (Javers and Barbash 2008).

The response

Pennsylvania along with most states responded to public concerns about oversight of legislative integrity with a State Ethics Commission enacted initially enacted in 1978. According to NCSL data from September 2010, only nine states in the nation lack State Ethics Commissions.²¹ States also vary in the titles given to the offices charged with overseeing ethical behavior among public officials. NCSL data from February 2008 indicates that while the most common title of these offices tends to be "State Ethics Commissions," other common names include entities such as the Alaska Public Offices Commission, California Fair Political Practices Commission, Delaware State Public Integrity Commission, Kansas Governmental Ethics Commission, and Kentucky Legislative Ethics Commission. The oversight and investigative powers of these agencies also fluctuate from one state to another.²²

Many observers of government believe that the most effective tools for encouraging public integrity is disclosure. Under Pennsylvania's Ethics Law, a personal "Statement of Financial Interests" is required to be filed with the Ethics Commission by legislators and candidates for legislature. The statement must report certain real estate interests, creditors,

²¹ <http://www.ncsl.org/?TabId=15331>.

²² <http://www.ncsl.org/?TabId=15348>.

direct and indirect sources of income, gifts valued at \$250 or more, transportation, lodging and hospitality expenses valued at \$650 or more, any office, directorship or employment in any business entity, and any financial interests or transferred interests in any business. The statements are open for public inspection. Filing incorrectly carries meaningful penalties.

Pennsylvania's current State Ethics Commission is composed of seven members serving three year terms. Under the Pennsylvania Public Official and Employee Ethics Act of 1978 as amended in 2006, a single appointment is given to the president pro tempore of the Senate, the Senate minority leader, the speaker of the House, and the House minority leader while three members are appointed by the governor. None of these appointees are subject to confirmation and no more than two of the members appointed by the governor may come from the same political party. None of the seven appointees are allowed to have served as an officer in a political party for one year prior to his or her appointment.

Legislation with bi-partisan support has been introduced in the 2011-12 session in both the House (HB 1200) and Senate (SB 625) to create a Public Integrity Commission for Pennsylvania. The legislation establishes a selection process for membership on the Public Integrity Commission, defines the scope and powers of this commission, and eliminates the current State Ethics Commission by placing its current functions under the Public Integrity Commission's umbrella.

The legislation establishes a five member nominating committee to compose a list of 15 nominees of possible commission members. The nominating committee under HB 1200 would be composed of a district attorney and two law school deans chosen by the speaker of the House and a law school dean and one reform advocate chosen by the House minority leader. Under SB 625, instead of the Speaker, the President pro tempore would make the appointments and instead of the House minority leader, the Senate minority leader would make the appointments. The nominating committee would advance 15 nominees to the governor of which seven commissioners would be selected and subject to two-thirds confirmation by the Senate.

Picking up where the Pennsylvania Crime Commission left off in 1994, the Public Integrity Commission would be charged with investigating public corruption, reporting the results of completed investigations to the General Assembly, making recommendations for action in given cases, referring criminal violations for prosecution, subpoenaing witnesses and documents, and carrying out the current State Ethics Commission's work on statements of financial interest and conflicts of interests.

In addition to the Ethics Law, the General Assembly has started requiring enhanced ethics training for members and staff. The House and Senate have put into place stricter policies (in the Senate through rules changes) to guard against legislative employees or resources being used in political campaigns and to ensure that bonuses are strictly documented and tied to extraordinary performance of their governmental duties by legislative employees. The Senate in 2012 adopted a rule that prohibits its members from serving on the boards of non-profit organizations that are solely dependent on state funds, a practice that led to prosecution of individual legislators for using such vehicles for political purposes.

The common response to concern over legislative integrity is to seek some type of

“reform.” But caution is advisable. Some studies suggest that excessively zealous anti-corruption measures can make matters worse (Anechiarico and Jacobs 1996; Johnston 2006). Anechiarico and Jacobs (1996) extensively studied reforms implemented in New York City and at the federal level, arguing that the processes put in place often made government ineffective, and with the more rigid and cumbersome procedures, perversely increased the incentives to engage in corrupt acts.

As Professor Megan Mullin reports in Volume V of *The Temple Papers*:

Little research exists on the political effects of state ethics laws. Some have argued that ethics requirements deter qualified candidates from running for office, because financial disclosure statements and restrictions on outside income violate lawmakers’ privacy and add to the costs of public service. Indeed, an analysis of state legislative races in the mid-1990s shows that open-seat races were less likely to be contested and attracted fewer candidates in states with strong financial disclosure requirements. The normative implication of these findings is not clear, because we cannot determine whether the laws are deterring qualified and appropriate candidates or individuals who have potential conflicts of interest. Limits on outside income opportunities did not have an impact on candidate entry, and the existence of an independent ethics commission was associated with more successful candidate recruitment (Rosenson 2006).

In somewhat the same vein, Marty Linsky, a former journalist, assistant minority leader of the Massachusetts House of Representatives, and faculty member of Harvard University’s Kennedy School, believes that corruption in state legislatures is a systemic or cultural problem and tougher ethics laws are unlikely to be effective. Citing Pennsylvania among many other states, Linsky observes that corruption is particularly prevalent among legislative leaders who abuse their power for personal or political gain. Linsky suggests that legislatures should raise leaders’ salaries and prohibit them from accepting outside income or lower their salaries so they feel less pressure to treat their positions as full-time jobs and could pursue private sector careers. According to NCSL, as of 2010 the presiding officers of the House and Senate earned \$122,253 annually while caucus leaders earned \$113,467 annually. Writing in the January 2012 issue of *State Legislatures*, Linsky also suggests legislatures should decentralize power to make it more difficult for those trying to influence legislation to focus on only a few members.

Johnston and other scholars (Hill 2003; Maxwell and Winters 2004, 2005) found that citizen participation (voter turnout) in politics influences levels of corruption to the point that perhaps citizens get the kind of official behavior they vote for. In other words, the more citizens participate, the less likely they are to have corrupt politicians. To the citizenry in an individualistic state like Pennsylvania, dogged corruption investigations may seem like a screen for more partisan purposes and “citizens may simply conclude that corruption is a permanent part of the political marketplace” (Johnston 1983:39) or give up on their government institutions all together (Johnston 1986, 2006). For a democracy, if most citizens believe corruption is a problem, whether or not it is in actuality, then there is certainly some kind of failure of leadership and institutions.

Opinions

Not surprisingly, no opinions were expressed in defense of public corruption or in opposition to ethical behavior. However, some of those interviewed noted that a number of Pennsylvania's recently prosecuted leaders were convicted of acts in pursuit of political, not personal, gains through means once practiced and tolerated by both parties here and in other states. Electoral calculations and strategies are a legitimate part of the legislative process to the degree they provide voters with a way to control policy, but the use of public resources in campaigns is not. In effect, those convicted were caught in what Professor Rosenthal described to the so-called Bonusgate grand jury as a "time-warp." Some interviewees also raised the difficulty of meeting integrity standards when those standards are frequently unclear in the law.

The view also was expressed that the "system works." An analysis of orders issued by the Pennsylvania State Ethics Commission found that approximately a third were directed at elected officials of either state or local government, most commonly for violations of financial-disclosure or conflict-of-interest laws (Bradbury 2007). Prosecutions of legislators and legislative staff have been pursued under existing laws by an office the General Assembly created over the objections of the executive. These investigations have led in turn to numerous measures to improve legislative transparency and accountability and to clarify the law to deter the use of government resources for political purposes.²³ In summary, many felt that substantial changes and checks have been implemented in the past several years and time will be needed to see how effective they are.

Opinions were sought in favor of revamping the existing Ethics Commission to establish a "public integrity commission" along the lines of the legislation recently introduced. Some felt a commission with expanded powers could perform functions which currently elude the State Ethics Commission. It could provide a one-stop-shop for citizens to report cases of suspected corruption at any level of government. While some critics pointed to the additional cost of a public integrity commission over the present Ethics Commission, supporters argued it would eventually save taxpayers money through its elimination of corruption, fraud, and abuse. Supporters further submit that if such an expanded commission had existed years ago, the "Bonusgate" scandal likely never would have happened.

On the other hand, critics felt it was too similar to the Pennsylvania Crime Commission. The Crime Commission was eliminated by the legislature in 1994 after criticism for targeting Italian Americans and ruining reputations before sufficient data was gathered. Any newly formed ethics commission with the powers proposed in the legislation should take heed of the past missteps of the Crime Commission. Critics also cautioned against any changes in the appointment process such as requiring a two-thirds Senate confirmation that would further politicize the appointees.

In testimony submitted to the House State Government Committee in November 2011,

²³ Ironically, as reported in Volume I, in an earlier era of concerns about official corruption and investigations of its own members, the General Assembly itself, over Governor Shapp's opposition, approved the constitutional amendment and subsequent legislation that changed the office of Attorney General from a gubernatorial appointee to the state's independently elected chief prosecutor.

the existing State Ethics Commission cautioned that provisions of the proposed Public Integrity Commission legislation might be found unconstitutional on separation-of-powers and vagueness grounds, among others. Instead of creating a new commission, the State Ethics Commission recommended a series of amendments to tighten existing law and enforcement. The recommendations included banning gifts of other than a de minimis nature (and better defining de minimis); including in-laws in the definition of immediate family who cannot benefit from an official's decision; requiring mandatory electronic filing of statements of financial interests and increasing penalties for violations of this provision; and requiring mandatory ethics training for new officials at all levels of government.

With respect to the annual personal disclosures which must be filed with the state Ethics Commission, some felt that the information required does not go far enough. On the other hand, others argued, in accordance with the study cited above, that too much "invasion of personal privacy" has already discouraged some qualified and honorable citizens from run seeking public office. Adding to current disclosure requirements might discourage still others.

A final opinion was universally shared. The most promising path to greater integrity in the General Assembly is the election of persons with integrity. That, interviewees opined, is in the hands of citizens motivated to run and citizens motivated to vote.

Regulation of the Lobbyist/Legislator Relationship

Much of the public interest in the behavior of lawmakers revolves around the question of what lobbyists might do for legislators that might unduly or even improperly influence them. That has led to the evolution of laws regulating lobbyists. Moreover, it has led to the evolution of laws regulating what legislators can accept from lobbyists as well as what they can do for income both while in office and after holding office.

Data

Lobbyist regulation

After the Pennsylvania Supreme Court overturned the lobbying disclosure act in 2002, Pennsylvania was without a law to regulate lobbyists until 2006. The General Assembly then passed HB 700, later signed into law as Act 134, the Lobbying Registration Act. The new law requires anyone who lobbies to register with the Department of State and the Governor's Office of Administration. Expenses related to lobbying activity must also be reported.

Who Is a Lobbyist?

The National Conference of State Legislatures (NCSL) provides the following summary of how states define the term lobbyist:

There are more than 50 versions of lobbying laws in states and territories. Yet, all states share a basic definition of lobbying as an attempt to influence government action. Written and oral communications are both recognized as lobbying. Three states (Delaware, Kansas, and Texas) include in their definitions of lobbying providing entertainment, gifts, recreational events, food and beverages to legislators. The remaining states regulate the disclosure of and the amounts spent on such activities.

The definition of who is a lobbyist usually revolves around compensation. Most states define a lobbyist as someone who receives any amount of compensation or reimbursement to lobby. Among the exceptions are Hawaii, Minnesota and New York. These states stipulate threshold amounts of money and time spent on lobbying, and, if these thresholds are reached, an individual becomes a lobbyist.

All states recognize certain exceptions for activities that might otherwise be construed as "lobbying." These activities include testifying at committee hearings, meetings, writing letters and casual conversations. In some states, interagency communications between state employees are outside the statutory definition of lobbyist. At least 14 states specify that members of the press are not lobbyists.²⁴

As of February 2012 all but two states required registration for paid lobbyists while less than half required registration for volunteer lobbyists, principals who employ lobbyists,

²⁴ NCSL. "How States Define 'Lobbying' and 'Lobbyist'." <http://www.ncsl.org/legislatures-elections/ethichome/50-state-chart-lobby-definitions.aspx>. Feb. 2012.

and lobbying firms. Only about a fifth of states required government agencies who lobby other agencies to register as lobbyists. The table below reflects cumulative NCSL data from February 2012 for each of these categories and notes whether or not these requirements are mandated in Pennsylvania.

Required to be Registered	Number of States	Registration Required in Pennsylvania?
Paid Lobbyists	48	Yes
Volunteer Lobbyists	20	No
Principals Who Employ a Lobbyist	23	Yes
Lobbying Firms	21	Yes
Government Agencies Who Lobby Other Agencies	12	No
Other (Those who spend over a certain amount and other enumerated groups)	10	No

Source: NCSL data and Pennsylvania State Ethics Commission (http://www.ethics.state.pa.us/portal/server.pt/community/lobbying/9042/the_lobbying_disclosure_law/541100)

How are Lobbyists Regulated?

NCSL provides a comprehensive summary of the 10 ways states have devised to regulate lobbyists.²⁵

- *Require lobbyists to register and identify their employer;*
- *Report on who is being lobbied, how often and on what topics;*
- *Report income and connections to public officials;*
- *Prohibit or limit gifts to public officials;*
- *Report costs of lobbying, including organizing the “grassroots;”*
- *Require reporting data to be easily available to the public;*
- *Prohibit commissions contingent upon a favorable lobbying effort;*
- *Ban false statements in lobbying practices;*
- *Establish a period of time before legislators may become lobbyists; and*

²⁵ See Kerns, Peggy. 2009. “The Influence Business.” *State Legislatures*, January. <http://www.ilga.gov/joint/Documents/Documents%20from%20NCSL%20-%20The%20Influence%20Business.pdf>.

- *Include in the definition of lobbying “goodwill,” such as someone who builds relationships with legislators.*

According to NCSL, recent changes to state laws governing lobbying have generally included:²⁶

- *Creating stricter registration requirements;*
- *Requiring lobbyists to disclose how much they earn and spend on lobbying;*
- *Giving the public more access to registration and disclosure information;*
- *Banning or limiting lobbyists from paying for gifts and food, even a cup of coffee;*
- *Imposing a time period before legislators can become lobbyists;*
 - *Creating ethics oversight by establishing ethics commissions and legislative ethics committees; and*
- *Giving oversight agencies more power to investigate violations of ethics laws.*

Application of Lobbying Laws

Lobbying laws often apply to more than the legislature. NCSL data suggests that as of April 2009, the majority of governor’s offices, legislatures, and executive branch agencies are covered by various state lobbying laws. Less than half of independent agencies and about a fifth of local governments are likewise covered. The table below shows how these entities are treated under Pennsylvania’s lobbying regulations.

Branches of Government Covered by Lobbying Law	Number of States	Covered by Pennsylvania Lobbying Regulations?
Governor’s Office	37	Yes
Executive Branch Agencies	34	Yes
Legislative Branch	49	Yes
Independent Agencies	22	Yes
Local Governments	12	No ²⁷

Source: NCSL data and Pennsylvania Bulletin, Chapter 51; <http://www.pabulletin.com/secure/data/vol39/39-15/691a.html>.

Gifts

Prohibiting gifts if they influence official action is a widely agreed-upon notion among state legislatures in the United States. Despite this, states often vary in the ways that they attempt to statutorily regulate this type of lobbying activity. NCSL groups state gift restriction regulations into three categories:²⁸

²⁶ Ibid.

²⁷The City of Philadelphia has enacted legislation regulating lobbyists. The city ordinance closely follows state law.

²⁸ Sampson, Ginger and Peggy Kerns. 2002. “Gift Restriction Laws for Legislators-It’s Not a Physics Lesson.” June/July. <http://www.ncsl.org/legislatures-elections/ethicshome/ncsl-eye-on-ethics254.aspx>.

Zero Tolerance Laws.

Massachusetts, Wisconsin, and South Carolina are considered “no cup of coffee states.” In these states, a lobbyist cannot give a legislator anything, including a cup of coffee. Wisconsin was the first state to adopt a zero tolerance rule. Enacted in the 1950s, Wisconsin prohibits all gifts to legislators unless also provided to the general public. All three states allow gifts from non-lobbyists under certain circumstances.

About a quarter of states restrict gifts of any monetary value, but with exceptions such as food and beverages, which take them out of the strict no-cup-of-coffee category. Minnesota comes close to being a no-cup-of-coffee state, the only exception being food and beverages at an event where a legislator gives a speech and or answers questions.

Bright Line Test Laws.

The largest number of states, almost half, specifies a monetary limit on gifts to legislators. These states employ a “bright line test,” and allow gifts up to a statute-established level. Iowa, otherwise a zero tolerance state, creates a bright line exemption of \$3 a day limit for gifts and food and beverages. In Texas, the line is drawn at \$500. The remaining states lie somewhere in between these limits.

Disclosure Laws.

Some states focus on disclosure instead of restrictions. Mississippi and Alabama are examples of “report everything” states. Lobbyists can give most anything of value, but it must be reported. Such reporting can affect behavior. In Kentucky, a zero tolerance state, a lobbyist may spend \$100 per year for food and beverages for legislators and the amount spent and name of the legislator is reported. Because of legislators’ reluctance to accept food and beverages, in 2001, lobbyists reported spending only \$25 for food and beverages for legislators.

Legislator regulation

The corollary to regulating the behavior of lobbyists and lobbyist disclosure is regulating the behavior of the individual legislator and legislator disclosure. As discussed under other subjects, a legislator must file a personal disclosure with the Ethics Commission annually as well as report campaign contributions on a fixed schedule to the Department of State.

They are designed among other reasons to allow the public to identify the relationship the legislator may have with various lobbyists and special interests. Both of these disclosures are open to public inspection. The National Conference of State Legislatures (NCSL) tabulates state legislative provisions on a variety of topics regulating the legislator side of the lobbyist/legislator relationship. The following summarizes NCSL’s information regarding common issues of concern to legislators:

Financial Disclosure

According to NCSL,²⁹ states are divided on the question of how to best regulate financial disclosure for elected officials, including members of the state legislature.

Personal financial disclosure laws require public servants to reveal information about their finances, relationships, professions and income. Many elected and appointed office-holders at the local, state and federal level must abide by versions of these provisions, which are different from campaign finance disclosures.

All but three states - Idaho, Michigan and Vermont - require state legislators to file personal financial disclosures, also called statements of economic interest. Most states require lawmakers to state their occupation, the sources of their income, the names of corporations in which they hold a position such as director or officer, the addresses of their property, the names of creditors and debtors and names of businesses in which they hold a financial interest. Actual amounts or value ranges are necessary in approximately one-third of the states. More than two-thirds mandate the release of information about each member's spouse and dependent children.

Over half the states require disclosure of any connections filers or their family members have with the state or state subdivision agencies, and some require disclosure of associations with lobbyists. In most states, legislators don't have to name their clients because such information is considered privileged and revealing it could constitute a breach of a professional ethics code. In those where such a disclosure is required, exceptions are allowed.

States are evenly split on whether or not legislators should be allowed to accept honorariums for their speaking efforts. In half, they are prohibited if offered in connection with a legislator's official duties. Most states that prohibit honorariums allow reimbursement for travel, lodging and necessary expenses. In the other half, honorariums are allowed or are not specifically addressed in statute. Many states require lawmakers to disclose the sources and value of any gifts or honorariums they receive.

Outside Income

NCSL data from January 2011³⁰ suggests that laws vary considerably among the 50 states and generally fall into six categories. Seventeen states do not restrict state legislators from being employed at the state or local level. These states include Colorado, Idaho, Indiana, Iowa, Kansas, Kentucky, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, South Carolina, Tennessee, Vermont, Washington, and Wyoming.

²⁹ <http://www.ncsl.org/legislatures-elections.aspx?tabs=1116,84,210#210>.

³⁰ <http://www.ncsl.org/legislatures-elections/ethicshome/summary-of-state-dual-employment-laws.aspx>.

Eight states allow legislators to hold state and local government employment as long as the legislators are not paid more than once for coincident hours of the workday: They are Delaware, Illinois, Minnesota, Montana, South Dakota, Utah, Vermont, and West Virginia.

Legislators in Arkansas and Rhode Island are permitted to hold employment at the state or local level if the legislator's employment precedes their election to office.

Employment positions that could conflict with duties as a state legislator are banned in six states: Florida, Maine, Mississippi, New York, Virginia, and Wisconsin.

Four states (Arizona, Louisiana, Ohio, and Oregon) prohibit any and all public employment for state legislators. These states make an except for legislators employed by the public school system.

Nine states and three territories ban state legislators from holding any state or local governmental jobs. They are California, Connecticut, Georgia, Maryland, Massachusetts, Michigan, Missouri, Pennsylvania, Texas, Guam, Puerto Rico, and the U.S. Virgin Islands. Four other states, Alaska, Hawaii, Nebraska, and Oklahoma ban employment at the state level.

Specifically, NCSL's research finds that, Pennsylvania legislators are prohibited from employment at the state or local level,³¹ with 65 Pa. Stat. Ann. § 16 stating that legislators "shall receive no other compensation, fees or perquisites of office for their services from any source, nor hold any other office of profit under the United States, this state or any other state." Therefore, Pennsylvania legislators may hold local offices but cannot receive payment for their service.

Representing Others before Government

According to NCSL:³²

...many states restrict legislators from representing others before state government in certain cases. Most restrictions only apply when compensation is involved. Restrictions include bans on: appearing on behalf of a client before specified state agencies, representing others before the legislature, and exercising improper influence in representing another before the state. Some states require disclosure of these activities in addition to, or instead of, restricting them.

October 2009 information compiled by NCSL identifies 15 states (including Pennsylvania) that do not prohibit legislators from "appearing on behalf of a client before state agencies, representing others before the legislature, and exercising improper influence in representing another before the state."³³

³¹ <http://www.ncsl.org/legislatures-elections/ethicshome/50-state-table-dual-employment-regulating-publi.aspx>.

³² <http://www.ncsl.org/legislatures-elections/ethicshome/representing-others-before-government.aspx>.

³³ <http://www.ncsl.org/legislatures-elections/ethicshome/50-state-table-representing-others-before-governm.aspx#PA>.

Dual Office-Holding

According NCSL, “Dual office-holding is generally defined as the practice of holding two elected offices at the same time at the state or local levels, paid or unpaid.”³⁴ As of January 2012, NCSL finds that:

States generally have taken three main approaches in restricting state legislators from concurrently holding a second elective office. The first approach, taken by all territories and 47 states categorically prohibits a legislator from holding another statewide elected office. (Indiana, West Virginia and Wyoming have some limited exceptions.)

Under the second approach, 25 of those 47 states and the three territories prohibit state legislators from holding any other elected office at the county or municipal level in addition to the state level. The states taking this second approach are: Alabama, Alaska, Arizona, Arkansas, Delaware, Florida, Iowa, Kentucky, Louisiana, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Utah, Guam, Puerto Rico, and the U.S. Virgin Islands,

The third approach is followed by 18 states. In those states a legislator may not hold a second state level elected office, but allow the legislator to hold a second county or municipal office if those offices are not “incompatible.” These states are California, Colorado, Connecticut, Hawaii, Idaho, Illinois, Kansas, Massachusetts, Mississippi, New Hampshire, New York, North Dakota, South Dakota, Tennessee, Texas, Vermont, Washington and Wisconsin.

Further variations are in Georgia, Indiana, Maryland, Oregon and Virginia, where a legislator is allowed to hold a second elected county or municipal office only when the second office is not considered lucrative. Generally, an office is considered lucrative when the office-holder receives compensation or remuneration beyond reimbursement for actual expenses incurred.

West Virginia adds another element by saying the second elected position cannot be lucrative or incompatible. Wyoming prohibits a state legislator from holding any other public elective office that receives any funding from the State of Wyoming.

Although Pennsylvania is listed in the second category of states described above, Article II, Section 6 of the Pennsylvania State Constitution only prohibits members of the General Assembly from receiving compensation for holding a county or municipal office while serving in the legislature.³⁵

Contracting with Government

NCSL states that “at least 40 states have statutory provisions that restrict legislators from

³⁴ <http://www.ncsl.org/legislatures-elections/ethicshome/dual-office-holding-overview.aspx>.

³⁵ <http://www.ncsl.org/legislatures-elections/ethicshome/restrictions-on-holding-concurrent-office.aspx#pa>.

*contracting with government. These laws may extend to a legislator's family and businesses in which he or she has a controlling interest. In other states—Arkansas, Delaware, Illinois, New Hampshire, North Carolina, North Dakota, Oregon, Tennessee, Vermont and Wyoming, general conflict of interest provisions may limit this practice or require legislators to disclose any interests in contracts that could compromise their independence in a legislative decision.*³⁶

As of September 2008 *“at least 10 states restrict legislators from entering into certain contracts with the legislature or certain contracts made by or for the legislature. These states are: Colorado, Florida, Idaho, Louisiana, Massachusetts, Mississippi, Ohio, Pennsylvania, Texas and Virginia.”*³⁷ In Pennsylvania, members of the General Assembly, *“their spouses, children and associated businesses cannot enter into contracts worth more than \$500 with the legislature unless awarded through sealed competitive bidding. Bidding public official cannot have oversight of administration of contract.”*³⁸ Legislators are also required on their financial interest statements to disclose *“details of any direct or indirect interest in real estate sold or leased to or purchased or leased from the state or a state subdivision.”*³⁹

Honoraria

Pennsylvania became the first state in the nation to prohibit members from accepting honoraria when Governor Robert Casey signed HB 75 of 1989 (Drachler 1989), which banned the practice among members of the Pennsylvania General Assembly. NCSL reports that as of December 2011, twenty-six other states have followed Pennsylvania's lead by prohibiting honoraria if they are offered in connection with a legislator's official duties.⁴⁰ Pennsylvania legislators may accept an honorarium for services performed in relation to a private profession or occupation if unrelated to legislative duties. Most states that prohibit honoraria—including Pennsylvania—allow reimbursement for travel, lodging and necessary expenses. According to NCSL data, twenty-two states allow honoraria or don't specifically address them in statute.

Nepotism

The technical definition of nepotism is, *“bestowal of patronage by public officers in appointing others to positions by reason of blood or marital relationship.”*⁴¹ NCSL says that about *“half the states restrict nepotism to varying degrees. All 50 states have laws that either prohibit the practice or have guidelines to use in conflict-of-interest situations, which may restrict nepotism depending on interpretation of the law. Nearly half the states prohibit a legislator from hiring a relative either through statute or by constitution.”*⁴² While Pennsylvania law does

³⁶ <http://www.ncsl.org/legislatures-elections/ethichome/contracting-with-government-home.aspx>.

³⁷ Ibid.

³⁸ <http://www.ncsl.org/legislatures-elections/ethichome/restrictions-on-legislators-contracting-w-govt.aspx#pa>.

³⁹ Ibid.

⁴⁰ <http://www.ncsl.org/legislatures-elections/ethichome/50-state-chart-honorarium-restrictions.aspx#PA>.

⁴¹ <http://www.ncsl.org/legislatures-elections/ethichome/50-state-table-nepotism-restrictions.aspx>.

⁴² Ibid.

not include specific nepotism restrictions, restrictions do exist in state hiring policy. NCSL reports that the Office of Administration provides guidelines intended to reduce or prevent practices that may be deemed nepotistic in nature. Their guidelines include a requirement that “legislators shall not exercise direct and immediate supervisory authority over a family member.”⁴³

Cooling Off Period

NCSL finds that “twenty-six states mandate a period of time that must elapse before a former legislator can represent clients before the legislature. These ‘cooling off period’ laws are intended to keep former legislators from using their government connections to benefit themselves or their business interests after they leave office.”⁴⁴ Pennsylvania law states that “no former public official, including legislators, shall represent a person for compensation on any matter before the governmental body with which he has been associated for one year after he leaves that body.”⁴⁵

Opinions

Some critics feel the current regulation of lobbyists and legislators in Pennsylvania does not go far enough. They argue that too much of the public believes “government is for sale” for the favors that lobbyists bestow. There is too much public distrust of the legislative process. Thus further limiting or at the least making fully transparent the lobbyist/legislator relationship could diminish the distrust and increase the public confidence in the legislative process and results. Examples on the lobbyist side include additional requirements to provide stricter regulation of gifts (even a “no cup of coffee” rule), broaden the definition of activities considered lobbying and restrict the use of taxpayer funds for lobbying. Examples on the legislator side include lengthening the existing “cooling off period” for former officials, and banning gifts, hospitality, lodging, and travel expenses from lobbyists.

On the other hand, others opined caution in going beyond current requirements. They point out that many of the requirements are recent and need time to be evaluated. Lobbyists provide needed information, input, and innovation to the lawmaking process on behalf of a broad spectrum of public interests. Overly burdensome restrictions can unduly inhibit this function.

Moreover, those suggesting caution opine that citizens should be free to attempt to influence their elected officials for legitimate ends, and overly restrictive regulation of lobbying activity can impinge on that freedom. After all, lobbyists represent interest groups and interest groups are made up of citizens with the right to petition their government.

Finally some feel that the ability to “get to know each other” among both legislators and interest groups is healthy for the often difficult and contentious policy making process. Excessively restrictive regulations can diminish the opportunity to do so.

⁴³ Ibid.

⁴⁴ <http://www.ncsl.org/legislatures-elections.aspx?tabs=1116,84,205>.

⁴⁵ <http://www.ncsl.org/legislatures-elections/ethics/home/50-state-table-revolving-door-prohibitions.aspx>.

Compensation for Legislators

Many salaried government officials such as members of the General Assembly, the governor, the lieutenant governor, and members of the state supreme court receive an automatic annual cost of living adjustment (COLA) based on the rate of inflation in the Philadelphia region. Apart from the COLA, an act of the legislature is required to adjust the salaries of these officials.⁴⁶ Following the backlash surrounding the “pay raise” legislation that was enacted and subsequently repealed in 2005, several proposals have been put forward to create an “Independent Compensation Commission” that would recommend compensation levels for these officials.

Data

Authority for compensation commissions comes from the constitution accompanied by enabling legislation in some states, and by statute alone in others. Typically, a citizen commission appointed by the governor and/or the legislature and/or the Supreme Court meets and establishes the various levels of compensation which usually include salaries and expenses. The process is open to the public and may involve mandatory hearings.

The commission generates a report which is submitted to the legislature. Many states require the legislature to approve the recommendations as submitted, and in some cases allow the legislature to approve the report with reductions from the original recommendations. Compensation levels are set prior to the elected officials taking office.

NCSL has determined that in order “to help take politics out of the issue, 19 states have created compensation commissions to provide independent and impartial recommendations.”⁴⁷ Morgan Cullen of NCSL specifically points the case of Pennsylvania when discussing why some states have moved to adopt compensation commissions. According to Cullen, some

...states have tied legislative compensation to other state employee salaries or to changes in the cost of living. In these cases, increases in legislative salaries are automatic. Florida legislators receive the same annual percentage increase as state employees. In Massachusetts, legislative salaries are tied to an index that provides an automatic increase or decrease, according to the median household income for the state.

No matter how salaries are determined, it's still difficult to have an open discussion about them, given the public's hostility toward the issue. Legislators are all too aware of the potential political consequences of supporting an increase, even if they believe it's the right thing to do.

⁴⁶ As reported in Volume I, Pennsylvania legislators’ compensation has risen less than average state per capita income since 1965, and adjusted for inflation, legislators are making less in the current session than they made in the 1989-90 session. On the other hand, legislative benefits far exceed average benefits in the private sector.

⁴⁷ <http://www.ncsl.org/legislatures-elections/legisdata/pay-problem.aspx>.

One has only to look at Pennsylvania to understand the implications involved. In 2006, primary voters there ousted 17 incumbents for increasing their salaries by 16 percent the previous year. To avoid voter scrutiny, many other lawmakers decided not to seek reelection. The increase was ultimately repealed four months later because of the political firestorm that had erupted.⁴⁸

As of the current session, only 40 percent of House members and 41 percent of Senators who voted for the pay raise in 2005-06 are still in the legislature.

There is a precedent for an independent compensation commission in Pennsylvania. As also recounted in Volume I, subsequent to a recommendation by The Pennsylvania Commission for Legislative Modernization in 1969, the legislature established a compensation commission. When the Commission recommended pay increases for elected officials in all three branches of government, it also generated hostile press coverage and vehement editorial criticism, as recounted by Professor Sidney Wise of Franklin and Marshall College:

When in 1972, salary increases were proposed by a newly formed Commonwealth Compensation Commission, the Pittsburgh Press printed a sidebar which read: "What You Can Do About Pay Grab." The Philadelphia Inquirer printed several times an "opinion coupon" that could be clipped and mailed to legislators. The Harrisburg Patriot portrayed the commission procedure as "sleight of hand" and described the raises as "gigantic," "fat," and "grubby." Scarcely mentioned, if at all, were the facts that the use of a compensation commission was in effect in a dozen other states, that the General Assembly had not had a salary increase in six years, and that the total salaries of all the officials affected by the recommendations accounted for less than one-third of one percent of the State budget and that if adopted completely that amount would have increased by an additional fifteen-hundreds of one percent. Eventually the General Assembly, again suffering from media duress, scaled down the commission's proposals considerably. (Wise 1984: 81)

After its last report leading to compensation adjustments, the Commonwealth Compensation Commission was eliminated in 1979. Wise reports that the pay-raise in 1983 was enacted through incorporation in a House-Senate Conference Committee report, with minimal notice to the press and public. The maneuver enraged the press and legislative critics, much as the 2005 pay-raise vote did. Leaders defended the procedure and Commonwealth Court upheld it.

Opinions

Those offering opinions in favor of a compensation commission approach opine:

- The commission approach offers a vehicle for both analysis and public input.
- Members of the General Assembly should not have the ability to propose their

⁴⁸Ibid.

own level of compensation.

- In the current environment of public distrust of government, it is even more important that an independent commission recommend the appropriate level of compensation for these officials. Meanwhile, legislative accountability will be maintained, because the commission's recommendations will require legislative approval.

Contrasting opinions suggest:

- Experience suggests a commission may be regarded as a “sleight of hand” maneuver, weakening accountability and public trust.
- The public does not have the ability to hold members of the independent compensation commission accountable for their actions.
- Members of the General Assembly should be held fully accountable for the scale of compensation proposals and the vote on their enactment.

ELECTIONS AND PUBLIC PARTICIPATION

The integrity of elections and facilitating maximum participation by voters are paramount goals for any democratic state. Elections provide citizens of the Commonwealth the most basic and widespread opportunity to participate and “have their voice heard” in state government. Whether an individual chooses to exercise that opportunity, it is guaranteed by the Pennsylvania constitution.

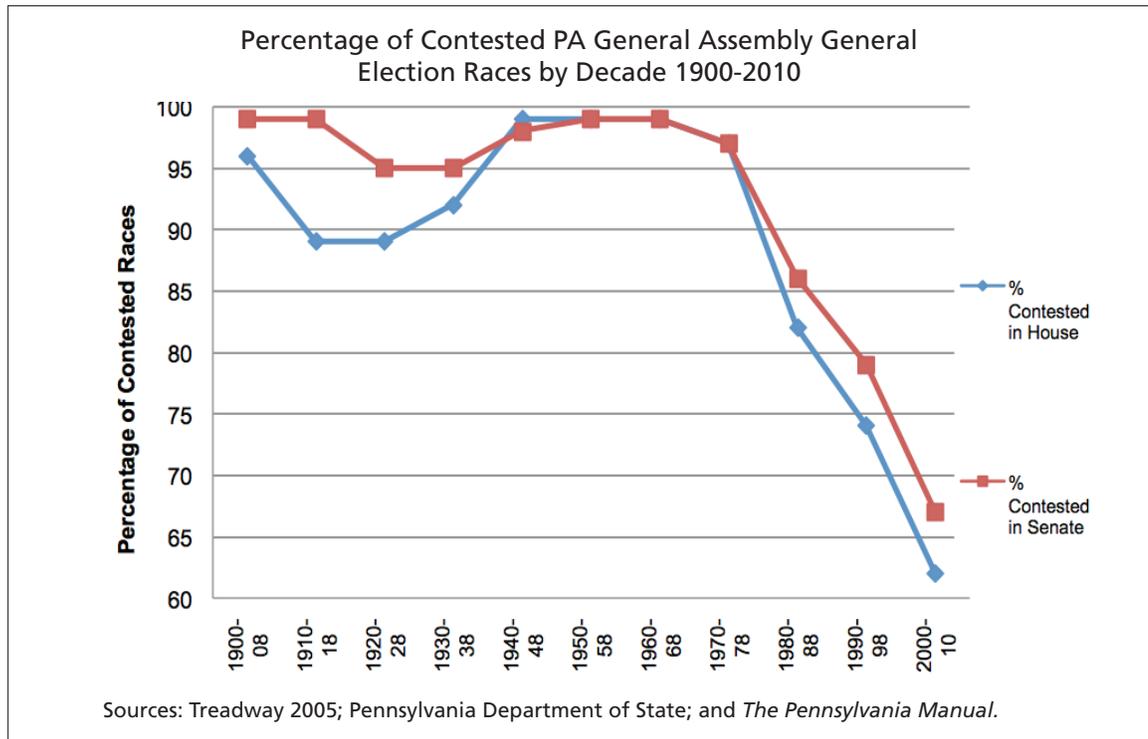
The constitution also lays down the mechanism by which legislative districts are determined; specifies the number of legislative districts and the number of legislators representing each district; does not allow citizens to initiate changes in law or to recall their elected officials; and also does not constrain the number of terms a legislator may serve... all subjects of discussion in the literature and the public leading to the question of whether the constitution itself should be amended. Campaign contributions are another form of “voting” and public participation and arguably influence who participates both in voting and in running for office. Whatever the “rules of the game,” to participate effectively, a citizen needs to understand the government and the way it works.

Background on Electoral Competition, Legislative Turnover, and Polarization

Several of the institutional changes in this section, such as term limits and campaign finance regulation, are advocated as ways to enhance electoral competition and therefore the public’s control of its representatives. Other changes, such as reapportionment reform, are advocated as ways to reduce political polarization. Before undertaking a discussion of these options, it is worth reviewing trends with respect to legislative turnover generally, actual levels of electoral competition, and the limited data available about polarization in the Pennsylvania General Assembly.

Electoral Competition

Prior to the modernization period, the two major parties -- and in a very small percentage of cases, independent candidates or parties -- consistently produced opposition candidates to incumbent members of the Pennsylvania General Assembly. Typically, more than 90 percent of incumbents faced an opponent in general elections, and many faced competition in primaries, as well. Beginning in the decade of the 1980s, the percentage of members facing general election competition began falling at accelerating rates. Many of the institutional changes discussed above have been advocated as remedies to this trend. The discussion under each topic suggests there are no simple diagnoses or “solutions’ to enhance competition. There may be, however, a number of inter-related causes and, if so, no simple solutions are likely to be found.



Among the potential explanations for these dramatic trends are:

1. The professionalization of the legislature, which the Legislative Modernization Commission recommended in 1968 and which, by our reckoning, took hold in 1973, when legislative salaries virtually doubled and professional staffing became more common. Higher salaries and more generous benefits are inducements to longer service but also might be expected to attract more opponents. Nevertheless, as reported in Volume I and documented in Volume V, research suggests legislators in professionalized bodies generally face less competition but also tend to enact legislation more closely attuned to voter preferences.
2. Reapportionment strategies are arguably aimed to protect incumbents, although as reported elsewhere in this series, the evidence nationally is that state legislative turnover has been greater, rather than lesser, in the first post-reapportionment election cycle (Ansolabehere and Snyder 2008). Nor, as reported in Volume I, has the party that controlled reapportionment in Pennsylvania always been able to maintain control of either the state House or congressional delegation throughout the ensuing decade.
3. Changes in campaign finance laws and practices, which put a greater premium on fundraising and greater access to potential contributors, helping to raise the cost of campaigns. Pennsylvania authorized political action committees in 1979. The increased cost of campaigns has made it less likely that potential candidates would undertake a campaign without the support of caucus leaders, who have incentives

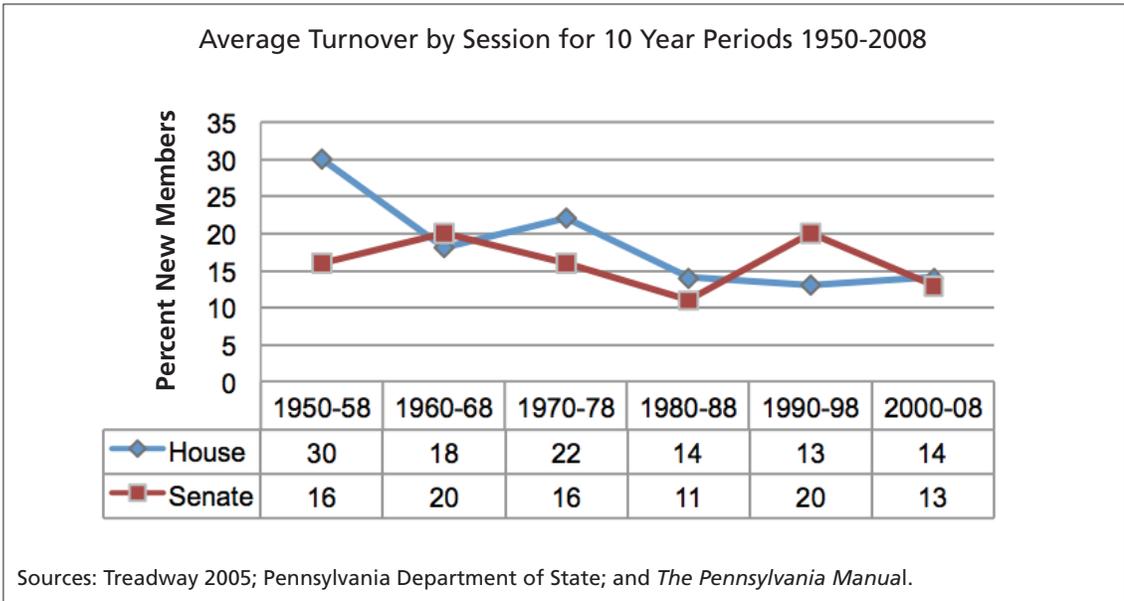
to focus their centralized resources on races they think are winnable at the expense of races that they consider long-shots.

4. The weakening of county-based party organizations (Aldrich 1995; Weir, Wolman, and Swanstrom 2005), which is associated with the demise of the patronage system. Although Pennsylvania's first civil service statute was enacted in 1938, broad-based reform was not enacted until 1963, and implementation proceeded in subsequent years. Further, Pennsylvania authorized collective bargaining and the right to strike for public employees in 1971. Although patronage systems tended to help entrench party control prior to civil service reform (Olle, Hirano, and Snyder 2011), it seems plausible that patronage-based and decentralized parties were also better equipped to produce and support opposition candidates in races that were unlikely to attract volunteer opponents. In contrast to caucus leaders who have incentives to concentrate centralized resources on a relatively small number of competitive districts, county parties had organizational incentives to field opponents in virtually all races within their boundaries. They also had incentives to back candidates who could win general elections. It seems plausible that candidates endorsed by strong local party organizations might have more moderate views than candidates elected chosen by ideologically more extreme primary election voters. In the last half century, leaders of both major political parties have at times attempted to thwart the ambitions of candidates regarded as ideologically extreme from winning presidential nominations through primary elections.

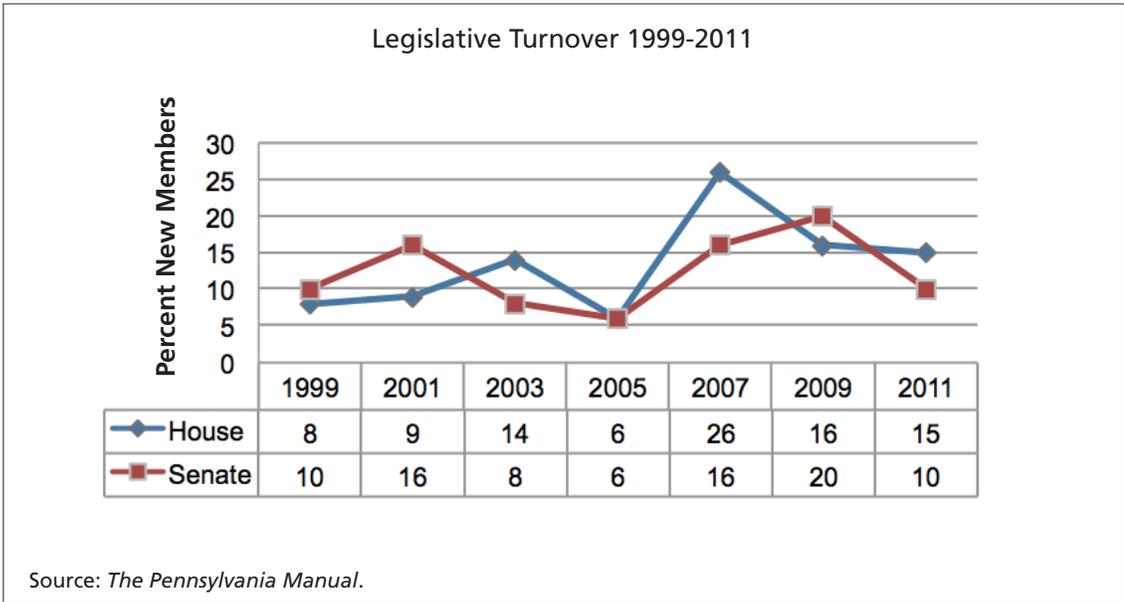
Legislative Turnover

Lack of competition in campaigns deprives voters of choice but does not necessarily equate to less turnover in the legislature. Turnover occurs when incumbents die or retire, often under no electoral pressure, but sometimes when they face formidable opposition or when their districts have been changed by reapportionment. Turnover also occurs when incumbents who do face competition are defeated.

Measuring turnover by the percentage of members at the beginning of one session who were not members at the beginning of the previous session and averaging the percentages by decade -- that is over five sessions -- also shows a downward, but less pronounced, trend beginning in the 1980s. House turnover by decade from the 1950s through the 1970s averaged 23 percent, and for the three decades after the 1980s, 14 percent. Senate turnover by decades from the 1950s through the 1970s averaged 17 percent, and after the 1980s, 15 percent.



A breakdown of the years since 1999 shows a pronounced upturn in new members in the sessions following the 2005 legislative pay raise vote. New members comprised 16 percent of the Senate for the session beginning in 2007 and 20 percent for the session beginning in 2009, or an average of 18 percent over the four-year cycle in which senators faced the electorate for the first time following the pay-raise enactment and repeal. House turnover was 26 percent in 2007 and 16 percent in 2009, or an average of 21 percent for the same two elections.



Year-by-year and even decade-by-decade data do not necessarily capture the cumulative effect of turnover, because it could be that the many of the newcomers are replacing others recently elected from a relatively small number of competitive districts, leaving the vast majority of members in safe seats with long service. To gauge the cumulative effect, we

counted the number of members at the beginning of the 1979 session who were not members at the beginning of the 1971 session and then did the same for the 2009 session and the 2001 session. We chose the 1970s because that was the last decade when more than 90 percent of state legislative candidates faced opposition. We found that 70 percent of the House turned over between 1971 and 1979 and 55 percent turned over between 2001 and 2009. We also found that 62 percent of the Senate turned over between 1971 and 1979 and 52 percent between 2001 and 2009.

What is the right amount of electoral competition and turnover? There is no “scientific” answer to this question; rather, it is judgment that depends on the perspectives and values of individual citizens, and citizens may change their judgments over time, depending on their evaluation of the legislature’s performance. It seems reasonable to assume that citizens would like their legislature to benefit from both the fresh energy and perspectives that new members might bring to bear on lawmaking and the seasoned judgment and skill that experienced members represent, but in what proportions?

Political Polarization

There is evidence that both legislators, as revealed by roll call votes and political rhetoric, and a significant proportion of voters, as revealed by public opinion surveys and election results, have become increasingly polarized in recent years (Haidt 2012, www.CivilPolitics.org). By polarization is meant that politicians and voters don’t just disagree about problems and solutions along party lines but that they are divided into ideological camps, each of which believes its views are morally superior. In extreme forms of polarization, each believes the views of the other camp are corrupt.⁴⁹ The polarization of congressional parties is often blamed for unwillingness to compromise and therefore for ideological gridlock that thwarts efforts to address many of the nation’s gravest problems. Respected scholars like Thomas E. Mann and Norman J. Ornstein (2012) have called for institutional changes in Congress to remedy gridlock. On the other hand, a scholar of at least equal stature, David R. Mayhew, argues that careful consideration of evidence, particularly historical evidence, often belies arguments that flawed institutions are root problems (2009 and 2010). Rather, Mayhew argues that institutional performance, such as the rising use of filibusters, often reflects societal conflicts that need to be resolved, as they have in the past, through elections.

Among institutional changes advocated by some critics to reduce political polarization in Pennsylvania are reforming reapportionment (also advocated to increase competition) and reducing the size of the legislature. The argument is that legislators elected from more competitive and larger districts will reflect more moderate constituencies, views for which

⁴⁹ There is a debate in political science about the extent of voter polarization. Morris Fiorina contends that polarization is primarily confined to elected officials and that the public at large is still moderate (Fiorina, Abrams, and Pope 2005). The late James Q. Wilson argued that both elected officials and the public at large are more polarized than they have been throughout most of our history (2006), although there also have been periods of intense polarization in the past, such as before the Civil War and during the McCarthy era in the 1950s. Wilson cites Richard Hofstadter’s article “The Paranoid Style in American Politics” (1964) as a classic examination of extreme forms of this phenomenon. Both Fiorina and Wilson agree, however, that legislative polarization has increased and is a threat to addressing the nation’s major problems.

there is some support in the literature of political science (Fiorina, Abrams, and Pope 2005). Both of these topics are discussed in Volume I, and reapportionment reform is also more thoroughly discussed below.

In a sophisticated analysis of roll call, election, and opinion survey data from the mid-1990s on, Boris Shor and Nolan McCarty (2011) conclude that at the aggregate level, the 50 state legislatures “appear to follow the national pattern of high and growing polarization” but with significant variation among the states. The majority of state legislatures, including Pennsylvania’s, are less polarized than the Congress, but 15 are more polarized. They find that California has by far the most polarized legislature and in fact “makes Congress look decidedly bipartisan by comparison.”⁵⁰ Shor and McCarty also conclude that in the state legislatures, “like the US Congress, polarization is primarily a manifestation of the different ways that Democrats and Republicans represent similar districts, not how voters are sorted across districts.” One implication of this finding -- and evidence that the large and gerrymander-proof US Senate is also polarized -- is that neither reapportionment reform nor enlarging districts might have as much impact on reducing polarization as their proponents hope.

In *The Righteous Mind: Why Good People Are Divided by Religion and Politics* (2012), Jonathan Haidt, a University of Virginia psychologist, argues, based on a variety of psychological tests and experiments, that liberals, conservatives, and libertarians talk past one another because moral reasoning is intuitive (based in emotions formed by genes and environment) rather than rational. Haidt cites the usual institutional remedies -- such as reapportionment and campaign finance reform -- for reducing polarization and regards “civility pledges” by elected officials as ineffectual wishful thinking. But Haidt also argues that increased socialization across the ideological divide can help if leaders and voters understand the emotional origins of moral disagreement (presumably from reading his book) and become less judgmental about the motives of those in the other camp. Increased socialization and improving understanding among legislators are ideas to which we will return in our discussion of Institution Building.

⁵⁰ As noted in Volume I, another study of the California senate, which has the most populous state legislative districts in America, also found it highly polarized.

Civics Education

“I know of no safe depository of the ultimate powers of society but the people themselves, and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion.”

(Thomas Jefferson in a Letter to W.C. Jarvis, 1820)

Civics, the study of the rights and duties of citizens designed “to inform their discretion,” was once a requirement for high school graduation in Pennsylvania. No longer.

Data

Although Pennsylvanians voted at about the same rates as the nation in 2010 (43.9 percent for Pennsylvania versus 45.5 percent for the nation) and are close to average on other measures of civic engagement, Keystone State residents have not fared so well on one key indicator. In a national study based on 2010 data, Pennsylvania ranked 49th among the states, ahead of only Delaware, in the rate of people who report that they talk about politics with their family and friends at least a few times a week. Only 20.9 percent of Pennsylvanians reported such activity, compared to a national average of 26 percent, according Penn State’s Center for Democratic Deliberation. The Penn State project was part of a national survey by the National Conference on Citizenship, and both efforts drew data from extremely large samples with small margins of error (Roebuck 2012). For both the state and the nation, the 2010 findings represented a significant decline from the 2008-2009 surveys, when 34 percent of Pennsylvanians and 39 percent of the nation reported having such conversations (Hogan and Hlavacik 2012). Perhaps the decline is partially due to 2008 being a presidential election year.

As reported earlier in this paper, a recent Pew study of five states demonstrates that the public does not understand the basics of the budgets of their states, where the money goes, how much discretionary spending there is, etc. While Pennsylvania was not studied, the states were similar to Pennsylvania and the results across the five states were remarkably similar, suggesting that the results in Pennsylvania would not differ by much, if at all. There is a national response to this problem. The Center for Civic Education “is a non-profit, nonpartisan educational corporation dedicated to promoting an enlightened and responsible citizenry committed to democratic principles and actively engaged in the practice of democracy in the United States and other countries.” (See www.civiced.org). The National Conference on Citizenship makes similar recommendations.

The “Campaign for the Civic Mission of Schools” (see <http://www.civicmissionof-schools.org/>) has enlisted over 40 organizations committed to increasing the emphasis on civics education through federal, state, and local education policies. In a recent release, the campaign noted that “the most recent National Assessment of Educational Progress (NAEP) test (May 2011) in Civics revealed only 25 percent of students could demonstrate a ‘proficient’ mastery of civics and government, meaning that millions of young Americans will be unprepared to be the informed and engaged citizens a healthy democracy requires.”

Reflecting their concern, several Pennsylvania state senators have introduced a resolution in the past two sessions which if enacted would direct the Legislative Budget and Finance Committee to “study the scope and quality of citizenship education in the Commonwealth.”⁵¹

Opinions

Opinions on the need for civics education boiled down to two arguments:

- The better the understanding of the “system,” the more effective a person can be in affecting an outcome of that system including affecting change in the system itself.
- Civics education has the potential to influence people to actively participate in the democratic process as voters and as office seekers.

The concerns boiled down to three arguments:

- Civics education costs money in terms of dollars and in terms of “opportunity cost,” i.e. the time students spend on civic education could be used for other subjects more directly related to their ability to obtain jobs.
- Civics education can be politicized and slanted towards one or another point of view.
- Some scholars argue that the problem is overstated. Citizens may not know intimate details about candidate positions or government operations, but they can accurately assess which candidate or policy alternative is closer to their point of view and adequately exercise democratic control.

⁵¹ These are SR 35 of 2009-10, and SR 42 of 2011-12. Neither left committee.

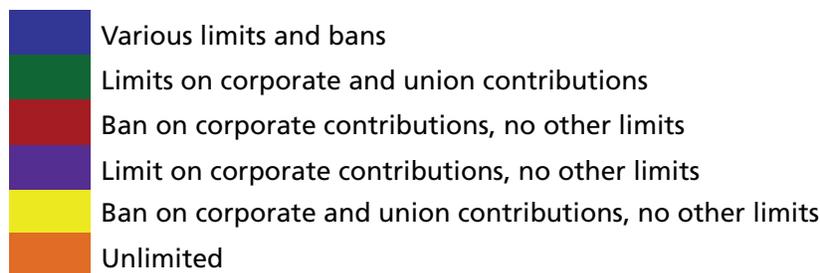
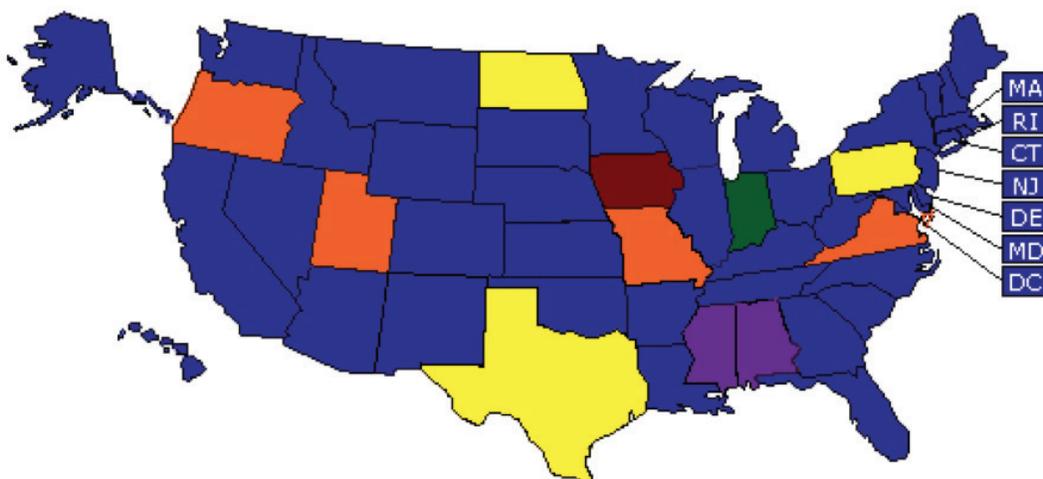
Campaign Finance Laws

Pennsylvania's disclosure regime is moderately strict, and the state is one of 14 that prohibit direct contributions to candidates from corporate and union treasuries. However, state law explicitly allows these entities to contribute using political action committees (PACs), which essentially means that businesses and other organizations can establish these mechanisms to collect contributions from employees and other individuals, provided such contributions are made voluntarily and from the after-tax income of the contributors. Pennsylvania is among 12 states that do not limit individual contributions to candidates. Amendments to campaign finance laws are among the most frequently espoused topics in the continuing evolution of the General Assembly as well as other elected offices in Pennsylvania.

Data

States regulate campaign financing in three ways: disclosure, contribution limits, and public financing. Each state is somewhat unique in employing a variety of provisions and a combination of approaches. The map below summarizes how the states regulate campaign financing:

Campaign Contribution Limits



Source: National Conference of State Legislatures <http://www.ncsl.org/programs/legismgt/about/ContribLimits.htm>

Disclosure. All states require some level of disclosure from candidates, committees and political parties although they vary in the level of detail and frequency of reporting. The trend has been for states to require electronic filing of reports.

Contribution Limits. Only four states limit neither the amounts nor sources of contributions – Oregon, Utah, Missouri, and Virginia. Another seven states have minimal limits – Alabama, Indiana, Iowa, Mississippi, North Dakota, Texas, and Pennsylvania (source but not amounts). Fourteen states index their limits to the inflation rate. While limits vary widely from state to state the table below describes the averages and extremes of states’ campaign contribution limits.

Individual Contribution Limits to Candidates as of 2008 (All amounts are per election cycle)			
	Gubernatorial	Senate	House
National Average	\$8,579	\$4,003	\$3,632
National Median	\$5,000	\$2,000	\$2,000
Highest Limit	\$60,800 New York	\$23,807 Ohio	\$23,087 Ohio
Lowest Limit	\$872 Arizona	\$320 Montana	\$320 Montana

Source: National Conference of State Legislatures (http://www.ncsl.org/programs/legismgt/about/2008_Contrib_Candidates.htm)

There are other common restrictions. For example, 24 states have limits on the amounts corporations may contribute. Other restrictions include prohibiting or limiting any contributions during a legislative session, those made by lobbyists, cash contributions, and those made by minors.

Pennsylvania has no limits on contributions to candidates by individuals, state parties, and political action committees (PACs), but it has had since at least 1937 a relatively strong disclosure law that also prohibited contributions from corporations. In 1979, the General Assembly replaced the 1937 statute, strengthening it in a number of respects. The 1979 legislation requires that “each candidate and committee shall keep records of the names and addresses of each person from whom a contribution of over ten dollars (\$10) has been received...” It also requires political committees receiving \$250 or more to register with the Secretary of the Commonwealth within 20 days of receipt. Additionally, this legislation requires filing reports of donors to candidates or political committees including the name, address, occupation and employer—more information required than the 1937 law—but only for individuals contributing in excess of \$250. Those contributing over \$50 must be reported along with their addresses, amounts and dates of contributions. Vouchers must accompany all sums expended over \$25 and be available for inspection upon request. As noted above, Pennsylvania does prohibit contributions from corporate and union treasuries directly to candidates. Citing the US Supreme Court decision in *Citizens United v. FEC* in January 2010 (and reaffirmed in June 2012) the Pennsylvania Department of

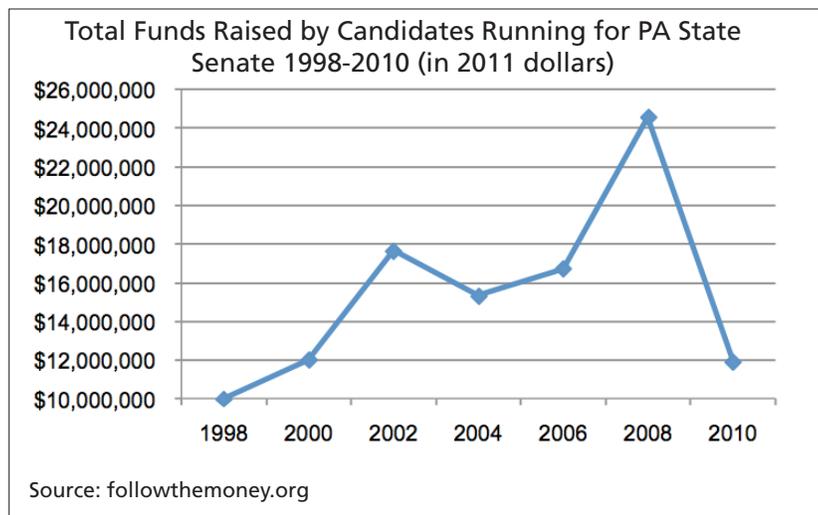
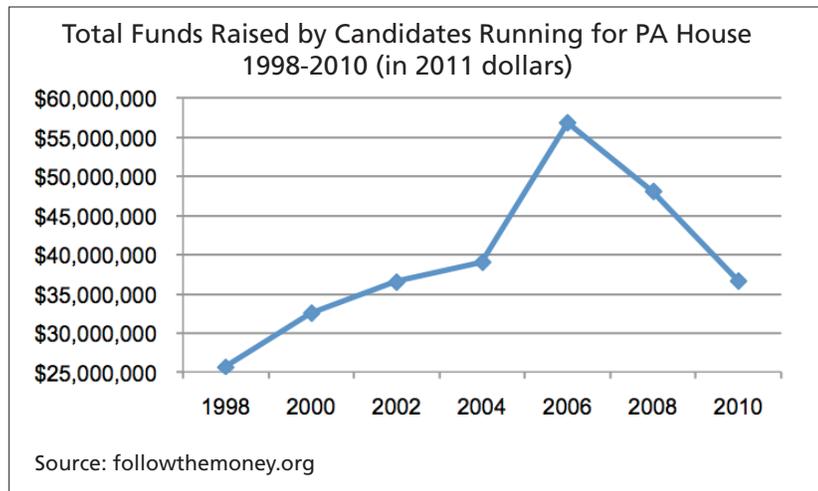
State has determined, however, that Pennsylvania’s prohibition on the use of such funds for “independent expenditures” in support of or opposition to a candidate cannot be enforced. “Independent expenditures,” in Pennsylvania law, are those “made for the purpose of influencing an election without cooperation or consultation with any candidate for any political committee authorized by that candidate and which is not made at the request or suggestion of any candidate or political committee or agent.”

Because Pennsylvania has relatively strong disclosure laws, large contributions to candidates often attract headlines and editorials that seem likely to raise questions in the minds of voters about whether certain interests will have inordinate influence upon the winning candidate. In the final days before the 2010 gubernatorial election, for example, the *Pittsburgh Tribune-Review* reported that Democratic gubernatorial nominee Dan Onorato had received \$400,000 from the Democratic Governors Association, \$275,000 from outgoing governor Ed Rendell’s campaign committee, and a combined \$628,500 from labor and trial lawyer organizations over a 30 day period. Meanwhile Republican Tom Corbett received \$2.5 million from the Republican Governors Association and a single \$50,000 donation from the CEO of a Texas-based natural gas company. These amounts are far in excess of the average limits in states that impose limits on contributions. It should be noted, however, that political scientists are not in agreement as to what degree campaign contributions influence the views of candidates for office. Some analysts suggest that contributors more often support candidates who already support their views rather than they try to influence candidates who are opposed to their views.

According to the National Institute for Money in State Politics (commonly known as followthemoney.org), the following 15 types of organizations were the top contributors to Pennsylvania gubernatorial and state legislative candidates in 2010:

Candidate Committees	\$19,860,520
Party Committees	\$15,824,960
Lawyers & Lobbyists	\$14,204,167
Conservative Policy Organizations	\$9,884,692
Candidate Self-finance	\$9,409,491
General Trade Unions	\$6,987,015
Public Education Policy	\$6,698,013
Public Sector Unions	\$4,103,774
Real Estate	\$3,374,513
Liberal Policy Organization	\$3,112,483
Insurance	\$2,691,021
Health Professionals	\$2,418,644
Oil & Gas	\$2,323,245
Construction Services	\$2,155,147
General Contractors	\$2,046,391

A significant portion of the funds raised for legislative races is contributed directly to legislative leadership PACs for redistribution to individual candidates as caucus leaders see fit. The trend over many years in Pennsylvania and other states has been for campaign fundraising to be based more in the caucuses than in county political organizations. The graphs below demonstrate that overall spending on Pennsylvania House and Senate campaigns increased each cycle. The largest increases in spending on House campaigns occurred between the 2004 and 2006 cycles, followed by a noticeable decrease following the 2006 election. The largest single bump in overall spending in Senate races occurred between the 2006 and 2008 elections and, like the House, experienced a decline in overall spending in the 2010 cycle.



Between 1998 and 2010—both cycles featuring gubernatorial elections—the cost of Pennsylvania House campaigns, measured in 2011 dollars, increased by 42.6 percent, rising from a combined total of \$25.7 million in 1998 to \$36.7 million in 2010. An average of \$126,672 was raised for each of the state’s 203 House seats in 1998 as compared to \$180,572 in 2010.

Meanwhile, the cost of Pennsylvania Senate campaigns increased between the 1998 and 2010 cycles by 19.1 percent, rising from \$10 million in 1998 to \$11.9 million in 2010.

Because only half of Pennsylvania's 50 Senate seats are elected at one time, the data shows that an average of \$400,201 was spent on each of the 25 seats up for election in 1998 while \$476,401 was spent per seat in 2010.

PA State House Candidate Fundraising 1998-2010				
Year	Total Funds Raised	Total in 2011 Current Dollars	Change in Total from Previous Cycle in 2011 Dollars	Funds Raised Divided Among 203 Seats
1998	\$18,569,135	\$25,714,492		\$126,672.37
2000	\$24,843,811	\$32,565,590	\$6,851,098	\$160,421.63
2002	\$29,135,044	\$36,555,977	\$3,990,387	\$180,078.70
2004	\$32,641,151	\$39,003,842	\$2,447,865	\$192,137.15
2006	\$50,730,125	\$56,800,125	\$17,796,283	\$279,803.57
2008	\$45,787,518	\$48,003,279	-\$8,796,846	\$236,469.35
2010	\$35,899,615	\$36,656,229	-\$11,347,050	\$180,572.56

Source:followthemoney.org

PA State Senate Candidate Fundraising 1998-2010				
Year	Total Funds Raised	Total in 2011 Current Dollars	Change in Total from Previous Cycle in 2011 Dollars	Funds Raised Divided Among 25 Senate Seats
1998	\$7,224,915	\$10,005,044		\$400,201.76
2000	\$9,157,816	\$12,004,184	\$1,999,140	\$480,167.36
2002	\$14,065,748	\$17,648,408	\$5,644,224	\$705,936.32
2004	\$12,825,488	\$15,325,541	-\$2,322,867	\$613,021.64
2006	\$14,917,052	\$16,701,918	\$1,376,377	\$668,076.72
2008	\$24,543,650	\$24,543,650	\$7,841,732	\$981,746.00
2010	\$11,665,663	\$11,911,526	-\$12,632,124	\$476,461.04

Source:followthemoney.org

As Rosenthal notes in discussing other states, however, average expenditures mask vast differences between relatively low amounts spent in safe districts and much larger amounts spent in districts regarded as competitive; further, in states with relatively few competitive districts, even the average expenditures are relatively low (2009: 125). The incumbent averages almost certainly include dollars given to an existing officeholder who was running for a different office in this election cycle. Although statewide averages no doubt mask significant variations between safe and competitive districts, the statewide averages show winners outspending losers, and incumbents outspending challengers, by significant amounts.

Pennsylvania General Assembly Average Dollars by Incumbency 2010 (Expressed in 2011 Dollars)								
Chamber	Total Spent By Winning Candidates	Total Spent by Losing Candidates	Total Amount Spent by All Candidates	Average Amount Spent by Winning Candidates	Average Amount Spent by Losing Candidates	Average Amount Spent by Incumbents	Average Amount Spent by Challengers	Average Amount Spent By All Candidates in Open Seat Races
House		9,712,484	34,351,695	123,190	67,059	126,467	49,245	117,064
Senate	8,237,274	740,583	8,977,858	334,419	74,058	302,900	45,603	232,857

Figures extrapolated from campaign finance report data compiled by followthemoney.org

Public Financing of Campaigns. Although Pennsylvania does not, half of the states grant public financing to political candidates and/or parties for campaigns. In many states the programs are limited in scope and the grants are small. Participation is optional. “Clean Elections” public financing is available in four states – Arizona, Maine, Vermont, and Connecticut. This type of financing allows candidates to fully fund their campaign after raising a specified amount in small contributions, but they must agree to strict spending limits and are prohibited from receiving any additional contributions from private sources.

Findings from Academic Research. It is reasonable to expect that campaign finance regulation would affect not just how much money candidates raise and spend, but also election outcomes. As Temple Professor Megan Mullin reports in Volume V, however, findings from political science literature are mixed. One study concludes that campaign spending plays a significant role in the outcomes of state legislative elections, with spending by challengers having a larger effect on winning the vote than spending by incumbents (Gierzynski and Breaux 1991). Indeed, studies demonstrate the potential for contribution limits to increase the competitiveness of elections. At the gubernatorial level, limits on individual contributions reduce the winning margin of victory (Primo, Milyo, and Groseclose 2006). Contribution limits also narrow victory margins in lower house elections and may increase the number of candidates running in each race (Stratmann and Aparicio-Castillo 2006). The effects seem to apply only to two-party competition; more stringent contribution limits increase the emergence of challengers in general legislative elections, but not in primaries (Hamm and Hogan 2008). The few states with public financing for legislative races also seem to enjoy higher levels of electoral competition, at least in the districts where challengers accept public funding (Hamm and Hogan 2008; Malhotra 2008). An analysis of corporate independent expenditures suggests that corporate contribution bans reduce the dominance of business among campaign contributors and may reduce the total supply of money in politics (La Raja 2010). However, there is no evidence that connects spending bans to political or policy outcomes.

Some data indicate that citizens have a stronger sense of efficacy, or belief that they can influence the political process, in states with disclosure laws and restrictions on contributions from organizations. Individual contribution limits and public financing of elections

have no relationship with perceived efficacy, however (Primo and Milyo 2006). Moreover, journalists perceive higher levels of corruption among state public officials in states with stricter campaign finance laws, perhaps because the laws make available more information about fundraising activities and generate media coverage about alleged improprieties (Rosenson 2009).

Although judicial selection is not a focus of this study, those who favor ending Pennsylvania's system of partisan elections for judges typically cite the potential for conflicts of interest or even corruption when candidates must solicit contributions from lawyers and litigants who might appear in their court. Volume V includes a review of academic literature that compares appointive to elective judges under partisan and non-partisan systems. In general, elected judges are more responsive to public opinion, but partisan (as opposed to non-partisan) elections for judges are associated with lower public confidence in the judicial system. On the other hand, public opinion polls have fairly consistently indicated that voters want to retain their power to elect judges. Also noteworthy is that, as reported in Volume I, elected judges were considered a reform in 1874, when the governor's power to appoint judges was considered the problem.

Several bills in the 2009 General Assembly would have provided for a combination of spending limits for donors or require greater disclosure and filing requirements for contributions. A number of bills have been introduced during the 2011-2012 Session that would require greater disclosure of campaign donations or may impact the amount of money individuals or PACs may donate to candidates in Pennsylvania. Among these bills are HB 1779 that would cap donations to candidates running for the General Assembly, Common Pleas Judge, county, or local offices at \$500 per election and \$2,400 for statewide candidates. HB 1850 would require countywide candidates to file copies of their campaign finance reports with the Secretary of the Commonwealth. SB 524 would mandate that write-in candidates must follow the same campaign finance reporting rules as candidates appearing on the ballot while also prohibiting individuals from becoming candidates for public office until past due reporting requirements had been met from previous races. Additionally, SB 1269 would prohibit campaign funds from being used for personal purposes, implement a \$100,000 annual cap on aggregate donations to General Assembly, Common Pleas Judge, county, or local candidates, and set a \$250,000 annual aggregate cap on donations to statewide candidates. A Pennsylvania Supreme Court decision striking down bans on contributions to candidates from gaming interests may stimulate interest among some legislators in revisiting the state's campaign finance laws.

Opinions

One concern raised over the current state of campaign financing is that to the extent that campaigns are more expensive and fundraising is based in caucuses rather than county committees, legislators and leaders have less time and energy to devote to the functions of representing, lawmaking, and balancing executive power.

It should be noted that, as discussed in Volume I, reducing the size of the House and Senate is likely to raise the cost of campaigns for both offices, although this probable effect

should be weighed with other important values entailed in that decision and with other measures that could be taken to control campaign costs. There is anecdotal evidence that underfunded candidates willing to wage “door-to-door” campaigns can still defeat incumbents in the Pennsylvania House of Representatives, while such occurrences are unheard of in the state’s larger senate districts.

One national expert on state legislatures argued that additional disclosure is the best form of campaign finance reform. He felt that campaign contribution limits in other states have driven some contributions (that would have otherwise been donated to candidates) to other entities, such as “527” committees, which can receive unlimited contributions, are not associated with any particular candidates, and cannot be held accountable by the voters. On the other hand, strong reporting requirements would increase transparency, showing the flow of money from contributors to candidates and allowing the electorate to make their decisions understanding how the candidate is financed.

Others advocated limits, opining:

- Limiting contribution amounts and banning contributions by certain persons who contract with the state would reduce the influence of special interests and curb political favoritism in office.
- Since incumbents are more likely to receive large contributions, limits can enhance the competitiveness of elections by “leveling the playing field” for challengers.
- The US Supreme Court’s decision in 2009 overturned a West Virginia Supreme Court decision on the grounds that a state judge should have withdrawn from a case in which one of the litigants had contributed \$3 million to help elect the judge argues for Pennsylvania to move to merit selection of judges or to limit contributions to judicial campaigns. Campaign finance limits would not just protect the public from undue influence on judges by large contributors but protect judges from the suspicion of improper influence.
- Pennsylvania should join other states in attempting to limit the use of funds from corporate and union treasuries to finance “independent expenditures” to support or oppose candidates.

Those opining against any further changes in campaign finance laws offer these points:

- As evidenced by the broad based utilization of “527” committees at the federal level, the free speech provisions in the First Amendment of the US Constitution allow interested parties to circumvent many of the existing campaign contribution limits that have been enacted to date. The US Supreme Court’s decision in *Citizens United v. FEC* appears to be having similar effects.
- Because contribution limits tend to drive money to unaffiliated entities, and do not necessarily eliminate large contributions from the political process, limiting contributions may not result in more competitive elections or a level playing field for candidates challenging incumbents.
- Contribution restrictions favor wealthy, self-funded candidates and may result in

even more elected officials having substantial wealth.

- Contribution and spending limits prevent challengers from buying publicity and thus overcoming the inherent advantages of incumbency, such as name recognition.
- The diversity of interests now contributing to political campaigns in Pennsylvania and the large amounts of funds being raised for candidates of both parties make any one large contribution relatively insignificant.
- Most contributors give to candidates who already support their positions, and many contributors give to both candidates of both parties.

Lawmaking by Initiative and Referendum

While a referendum may be put on the statewide ballot by act of legislature, Pennsylvania does not allow referendum questions to reach the ballot by “initiative,” i.e. enabling the citizenry through a petition process to put a question on the ballot. The question of whether it should be possible has been a recurring discussion topic in the evolution of Pennsylvania lawmaking since at least the 1970s.

Data

Voting is the most fundamental way in which citizens participate in government in a democracy. In a representative democracy, elections are the mechanism by which voters control their representatives and therefore obtain the policies that they prefer. In a direct democracy, elections are the mechanisms by which voters themselves can initiate, approve, or veto proposed statutes or constitutional provisions. Nowhere in the world is direct democracy practiced to the same degree that it is in many states and local governments in the US (Donovan, Mooney and Smith 2009).

Compared to many states, however, Pennsylvania provides relatively few opportunities for direct democracy. In Pennsylvania, voters must approve changes to the state constitution and they are sometimes presented with the opportunity to approve state or local laws in a referendum, but the propositions on which they vote are drafted by elected representatives. The sole exception is that the constitution allows voters that wish to consolidate municipalities to petition for the question to be put on the ballot without the approval of their respective legislative bodies. If the proposal is approved by the voters, the consolidation is approved. This provision of the constitution is rarely tried but has succeeded in a handful of instances.⁵²

Twenty-four states permit a referendum to reach the ballot by “initiative.” Of the 24 states, 18 allow initiatives to propose constitutional amendments, and 21 states allow initiatives to propose statutes. Initiatives and referenda come in different sizes and shapes depending on the state.

The two types of initiatives are direct and indirect. In the direct process, proposals that qualify go directly on the ballot. In the indirect process, they are submitted to the legislature, which may act on the proposal. Depending on the state, the initiative question goes on the ballot if the legislature rejects it, submits a different proposal, or takes no action.

According to NCSL, “In some states with the indirect process, the legislature may submit a competing measure that appears on the ballot along with the original proposal. States with some form of the indirect process are Maine, Massachusetts, Michigan, Mississippi, Nevada and Ohio. In Utah and Washington, proponents may select either the direct or indirect method.”⁵³

⁵² As presently constituted, the City of St. Mary’s in Elk County and Fairview Township in Erie County each resulted from consolidations initiated and approved by citizens.

⁵³ From NCSL at <http://www.ncsl.org/legislatures-elections/elections/initiative-referendum-and-recall-overview.aspx>.

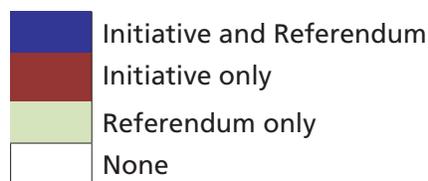
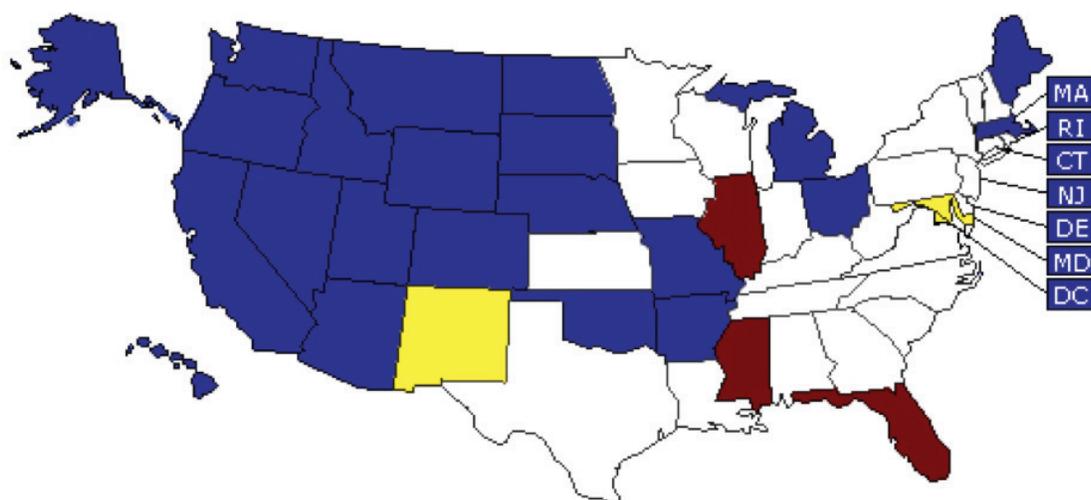
Most states that employ initiative and referendum have done so for almost a century. Only Florida (1972), Illinois (1970), and Wyoming (1968) are relatively recent additions to the list. The rest have a history dating back to 1918 and before. Most incorporated the concept in the decade or so after the beginning of the 20th century.

Because of the number of different types of initiative and referenda and the different details of each system, it is difficult to compare one state to another. The degree of requirements can have a major impact on the number and focus of initiatives and referenda. The major differences include:

- Different restrictions on subjects
- Varying number of signatures and signature related requirements
- Time limits for circulating and submitting petitions
- Voter information requirements
- Passage requirements (different percentages of votes cast in the last election)

The following map provides an overview and the table summarizes initiative and referendum capabilities in greater detail in the States.

Initiative and Referendum States



Source: NCSL.

Initiative and Referendum States⁵⁴ (Updated May 2009)

State	Statutes		Constitution
	Initiative	Popular Referendum	Initiative
Alaska	I*	Yes	None
Arizona	D	Yes	D
Arkansas	D	Yes	D
California	D	Yes	D
Colorado	D	Yes	D
Florida	None	No	D
Idaho	D	Yes	None
Illinois	None	No	D
Maine	I	Yes	None
Maryland	None	Yes	None
Massachusetts	I	Yes	I
Michigan	I	Yes	D
Mississippi	None	No	I
Missouri	D	Yes	D
Montana	D	Yes	D
Nebraska	D	Yes	D
Nevada	I	Yes	D
New Mexico	None	Yes	None
North Dakota	D	Yes	D
Ohio	I	Yes	D
Oklahoma	D	Yes	D
Oregon	D	Yes	D
South Dakota	D	Yes	D
Utah	D & I	Yes	None
Washington	D & I	Yes	None
Wyoming	I*	Yes	None
US Virgin Is.	I	Yes	I

D- Direct Initiative; proposals that qualify go directly on the ballot.

I- Indirect Initiative; proposals are submitted to the legislature, which has an opportunity to act on the proposed legislation. The initiative question will subsequently go on the ballot if the legislature rejects it, submits a different proposal, or takes no action.

I* -- Alaska and Wyoming's initiative processes are usually considered indirect. However, instead of requiring that an initiative be submitted to the legislature for action, they only require that an initiative cannot be placed on the ballot until after a legislative session has convened and adjourned.

⁵⁴ From NCSL at <http://www.ncsl.org/legislatures-elections/elections/chart-of-the-initiative-states.aspx>.

While initiative and referendum in other states have placed certain measures on the ballot that may otherwise have not been taken up by the legislature, studies generally suggest that they have not produced a better legislative product. According to many commentators, California's initiative and referendum process has contributed to the deterioration of its public schools after Proposition 13; the decay of its highways and other infrastructure; electricity shortages and blackouts; increasing traffic congestion and suburban sprawl; perverse and poorly drafted laws attempting to deal with social issues like gay marriage, affirmative action, and immigration; legislative supermajority requirements that prolong and deepen state budget crises; the loss by the governor and legislature of control of 85 percent of the state budget driven by popular initiatives; and the escalating influence of money in efforts to influence the outcome of lawmaking under direct democracy (Zakaria 2003; Pew Center on the States 2009).

The academic literature has been more measured in its assessments of direct democracy. Studies have found that initiative campaigns help educate voters on issues, stimulate greater public interest and voter turnout (Tolbert and Bowen 2008; Tolbert, Bowen, and Donovan 2009; Childers and Binder, n.d.). The threat of initiative provides incentives for legislatures to better represent majority opinion (Gerber 1996, 1999). Some studies dispute that minority rights are insufficiently protected (Donovan and Bowher 1998; Frey and Goette 1998; Hajnal, Gerber, and Louch 2002), although gay-rights and bilingual education advocates undoubtedly would disagree. Recent research suggests that direct democracy may reduce citizens' trust and confidence in government (Dyck 2009). Rosenthal (2009) argues initiative and referendum reduce deliberation and increase the importance of courts as final arbiters of state law.

While legislation has been proposed in Pennsylvania to establish initiative and referendum on statewide issues, it has yet to achieve passage even in one chamber. It should be noted that in enacting legislation, the legislature can and has attached a referendum provision that makes the implementation of the particular act dependent on a state and/or local referendum. Governor Robert P. Casey's ambitious local tax reform legislation, for example, was dependent on voter approval of a constitutional amendment, which was soundly defeated by voters. As noted earlier, although the Pennsylvania Constitution authorizes citizen initiative to force potential consolidation with other local governments to be placed on the ballot for voter approval when local legislative bodies have not done so, such instances have been extremely rare.

Opinions

According to one national expert on state legislatures, initiative and referendum make it "impossible" to govern. He claims that initiative and referendum remove deliberation and compromise from the legislative process. Deliberation and compromise are two of the things that he states are absolutely necessary to craft a good legislative product. The expert also claims that initiative and referendum remove accountability from the legislative process and fundamentally shift how tax dollars are expended.

However, these contrasting opinions in favor of initiative and referendum were garnered:

- Initiative followed by referendum increases citizen power.
- It puts pressure on legislators to act on a particular issue or face the possibility that it will be decided by the voters without them.
- It provides a way to circumvent the legislature and enact law where the legislature is stymied and not representing the public. Thereby it provides the ultimate in “representation” when the legislature is viewed by some to be failing to do its job.
- But others offered these opinions arguing for the status quo:
- Pennsylvania is a “representative democracy” with all that implies; and, in some aspects, the failures of the present system are the fault of the electorate, not those they elect.
- Requirements often limit initiatives to well-funded interests that can pay for signature collectors and a marketing campaign. The result is mass marketing campaigns that distort the real consequences and meaning of the referendum.
- Initiative and referendum would become an “escape hatch” for legislators who, rather than struggling with an issue, choose to just leave it up to the public.
- Initiative followed by referendum is more likely to force the will of the majority against the minority (e.g., gay-marriage bans).
- Too many ballot questions can make voting long and complicated. Many people may not have enough time to fully understand the issues and be insufficiently informed when they go to the polls.
- Once proposals are placed on the ballot and attract public attention, they cannot be amended to reflect compromises among contending groups, but are offered in “take it or leave it” form.

Term Limits

For the past two decades, one of the most frequently discussed subjects in the evolution of legislative bodies has been the idea of term limits. Pennsylvania has been no exception to the discussion but has not adopted the idea.

Data

A total of 21 states adopted term limit legislation that applies to legislators. The chart immediately below lists the 15 states that continue to limit the terms of their legislators along with when the limits were adopted and the number of limited years a legislator can hold office.

States with Term Limits

State	Year Enacted	Limit (Years)	
		House	Senate
California	1990	6	8
Colorado	1990	8	8
Oklahoma	1990	12	12
Arizona	1992	8	8
Arkansas	1992	6	8
Florida	1992	8	8
Michigan	1992	6	8
Missouri	1992	8	8
Montana	1992	8	8
Ohio	1992	8	8
South Dakota	1992	8	8
Maine	1993	8	8
Louisiana	1995	12	12
Nevada	1996	12	12
Nebraska	2000	n/a	8

Source: NCSL.

The following chart lists the six states that adopted term limits but repealed them either through state Supreme Court rulings or legislative action.

Term Limit Repeals

State	Year Repealed	Year Enacted	Who Repealed
Massachusetts	1997	1994	State Supreme Court
Washington	1998	1992	State Supreme Court
Idaho	2002	1994	Legislature
Oregon	2002	1992	State Supreme Court
Utah	2003	1994	Legislature
Wyoming	2004	1992	State Supreme Court

Source: NCSL

Several similarities in the charts become obvious. First, the overwhelming number of states adopting term limits instituted the practice in the early 1990s. Only Nebraska adopted a limit in 2000 and Louisiana and Nevada waited until the mid-1990s. No state has adopted term limits since 2000. Second, eight years is the most common term limit for both chambers of term-limited state legislatures. Third, where term limits have been repealed, none have been repealed by popular vote but rather by the courts or the legislature itself.

Research on the first effects of term limits has resulted in some conclusions of interest. The Joint Project on Term Limits (JPTL), a coalition of the National Conference of State Legislatures, the Council of State Governments, the State Leadership Foundation, and a group of distinguished scholars from various universities around the country has studied the issue through surveys, case studies, and data collection. “The Effects of Term Legislative Limits” by Jennifer Drage Bowser (2005) summarizes their work. Also the results of a 50-state survey by a group of academics were reported at a conference at the University of Akron in 2004 (Cooper 2004). Both of these reports were published by the Council of State Governments. Finally, Kousser (2005) and Kurtz, Cain, and Niemi (2007) examined term limits from multiple perspectives.

Following are findings of these efforts:

1. The effects of term limits vary from state to state depending on size, professionalization of legislature, and type of limits imposed.
2. Surveys reinforce the notion that term limits are popular with voters.
3. As contemplated by proponents, there is a definite increase in turnover. In 2004, the average turnover for all legislators was 20.6 percent, compared to 37.1 percent in term-limited house chambers.
4. With few exceptions, the numbers of female and minority legislators has not changed. Similarly, the age, ideology, religion, professional background, and socioeconomic status of legislators has changed little.
5. An increasing number of new legislators come to office with more local or county legislative experience and more choose to seek other legislative office when their terms expire. That is, newcomers in term-limited states were more than likely to have held public office prior to their election than in other states.
6. Many states are creating new training and education programs for the increasing

number of newcomers.

7. Leaders rise to the top more quickly, stay for a briefer time, and wield less influence. Members know the leaders are term-limited since they are usually in their last term once they get into leadership, thus making it easier to challenge them. One former senate president stated “Managing the legislature under term limits is like fielding a team of free agents.” Leaders are also playing a greater role in fundraising and campaigns. On the other hand more members will get to serve in a leadership position.
8. Committees are weaker and less collegial. Committee chairs have high turnover rates and reduced legislative and policy experience. The JPTL reports that committee gate-keeping has declined significantly in California and bills are less well-crafted when they reach the floor in Colorado. Arizona has reduced the number of committees to make up for the shortage of qualified chairs.
9. The importance and influence of legislative staff has increased. Partisan staff has increased in both number and influence. The number of staff has increased as well to handle the extra workload.
10. The question of loss of power has mixed results. The results of JPTL interviews reveal that in about half of the states the legislature lost power to the executive with no change in the other half. Researchers measured loss of legislative power by evidence of reduced oversight activities, reduced amendment of the governor’s budget proposal, and the perceptions of surveyed state legislators and capitol insiders (Moncrief and Thompson 2001; Peery and Little 2002; Kousser 2005; Carey, et al. 2006; Kousser 2008; Sarbaugh-Thompson, et al. 2010; Miller, Nicholson-Crotty, and Nicholson-Crotty 2011).
11. Legislators in term-limited states say they spend less time keeping in touch with constituents.

Overall JPTL reports that many of the problems experienced by term-limited legislatures are the same problems faced by all legislatures; term limits simply amplify and accelerate them.

While term limits in other states have effectively increased the turnover of legislators and legislative leaders, studies generally suggest that they have produced neither better legislators nor better legislative products; nor have they reduced spending; nor have they shifted the ideological makeup of the legislator. Moreover, they have little to no impact on increasing the representation of minorities and women (Carey, et al. 2006; Moncrief, Powell, and Storey 2007; Kousser 2008).

Opinions

Opinions raised in favor of term limits are familiar, to wit:

- Term limits simply parallel the limits on gubernatorial terms.
- Term limits break the power of incumbency and periodically provide the opportunity for a competitive election in the district of the term-limited legislator.

- Term limits enable more people to serve.
- Term limits are effective in reducing the ability of senior legislators to inefficiently allocate appropriations to their district at the expense of those of more junior legislators.
- Term limits weaken the power of special interest groups who develop special relationships with incumbents.
- Term limits strengthen the ability of the governor to get his or her public policy agenda approved and implemented.

In addition to citing the negative findings of the various studies of term limits for legislators, critics offered the following opinions:

- Term limits artificially restrict the voter's right to choose.
- Term limits reduce the effectiveness of the legislature by eliminating meaningful long term relationships between legislators, hampering compromise, and reducing debate to partisan politics instead of meaningful deliberation.
- Inexperienced legislators will lack the clout that governors possess. As such, they are less able to influence the process.
- With frequent turnover of elected legislators, the influence of the executive branch, unelected legislative staff, and lobbyists will increase.
- Even without term limits, more than half of the current Pennsylvania General Assembly has taken office in 2005 or later and more than 90 percent of leaders are in new positions since 2005. (As noted earlier, however, the turnover rate of the House and Senate were higher in the 1970s, when county-based parties were still slating opposing candidates in more than 90 percent of legislative districts.)

Reapportionment

Sections 16 and 17 of the Pennsylvania Constitution govern the process of reapportioning legislative districts.⁵⁵ Volume I in this series provides a history of legislative reapportionment in Pennsylvania. This volume repeats some of that history but focuses more attention on how our system compares to those in other states, some of which have been recommended as models for reform.

Data

Reapportionment in Pennsylvania

Existing constitutional provisions which guide the drawing of legislative districts are relatively strong and clear. The Pennsylvania Constitution reads as follows:

Legislative Districts

Section 16.

The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

Legislative Reapportionment Commission

Section 17.

(a) In each year following the year of the Federal decennial census, a Legislative Reapportionment Commission shall be constituted for the purpose of reapportioning the Commonwealth. The commission shall act by a majority of its entire membership.

(b) The commission shall consist of five members: four of whom shall be the majority and minority leaders of both the Senate and the House of Representatives, or deputies appointed by each of them, and a chairman selected as hereinafter provided. No later than 60 days following the official reporting of the Federal decennial census as required by Federal law, the four members shall be certified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives to the elections officer of the Commonwealth who under law shall have supervision over elections. The four members within 45 days after their certification shall select the fifth member, who shall serve as chairman of the commission, and shall immediately certify his name to such elections officer. The chairman shall be a citizen of the Commonwealth other than a local, State

⁵⁵ Strictly speaking, “reapportionment” means realigning districts to reflect the gain or loss of US House seats to reflect population changes among the states, while “redistricting” means redrawing lines for the same number of state legislative seats to reflect population shifts among districts. Because the Constitution of Pennsylvania uses the term “reapportionment” with respect to the redrawing of district lines for constant number of state legislative seats, the report will do likewise.

or Federal official; holding an office to which compensation is attached. If the four members fail to select the fifth member within the time prescribed, a majority of the entire membership of the Supreme Court within thirty days thereafter shall appoint the chairman as aforesaid and certify his appointment to such elections officer. Any vacancy in the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(c) No later than ninety days after either the commission has been duly certified or the population data for the Commonwealth as determined by the Federal decennial census are available, whichever is later in time, the commission shall file a preliminary reapportionment plan with such elections officer. The commission shall have thirty days after filing the preliminary plan to make corrections in the plan. Any person aggrieved by the preliminary plan shall have the same thirty-day period to file exceptions with the commission in which case the commission shall thirty days after the date the exceptions were filled to prepare and file with such elections officer a revised reapportionment plan. If no exceptions are filed within thirty days, or if filed and acted upon, the commission's plan shall be final and have the force of law.

(d) Any aggrieved person may file an appeal from the final plan directly to the Supreme Court within thirty days after the filing thereof. If the appellant establishes that the final plan is contrary to law, the Supreme Court shall issue an order remanding the plan to the commission and directing the commission to reapportion the Commonwealth in a manner not inconsistent with such order.

(e) When the Supreme Court has finally decided an appeal or when the last day for filing an appeal has passed with no appeal taken, the reapportionment plan shall have the force of law and the districts therein provided shall be used thereafter in elections to the General Assembly until the next reapportionment as required under this section 17.

(f) The General Assembly shall appropriate sufficient funds for the compensation and expenses of members and staff appointed by the commission, and other necessary expenses. The members of the commission shall be entitled to such compensation for their services as the General Assembly from time to time shall determine but no part thereof shall be paid until a preliminary plan is filed. If a preliminary plan is filed but the commission fails to file a revised or final plan within the time prescribed, the commission members shall forfeit all right to compensation not paid.

(g) If a preliminary, revised or final reapportionment plan is not filed by the commission within the time prescribed by this section, unless the time be extended by the Supreme Court for cause shown, the Supreme Court shall immediately proceed on its own motion to reapportion the Commonwealth.

(h) Any reapportionment plan filed by the commission, or ordered or prepared by the Supreme Court upon the failure of the commission to act, shall be published by the elections officer once in at least one newspaper of general circulation in each senatorial and representative district. The publication shall contain a map of the Commonwealth showing the complete reapportionment of the General Assembly by districts, and a map showing the reapportionment districts in the area normally served by the newspaper in

which the publication is made. The publication shall also state the population of the senatorial and representative districts having the smallest and largest population and the percentage variation of such districts from the average population for senatorial and representative districts.

During reapportionment process provided in the constitution, district boundaries may be “gerrymandered” to give an advantage to some incumbents and a disadvantage to others. The current process provides this opportunity to the party or parties who can deliver a majority of the commission membership since the commission is comprised of the leaders of the four party caucuses in the General Assembly (or their appointed deputies). These four select the fifth member by a majority vote. If they fail to do so within 45 days, then the constitution provides that the Pennsylvania Supreme Court appoint the fifth member. Thus, the party that most influences the court may well determine the majority of the commission which in turn determines the final plan. As recounted in Volume I, the Pennsylvania system, adopted as part of the 1968 Constitution, was regarded as an improvement and indeed a reform compared to the previous system of requiring reapportionment to be approved by the legislature itself, a task at which it failed in the 1960s.⁵⁶ In an attempt to eliminate or control gerrymandering in favor of one of the parties, proposed amendments to the constitution would provide alternative ways to appoint a commission. Proposed legislation would prohibit political considerations in the reapportionment process and emphasize that population is the principle consideration, while placing strict limits on variance between districts.

Reapportionment across states

The most common method for reapportionment of the state legislature is through the legislature, occurring in 37 states. The other 13, including Pennsylvania, use various forms of a commission. The chart below outlines certain characteristics of the commission form by state.⁵⁷

⁵⁶ As reported in Volume I, the General Assembly also failed to approve a congressional reapportionment plan after the 1990 Census, and the Pennsylvania Supreme Court then drew the new districts.

⁵⁷ Information derived from NCSL at <http://www.ncsl.org/legislatures-elections/redist/2009-redistricting-commissions-table.aspx>.

State	Number on Commission	Appointment Authority
Alaska	5	Governor (2), Senate President (1), House Speaker (1), Supreme Court Chief Justice (1)
Arizona	5	Legislative Leaders (4), Fifth appointed by the 4 (commission on appellate court appointees appoints fifth in case of deadlock), all from a list of 25 created by a commission.
Arkansas	3	Commission consists of Governor, Secretary of State, and Attorney General
California	14	5 Democrats, 5 Republicans, 4 from neither party; selected by government auditors from an applicant pool
Colorado	11	Legislature (4), Governor (3), Judiciary (4)
Hawaii	9	Legislature (8), Ninth appointed by the 8
Idaho	6	Legislature (4), Party Chairs of two largest parties (2)
Missouri	18, 10	Two Committees, Governor picks from lists supplied by legislature
Montana	5	Legislature (4), Fifth appointed by the 4
New Jersey	10	Chairs of two major political parties. 11 th chosen by State Supreme Court if plan cannot be developed in allotted time.
Ohio	5	Board consists of Governor, Auditor, Secretary of State, and legislature (2)
Pennsylvania	5	Legislature (4), Fifth appointed by the 4 unless deadlock then State Supreme Court
Washington	5	Legislature (4) Fifth appointed by the 4 unless deadlock then State Supreme Court

In addition to the above 13, Maine and Vermont use advisory commissions and Connecticut, Illinois, Mississippi, Oklahoma, and Texas have backup commissions if the legislature fails to reach agreement within a specified amount of time.

Iowa Model. Of the non-commission states, Iowa stands out as significantly different. Many government reformers point to Iowa as having the best system. The Iowa system relies on the legislature to vote on the plan. However, a nonpartisan staff develops maps for the Iowa House and Senate as well as U.S. House districts. The Legislative Service Bureau draws the district boundaries within the constraints described below. A Temporary Redistricting Advisory Committee provides advice to the Legislative Service Bureau and acts as liaison to the public. The plan is released to the legislature, but at the same time all of the maps, standards, and background information are made available to the public.

The staff is charged with developing plans under strict guidelines that include:

- Respect for political subdivisions – district boundaries should coincide with political subdivisions of the state.
- Contiguousness – meeting only at points of adjoining corners isn't contiguous.

- Compactness – the Iowa Code refers to “those which are square, rectangular, or hexagonal in shape permitted by natural or political boundaries.”
- Improper considerations - factors such as political parties, incumbent legislators, or voting strength are specifically prohibited as considerations. No political or election data including the addresses of incumbents can be used.
 - Interrelationship of districts – all house districts are wholly included within a single senatorial district.

Several studies offer insights into the difficulties of predicting the impacts of the primary concern over reapportionment, namely gerrymandering. For example, Justin Buchler (2009) concludes that gerrymandered districts are not the cause of polarization in the California legislature and that therefore redistricting reform is not a solution to the state’s recurring budget crises, arguing instead for the removal of supermajority requirements on tax and spending legislation. David King (2003), a Harvard political scientist, argues that competitive districts actually produce more ideologically extreme candidates because activists in both parties are motivated to mobilize in primaries, resulting in competitive districts shifting from one extreme to the other.

In an extensive analysis of all 50 state legislatures, Stephen Ansolabehere and James R. Snyder, Jr. (2008) conclude that redistricting since the one-person, one-vote US Supreme Court decisions of the 1960s has greatly minimized partisan bias even when one party controlled the process and virtually eliminated partisan bias when control was divided between the parties. They also dispute the conventional wisdom that under unified party control, “monopolistic” redistricting succeeds in protecting incumbents of the majority party and that under divided control, “duopolistic” redistricting succeeds in protecting incumbents of both parties. Legislators may be trying to achieve such ends, the authors contend, but the record shows that to a large extent they are not successful; rather, incumbent turnover is highest immediately after redistricting, as legislators are faced with the need to win the support of citizens they have not previously represented. “Periodic redistricting – more than any other force in American politics – turns incumbents out of office and brings in new people,” the authors assert (Ansolabehere and Snyder 2008: 264). Their conclusion is consistent with data presented in Volume I, showing the party control of redistricting in Pennsylvania, especially for the Pennsylvania and US House, does not ensure party control of the legislative chamber or the state’s congressional delegation over the ensuing 10-year cycle.

While creating a state composed of entirely heterogeneous, competitive districts sounds

good in theory, it would be difficult to achieve in a state as culturally and geographically diverse as Pennsylvania. In analyzing what would be required to make certain districts “competitive,” one encounters evidence that people of similar interests, ideology, and party affiliation increasingly tend to live near each other, as argued in *The Big Sort: Why the Clustering of Like-Minded Americans Is Tearing Us Apart* (Bishop 2008).⁵⁸ For instance, if one were attempting to make a West Philadelphia House district (which is comprised of more than 90 percent Democratic party registration) “competitive” in a general election, one would have to draw the district in such a way that it would resemble a sliver of pie that would most likely reach from West Philadelphia deep into the Philadelphia suburbs, or even further, in order to encompass enough Republicans to make it “competitive” in a general election. The result would be a legislator who would represent parts of several municipalities and counties, clearly violating constitutional requirements to minimize such splits and almost certainly having diverse and even competing cultural, geographic, and economic interests. The legislator would find it difficult to represent any portion of the district well.⁵⁹ Similar contortions would be required to find sufficient Democratic voters to make many rural districts competitive.

Paradoxically, as noted earlier, Shor and McCarty (2011) conclude that polarization in state legislatures results primarily from Democratic and Republican legislators representing similar districts in different ways, not from the way voters are sorted into districts. Although these contrasting views of the effect of sorting appear to be at odds, both cast doubt on the theory that reapportionment reform is a solution to polarization.

We could find no data to support the unresponsiveness of representatives in “safe” districts. Legislators are aware that even if voters are not paying attention to most roll call votes, potential opponents will scrutinize voting decisions for possible use in a campaign against them (Mayhew 1974; Kingdon 1989; Arnold 1990; Wittman 1995). As a result, incumbents often campaign vigorously for support despite a near guarantee of reelection in a general election. One recent study disputes the notion that more competitive districts increase responsiveness, arguing that they result in more dissatisfied voters and more timid legislators, whereas a preponderance of safe districts produces a legislature that more accurately represents the public, increases voter satisfaction with election results, and allows legislators to better represent the views of their constituents (Brunell 2008). As the same

⁵⁸ Abrams and Fiorina (2012) have attempted to cast doubt on the “Big Sort” argument, criticizing Bishop’s use of the increasing number of “landslide counties” (those with winning margins of 20 percent or better) in presidential voting as evidence of partisan geographic sorting. Using voter registration data, which they argue are less subject to extraneous factors, they find fewer, not more, counties where either party had an overwhelming edge over the same time frame. Much of the rest of Bishop’s evidence is anecdotal, they contend. While not denying that partisan sorting has occurred and allowing for the possibility that some geographic sorting may have occurred, Abrams and Fiorina find no evidence for what they characterize as Bishop’s sweeping generalization that there has been a trend toward large-scale geographic sorting.

⁵⁹ As is noted in Volume I of this series, several Temple graduate students simulated the Iowa method of redistricting by a “blind” technician, with the emphasis on increasing competition. Their efforts are summarized in “Why the Conventional Wisdom about Reapportionment Reform Might Be Wrong: The Case of “Safe” and “Competitive” State Senate Districts in Southeastern Pennsylvania,” which can be found at www.temple.edu/ipa.

study notes, the US Supreme Court has ruled that reapportionment plans that deliberately avoid placing two incumbent legislators in the same district are not unconstitutional, because legislative bodies have a legitimate interest in preserving experienced members.

Opinions

The opinion was frequently advanced that voting districts are manipulated during the reapportionment process to protect incumbency or promote a partisan advantage. Those arguing this point of view believe that changing the status quo should result in more competitive elections and ultimately a more representative, accessible, and accountable legislature. When both parties have the ability to win a seat, the candidates tend to gravitate towards the median (moderate) voter as opposed to elections in which only one party has a chance. In the latter, primaries are the real competition resulting in more ideological, partisan candidates who gravitate to the median of their party's voters. A more moderate legislature would theoretically share more views, limiting disagreement. This should increase effectiveness and may lead to less partisan legislation (Fiorina, Abrams, and Pope 2005: 163-68).

On the other hand, others argued that the view that whether, or to what degree, gerrymandering of safe seats increases partisanship is subject to question: the US Senate is elected from gerrymander-proof districts and yet, as reflected in roll call votes and the increasing use of filibuster threats, is polarized (Mayhew 2010). Further, as noted above, a number of studies cast doubt on whether gerrymandering has the negative effects attributed to it by conventional wisdom.

As for keeping districts competitive, many of the advantages incumbents have are not district related including name recognition, relationships with contributors, tax-supported newsletters and news releases, good media coverage, and perhaps in many cases just talent and experience. "The main reason for high rates for incumbent success," Wittman argues, "is much simpler. Incumbents tend to be reelected for the same reason that the winner of the last footrace is likely to win the next one...They are the best. That's why they won in the first place..." (Wittman 1995).

The most popular incumbents are also the most likely to run for reelection, which skews reelection statistics since those who think they might lose resign or choose not to run again. Others noted that primary elections provide for a measure of accountability in all districts, regardless of the partisan registration breakdown. The example was noted that two longtime Senate Republican leaders were defeated in the 2006 primary elections after they had advocated the 2005 legislative pay raise.

One national expert on state legislatures agreed that reasons to change the current system include the creation of more competitive districts and additional transparency in the reapportionment process. Conversely, this expert also cited reasons supporting the inclusion of some uncompetitive districts in reapportionment. He felt that more competition leads to more money being spent on elections and in turn legislators spend more time raising money, and less time deliberating. The expert stated that some level of stability is needed within a legislature, and that members in "safe" districts are more willing to cast the

votes necessary to pass certain controversial measures that would not be tackled otherwise. He also claimed that there is an inherent tradeoff between “competitiveness” and “representation.” Less homogeneous districts mean less “community of interest” in the district.

As for the rejected first attempt at reapportionment in 2011, it may be, as Volume I suggests, indicative of the effect that widely available redistricting technology will have on the process in the future, making the Legislative Reapportionment Commission more careful in balancing the values embodied in the Pennsylvania Constitution. Even if the eventual results are redistricting maps that reduce the number of split communities, it seems unlikely to satisfy reformers who believe that it is both possible and desirable to remove “politics” from the inherently political task of drawing legislative districts.

Open Primary Elections

Pennsylvania has “closed” primary elections in which a voter can only participate in nominating candidates for the party in which the voter is registered. Further, unlike a number of states, Pennsylvania voters must register in advance of the election and cannot choose their party on election day.

Data

California’s experiment in June 2012 with nonpartisan primary elections has raised the visibility of this kind of institutional change. According a June 7, 2012 *Wall Street Journal* article, the first election under the new rules resulted in more centrist candidates from both parties being chosen by voters to face each other in the fall (Carlton and Scheck 2012). Under the new California system, all candidates for an office appear on the same primary election ballot, and the top two finishers, even if of the same party, face each other in the general election. According to one analysis, two candidates of the same party prevailed in eight of 53 congressional races, 18 of 80 state assembly races, and two of 40 state senate races. The one-party runoff elections will occur mainly in districts where the party of the winning candidates is dominant. In competitive districts, voters will face choices between a Democrat and a Republican (Masket 2012).

The *Journal* article quoted candidates and their strategists as agreeing the general election opponents, even when of the same party, will have to reach out to voters who are independent or who associate with the opposite party.

California’s new primary rules, which are similar to those used in Washington and Louisiana, are one of several alternative systems that states use for nominating candidates for state-level and Congressional (but not presidential) races. Temple Professor Megan Mullin, who has authored articles on this topic and on California politics, reviews the findings from academic research in Volume V. Her commentary follows:

State parties employ a variety of different strategies for nominating candidates to stand for general election, and in some states nomination rules vary between parties and among elected offices. Nomination rules determine the ease with which voters can cross over party lines and the extent to which parties can control the selection of their general election candidates. The most open rules provide high voter flexibility and little party control. States regularly change their nomination rules, and although in general the trend has been to allow more openness, many changes have restricted participation in order to comply with court rulings or, more commonly, because a majority coalition within the legislature has sought to gain advantage over a rival political faction (Cain and Mullin 2002).

Open primaries require voters, regardless of their own registration, to publicly select one party’s ballot before entering the voting booth. Voters have the opportunity to participate in either party’s primary, but in effect, they must choose to affiliate with one party for the day, and their ballot choice is public information that becomes available to the parties after the election. States that do not register voters by party most often use this system. Somewhat more restrictive are semi-open primaries,

in which only party members and Independents may participate. The semi-open system allows parties to reach out to unaffiliated voters without inviting potentially hostile loyalists of other parties to participate. The primary system with the highest participation barriers is the closed primary, which allows only pre-registered party members to vote. Individuals must affiliate with a party before the state's registration deadline in order to participate in the party's nominating event. Caucus and convention systems are even more restrictive because of the time investment required for voter participation, and they provide the most opportunity for party loyalists to control outcomes.

Research shows that nomination rules affect the type of candidates selected to be party nominees, and consequently help shape election outcomes. On the whole, more open processes produce more moderate candidates. Members of Congress from states with closed primary rules take more extreme policy positions, relative to the average voter in their district, than members nominated in more open systems (Gerber and Morton 1998). Because open primaries allow the state's swing voter to participate in a nominating event, regardless of that voter's party identification, they allow a dominant party within a state to dominate even more easily. As a result, one study finds that states with open primaries are more likely to have two U.S. Senators from the same party (Grofman and Brunell 2001). The effect on candidate selection is not attributable to intentional efforts by non-party members to raid a primary and hurt the party's chances in the general election. Instead, voters are most likely to cross over to cast a ballot in another party's nominating event in order to participate in an exciting race or support an incumbent whom they already know (Gerber and Morton 1998; Cain and Gerber 2002). Although participation rules affect outcomes, they do not appear to have an impact on the level of primary competition, at least in primaries for state legislative office (Hogan 2003). But more moderate candidates competing in a general election can enhance participation, and states with more open nomination systems tend to have higher turnout in general elections for governor (Calcagno and Westley 2008).

Nomination rules also have an impact on voters' individual partisan affiliations. Restricting primary participation only to party members reduces the number of self-identified Independents in a state. Although parties initially expanded access to their nominating events in order to build party support, the result seems to be the opposite. However, registration-induced party identification is shallow; individuals living in states requiring party identification are more likely to vote for candidates from the other party in general elections (Norrander 1989; Burden and Greene 2000).

Opinions

Supporters argue that open primaries will increase voter participation by allowing nonpartisan or independent voters to participate in the nominating process. They also seem likely to reduce the number of uncontested races in the fall, giving voters a choice and increasing turnout in general elections. On the whole, more open primaries will produce more

moderate candidates.

Opponents argue that open primaries weaken political parties and their role in the process of recruiting qualified and attractive candidates. They leave the party nominations vulnerable to manipulation and dilution by the opposing party. Open primaries will allow the dominant party within the state to dominate even more easily.

Professor Mullin cautions that it will take several election cycles to evaluate the impact of the new California system on both election outcomes and public policy. The June 2012 primary also involved new legislative districts and, with the presidential nominations already resolved, low turnout. Although opponents cite a possibility of weakening party accountability, Mullin notes that in California endorsements of party organizations appear on the official voting guides sent by the state to voters, and in 2012 both parties endorsed candidates in most districts. It thus seems possible that the new system will shift power in that state from party members to party organizations. She also cautions that lessons from California don't always extend well to other states.

Multi-Member Legislative Districts

Multi-member districts (MMDs) are those in which more than one legislator represents a common geographic area. Pennsylvania had multi-member districts for much of its history. However, since 1968 the Pennsylvania Constitution has specified that the General Assembly shall consist of 50 senators and 203 representatives, each elected from a single-member district. Consideration of the multi-member district idea was suggested by one non-Pennsylvania expert that we interviewed as a response to the public's concern regarding excessive partisanship. Although we found no evidence that it was under serious consideration in Pennsylvania, we found it a sufficiently interesting idea to warrant discussion.

Data

MMDs once were widespread in state legislatures but have become less common since data emerged that they can dilute the voting strength of racial minorities in some contexts. Eleven states, including New Jersey, now use MMDs to elect some or all of one or both chambers.

States with MMDs can either explicitly authorize cumulative voting or implicitly invite a subtle form of such voting. Before it abandoned MMDs, Illinois allowed each voter in a state legislative election three votes, which the voter could then divide one-vote-a-piece among three candidates, split one-and-one-half votes a piece among two candidates, or cast all three votes as a "bullet" for one candidate. Even where not explicitly authorized, MMDs can induce a form of cumulative voting because voters can vote only for one candidate whom they heavily favor and deny votes to that candidate's opponents. Some voters in local government at-large elections (which are MMDs) have been known to employ this strategy.

Research suggests that MMDs have a modest effect on representation by loosening the ties between legislators and their constituents. Legislators who share a constituency are more likely to think of themselves as trustees than delegates. Trustees spend less time building relationships with their constituents and follow constituent opinion less closely in their decision making (Cooper and Richardson 2006).

MMDs have a small positive effect on legislative turnover, probably attributable to reduced name recognition that is an important source of incumbency strength. Incumbency advantage in state legislative elections has increased over time, but at a slower rate in multi-member than in single-member districts (Cox and Morgenstern 1995; Hirano and Snyder 2009). The effects on partisanship and membership diversity are more mixed. In Illinois, MMDs seem to have produced more ideological diversity within parties, but data from Arizona suggest that legislators elected from MMDs are more ideologically extreme. There are good data that MMDs increase the representation of women in state legislatures, but effects on the representation of minorities are less certain (Cooper 2008).

Assuming Pennsylvania wished to change to MMDs with approximately the same number of legislators, the House could consist of 200 members elected from districts coterminous with those of the 50 senators. The need to fit four House districts into each Senate district might constrain gerrymandering, making it more difficult to protect both House and Senate incumbents simultaneously. New Jersey, which uses this system, hardly seems

less partisan a state than Pennsylvania, although further study might suggest otherwise.

Under a system with cumulative voting similar to that once used in Illinois, the House could be composed of 201 members elected from 67 districts, each represented by three House members. The parties could be restricted to nominating two candidates, insuring a 2-1 split in every district. This is essentially the system used to elect county commissioners in most of the state. We know of no state that uses such a system to elect legislators, and some observers question whether it would survive a court test on constitutional grounds. Alternatively, voters could be allowed three votes each, giving minority party voters an opportunity to bullet vote for a preferred candidate but not guaranteeing the 2-1 split. This was the system used in Illinois. A proposed constitutional amendment to return to MMDs with cumulative voting was introduced in Illinois in 2005 but did not advance to a vote before the session ended in 2006.

Under an Illinois-like system, every district in the state would likely have bipartisan representation. Philadelphia, which for much of the 2011-12 session has had 24 Democrats and 2 Republicans, might elect 16 Democrats and 8 Republicans from districts with a majority of their constituents in the city. Although this result would seem to over-represent the city's Republican voters, based on registration, some rural and heavily Republican districts would have Democratic legislators who would over-represent their party's constituents. The theory is that legislators in these districts would have incentives to work together in a bipartisan fashion.

However, research does not clearly suggest that MMDs reduce partisanship, and the history of cumulative voting in Illinois suggests it can reduce party competition. According to Joseph Zimmerman (1994):

The system was controversial in Illinois with some citizens claiming cumulative voting was technically complicated and confusing. Critics maintained that interparty competition was eliminated in some districts by "sweetheart deals" and "horse trading" between the two major parties which had agreed to nominate a total of three candidates, thus depriving voters of any choice. In other districts, the two majority-party incumbents and the minority-party incumbent discouraged potential challengers by playing down differences and often speaking on each other's behalf....Between 1902 and 1970, no district had three candidates nominated by each of the two major parties. In 1970, only one Senate candidate had no opposition compared to 93 House candidates with no opposition. Thus, there was no pressure to debate issues in 31 districts. It is also possible for a candidate receiving only a small fraction of the total votes cast to be elected. In one district, in 1968, a minority-party candidate with only 6.4% of the votes was elected; the two majority-party candidates received 47.6% and 45.8%, respectively, of the total votes cast. The lack of party competition could be remedied by requiring each party to nominate at least two candidates, but such a requirement might prevent the minority party from winning a seat since the party can elect a candidate only if its members each

cast three votes for the same candidate. This system also encourages the majority party to direct a number of its members to cast votes for a favored minority party candidate to influence the election of the minority party candidate, thereby encouraging all minority-party candidates to curry the favor of the majority party. Furthermore, a remote possibility exists that the minority group or party can elect a majority of the members of a district if the majority group or party nominates candidates for all seats, thereby splitting its votes.

During the time Illinois used MMDs, Republican House members from the west side of Chicago were referred to as “the West Side Bloc” and were regarded as effectively elected, and therefore heavily influenced on at least some legislative votes, by Mayor Richard J. Daley’s Democratic organization.⁶⁰

Opinions

Opinions favoring a switch to multi-member districts include:

- MMDs might reduce the incumbency advantage, encourage more turnover, and -- using the Illinois system -- reduce excessive partisanship.
- MMDs could help insure the survival of minority parties in one-party strongholds, not just for the legislature but for other offices. Minority party voters in every district would have a more sympathetic legislator on matters of both policy and casework.
- MMDs also could result in fewer but larger districts and therefore broadening each legislator’s constituency.
- Depending on how they are structured, MMDs with or without cumulative voting would not reduce the total number of legislators and therefore would not necessarily reduce the total number of leadership opportunities for talented and hardworking legislators. Nor would they necessarily affect the overall representation of rural areas or third-class cities. Third-class city voters, for example, could bullet vote for a candidate from their city.

On the other hand, there are districts in which members of one of the parties are so much in a minority that the member elected from that party would represent a very small proportion of the district’s population. Moreover, although MMDs might appear to formally reduce parochialism, legislators may continue to have territorial strongholds within their larger districts to which they are most responsive. Some observers see this tendency among Philadelphia’s seven elected at-large City Council members, who effectively run in a city-wide MMD.

Philadelphia City Council’s MMD structure may occasionally induce a form of cumulative voting that paradoxically reduces electoral participation. Each party can nominate five

⁶⁰ The observation that Chicago’s West Side Bloc was responsive to Mayor Richard J. Daley’s Democratic organization is based on the recollections of Joseph P. McLaughlin, Jr., who was a reporter for *The Chicago Tribune* from 1968 to 1971.

candidates and the top seven vote-getters take office, insuring that the minority party will have at least two Council members. In both the primary and general elections, each voter can vote for up to five candidates. In primary elections, supporters of some at-large candidates have urged voters to “bullet” for their candidate by not exercising all five vote choices to which they are entitled, thus reducing their rivals’ share of votes. Republican voters may also be exercising this option in general elections, but if they are doing so, it has rarely worked to elect a third at-large party member.

Constitutional Revision

A change in the Pennsylvania Constitution could be necessary to change the status quo regarding many of the subjects presented in this paper, including initiative and referendum, term limits, reapportionment, and multi-member districts. There are many other subjects as well that are frequently raised. The utilization of a commission to determine the need for and agenda for a constitutional convention has been prevalent throughout Pennsylvania's constitutional history.

Data

The "Sproul Commission," appointed by Governor Sproul in 1920, decided a complete overhaul of the Pennsylvania Constitution was necessary, but a constitutional convention was rejected by the voters despite the governor's support. This was followed by a "Committee on Constitutional Revision" in 1935. Governor Earle and this committee called for a convention but it was again rejected by popular vote.

Governor Leader made the next attempt in 1957 by appointing a commission chaired by Judge Robert Woodside. After more than a year of study, the "Woodside Commission" did not call for a convention. However, it did call for changes to "no less than 117 sections of the existing constitution and proposed adding six new sections" (Moyer and Podvia 2009: 34). It forwarded a set of proposed amendments to the General Assembly on March 9, 1959. They were disregarded.

In response to the rejection of the Woodside Commission's work, the Pennsylvania Bar Association, under the leadership of former Attorney General William Schnader, initiated its own study recommending 12 proposals for revision through the normal constitutional amendment process. A commission was then appointed by Governor Scranton which adopted 13 amendment proposals, including those of the Bar Association. The work of the Woodside and Scranton Commissions served as the foundation for the Constitutional Convention of 1968.

State Representative Dwight Evans, Democrat from Philadelphia, introduced legislation to create such a commission during the 2007-08 legislative session, but his proposal (HB 1179) was defeated in the House (83 YES to 118 NO). The commission would have had 15 members: 5 appointed by the governor, 3 each by the speaker and president pro tempore, and 2 each by the House and Senate minority leaders. Under the partisan lineup in state government at the time, 10 members would have been appointed by Democrats. The commission would have been barred from recommending amendments to Article I of the constitution, which includes the right to bear arms. Only one Republican supported the bill, and Evans also lost the support of 18 Democrats, who were members of the majority party.

Florida Constitutional Revision Commission

Once every 20 years, the Florida Constitution provides for the creation of a 37 member revision commission for the purpose of reviewing Florida's constitution and proposing changes, which are placed on the ballot. The commission meets for approximately one

year, traveling Florida, identifying issues, performing research and possibly recommending changes to the constitution. The last comprehensive review of Florida's constitution occurred in 1997-98 and resulted in several changes to the Florida Constitution.

Opinions

Those weighing in for a commission, though not necessarily as proposed in the 2007-08 session, make the straightforward argument that it has been more than 40 years since the Pennsylvania Constitution has been subjected to thorough review and potential revision by a convention. Life in Pennsylvania is dramatically different than it was 40 years ago. While the Commonwealth has changed significantly, the constitution has not been updated to reflect a rapidly changing society. In their opinion, establishing a commission to study the constitution and possibly recommend amendment or revision would provide the General Assembly and the people of the Commonwealth the information necessary to decide whether comprehensive revision is warranted.

On the other hand, those opposed opine that the Pennsylvania Constitution can be amended at any time through a process of legislative action in two consecutive sessions and subsequent approval by the voters, and in fact the constitution has been amended in this fashion dozens of times over the last 40 years. Opponents argue that a commission on constitutional revision could lead to a convention that adopts changes that are not in the best interests of the Commonwealth and that are strongly opposed by large segments of the population. Conservative and rural voters fear that a convention might propose eroding the right to bear arms. Liberal and urban voters fear changes such as tax and expenditure limits. Business is concerned about changes to the uniformity clause that might expose employers to higher taxes and thereby discourage private, job-creating investments in the state's economy. There is a significant amount of risk involved in subjecting the constitution to the broad revision allowed by a constitutional convention. This is because of the possible unanticipated consequences of such an exercise.

Those who tend to support a commission to study and take input on the constitution contend that the fears of various liberal and conservative groups that a convention would lead to undesirable changes show a lack of confidence in the judgment of voters. They also argue that voters in states that require periodic votes on whether to hold conventions often reject this option and choose the status quo.

Groups that fear a "runaway" convention cite the example of the 1787 convention that ignored state legislative directives to revise the Articles of Confederation and instead drafted the US Constitution of 1789. John L. Gedid, a professor at Widener University Law School and a member of the Pennsylvania Bar Association's Commission on Constitutional Revision, has concluded that our legislature could effectively limit the scope of a constitutional convention as was done in 1968 (Gedid 2011).

This issue and many others involved in the holding of a convention are discussed in *A Citizen's Guide to a Modern Constitutional Convention*. The guide was published by a coalition of groups that calls itself The Pennsylvania Constitutional Convention Commission, in conjunction with the Civic Research Alliance (Moyer and Podvia 2009).

The coalition includes the Commonwealth Foundation, Democracy Rising PA, Common Cause PA, and the League of Women Voters of Pennsylvania Citizen Education Fund.

INSTITUTION BUILDING

The final group of subjects relates to the topic of “Institution Building.” Of all the ideas put forward in the ongoing discussion of the evolution of the General Assembly, this is the topic that gets the least public discussion but may have the greatest potential for comprehensively, efficiently, and logically addressing how the institution should evolve. Institution building requires building the knowledge and capabilities of the people that define the institution and how it performs. It also means reexamining the operations of the institution to constantly improve.

Bipartisan Leadership Development

The functions of representing, lawmaking and balancing power require broad knowledge and leadership skills regardless of party or legislative chamber. Unlike some states, Pennsylvania has not had, except intermittently, bipartisan, bicameral programs to provide legislators with a common platform to improve their knowledge and skills. During 2011 an eight-member legislative planning committee composed of two members of each of the four caucuses implemented two bipartisan, bicameral symposia on institutional issues. These events grew from a discussion between committee members and representatives of the Pennsylvania Policy Forum about the possibility of formalizing such efforts by establishing an “institute.” The institute would bring the members of the Pennsylvania legislature together on a bipartisan, bicameral basis for individual development and mutual education on issues affecting the state and the General Assembly itself.

Data

Although most research on reducing political polarization focuses on possible institutional changes as remedies, some thinkers and politicians, including a number we interviewed, have argued that facilitating more socialization across party and chamber lines, particularly within the context of continuing educational programs like those of the Vinson Institute, is also a promising approach and has fewer downside risks. As earlier noted in this report, in *The Righteous Mind Why Good People are Divided by Politics and Religion*, Jonathan Haidt supports institutional changes such as reapportionment and campaign finance reform but also writes about the importance of understanding the emotional roots of moral and political reasoning:

Before 1995, congressmen from both parties attended many of the same social events on weekends; their spouses became friends; their children played on the same sports teams. But today, most congressmen fly to Washington on Monday night; huddle with their teammates; do battle for three days, and then fly home on Thursday night. Cross-party friendships are disappearing...scorched Earth policies are increasing...Intuitions come first, so anything we can do to cultivate more positive social connections will alter intuitions and, thus, downstream reasoning and behavior (2012: 311).⁶¹

Haidt attributes these insights to a session with members of Congress that he helped organize to explore the causes of -- and possible remedies for -- legislative polarization (Haidt 2012). One manifestation of polarization – incivility – prompted similar sessions on a larger and continuing scale. Prompted by concerns of intemperate debate in Congress, the Aspen Institute, with the support of bipartisan House leaders, coordinated three retreats for members between 1997 and 2001. To support and evaluate these sessions, which were attended by several hundred members, their spouses, and children, Kathleen Hall Jamieson,

⁶¹ Although Haidt’s diagnosis that declining socialization is a significant cause of polarization is widely accepted, the implicit suggestion that members of Congress should move to Washington, DC seems unlikely to happen anytime soon. A number of congressional incumbents, most recently US Senator Richard Lugar, R-Indiana, who commanded bipartisan respect, have lost elections after being attacked for making their primary residence in the nation’s capital rather than in their home state or district.

director of the University of Pennsylvania's Annenberg Center on Public Policy issued a series of reports documenting patterns of incivility in floor debates between 1935 and 2011 (Jamieson 2001 and 2011). Incivility was measured by use of language that impugned the motives or integrity of members of the opposite party or of the president and by the frequency of motions to strike or withdraw offensive remarks from the record. Following the first retreat at Hershey, Pennsylvania, the Annenberg Center documented declines on most incivility measures (Jamieson 2001). But in the fall of 2011, Jamieson also cautioned two factors raised risks of greater incivility in the current session: an influx of inexperienced members and the heightened partisanship associated with changes in party control (2011). The retreats were discontinued after 2001 as attendance waned.

The evidence suggests to us that such programs can be effective but need to be institutionalized within the legislative branch itself and also that they should provide members not just with opportunities for bipartisan socialization but with a common platform of information about policy problems and options. Uncivil or intemperate language is part of the problem but deep disagreement on issues also hinders compromise.

The Pennsylvania General Assembly has experimented with such programs but only on an intermittent basis. In 1977 and 1983, the General Assembly organized bipartisan, bicameral symposiums featuring an impressive array of speakers and panelists focusing on public policy challenges facing the state. Both were supported financially by contributions from businesses and foundations. Neither of these events was as well attended by legislators as the two 2011 symposiums.

In recent years—2000, 2004 and 2006—the Commonwealth of Pennsylvania and the Fels Institute at the University of Pennsylvania have partnered in three different efforts to bring legislators and executive branch officials together for executive education sessions designed to improve the quality of their deliberations and decision making. The Fels “Summer Leadership Institute” in 2000 brought eight legislators selected by their leaders from the House and Senate and both parties together for a week-long program. The goal was to equip these legislators to gain fluency with measuring performance and results of state programs in their role of providing legislative oversight of state agencies. Leaders gained multiple skills including: critiquing performance measures, designing reporting systems, using a STAT system, and dealing with the news media. Topics included:

- Leadership and Results
- Baseline Evaluations
- Social Capital and Performance Measurement
- COMPSTAT: Measuring Results in Leadership for Crime Prevention
- Leading Budgets for Results
- Legislative and Executive Budgeting: Who Leads?
- Race Discrimination by Government: Outputs and Outcomes
- Performance Audits, Agency Objectives, and Multiple Programs
- Sprawl and Economic Development
- StateStat by the Governor and Legislature

The Fels Institute of Government again partnered with the Commonwealth in 2004 and in 2006 to create the Pennsylvania Leadership Academy (PALA). The academy convened leaders from the legislative and executive branches of the Commonwealth for a series of conferences, events and research projects surrounding cutting edge public policy and management strategies. At the first academy, PALA inducted 27 fellows, including nine senators, twelve representatives, two cabinet-level secretaries and four other members of executive departments. The second academy inducted eight representatives, six senators, and five members of executive departments. Topics at the two academies included:

- Solving Problems through Leadership
- Legislative Leadership
- Homeland Security
- Grading State Governments
- Emergency Preparedness
- “The World is Flat”
- Public Management Issues for PA
- Demographic Change and Impact on PA
- Privatization
- Economic and Community Development in PA’s Towns and Cities

A number of other states hold in one form or another educational and development programs for legislators on a bipartisan, bicameral basis. Alan Rosenthal suggests that the Georgia legislature has the best program. Georgia has 236 members, just shy of the size of Pennsylvania’s legislature. The program itself is carried out by the Carl Vinson Institute of Government at the University of Georgia and has several components.

First, the “Biennial Institute for Georgia Legislators” is held for three days at the University in December following elections in even number years. It is preceded two to three weeks earlier by a full day special orientation program for newly elected legislators only. From their website:⁶²

New and veteran legislators count on the Biennial Institute to provide information and training that will help them make better-informed decisions for Georgia. A recognized event on the state’s political calendar since 1958, the Biennial provides legislators with valuable time for learning, networking, and exploring state issues prior to the upcoming session of the General Assembly.

The offices of the Lieutenant Governor and Speaker of the House cosponsor the Biennial Institute for Georgia Legislators, with the Carl Vinson Institute of Government organizing and assembling the resources and expertise needed to carry out the agenda. Sessions conducted by Vinson Institute faculty, veteran lawmakers and staff, agency administrators, and subject experts lead legislators through a wide variety of current topics. The Biennial concludes with remarks by the governor outlining his goals for the next session.

⁶² See <http://www.cviog.uga.edu/biennial>.

The National Conference of State Legislatures has ranked the Biennial Institute for Georgia Legislators as the top university-based training program in the country.

Attendance is not mandatory, but all the leadership and 90 percent of the membership attend. It has become “institutionalized.” Topics from the 2010 three day session included:

- Tax Reform and Fairness
- Health Care Reform
- Economic Outlook
- Behavioral and Mental Health Settlement
- Tri-State Water Update
- Ethics
- Georgia Ports Update

Second, with the support of the Robert W. Woodruff Foundation, the Carl Vinson Institute has built on the base of the Biennial Institute by adding a separate program aimed at legislators who may enter leadership positions. Every two years, the leadership of the House and Senate select 20 legislators for the program. From their website:⁶³

The Georgia Legislative Leadership Institute (GLLI) is an extension of the Biennial Institute. Developed and authorized by the Georgia General Assembly Training Institute, GLLI forms the core of a phased leadership development program for members of the Georgia General Assembly. The purpose of GLLI is to help newer legislators develop the skills necessary to become effective leaders, informed decision makers, and astute policy analysts.

The program offers a unique opportunity for lawmakers to improve their leadership skills and explore the issues of the day with nationally renowned scholars, professional development experts, and legislative leaders and colleagues from across the region.

GLLI held its inaugural session in the summer of 2005. This new program is sponsored by the Vinson Institute and the Robert W. Woodruff Foundation.

Leadership Development

Leadership. It's the essential ingredient in the complex arena of the legislature. Moving beyond conflict and partisanship to meet the real needs of people is the fundamental test of legislative leadership. The future of the legislature depends upon the quality and creativity of the men and women who lead it today and those who will be its stewards in the future.

The Georgia Legislative Leadership Institute's curriculum comprises six main elements: personal leadership development, public policy process and analysis, ethical governance, political leadership, understanding a diverse citizenry, and advanced legislative processes.

⁶³ See <http://www.cviog.uga.edu/services/education/glli.php>.

The first session of GLLI focuses on personal leadership and the exercise of power and leadership within the legislative context. In session two, these lessons are applied to “getting things done” in the legislature, with a focus on the skills and abilities needed to be a successful legislator.

Finally it is worth noting that other public officials have educational programs. The Pennsylvania judiciary has established an extensive educational program in which all judges regardless of party and judicial role participate. Indeed, federal judges in the Third Circuit also attend an annual institute where the agenda includes major topics to improve their perspective and understanding. In addition to the educational content, one goal of both state and federal programs is to develop relationships among the judges so they share knowledge and work together more readily.

Opinions

Leadership development along the lines of the program in Georgia described above met with very positive responses along one or more of the following opinions:

- Through such a program, members would be given knowledge and perspective that will inform their ability to do their lawmaking business. They would be treated as the important decision makers they are and that, in turn, will encourage potential talent to view the job as important.
- An educational program will decrease excessive partisanship by creating relationships “across the aisle” and between House and Senate members.
- An educational program will help create a sense of institutional responsibility and respect, improve civility and encourage lawmakers to work together toward solutions.
- The executive and judicial branches already have education and development programs and so too should the legislature.

On the other hand, several concerns were raised:

- Public critics might label such a program as a “junket” and/or a waste of time.
- The program would require resources and time from both legislators and staff.
- Such a program may dilute both party and chamber loyalty.

Legislative Modernization Redux

The “Commission for Legislative Modernization” convened in 1968 consisted of 12 members appointed by the four caucuses (three each) to undertake a comprehensive study and evaluation of the operation of the General Assembly and make recommendations for improvement. The details of how this commission was created and its results are discussed at length in Volume I in this series entitled “The Pennsylvania General Assembly Before and After the 1968 Legislative Modernization Commission: The Evolution of an Institution.” Co-chaired by James Michener and W. Theodore Hazlett, the commission set a high standard for the quality of its members and the independence and expertise of its staff. Over 40 years have passed and it may be timely to attempt a similar effort. By way of example, all of the subjects in this paper as well as many others could be thoroughly researched, analyzed and publicly vetted through such a mechanism.

Data

Although the General Assembly as a whole and the House and Senate through new rules and policies have adopted important reforms as discussed in Volume I and elsewhere in this report, incremental progress has been obscured by continuing investigations, allegations of wrongdoing and waste, and drum beats of criticisms from reformers, media critics, and candidates seeking to capitalize on public distrust. As a result, despite the reforms, the General Assembly’s public approval ratings have remained low.

Seventy percent of Pennsylvanians favor a constitutional convention, a proposal discussed elsewhere in this report. Regardless of whether such a step would be wise, the survey, and the calls for a pre-convention study commission by a wide range of groups and editorial writers, are indisputable data that the public is ready to consider fundamental reforms.

Prominent economists have found data that lost faith in political institutions retards economic growth.⁶⁴ In a paper entitled “Broken Politics,” Darrell West of the Brookings Institution made a similar argument, noting that only 14 percent of voters trusted the federal government to do what is right either always or most of the time and that Congress had a 17 percent approval rating, lower than any institution but big business.⁶⁵ In the January 2010 issue of *Governing* titled “Broke and Broken”, Rob Gurwitt documents declining confidence on the part of both political leaders and the public in the institutions of state governments, and particularly legislatures, across the country, including in Pennsylvania. In that article and many others, it is routinely asserted that the General Assembly is incapable of reforming itself.⁶⁶

⁶⁴ See “Lost Faith in Institutions Hurts U.S.’s Prospects,” by Jon Hilsenrath, *Wall Street Journal*, March 29, 2010, in which Hilsenrath writes: “Daron Acemoglu, a Massachusetts Institute of Technology professor... and other economists have shown a clear link between economic growth and the health of public institutions. If the government can’t solve problems such as the budget deficit, if the public doesn’t trust information it gets from the media, if investors worry about losing their shirts because of what they see as some arbitrary regulatory change or unfair rulings in court, then hiring, investment, and spending can suffer.”

⁶⁵ Current polls show Congress with even lower approval ratings, as of April 2012, as low as 8 percent. See the Economist/YouGov Poll at <http://today.yougov.com/news/2012/04/06/congress-job-approval-8-solid-majorities-key-group/>.

⁶⁶ In the January 2010 issue of *Governing*, Gurwitt writes about Pennsylvania: “At the moment, the ball is in

Opinions

Assuming the commission were composed of highly respected citizens, staffed by competent professionals, given free rein by the legislature, and open to public testimony and other forms of citizen input, the sentiments offered in support include:

- Its recommendations would likely be better grounded, enjoy more legitimacy, and carry more weight than those of pre-committed reformers, investigating grand juries, or even (though this is hard to admit) the authors of this report.
- Numerous proposals for improving the lawmaking process are inter-related and difficult to evaluate in isolation. Tackling these proposals one at a time is an inefficient approach. Pennsylvania has a lawmaking system and the better way to improve a system is by looking at it comprehensively.
- A citizens' commission would provide a forum where the pros and cons of many ideas for improving our government can be evaluated in an intelligent, thoughtful, and dispassionate manner, where committed advocates, concerned citizens, responsible leaders, and well-informed experts can be heard and their views debated, discussed, and evaluated.
- While the commission pursued its work, the General Assembly would be able to concentrate its attention on dealing with the substantive problems facing the Commonwealth while the commission works on institutional issues. And groups that favored both institutional change and policy change would not have to compete with themselves to influence the legislature's agenda on these two fronts.
- The commission could be directed to seek citizen input through hearings and other means and to report its findings and recommend improvements for consideration by the House and Senate.
- Finally, if composed of members equal in stature and independence to those who served with Michener and Hazlett, a commission would help overcome the perception that the General Assembly is incapable of reforming itself.

On the other hand, negative views also were expressed including:

- There is no need for a citizens' commission. The General Assembly has been making steady progress on improving its operations.⁶⁷ A commission will simply

the hands of a coalition of four organizations that have been pushing for a convention. The groups include the state branches of Common Cause and the League of Women Voters, a conservative think-tank called the Commonwealth Foundation and a grassroots reform outfit called Democracy Rising Pennsylvania. "It's conspicuous" says Tim Potts, Democracy Rising's director, "that the legislature can't reform itself."

⁶⁷ As reported in Volume I of this series, since 2005, the General Assembly has enacted laws requiring lobbyists to register and report their expenditures and establishing firmly the public's right to almost all government records. The House and Senate have also each adopted rule changes to address perceived abuses or shortcomings in the legislative process, including ending sessions before 11 p.m.; putting legislative journals, committee reports, and the votes of members online; providing members with more notice before they vote on legislation; and requiring enhanced ethics training for members and staff. The House and Senate have also put into place stricter policies (in the Senate through rules changes) to guard against legislative employees or resources being used in political campaigns and to insure that bonuses are strictly documented and tied to extraordinary performance of their governmental duties by legislative employees. The Senate in 2012 adopted a rule that prohibits its members from serving on the boards of non-profit organizations that are solely dependent on state funds, a practice that led to prosecution of individual legislators for using such vehicles for political purposes.

consume more time and resources better spent on substantive policy issues.

- A commission could become an excuse for not making more immediate progress. Incremental reforms are easier to achieve and less likely to lead to unintended consequences, and the legislature has been making progress on such reforms.
- The House has passed legislation for a constitutional amendment that would reduce the lower chamber from 203 to 153 members, thereby putting on the agenda an institutional change that many reform groups have long advocated and that both the 1968 Constitutional Convention and the 1968 Commission on Legislative Modernization ducked.

CONCLUDING REMARKS

As discussed in Volume I of this series, the US Congress and state legislatures across the country, including ours in Pennsylvania, are experiencing extraordinarily low public approval ratings. Across the United States, there is widespread recognition among elected officials; news reporters and commentators; civic, business, and labor leaders; “good government” advocates; and policy analysts and scholars in a wide range of fields that the public has lost confidence in many of our political leaders and our political institutions. Opinion surveys have shown that the American people are deeply worried about the future of their country and their states and communities and are fearful that their children will have a lower quality of life than they have enjoyed. There is also data that the public has unrealistic and often contradictory views about the kinds of changes that state governments need to make to address these serious problems (Pew Center on the States and Public Policy Institute of California 2010). Perhaps the most corrosive feature of the current environment is the perception that many elected officials are more interested in serving their own interests and needs than those of average citizens and families.

In some respects, the mood in the state and nation is similar to what was experienced during the Populist and Progressive movements of the late 19th and early 20th centuries. These expressions of distrust of politicians and political institutions also were born in a period of profound economic, technological, and social change, including severe recession, wars, the Industrial Revolution, and massive immigration, that many Americans found threatening to their way of life. Ultimately, over many decades, these movements transformed important institutional features of the federal, state, and local governments, including the direct election of US Senators, the curtailment of political patronage, and the use of primary elections to nominate candidates.

Similarly, the political and social unrest of the 1960s and the rapid expansion of federal programs and of constituencies for those programs funded through state and local governments were among the pressures that led to the transformation of state legislatures. In a 2010 article in *State Legislatures*, published by NCSL, Karl Kurtz and Brian Weburg saw the challenges as perhaps even more daunting than the legislatures faced in the 1960s:

Legislators, staff, academics and committed citizens need to come together to draw up a new agenda to strengthen legislatures. The reformers of the 1970s had a difficult task of transforming state legislatures into something more than “sometime governments.” But, in retrospect, their task seems easy compared to today’s work of building integrity, will, commitment and trust. The challenges facing today’s more robust legislatures are even more daunting. But that shouldn’t stop them. They need to find the mechanisms and a spirit similar to those of a previous generation of dedicated people who improved America’s state legislatures.

Our interviews and discussions with dozens of current and former leaders, members, and senior staffers of the General Assembly, most conducted in 2009 and early 2010 but some subsequently, disclosed concerns that our legislature, like others, had not fully adjusted to

the new realities. They recognized that corruption investigations and the 2005 pay-raise vote damaged the institution's reputation, as is evident from promises by both major party candidates for governor in 2010 television ads to "clean up the mess" in Harrisburg and impose various "reforms" on the legislature. They believed that many criticisms of the legislature are unfair and shallow and that many of the "reforms" being advocated might well have counterproductive results and lead to poorer public policy decisions. Legislators' caution in responding reflexively to reform demands is understandable; they know that unlike their critics and the authors of this report, they will be held responsible for reforms that promise more than they can deliver, that complicate governing, that actually turn out to be bad ideas. Similarly, the literatures of political science and history are replete with examples of reforms that have had little impact or unintended consequences.

Some felt that their branch of government had been singled out for an unfair share of criticism and that structural reforms of the executive and judicial branches also should be considered. They felt that neither the General Assembly as a whole nor the House and Senate individually have been given credit for progress already made and referenced in this series of reports in responding to allegations of wrongdoing and complaints about procedural abuses. Many agreed that in an era of scarce resources and unmet needs, the legislature needed to continue reducing its own budget to demonstrate to constituents that they "get it." They also acknowledged that in the hyperpolarized politics and intense political competition of our era, caucus strategies have dominated, if not entirely displaced, institutional strategies. On few occasions is the institutional voice of the General Assembly itself heard by the people.

In short, many of those we interviewed did not disagree with Alan Rosenthal's admonition that what is needed by American state legislatures is a commitment to a "New Institutionalism," that is to say, a commitment to strengthen their institution's performance, balance responsible partisanship with responsible bipartisanship, and rebuild trust in their role as engines of democracy.

All of this said, many we interviewed share our view that institutional changes are not necessarily the only or even the most promising path to improving legislative performance and restoring public confidence. Several thoughtful former members who have gone on to successful careers in the public or private sectors pointed out some of what we don't like when we look at the legislature is a reflection of ourselves as a citizen-body that is divided on appropriate policy responses to increasingly grave problems. But that is also an argument for helping those we elect act as leaders in conducting civil and constructive debates and educating the public about the desirability of compromises.

Improving the knowledge, skills, and sense of institutional obligation and pride among current and newly elected members through efforts such as those recommended in the above section on "Institutional Building," was seen by many as even more important, more feasible, and less likely to have unintended consequences.

But they also agreed that ignoring the possibilities for institutional changes was unwise. The intent of this report has been to review some of those possibilities and provide both data and arguments for and against to assist the legislature and the public to make

informed and judicious decisions.

No state has experimented more with institutional change than California, which has adopted many of the “reforms” recommended in this report. California has enacted tax and spending limitations, term limits, a citizens reapportionment commission, open primaries, supermajority requirements for budget and tax legislation, and large-scale revenue earmarking. It has made more extensive use of initiative and referendum than any state, and indeed, many of its institutional changes were approved through these direct democracy tools. Yet by almost any measure, California is the most fiscally distressed state in the country. The viability of its public schools, universities, prisons, highways, state and local government services, public employee pension funds, and health care systems have deteriorated during decades of relentless experimentation (Zakaria 2003; Pew Center on the States 2009). A number of direct democracy referenda have approved policies regarded as discriminatory by minority groups, which has contributed to polarization of both the public and the legislature.

Like the Congress and many state legislatures, California has been plagued by prolonged state budget crises, and California public employees and vendors, including non-profit organizations, have experienced missed paychecks and reduced or delayed payments. A number of its municipalities are on the verge of fiscal collapse and even bankruptcy. Its legislature, which is highly professional but relatively small compared to Pennsylvania’s and therefore has the most populous districts in the nation, has been found by far the most polarized of any state, casting some doubt on arguments that larger districts can reduce polarization.⁶⁸ Indeed, as noted earlier, one 50-state study found that the California legislature “makes Congress look decidedly bipartisan by comparison” (Shor and McCarty 2011).

There are no “silver bullet” changes that would for once and all “solve” the grave problems confronting the public and its government. That is the one clear conclusion of the authors after spending considerable effort studying the evolution of the institution to date and the many subjects for how it might evolve in the future. The General Assembly is a political and governmental body that operates within a larger political and governmental system. Single changes in any system can have unintended consequences. Caution is called for. Careful research is called for. And considering any particular idea in the context of the overall system is called for. But caution should not be a cover for timidity or an excuse for thoughtful consideration of the possibilities for institutional change.

⁶⁸ As noted in our discussion of reapportionment, California is experimenting with a citizens’ commission that may provide other states with insights into whether or to what degree its approach achieves the goals of reformers, which include reducing polarization. But as noted in Volume I, such reform commissions, which are being tried in a number of states, have also engendered complaints about bias and political conflicts of interest (Beckett 2012; Goodman 2012). As reported earlier in this volume, California’s experimentation with open primaries in 2012 has produced by some accounts more centrist candidates running in the new districts. Evaluating the impact of these two simultaneous changes on election outcomes and public policy and disentangling their effects may take several election cycles.

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APPENDIX A

Framework for Representing, Lawmaking and Balancing Power

This appendix attempts to provide readers with a very basic understanding of the operational context and contemporary characteristics of state legislatures. Members and staff of the General Assembly, scholars who study legislatures, lobbyists who work with legislatures, and reporters who cover them may find this section unnecessary and might well decide to skip it. For those who lack such knowledge, we attempt in this section to describe some general features and practices of American state legislatures to demonstrate that Pennsylvania's system is not necessarily unique and to provide a common foundation for the report.

The Individual Legislator

The job of a legislator

While defining the job of a legislator is imprecise and its interpretation differs from member to member, some combination of three predominant roles can be found in state constitutions and emerge among both practitioners and theorists in defining the job:

Lawmaking: This involves the process by which settlements are reached (or not reached) among contending values, interests, preferences and priorities that exist in the population and its organized groups and are represented and promoted in the legislature. In order to enact laws, including the most important one, the budget for the state, participants in the process engage in study, deliberation, strategizing, negotiation, compromise and attempts to build successive majorities (Rosenthal 2004: 8-11, 232-243).

Representing constituencies and constituents: This entails legislators serving their districts' interests and expressing their constituencies' views. The former involves offering access to individuals and doing case work for them and bringing home the bacon. The latter involves expressing the dominant policy positions of the constituency, that is first, if constituents care about an issue, and second, if they generally agree as to what should be done about it (Rosenthal 2004: 8-11, 232-43).

Balancing the power of the executive: In a system of separated and shared powers such as ours, the legislature is obliged to check and balance the executive. Earlier in the nation's history, the legislature was the more powerful branch, but today scholars generally agree that the advantage is with the executive. Because the executive is one and the legislators are many (individuals who are also divided into contending parties and chambers), governors normally have the upper hand, particularly in setting the agenda for major policy initiatives. Unlike legislatures, chief executives can decide without having to build consensus. They can prioritize and focus their resources far more easily than can legislatures. And they have the bully pulpit, that is access to the media, which allows them to build support among the public and indirectly within the legislature. To balance a strong executive, a legislature must be able to review seriously the governor's budgetary and programmatic

priorities, ensuring that they are consonant with those of the legislature. It must also be able to initiate major items on its own, without depending on the governor to always set the agenda (Rosenthal 2004: 8-11, 232-43).

The personality of the legislator

Perhaps contrary to public opinion, Alan Rosenthal, who has spent decades studying state legislatures, finds that most legislators are bright, want to have a positive impact, are hardworking, ready to listen, accept conflict, want to resolve problems and have leadership qualities. These attributes lend themselves well to the process of lawmaking.

The permanent campaign for reelection

In our democratic system, constant attention must be paid by legislators to reelection. That becomes a primary goal from the day they are elected and remains so through the coming term. This is the intent of the constitutional provisions for elections. It is the mechanism by which the legislators are held accountable by their constituencies for how well they do the job of representing, lawmaking and balancing. It is also perhaps the most effective mechanism through which voters influence their elected representatives. Systems in which legislators and parties are inattentive to election concerns are generally authoritarian, not democratic.

Time—the scarce resource

Lawmaking and representing come with lots of demands requiring lots of time. There is only so much of it. In response, most legislators put in long hours. Still, time will not allow a thorough understanding of every issue or participation in every meeting and deliberation. Time-management is a constant challenge for legislators.

The Legislature

The role of caucuses in American legislatures

The caucus is the launching pad for the lawmaking and balancing functions of the legislature. Scholars generally agree that party caucuses play an important role in stabilizing the conduct of legislative business and helping voters choose between candidates on Election Day and then hold candidates and their leaders responsible for policy consequences (Aldrich 1995; Wright and Shaffner 2002). The majority caucus in each chamber historically governs the flow of legislation, though not always its outcome. The Pennsylvania Constitution recognizes the existence of majority and minority caucus leaders, vesting in them the responsibility for serving on, or appointing others to, the decennial Legislative Reapportionment Commission.

The role of legislative leaders

In November of every even-numbered year, following the general election, the Democratic and Republican caucuses of the House and Senate meet privately to elect their party leaders. They also nominate their party's candidates for Speaker of the House and President

Pro Tempore of the Senate, two officers that are officially elected by their chambers in public votes at the opening of the next session. When complaints are raised that leaders have too much power, it is important to remember that the caucus leaders in both chambers are elected by their peers. If a majority of the members of any caucus believe that a particular leader is not leading the caucus well, that leader can be deposed. As with any democratically held position, in order to be re-elected, leaders must be responsive to their constituency, in this case their respective caucus members. How and how well legislatures do their lawmaking and balancing, and even to some degree how they do their representational work, depends substantially on legislative leadership. The legislature is a complicated operation, involving many people. Legislators, legislative staff, interest groups, lobbyists, constituents, the governor, and executive officials all play parts in the process. Although no single person runs the legislature as such, legislative leaders are the fulcrum on which much of the work of the legislature hinges. It would be difficult for the legislature to do its job without leadership (Rosenthal 2004: 11, 208). A leadership role comes with a great deal of responsibility. A leader must among other things, recruit candidates, raise funds, manage campaign resources, develop an agenda, shape legislation, appoint committee members and chairs, strategize, negotiate, build consensus and round up votes.

Committees, chairs and leaders

Among many practitioners and theorists it is perceived that legislative committees should be “workshops” where input is gathered and legislation is honed. In practice, some committees are very active and embrace a “workshop” type of role while other committees are less active. Much of this has to do with the amount and relevance of legislation that is moving through a particular committee during a particular session, but some of it also has to do with the leadership quality and disposition of the committee chair. Committees already possess many of the tools necessary to be effective legislative workshops, such as the ability to hold hearings, gather testimony, conduct studies and recommend re-referral of bills to other committees. These tools are not utilized for every piece of legislation, but certain committee chairs use them much more frequently than others.

There is a concern among some practitioners and theorists regarding the provision allowing majority legislative leadership to refer bills to the committee of their choosing. The fear is that the leaders have and will continue to refer bills that they do not favor to a particular committee where they know that bill will “die.” While the leaders do have this referral power, one must remember that there is a balance of power between the leaders and the chairs. Committee chairs know to which committee bills should be referred, and the leaders will have to answer to a committee chair (who is the leader’s constituent) if a referral is not “appropriate.” It is also inevitable that at some point in time, the leaders will need that chair to report a particular bill out of his or her committee, or vote for a particular bill on the floor. If the leaders have been circumventing the chair, or holding back a particular bill on the legislative calendar that the chair wants put up for a vote, possibilities are the leaders will find at best an uncooperative chair, and at worst an opponent in the next leadership election.

The diminishing role of party organizations outside the legislature

While significant as recently as 25 years ago, the role of statewide and local party organizations in legislative politics has diminished significantly, and not just in Pennsylvania (Aldrich 1995; Weir, Wolman, and Swanstrom 2005). Caucus leadership has become a more important influence on individual legislators than their local party organizations. In their official capacity, the caucus leadership allocates the budget for the legislator's office and expenses and provides opportunities for the individual legislator to "look good" or "bad." In their unofficial capacity caucus leadership also engages in "electioneering" beyond their home districts, recruiting candidates and raising funds for campaigns. Caucus leadership also has a significant role in determining what a legislator's district will look like after each reapportionment.

The permanent campaign for the majority

The majority caucus controls the legislative calendar of bills to be voted on and therefore the lawmaking process in each chamber. So in American legislatures, the leadership – majority and minority – is in a constant quest to win or keep the majority and the power that comes with it. Within bounds, this competition is healthy, because it is the means by which voters ultimately control their representatives. The permanent campaign for the majority, however, means "lawmaking" and "electioneering" compete for time. It also means that the caucuses are often engaged in a public relations effort to portray the other party in an unfavorable light. The permanent campaign for the majority is the responsibility of caucus leadership, and it vies for attention along with the lawmaking process. Unless kept within the bounds of responsible policy debate, the constant conflict of the permanent campaign for the majority can be a strong deterrent to a deliberative lawmaking process and can contribute to the legislature's relatively low approval ratings on the part of the public.

Ironically, although competition for statewide majority control appears as fierce as ever, it also appears to be concentrated in fewer districts, with increasing numbers of legislators facing no general election competition. As discussed earlier in this report, there are a number of theories of why this has occurred and a number of potential institutional remedies that have been put forward, but there is no clear and simple diagnosis or "silver bullet" solution.

Time-the scarce resource

Just as is the case for the individual member, perhaps the biggest resource constraints on the legislature are not budget and staff. It is time. There are so many issues to be addressed and only so much time. Along with all the other challenges of a legislative body, this fact of life imposes a huge management challenge. It also means that not all issues will get addressed and that those that do may not receive the careful deliberation they may deserve or demand. How the time that is available is managed heavily influences the outcomes of the lawmaking process.

The Executive

The governor as a lawmaker

One cannot judge the American legislature's lawmaking performance independent of the governor's role in lawmaking. Constitutional, statutory, and political factors set the stage for the governor's exercise of power vis-à-vis the legislature. But how the drama gets played out hinges on how the executive approaches the legislature and vice versa. The balance in practice between the two branches depends in part, indeed in large part, on the attributes of the individual governor. That is to say, governors generally have the wherewithal to match or outmatch the legislature – if that is their desire and if they have the skill. Most have both. Legislative leaders expect the governor will be in the trenches with them when it comes to heavy negotiations. “Heavy” usually refers to the budget. Some governors delegate negotiating to staff, and others would rather let their own veto power do the talking for them. Either way, the legislators cannot ignore the governor's interests (Rosenthal 2004: 184, 192).

The governor as leader

The governor is the de facto leader of his or her party. Whether the legislative leaders in the governor's party like it or not (often they do not), their caucuses are tethered to their governor and their governor's agenda. The governor's ability to use the bully pulpit to propose and thereby focus attention on particular policy proposals is a powerful tool, and his ability to reach across party lines for a productive resolution is an even greater tool.

The governor as candidate

While limited to two terms, the governor in his first term is constantly attentive to reelection to a second term. If in a second term, the governor is attentive to his or her “legacy.”

Time-the scarce resource

Governors must respond to a set of demands that far exceed the time they have. In addition to the governor's “representing, lawmaking and balancing” roles, she or he must run the executive branch and run for reelection or for his or her legacy. That means not every issue gets a governor's attention. As in the case of the individual legislator and the legislature itself, the lawmaking process requires time management.

The Public

Public understanding, participation and opinion

Legislatures often do not look good because of the very functions they perform. They channel, express, and try to settle differences and conflict, and they do so in a complicated, un-programmed, and human fashion. A most unattractive business to the average eye, the legislative process is even less appealing as a result of press coverage that sometimes focuses more on politics than policy (see the analysis of the Fourth Estate, pages 47-53, in Volume I), attacks by political opponents in campaigns, and criticisms by disappointed advocates for one cause or another, as well as the misbehavior of some members (Rosenthal 2004).

The legislature is impressive at moments, disheveled more often, ragged at worst. It is unpredictable and frustratingly elusive... a strong manifestation of democratic politics. While most Americans applaud democracy in principle, not many appreciate the nitty-gritty of representative democracy in practice, particularly as it is portrayed by news reports that stress negative attacks, conflict, and scandal. The result is low marks for the legislature (Rosenthal 2004) and not just in Pennsylvania (see pages 42-45 in Volume I for comparative approval data on American legislatures and the Congress). Public opinion of the lawmaking process and the legislature is not formed from deep study and understanding. Generally, opinions are influenced unduly by the inappropriate behavior of a small sample of the legislative body. An exception in Pennsylvania is the "pay raise" legislation of 2005 in which a majority of legislators were complicit. As to policy results, it can be argued that the public often gets what the majority is often most comfortable with, and that is little or no change.

Representation through interest groups

Whether an individual realizes it or not, the likelihood is close to 100 percent that he or she is represented in Harrisburg through some organized interest group, often the state chapter of a national interest group. Examples include the Pennsylvania State Education Association (PSEA), the American Association for Retired Persons (AARP), the Farm Bureau, and the American Automobile Association (AAA). Yet the public and politicians frequently disparage interest groups for having too much influence in lawmaking. It can be argued that interest groups and their representatives fulfill a vital function, making sure that "voices are heard" in policy debates. Today these groups are in many cases powerful grassroots organizations that are often left wanting. Perhaps a half-century ago, these groups did not expect as much and could be satisfied with the proverbial "half loaf." That is no longer the case. However savvy a group's leadership may be with regard to what it can reasonably expect to achieve, it is necessary nowadays to make sure the rank and file is mobilized for grassroots campaigns. The troops have to be kept fired up. The message communicated to the rank and file is that the group did not get from the legislature what it deserved. Something is in the way; the system has to be overcome (Rosenthal 2004: 2).

Civic campaigning

We define "civic campaigning" as the capacity of segments of the public to influence the outcomes of the lawmaking process. Despite being represented by interest groups, citizens frequently feel that their voices are not heard and important public policy change is not forthcoming from the lawmaking process in Harrisburg. It should be understood that the legislative body, generally speaking, reflects the product of the breadth and intensity of public demand for change. Often the breadth is not extended nor the intensity heightened by effective civic campaigns for change. Put another way, lack of policy change may in some cases not reflect a dysfunctional lawmaking system but rather ineffective civic advocacy.

APPENDIX B
Statistical Appendix

Table B-1 Pennsylvania Budget Enactment
 Passage of General Appropriation Act, Divided Government and Taxes

Fiscal Year Ending	Days Late	Divided Government	Income Tax Increase/ Decrease	CNI Tax Increase/ Decrease	Sales Tax Increase/ Decrease
1956	336	1		6.00%	3.00%
1958	19	1			
1960	134	1			4.00%
1961		1			
1962	0	0			
1963	0	0			
1964	44	0			5.00%
1965	0	0			
1966	9	1			
1967	55	1			
1968	61	0		7.00%	
1969	0	0			6.00%
1970	31	1		12.00%	
1971	248	1*	2.30%		
1972	62	0			
1973	7	0		11.00%	
1974	12	1			
1975	0	1	2.00%	9.50%	
1976	0	0			
1977	0	0			
1978	51	0		10.50%	
1979	0	0	2.20%		
1980	4	1			
1981	0	1			
1982	0	0			
1983	0	0			
1984	11	1	2.45%		
1985	0	1	2.40%		
1986	0	1	2.35%	9.50%	
1987	0	1	2.16%		
1988	3	1	2.10%	8.50%	
1989	0	1			
1990	0	1			
1991	0	1			

Fiscal Year Ending	Days Late	Divided Government	Income Tax Increase/ Decrease	CNI Tax Increase/ Decrease	Sales Tax Increase/ Decrease
1992	35	1	2.60%	12.25%	
1993	0	0	2.95%		
1994	0	1	2.80%		
1995	0	1		11.99%	
1996	0	0		9.99%	
1997	0	0			
1998	0	0			
1999	0	0			
2000	0	0			
2001	0	0			
2002	0	0			
2003	0	0			
2004	0	1	3.07%		
2005	4	1			
2006	7	1			
2007	2	1			
2008	17	1			
2009	4	1			
2010	101	1			
2011	6	1			
2012	0	0			
Total		30			
Average	23.39				

1 indicates divided government between the General Assembly and the party in control of the Governor's office.

Tax percentages shaded green indicate tax increases; percentages shaded red indicate tax decreases.

Tax percentages listed indicate the actual tax rate and not the percentage of tax increase or decrease in a given year.

*The budget negotiations for FY 1971 began with divided government in 1970, but the budget was signed under unified party control. The numbers for House and Senate are for 1970.

Recession information from the National Bureau of Economic Research, <http://www.nber.org/cycles/cyclesmain.html>.

Income Tax rates from the Pennsylvania Department of Revenue Tax Compendium, December 2008.

The Senate was reorganized on November 18, 1992, moving from 26-24 Republican, to an even number of Republicans and Democrats.

Average Length of Budget Delay: 23.39 (late 24 times)

Average Length of Budget Delay Pre-Modernization Implementation (FY 1956-1972): 71.36 days (late 10 times)

Post-Modernization Implementation (FY 1973-2010): 6.6 days (late 14 times)

Table B-2

Percentage of Contested PA GA Races by Decade: 1900-2010 General Elections		
Decade	% Contested in House	% Contested in Senate
1900-08	96	99
1910-18	89	99
1920-28	89	95
1930-38	92	95
1940-48	99	98
1950-58	99	99
1960-68	99	99
1970-78	97	97
1980-88	82	86
1990-98	74	79
2000-10	62	67

Sources: Treadway 2005; Pennsylvania Department of State and *The Pennsylvania Manual*.